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2004 UN Commission on Human Rights:

Mission: to promote and protect human rights

“This is a time when your mission to promote and protect human rights in the widest sense is more important than ever, your responsibility to act more urgent.”

From UN Secretary-General Kofi Annan’s address to the 59th session of the Commission on Human Rights, 24 April 2003.

Promotion and protection of human rights are among the key functions of the Commission on Human Rights (the Commission) and yet there are many human rights situations which the Commission simply fails to address. There have even been times when the Commission has adopted ‘motions to take no action’ to avoid consideration of human rights violations.¹ And even where the Commission has acted it has too often demonstrated its inability or unwillingness to monitor implementation of its own recommendations. At its 60th session Amnesty International (AI) is calling on member states to build on the momentum created by the Secretary-General’s reform process² as well as the ongoing review of the working methods of the Commission³ to consider fundamental reform of the working methods of the Commission to enable it to take effective and concrete action to end grave violations of human rights wherever these occur.

AI is also presenting a number of recommendations to the Commission in respect of issues on the Commission’s agenda, including in relation to ending violence against women; abolition of the death penalty; human rights and counter-terrorism; human rights and sexual orientation; human rights of refugees, asylum-seekers, and other migrants and non-nationals; and on the Human Rights Norms for Businesses. In the area of standard-setting AI is making recommendations in relation to the draft binding instrument on enforced disappearance, on an optional protocol to the International Covenant on Economic, Social and Cultural Rights, and the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”.

With regard to human rights violations in specific countries, AI presents brief regional overviews followed by individual sections on the 18 countries currently on the Commission’s agenda: Afghanistan, Belarus, Burundi, Cambodia, Chad, Colombia, Cuba, Democratic Republic of Congo, Haiti, Iraq, Israel and the Occupied Territories, Liberia, Myanmar, People’s Democratic Republic of Korea, Sierra Leone, Somalia, Timor-Leste, and Turkmenistan. In providing this information AI wishes to stress that its concerns about the human rights situation in individual countries go far beyond these 18 countries as the organization’s annual report and other reports will testify.⁴ However, it is AI’s hope that the information provided will assist the Commission in taking concrete action to end human rights violations wherever these occur.

¹ Members of the Commission have tabled motions of “no action” prevent scrutiny of the human rights situation in countries like China and Zimbabwe.

² Report of the Secretary-General on Strengthening the United Nations: an agenda for further change (A/57/387), 9 September 2002.

³ Commission resolution 2002/91 and decisions 2002/115 and 2003/116.

⁴ See Amnesty International Report 2003 (AI Index: POL 10/003/2003) and other documents available on www.amnesty.org.

Violence against women

“If the first decade emphasized standard-setting and awareness-raising, the second decade must focus on effective implementation and the development of innovative strategies to ensure that the prohibition against violence is a tangible reality for the world’s women.”

Radhika Coomaraswamy

Special Rapporteur on violence against women, its causes and consequences, from 1994-2003

In her report⁵ to the 59th session of the Commission, Ms Coomaraswamy noted that in the struggle to eradicate violence against women “the greatest achievements ha[d] been in awareness-raising and standard-setting”.⁶ She further noted, however, that “despite these successes [...] very little has changed in the lives of most women”; rather that “for the vast majority violence against women remains a taboo issue, invisible in society and a shameful fact of life”. She urges that governments and the international community now focus on implementation of existing standards, laws and measures as the main priority in the struggle to eradicate violence against women. In particular she recommends that governments:

- Ratify all instruments for the protection and promotion of the rights of women, including the Rome Statute of the International Criminal Court (Rome Statute) and the Convention on the Elimination of All Forms of Discrimination against Women (Women’s Convention) and its Optional Protocol;
- Exercise due diligence including to prevent, investigate and punish all acts of violence against women, to take measures to empower women and strengthen their economic independence; and to enact, reinforce or amend domestic legislation to enhance the protection of victims of violence;
- Take or strengthen measures to address the root causes of VAW, including poverty, under-development and lack of equal opportunity;
- Support women’s participation in peace processes, in accordance with Security Council resolution 1325 (2000), without threat of further violence.⁷

⁵ E/CN.4/2003/75

⁶ The Special Rapporteur lists among these achievements, the standards with regard to violence against women in wartime developed by the Rome Statute, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons. At the regional level, such developments include the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Para), the Additional Protocol on women’s rights in Africa to the African Charter on Human and Peoples’ Rights and the Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution adopted by the South Asian Association for Regional Cooperation.

⁷ For a full list of recommendations by the Special Rapporteur, please see paragraphs 84-104 in E/CN.4/2003/75.

Action by the Commission to eradicate violence against women

It was the Commission's very first task, meeting in 1947, to authorize a committee to begin drafting the Universal Declaration of Human Rights (UDHR) – the foundation stone of the human rights movement.⁸ The UDHR proclaims that all human beings are equally entitled to civil, political, economic, social and cultural rights, including the right of women to live their lives free from violence. The Commission continues to play an important role in seeking to realize this promise.

In 1994, the Commission established the mandate of the Special Rapporteur on violence against women, its causes and consequences⁹, and each year since then the Commission has adopted an annual resolution on "Elimination of violence against women" through which the Commission calls on governments to ratify the Women's Convention and its Optional Protocol; exercise their duty to promote and protect the human rights of women and girls; to refrain from invoking custom, tradition, religion or culture as an excuse for violence against women; to address violence against women in the context of armed conflict; and to establish national mechanisms for monitoring and evaluating measures taken to eliminate violence against women. However, the challenge for the Commission remains to support member states in taking decisive and concrete steps to implement women's right not to suffer violence.

Amnesty International's campaign to stop violence against women

It is with the goal of implementation in mind that AI will launch a campaign to stop violence against women in March 2004, in connection with International Women's Day. Through this campaign the organization is calling on all governments as well as private actors, on institutions as well as individuals, to take immediate steps to put a stop to violence against women and to redress the suffering it causes. Violence against women is neither legal nor acceptable and must never be tolerated or justified.

AI's campaign on stopping violence against women will aim to secure:

- **The abolition of laws that support impunity for violence against women and laws that discriminate against women.**
- **The enactment and implementation of effective laws and practices to protect women from violence in conflict and post-conflict situations, and to ensure that impunity is ended for combatants that commit violence against women, and their commanders.**
- **The individual and collective accountability of states for their existing obligations under international law to prevent, investigate, punish and redress all acts of violence against women whether in peacetime or armed conflict.**

⁸ The UDHR was subsequently adopted by the General Assembly through resolution 217 A (III) on 10 December 1948.

⁹ Commission resolution 1994/45

- **Effective action to stop violence at the community level by local governments and civil society, including religious bodies, traditional and informal authorities.**

The campaign will focus on violence against women in the family and armed conflict. However, during this campaign, AI will establish gender equality at the core of its human rights research and advocacy so that acts of violence against women in the full range of contexts are addressed. Within the framework of international human rights law AI will campaign to hold governments to their commitments and urge them to effectively implement laws to protect and respect women's human rights in times of peace as well as conflict. Throughout the campaign, AI will show that the right of women to be free from violence is integral to the UDHR -- until violence against women is eradicated, the promise of the UDHR remains unfulfilled.

Violence against women in the family

The Special Rapporteur on violence against women has stated: “[v]iolence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotype and is used to control women in the one space traditionally dominated by women, the home.”¹⁰ Violence is both rooted in discrimination and serves to reinforce discrimination, preventing women from exercising their rights and freedoms on a basis of equality with men. The Declaration on the Elimination of Violence against Women¹¹ states that violence against women is a “manifestation of historically unequal power relations between men and women, and that this is “one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.

Violence in the family includes battering by intimate partners, sexual abuse of female children in the household, dowry-related violence, marital rape and female genital mutilation and other traditional practices harmful to women. Abuse of domestic workers -- including involuntary confinement, physical brutality, slavery-like conditions and sexual assault -- can also be considered in this category.

In some countries, personal status laws may condone violence against women. Some obedience and modesty laws require a wife's submission to her husband and give the husband an explicit or implicit right to discipline his wife, and in some countries women are considered to be the property of their fathers or husbands. In parts of Kenya, for example, on the death of her husband, a woman is likely to be “inherited” by his brother or a close relative.

Impunity for violence against women is complex – many women are unwilling to pursue intimate partners through the legal system because of emotional attachments and the fear of losing their homes or the custody of their children. Women are also discouraged from seeking justice through the courts because too often criminal justice systems hold them responsible for violence, asserting that it was “incited” or “instigated” by the woman's own behaviour. Since

¹⁰ E/CN.4/1996/53, para 27.

¹¹ Adopted by General Assembly resolution 48/104, 20 December 1993.

women are often denied equal access to economic and social rights, many do not have the financial resources to access the legal system.

There are flaws in the legal framework of some countries which contribute to impunity. For example, even though constitutional provisions may affirm women's right to a life free from violence, the definition may not cover all forms of violence against all women. Among the forms most frequently absent from legislative prohibition is sexual harassment in the workplace or in school. In some countries laws allow so-called "honour crimes" or allow a defence of honour to mitigate criminal penalties, putting the right of the family to defend its honour ahead of the rights of individuals in the family.

In some countries, family and customary law covering inheritance, property rights, marriage, divorce and custody deny women the same rights as men. By denying women their economic, social and cultural rights these laws make it harder – in many cases, impossible - for women to escape situations of violence.¹²

Violence in armed conflict

Armed conflict leads to an increase in all forms of violence, including genocide, rape and other forms of sexual violence.¹³ Violence against women is often used as a weapon of war, in order to dehumanize the women themselves, or to persecute the community to which they belong.

Natalie was 12 years old when her village in the Democratic Republic of Congo was attacked. *"I saw how many soldiers raped my sisters and my mother. I was scared and I thought that if I joined the army I would be protected. I wanted to defend myself...I was only 12 years old, but I was frequently beaten and raped during the night by the other soldiers. When I was just 14 I had a baby. I don't even know who his father is. I ran away...I have nowhere to go and no food to give to the baby"*.

In a 2002 report, the World Health Organization noted that "in many countries that have suffered violent conflict, the rates of interpersonal violence remain high even after the cessation of hostilities -- among other reasons because of the way violence has become more socially acceptable and the availability of weapons."¹⁴

Violence in post-conflict situations

The level of violence does not necessarily reduce once the conflict has abated.¹⁵ In the USA, domestic violence and murder by soldiers returning from combat is emerging as a serious issue.

¹² Acknowledged by Commission most recently in resolution 2003/22 on "Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing", 22 April 2003

¹³ See also *Report of the Secretary-General on women, peace and security (S/2002/1154)* which in paragraph 7 states: "During conflict, women and girls are vulnerable to all forms of violence, in particular sexual violence and exploitation, including torture, rape, mass rape, forced pregnancy, sexual slavery, enforced prostitution and trafficking."

¹⁴ World Health Organization (WHO), Geneva, 2002, *World Report on Violence and Health*, p. 15

¹⁵ See also *Report of the Secretary-General on women, peace and security (S/2002/1154)* which in paragraph 7 states: "A proliferation of small arms increases the risk of interpersonal violence, including domestic violence, which often continues after the conflict."

One study, conducted by the US Army, found the incidence of “severe aggression” against spouses three times as high in army families as in civilian ones.¹⁶

Post-conflict societies have seen an increase in violence against women associated with the presence of international peace-keeping forces. Women from neighbouring countries have been trafficked into Kosovo for forced prostitution since the deployment of the international peacekeeping force, KFOR,¹⁷ and the establishment of the UN civilian administration, UNMIK,¹⁸ in July 1999. Trafficking was identified as a problem soon after UNMIK’s arrival, but the number of premises where trafficked women are forced to work as prostitutes has continued to rise, reaching more than 200 by July 2003. The UN has taken steps to address this; however, implementation remains a challenge.¹⁹

Peace processes have routinely failed to include women and to deal with gender issues, which can result in gender-based persecution and violence being rendered invisible in peace agreements and not taken into account in their interpretation and implementation. For example, an AI delegation which visited Sierra Leone in 2000 reported that the process of disarmament, demobilization and reintegration of former combatants was failing to address the experiences of the many girls and women who had been abducted by armed opposition groups and forced to become their sexual partners. It appeared that when they reported for disarmament and demobilization, they were often not interviewed separately from their “husbands” and not offered a genuine opportunity to leave the armed forces, if they wished to do so. These women and girls, many either pregnant or with young children, required support to either return to their families where possible or to re-establish their lives together with their children.²⁰

In October 2000, the Security Council adopted a landmark resolution on women, peace and security.²¹ Building, *inter alia*, on the Women’s Convention, the Beijing Declaration and Platform for Action, and the outcome document the twenty-third session of the General Assembly, the resolution reaffirmed women’s right to protection in conflict and post-conflict situations, urged all actors involved in negotiating and implementing peace agreements to adopt a gender perspective, and urged increased participation by women in all peace processes.

Abuses by armed political groups

Over the past several years, armed groups operating in all regions of the world have been responsible for some of the worst human rights abuses, including brutal and systematic acts of violence against women, such as rape and other forms of sexual violence.

¹⁶ Cited in Jon Ellison and Catherine Lutz, “Hidden Casualties,” *Southern Exposure*, 15 May 2003.

¹⁷ Kosovo Force, led by NATO.

¹⁸ UN Interim Mission in Kosovo, established on 10 June 1999, Security Council resolution 1244.

¹⁹ Following serious allegations of widespread sexual exploitation and abuse of refugee and internally displaced women and children by humanitarian workers and peacekeepers in West Africa, a task force was established by the Inter-Agency Standing Committee (IASC) to address this issue. The task force established six core principles representing agreed principles and standards of behaviour to be incorporated into the codes of conduct and staff rules and regulations of IASC member organizations (A/57/465).

²⁰ See also *The Voices of Girls Child Soldiers* and *Girl Soldiers: Challenging the Assumptions*, both issued by the Quaker United Nations Office in October and November 2002, respectively.

²¹ Security Council resolution 1325, adopted 31 October 2000.

Cherifa Bouteiba, a 20-year-old woman from Algeria, was abducted by armed men on 2 June 2001. She was forced to walk into the mountains where she was repeatedly raped by several men over a two-day period. On the third day she was able to escape. She had been pregnant at the time of her abduction and subsequently miscarried. Her husband divorced her on the grounds that she had soiled his honour. Cherifa Bouteiba fears her assailants may come back for her. She believes some of the men who assaulted her gave themselves up to the authorities in 2002 and were granted immunity from prosecution. Ever since she saw some of her attackers walking freely in the area where she lives, is hiding behind her veil, hoping she will not be recognized.

Refugees and asylum-seekers

Women refugees and asylum-seekers often find themselves caught in an inescapable cycle of violence. Fleeing from one dangerous situation, many women are abused during their flight in search of safety. Government officials such as border guards, smugglers, pirates, members of armed groups, even other refugees, have all been known to abuse refugee women in transit. Women and girls are sometimes not even safe from sexual and other exploitation by humanitarian aid workers -- the very people charged with responsibility for the welfare of refugees and the displaced.

In a number of countries, asylum-seekers are detained in regular prisons where they are effectively treated as criminals. AI and other human rights organizations have documented incidents of abuse of women and girl refugees and asylum-seekers in detention and conditions which amount to cruel, inhuman or degrading treatment. Women have been humiliated, raped, and in some instances driven to attempt suicide or commit acts of self-harm.²²

When women return to their countries of origin, they may find themselves living alongside the perpetrators of the abuses that forced them to flee. Returning from exile, women and girls may also encounter a new set of problems. The breakdown of community structures and traditional roles that often results from conflict and flight presents new challenges in a post-conflict society.²³

Reports in 2002 by the Office of the UN High Commissioner for Refugees (UNHCR), together with Save the Children-UK, documented serious allegations of sexual abuse and exploitation of women and children by humanitarian workers in camps for refugees and displaced people in Sierra Leone, Liberia and Guinea. Allegations included humanitarian workers deliberately withholding food and services in order to extort sexual favours. In Nepal, it was acknowledged by UNHCR that Bhutanese refugees in camps were found, in at least 18 cases, to have been victims of sexual abuse and exploitation by refugee aid workers. The victims included a seven-year-old girl and a woman with disabilities.

²² See for example *USA: Lost in the labyrinth: detention of asylum-seeker* (AI Index: AMR 51/51/99) and *Lebanon: AI reiterates its concerns on the situation of refugees and asylum-seekers* (AI Index: MDE 18/005/2002)

²³ See for example *Afghanistan: Out of sight, out of mind: The fate of the Afghan returnees* (AI Index: ASA 11/014/2003)

Amnesty International calls on the Commission to:

- Urge governments to take steps, including through national action plans and gender specific budgets, to ensure the protection of women's human rights, including full and prompt implementation of the Women's Convention, its Optional Protocol, the Rome Statute and other international standards;
- Call on those governments that have yet to do so to ratify the Women's Convention, i.e. Brunei Darussalam, the Holy See, Iran, Kiribati, the Marshall Islands, Federated States of Micronesia, Monaco, Nauru, Oman, Palau, Qatar, Somalia, Sudan, Swaziland, Tonga, United Arab Emirates, the United States of America;
- Call on all states parties to the Women's Convention which have entered reservations to re-examine these with a view to withdrawing them;
- Call on all states parties to the Women's Convention to ratify its Optional Protocol without making a declaration under Article 10 to opt out of the inquiry procedure;
- Call on all governments to enact, reinforce or amend domestic legislation in accordance with international standards to protect the right of women and girls to freedom from violence; to provide gender-awareness training to professionals who deal with victims of domestic violence, including law enforcement personnel, health workers and the judiciary; and to review, as a matter of urgency, those practices and factors which discourage women from taking action to escape from violence and seek redress;
- Call on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse; to investigate all acts of violence against women during war, to bring to justice those responsible and to provide full redress to the victims;
- Urge governments to ensure full and speedy implementation of Security Council resolution 1325 (2000) on women, peace and security as well as the recommendations contained in the study by the Secretary-General on women mandated by that resolution;
- Welcome the resolution by the General Assembly to mandate the Secretary-General to prepare an in-depth study on all forms of violence against women and to urge governments and UN bodies, including the Special Procedures of the Commission, the treaty monitoring bodies and the OHCHR to participate fully in this process by submitting relevant information, including best practice, and making recommendations for eradicating violence against women;
- Continue to support the work of the Special Rapporteur on violence against women including by ensuring full and prompt implementation of her recommendations and by facilitating without delay the visits requested, in particular the planned visit to the Russian Federation in June and to Nigeria in July 2004;
- Encourage all Special Procedures of the Commission to pay particular attention to gender-specific violations of human rights within their respective mandates, to integrate these issues fully in their missions, reports and recommendations, to assess the extent to which such violations are reported to them, and to recommend measures which should be taken to improve this;
- To mandate the OHCHR, in cooperation with relevant agencies, to develop a comprehensive program of technical assistance aimed at eliminating violence against women.

Thematic issues

For the 60th session of the Commission, AI is focusing in particular on the following issues:

The death penalty

Each year since 1997 the Commission has adopted a resolution on the question of the death penalty.²⁴ These resolutions are important indications of the views of member states on how to achieve the agreed UN goal of abolition of the death penalty.²⁵ A similar draft resolution is expected to be presented to the 60th session of the Commission in 2004.

The resolutions call upon states that retain the death penalty to establish a moratorium on executions and to observe agreed safeguards in death penalty cases. In 2003 the text was strengthened in several ways, including the addition of language urging retentionist states not to extend the application of the death penalty to crimes to which it does not presently apply (para. 5(a)). Resolution 2003/67 also urged all retentionist states “not to impose [the death penalty] for crimes committed by persons below 18 years of age” (para. 4(a)); in previous resolutions, this stricture had referred only to states’ obligations under the international treaties to which they were party.

For the Commission’s consideration of the question this year, an important source of information will be the yearly supplement to the Secretary-General’s quinquennial report on capital punishment, to be submitted to the 60th session of the Commission.²⁶ AI’s information indicates continuing progress towards worldwide abolition. In 2003 Armenia abolished the death penalty in peacetime, and Kazakhstan declared a moratorium on executions. By mid-December 2003, 76 countries had abolished the death penalty for all crimes; 16 had abolished it for ordinary crimes only and 20 were abolitionist in practice, giving a total of 112 countries abolitionist in law or practice. Eighty-three countries and territories retained the death penalty, but many of these did not carry out executions during the year.

Another important development was the entry into force in July 2003 of Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), the first international treaty to provide for the abolition of the death penalty in all circumstances with no exceptions permitted. By mid-December 2003 the protocol had been ratified by 20 of the 44 Council of Europe member states and signed by a further 21 states. The other three existing abolitionist treaties – the Second Optional Protocol to the ICCPR, Protocol No. 6 to the European Convention on Human Rights and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty – had been ratified by 51, 43 and eight states respectively.

²⁴ Most recently Commission resolution 2003/67.

²⁵ General Assembly resolution 32/61 of 8 December 1977.

²⁶ Commission resolution 2003/67, paragraph 8.

Despite these positive developments, executions have continued, and in some countries the safeguards referred to in resolution 2003/67 have not been respected. The death penalty has been applied against the mentally ill and the mentally retarded, against people convicted of non-violent crimes and in many cases in which the defendants have not received a fair trial. One country, the Philippines, announced the lifting of a moratorium on executions, and there were calls to resume executions in several other countries.

AI remains deeply concerned about the use of the death penalty against child offenders – people convicted of crimes committed when they were under 18 years old. Such use is contrary to resolution 2003/67 as well as the Commission’s resolutions 2002/47 (Human rights in the administration of justice, in particular juvenile justice) and 2003/86 (Rights of the child), both of which were adopted without a vote. AI believes it is also a violation of customary international law, and that the prohibition of use of the death penalty against child offenders should be recognized as a peremptory norm of general international law (*jus cogens*).²⁷

It should be noted that:

- 194 states are now parties to either the ICCPR or the Convention on the Rights of the Child (CRC), both of which exclude the use of the death penalty against child offenders.
- When the USA on ratifying the ICCPR entered a reservation to exempt itself from the relevant provision of that treaty, 11 other states objected to the reservation. The Human Rights Committee (HRC) recommended that the USA withdraw the reservation and stated that it believed the reservation to be incompatible with the object and purpose of the ICCPR.²⁸
- Executions of child offenders are very rare in comparison to the number of executions carried out worldwide. In 2003, AI learned of only two executions of child offenders, one in China²⁹ and one in the USA.
- Very few countries still execute child offenders; indeed, such executions are very rare in comparison to the number of executions carried out world wide. Of the eight countries reported to have done so since 1990, at least three (China, Pakistan and Yemen) have raised the minimum age to 18 in domestic law, and others have denied carrying out executions. Only one country, the USA, regularly executes child offenders and acknowledges doing so.
- The Inter-American Commission on Human Rights has held that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18

²⁷ Rules of customary international law are rules of law derived from state practice and regarded as law (*opinio juris*). They are binding on every state, except on those states that have “persistently objected” to the rule in question. A peremptory norm of general international law is defined in the Vienna Convention on the Law of Treaties as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of international law having the same character”. See *Amnesty International, The exclusion of child offenders from the death penalty under general international law* (AI Index: ACT 50/004/2003) July 2003.

²⁸ *Report of the Human Rights Committee* (A/50/40), 3 October 1995, paragraphs 279 and 292.

²⁹ This execution took place despite China having amended its Criminal Law in 1997 to abolish the death penalty for defendants who were under 18 at the time of the offence.

years at the time of their crime” and that “this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*”.³⁰

AI has also been concerned about expansions of the scope of the death penalty. Contrary to the agreed UN position that “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment”,³¹ at least one country, Morocco, extended the scope of the death penalty to “terrorist”-related crimes in 2003.

At the 60th session of the Commission, AI will be working together with other members of the World Coalition against the Death Penalty. This organization, founded in Rome in May 2002, is a coalition of human rights organizations, trade unions, bar associations and local and regional authorities from different parts of the world which have committed themselves to work together for the abolition of the death penalty worldwide.

Along with the other members of the World Coalition against the Death Penalty, Amnesty International calls on the Commission to:

- Adopt a resolution on the question of the death penalty which reiterates the provisions of the Commission’s previous resolutions on the subject, as well as:
- Affirm that the imposition of the death penalty on those aged under 18 at the time of the commission of the offence is contrary to customary international law, as stated by the Commission’s Sub-Commission on the Promotion and Protection of Human Rights,³² and recognize that the prohibition of use of the death penalty against child offenders is a peremptory norm of general international law (*jus cogens*);
- Call upon states that still maintain the death penalty to abolish it in wartime as well as peacetime;
- Call upon states that have abolished the death penalty to enshrine abolition in their constitutions;
- Decide to discuss the issue again at its 61st session in 2005.

AI and the other members of the World Coalition against the Death Penalty urge all members of the Commission to vote in favour of such a resolution, and appeal to all states to co-sponsor it.

AI also urges the Commission again to adopt resolutions on the “Rights of the child” and “Human rights in the administration of justice”, in particular juvenile justice, urging all states to ensure under their legislation and practice that the death penalty cannot be imposed on people under 18 years of age at the time of the offence.

³⁰ *Michael Domingues v. USA*, Report No. 62/02, Merits, case 12.285, 12 October 2002, paras. 84-85.

³¹ General Assembly resolution 32/61.

³² Sub-Commission resolution 2000/17 of 17 August 2000.

Human rights and counter-terrorism

Legislation and measures introduced by states to counter the perceived or real threat of terrorist³³ acts have continued to curtail human rights and to undermine the rule of international law in a wide range of countries in all regions of the world. While AI condemns unreservedly attacks on civilians, whether committed by state or non-state actors, the organization has repeatedly urged governments, both before and after the 11 September attacks in the USA, to ensure that measures taken to prevent and respond to terrorist acts are in strict conformity with their obligations under international human rights law.³⁴

Countries in regions have introduced new legislation or toughened up existing laws after 11 September 2001. Common to most such laws are vaguely worded definitions of new offences; sweeping powers to hold people without charge or trial, often on the basis of secret evidence; provisions to allow for prolonged *incommunicado* detention, which may facilitate torture; and measures which effectively deny or restrict access to asylum as well as speed up deportations. A number of retentionist countries have introduced new capital offences relating to “terrorism”.

In order to illustrate the range of AI’s concerns regarding the impact of counter-terrorism measures on human rights, please see the summaries below on concerns in the following countries: China, Malaysia, Russian Federation, Tunisia, UK, USA and Yemen.

China

Following the attacks of 11 September 2001, the Chinese government has intensified its crackdown on Uighur opponents of Chinese rule and others branded as “ethnic separatists” in the Xinjiang Uighur Autonomous Region (XUAR), in the west of China. The government has claimed that they are linked with international “terrorism” and has called for international support in its crackdown on domestic “terrorism”.

Several thousand people are reported to have been detained for investigation in the crackdown and scores charged or sentenced under the Criminal Law. At the same time, the government has further restricted the religious rights of the Muslim population in the XUAR, banning some religious practices during the holy month of Ramadan, closing mosques, increasing official controls over the Islamic clergy in the region, and detaining or arresting religious leaders deemed to be “unpatriotic” or subversive. At the end of December 2001, China amended the provisions of its Criminal Law with the stated purpose of making more explicit the measures it already contained to punish “terrorist” crimes. AI is concerned that the new provisions enlarge the scope of application of the death penalty in China and may be used to further suppress freedom of expression and association. AI has called on the Chinese government to review the provisions on terrorist crimes in the Criminal Law with a view to removing the death penalty from the

³³ AI notes that there is no agreed legal definition of the term “terrorism”.

³⁴ Israel and the Occupied Territories and the Palestinian Authority: Without distinction: Attacks on civilians by Palestinian armed groups (AI Index: MDE 02/003/2002).

punishments they provide and ensuring that these provisions do not criminalize activities which amount to no more than the peaceful exercise of fundamental human rights.³⁵

Malaysia

For decades Malaysia received international criticism in relation to its security legislation, particularly the Internal Security Act (ISA), which violates internationally recognised human rights standards, and has been used against people peacefully expressing their religious and political beliefs.

The ISA predates the 11 September attacks, and the justification for its continued use has changed over the years, as new perceived threats were identified by successive Malaysian governments. The type of people arrested under the ISA has also changed over time. Starting with those accused of being communists, it soon was used against students, academics, Shi'a Muslims, human rights activists, journalists, religious clerics, trade unionists, political opponents, civil society leaders, and most recently those accused of being 'terrorists'. What has changed little over the years is the way it has continued to be used to arrest and detain people for the peaceful expression of their religious and political beliefs.

Allowing for arrest without warrant and indefinite detention without trial, hundreds of people have spent years, and in some cases decades, in prison without ever appearing in court. Through a combination of solitary confinement, *incommunicado* detention and aggressive interrogation techniques some of those people have been subjected to physical and psychological ill-treatment, sometimes amounting to torture.

The ISA demonstrates what can happen when states promote security at the expense of human rights. It shows how temporary measures implemented as a reaction to a perceived threat to a nation's security can become permanent.³⁶

Russian Federation

The 1998 Law to Combat Terrorism makes it virtually impossible for anyone with a grievance arising from an "anti-terrorist" operation to gain redress. It exempts from liability those participating in such an operation, even if they violate human rights.

Responsibility for planning "anti-terrorist" operations lies with federal bodies – the President and the government of the Russian Federation – which may set up a command centre to tackle individual incidents, according to Article 10 of the Law. This centre would normally include representatives of the Federal State Security Service; the Ministry of Internal Affairs; the Ministry of Defence; the Federal Border Guards' Service; the External Intelligence Service; and the Service of Federal Protection – under the overall control of the President of the Russian Federation.

The Law to Combat Terrorism does not, however, ascribe any responsibility to the

³⁵ See also *People's Republic of China: China's anti-terrorism legislation and repression in Xinjiang Uighur Autonomous Region* (AI Index: ASA 17/010/2002).

³⁶ See also *Malaysia: The Internal Security Act* (AI Index: ASA 28/006/2003)

decision-makers for damage arising from an “anti-terrorist” operation. Material damages are to be paid by the authority where the incident happens to take place and according to fixed rouble tariffs – provisions set down in Articles 17(1) and 20 of the Law. Neither federal nor local authorities are liable under this law for “moral damage” to survivors. The only exception is for foreign nationals who suffer damages in an “anti-terrorist” operation in the Russian Federation, who may claim compensation from the federal bodies in charge of the operation.³⁷

Following consideration of the fifth periodic report of the Russian Federation, the Human Rights Committee stated that “[t]he State party should ensure that operations in Chechnya are carried out in compliance with its international human rights obligations. The State party should ensure that abuse and violations are not committed with impunity, *de jure* or *de facto*, including violations committed by military and law enforcement personnel during counter-terrorist operations. All cases of extrajudicial executions, enforced disappearances and torture, including rape, should be investigated, their perpetrators prosecuted and victims or their families compensated (articles 2, 6, 7 and 9).³⁸

Tunisia

Well before the 11 September 2001 attacks in the USA, the Tunisian authorities have used the threat of violent Islamist activities to justify “security” and “anti-terrorist” measures. Since the late 1980s, the authorities have tried without success to provide evidence that the unauthorized Islamist movement *Ennahda* (Renaissance) is involved in violent attempts to overthrow the government.

The definition of “terrorism” in Tunisian law, especially Article 52 of the Penal Code, is already broad.³⁹ This article has been used to criminalize peaceful opposition activities, including leading to the imprisonment of prisoners of conscience.⁴⁰ Tunisian nationals living abroad may also be charged with “terrorist” activities under Article 52 and under provisions of the Military Justice Code, which allows legal action against Tunisians who serve in a foreign army or in a “terrorist” organization operating from abroad (Article 123).

AI continues to call on the Tunisian authorities to revise the legislation to ensure its compliance with international human rights standards, to end the practice of trying civilians before military courts where procedures fall short of international standards for fair trials, and to repeal or amend all laws, including Article 52 of the Penal Code and Article 123 of the Military Justice Code.⁴¹

United Kingdom

Emergency legislation in the UK has been of concern to AI since the 1970s. The organization has documented that provisions of such legislation have violated international human rights law and

³⁷ See also *Rough Justice: The law and human rights in the Russian Federation* (AI Index: EUR 46/054/2003)

³⁸ CCPR/CP/79/Rus, 6 November 2003.

³⁹ A 1993 amendment to the Penal Code qualified as acts of terrorism “*all actions relating to individual or collective initiative, aiming at undermining individuals or properties, through intimidation or terror*” and “*acts of incitement to hatred or to religious or other fanaticism, regardless of the means used*” (Article 52, amended by Law 93-112 of 22 November 1993).

⁴⁰ See *Tunisia: the cycle of injustice*, (AI Index MDE 30/001/2003), June 2003.

⁴¹ See also *Tunisia: New draft “anti-terrorism” law will further undermine human rights* (AI Index MDE 30/021/2003).

facilitated abuses of human rights, including torture and cruel, inhuman or degrading treatment and unfair trials. In the aftermath of the 11 September 2001 attacks, the UK government stated that the threat posed to the UK by the *al-Qa'ida* network amounted to “a public emergency” which necessitated the enactment of new “anti-terrorist” measures. The Anti-terrorism, Crime and Security Act 2001 (ATCSA) was passed by the UK Parliament and enacted on 14 December 2001. AI is concerned that following its enactment, serious human rights violations have taken place in the UK.

Under the ATCSA, non-UK nationals, whose removal or deportation from the UK cannot be effected, can be certified as “suspected international terrorists” by the Secretary of State and immediately detained without charge or trial for an unspecified and potentially unlimited period of time, principally on the basis of secret evidence. As of 18 November 2003, the Home Secretary had certified 17 people as “suspected international terrorists” and there were 14 people -- all non-UK nationals -- detained under the ATCSA in high security establishments in the UK. AI believes that in applying Part 4 of the ATCSA people have effectively been “charged” with a criminal offence, and “convicted” and sentenced to an indefinite term of imprisonment without a trial. In addition, as these provisions can only be applied to non-UK nationals, AI considers that Part 4 of the ATCSA violates the prohibition of discrimination enshrined in international law. The organization continues to call on the UK government to release all persons detained under the ATCSA unless they are charged with a recognizably criminal offence and tried by an independent and impartial court in proceedings which meet international standards of fairness.⁴²

United States of America

The US government reacted to the atrocities of 11 September 2001 by characterizing its response as a “war”. Its “war on terror” has indeed already seen two international armed conflicts – the invasions of Afghanistan and Iraq – but it has also consisted of an ongoing law enforcement effort at home and abroad. While the Justice Department continues to conduct investigations into “terrorism” within the criminal justice system, the US government has at the same time pursued a parallel system in which the executive has assumed sweeping powers to indefinitely detain, interrogate, charge or try suspects. AI believes that the USA has contravened international law and standards in its treatment of detainees and it is setting a dangerous precedent in so doing.

More than 650 people remain held without charge or trial in the US Naval Base in Guantánamo Bay in Cuba. The detainees are from around 40 countries,⁴³ and some have now been held in the base for over two years. The military has not made public the precise numbers, identities or nationalities of the prisoners. None was granted prisoner of war status or brought before a competent tribunal to determine this status as required by the Geneva Conventions. None has had access to any court, to a lawyer, or to family members. On 3 July 2003, it was revealed that President Bush had named six foreign nationals in US custody as being the first to be subject to his Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism. Under the Order, anyone so named can be held indefinitely without charge or trial, or brought to trial before military commissions with the power to hand down death sentences

⁴² See also *United Kingdom: Justice perverted under the Anti-terrorism, Crime and Security Act 2001* (AI Index: EUR 45/029/2003)

⁴³ Reportedly those detained include nationals of Afghanistan, Algeria, Australia, Azerbaijan, Bahrain, Belgium, Canada, China, Denmark, Egypt, France, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Libya, Maldives, Mauritania, Morocco, Pakistan, Qatar, Russia, Saudi Arabia, Spain, Sweden, Turkey, Uganda, United Kingdom, Uzbekistan and Yemen.

and against whose decisions there would be no right of appeal to any court. Following the naming of the six detainees, the Special Rapporteur on the independence of judges and lawyers stated that “in proceeding to apply these drastic measures to counter terrorism, the United States Government is seen defying United Nations resolutions, including General Assembly resolution A/RES/57/219 of 18 December 2002 and Security Council resolution S/RES/1456 of 20 January 2003”. The Rapporteur pointed out that these resolutions “reiterate very clearly that counter-terrorism measures must comply with international human rights law, humanitarian law and refugee law. It was the US that went to war with Iraq for breach of a Security Council resolution, and here we find the US blatantly defying these resolutions which they were party to.”

AI believes that the Military Order should be revoked. It would allow indefinite, unchallengeable detention without trial, and any trial before the military commissions would be unfair, as these will lack independence from the executive; there is only restricted right to counsel of choice and to an effective defence, and there is no right of appeal to an independent and impartial court established by law.

The US administration has not been open to scrutiny of its actions. In two opinions on the Guantánamo detainees, the Working Group on arbitrary detention stated that it finds the US government acting in contravention of articles 9 and 14 of the ICCPR and “deplores the lack of co-operation” by the US government in responding to issues raised.⁴⁴ To AI’s knowledge, the Special Rapporteur on the independence of judges and lawyers had still not received a response from the USA to the urgent appeal he sent on 16 November 2001 relating to the Military Order that President Bush had signed three days earlier.

There has also been concern that the aggressive response of the US government might include resort to the torture or ill-treatment of suspects taken into custody in the context of the “war on terror”. This concern has been heightened by the denial of access to international human rights organizations to the hundreds of detainees held in Guantánamo Bay, Afghanistan and elsewhere, notwithstanding the access granted to the International Committee of the Red Cross.⁴⁵ The US authorities have variously used hooding, blindfolding, handcuffing, and shackling of detainees in Iraq, Afghanistan, and Guantánamo. Ill-treatment of detainees reported to AI delegates in Iraq include prolonged sleep deprivation, prolonged restraint in painful positions, sometimes combined with exposure to loud music, prolonged hooding, and exposure to bright lights. There are also reports that the US has transferred some detainees to countries known to practice torture.⁴⁶

⁴⁴ Opinion No.21/2002 (USA) and Opinion No.5/2003, (USA) contained in the report of the Working Group on arbitrary detention (E/CN.4/2004/3/Add.1), 26 November 2003. See also WGAD Legal Opinion regarding the deprivation of liberty of persons detained at Guantánamo Bay (E/CN.4/2003/8), 16 December 2002.

⁴⁵ It is the policy of the International Committee of the Red Cross to make its concerns and recommendations known to the detaining power, rather than to make its findings public.

⁴⁶ See also USA: *The threat of a bad example: Undermining international standards as “war on terror” detentions continue* (AI Index: AMR 51/114/2003).

Yemen

On 16 July 2003 the Minister of Interior of Yemen told Parliament that 95 people accused of belonging to *al-Qa'ida* had been released because they “had changed their ideas”, and that 195 others remained in detention because they “persist in holding on to the ideas they believe in”.

In the weeks and months following this statement, security forces carried out mass arrests targeting Yemeni and foreign nationals, including women, and children as young as 12 years of age. Arrests were made without the judicial supervision required by law, and detainees have invariably been subjected to lengthy *incommunicado* detention, during which some of the detainees alleged that they were tortured or ill-treated. Most of the Yemenis who were arrested were held for weeks or months before they were released uncharged or tried. Those who remain continue to be held indefinitely outside any recognized legal framework, without charge and without judicial supervision. Most foreign nationals were deported after weeks or months of interrogation in *incommunicado* detention. They were denied access to asylum procedures and the judiciary to challenge their deportation, and no assessment of the risks of torture or execution in the countries to which they were sent were known to have been carried out.

AI is concerned that the Yemeni government has sidelined the rule of law and its human rights obligations in the name of “fighting terrorism” and “national security”. It has given the green light to the security forces to act with impunity in total disregard of the law and the role of the judiciary. Mass arbitrary arrest, detention, and deportations have taken place and continue to take place. More than 200 people, many of them arrested nearly two years ago, continue to be detained without charge or trial and denied access to lawyers or the courts to seek justice.⁴⁷

Developments at the UN

AI welcomes the adoption by the 58th session of the General Assembly of the resolution on “Protection of human rights and fundamental freedoms while countering terrorism”.⁴⁸ Building on previous resolutions adopted by the 57th session of the General Assembly⁴⁹ and the 59th session of the Commission,⁵⁰ the new resolution re-affirms that states must ensure that measures to combat terrorism comply with their obligations under international law, in particular human rights, humanitarian and refugee law. In adopting resolution 1456 on 20 January 2003, the Security Council also stressed the importance of this obligation. The General Assembly resolution also calls on the Counter-Terrorism Committee (CTC) to strengthen its cooperation with relevant human rights bodies (especially the OHCHR), requests the Special Procedures of the Commission as well as the treaty monitoring bodies, within their mandates, to consider the protection of human rights in the context of measures to combat terrorism, and to coordinate their efforts and exchange information. Further, the resolution requests the High Commissioner for Human Rights to continue to examine the question of the protection of human rights while countering terrorism, to make general recommendations and provide assistance and advice to states upon their request.⁵¹

⁴⁷ See also *Yemen: The rule of law sidelined in the name of security* (AI Index: MDE 31/006/2003)

⁴⁸ A/RES/58/187.

⁴⁹ A/RES/57/219.

⁵⁰ Commission resolution 2003/68.

⁵¹ The OHCHR has produced “Proposals for ‘Further Guidance’ for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 (mentioned in the Annex to a letter by the Chair of the CTC in S/2001/1227 and reproduced in E/CN.4/2002/18).

Of particular importance is the General Assembly's request to the OHCHR to "submit a study on the extent to which the Special Procedures and treaty monitoring bodies are able, within their existing mandates, to address the compatibility of national counter-terrorism measures with international human rights obligations".

AI also welcomes the joint statement by the Special Procedures of the Commission, at their annual meeting in July 2003, in which they "voiced profound concern at the multiplication of policies, legislations and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affect negatively the enjoyment of virtually all human rights -- civil, cultural, economic, political and social". They strongly affirmed that any measures taken by States to combat terrorism must be in accordance with their obligations under the international human rights instruments, and expressed their determination, within the framework of their respective mandates, to monitor and investigate developments in this area.

While welcoming the increased attention by the Special Procedures and treaty monitoring bodies on the impact of counter-terrorism measures on human rights, AI wishes to underline that the work of these bodies in this area remains severely restricted because of mandate, periodic reporting and other constraints. Consequently AI is convinced that a new mechanism needs to be established on human rights and counter-terrorism. This is important in order to link the UN's human rights expertise in this area more effectively with the CTC, which, as a Security Council body, has an important role to play but continues to neglect the importance of the human rights dimensions of its work.

The benefits of a new mechanism on human rights and counter-terrorism would be manifold:

- It will be able to specifically focus on the impact of counter-terrorism measures on human rights and assist states in meeting their human rights obligations;
- It will be able to strengthen the dialogue and enhance cooperation between the UN's human rights experts and the CTC with a view to better assist in states in fully implementing their obligations in Security Council resolutions 1373 and 1456;
- It will serve as a focal point for the UN on this important issue. It will be able to better coordinate the work of the other Special Procedures, country mandates as well as thematic mandates;
- It will be able to take into account the observations and recommendations of the treaty monitoring bodies.

Together with other NGOs, Amnesty International calls on the Commission to:

- Urge states to ensure that in taking counter-terrorism measures they fully meet their obligations under international laws, in particular human rights, humanitarian and refugee law;
- Establish a new mechanism mandated to monitor and analyze the impact on human rights of measures taken by states to combat terrorism, and to make recommendations to states as well as other relevant UN bodies aimed at ensuring full protection of human rights and fundamental freedoms;

- Call on states to implement the recommendations of the Special Procedures and the treaty bodies relating to counter-terrorism measures;
- Encourage the Special Procedures of the Commission to continue to monitor and report, as appropriate, on the impact of counter-terrorism measures on human rights and to make recommendations for their effective observance;
- Request the High Commissioner for Human Rights to ensure high-level, sustained and adequately resourced capacity at the OHCHR to analyze the global impact on human rights of counter-terrorism measures by states and act on that basis including by providing appropriate assistance and advice to states.

Human rights and sexual orientation

At the 59th session of the Commission, Brazil introduced a draft resolution titled “Human Rights and Sexual Orientation”,⁵² which expressed concern at the occurrence of human rights violations against persons because of their sexual orientation, called upon states to promote and protect the human rights of all persons and asked the High Commissioner for Human Rights and the UN special procedures to pay attention to the issue. The draft resolution did not attempt to create a new body of rights, but sought to reaffirm existing non-discrimination principles established under international human rights law. However, the draft text proved to be one of the most fiercely contended issues of the session. Pakistan, on behalf of the Organisation of Islamic Conference (OIC), proposed a motion that the Commission take “no action” on the draft resolution which was narrowly defeated.⁵³ On the final day of the session, the Chair’s proposal to postpone consideration of this draft resolution to the 60th session was adopted by roll-call vote.⁵⁴

AI has been documenting abuses based on sexual orientation or gender identity from countries all over the world for more than a decade.⁵⁵ These atrocities have included the death penalty, imprisonment, torture and cruel and ill-treatment (including rape and forced medical treatment), attacks on lesbian, gay, bisexual and transgender (LGTB) human rights defenders, denial of legal status to LGTB rights organizations and other forms of discrimination. In many countries, the ill-treatment of people due to their sexual orientation or gender identity provokes little outrage and those who defend such cases have themselves been attacked by the government or other groups in society. Human rights defenders working in issues of sexuality have increasingly turned to international human rights bodies, including those of the UN, to seek protection against these abuses.

Over the last 10 years, the treaty bodies (ICCPR,⁵⁶ the ICESCR,⁵⁷ the CRC⁵⁸ and CEDAW⁵⁹) and the Special Procedures of the Commission have addressed violations across the

⁵² E/CN.4/2003/L.92

⁵³ 22 in favour, 24 against, with 6 abstentions.

⁵⁴ 26 in favour, 21 against, with 6 abstentions.

⁵⁵ See ‘Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity’ (AI Index: ACT 40/016/2001)

⁵⁶ In *Nicholas Toonen v. Australia* the Human Rights Committee held in para. 8.7 of its Views, that a Tasmanian law violated the right to privacy jointly with the right to freedom from discrimination. The Committee noted that reference to “sex” in the non-discrimination clauses of the ICCPR (Articles 2 (1) and 26) should be taken as including “sexual

full range of rights enshrined in international treaties and consistently called on governments to respect and promote the rights of all without discrimination on the grounds of sexual orientation. However, at the political bodies of the UN, including the Commission and UN World Conferences, governments have systematically resisted any recognition of these rights violations, deleting any proposed reference to 'sexual orientation' from Commission resolutions and instruments adopted at World Conferences, i.e. the Fourth UN World Conference on Women, Beijing, September 1995. Brazil's draft resolution, if adopted, would represent an important acknowledgement by governments at the Commission of the rights which have been affirmed, consolidated and promoted by the expert bodies for more than a decade.

Human rights violations based on sexual orientation or gender identify

In some states, persons perceived to be homosexual continue to be sentenced to death, in some cases solely for their sexual orientation. AI recently raised concerns about a case in the USA where the prosecution referred to the homosexuality of the accused during the trial in order to obtain the death penalty.⁶⁰ Throughout the world LGBT persons suffer torture or ill-treatment by state officials to extract confessions of "deviance", or rape to "cure" them of it.⁶¹

The Special Rapporteur on extrajudicial, summary or arbitrary executions continues to receive reports of persons having been subjected to death threats or extrajudicial execution because of their sexual orientation and gender identity.⁶² Since 2002, a reference to "killings committed for any discriminatory reason, including sexual orientation" has been included in the Commission's resolution on "Extrajudicial, summary or arbitrary executions", despite strong opposition from some countries including those belonging to the OIC.⁶³

AI has received dozens of allegations of torture and ill-treatment in detention, which indicate the risk is highest in police stations, particularly during the initial period of detention.⁶⁴

orientation", thereby affirming that the rights set out in the ICCPR cannot be denied to any individual because of their sexual orientation. (CCPR/C/50/D/488/1992)

⁵⁷ The Committee on Economic, Social and Cultural Rights proscribes any discrimination including that based on "sexual orientation" – see General Comment no.14 on the right to the highest attainable standard of health (Art 12): UN Doc. E/C.12/2000/4, 11 August 2000.

General Comment no. 14 (2000) para. 18 on art 2(2) and General Comment No. 15 (2002) on the right to water para 13. (art. 11 and 12 of the ICESCR) UN Doc E/C/12/2002/11.

⁵⁸ Concluding Observations of the Committee on the Rights of the Child (Isle of Man): United Kingdom of Great Britain and Northern Ireland, 16 October 2000, UN Doc. CRC/C/15/Add.134, para. 22.

⁵⁹ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Kyrgyzstan, 27 January 1999, UN Doc. A/54/38, paras. 127-8.

⁶⁰ Urgent Actions; USA (North Carolina: Death penalty/Legal Concern, AI Index: AMR 51/123/2003 and AMR 51/126/2003)

⁶¹ See AI report *Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity*, 2001 (AI Index: ACT 40/016/2001).

⁶² See *Report of the Special Rapporteur* (E/CN.4/2003/3) (noting Afghanistan under the Taliban, Mexico, Venezuela and mission report to Honduras where some 200 gay and transgender sex workers were killed in the period 1991-2001. E/CN.4/2003/3/Add.2).

⁶³ Resolutions 2002/36 and 2003/53.

⁶⁴ Egypt Appeal Case: Imprisonment for Actual or Perceived Sexual Orientation in Aqouza (AI Index: MDE 12/031/2003); Egypt: Appeal Case- the Giza Fourteen, Imprisonment for actual or perceived sexual orientation (AI Index MDE 12/028/2003).

The “Queen Boat” case⁶⁵ in Egypt has been taken up by the HRC⁶⁶, the Committee against Torture (CAT),⁶⁷ the Working Group on Arbitrary Detention (WGAD)⁶⁸, the Special Rapporteur on the independence of judges and lawyers⁶⁹ and the European Parliament.⁷⁰ The WGAD clearly stated that the detention of people on the grounds “that by their sexual orientation, they incited ‘social dissension’ constitutes or has constituted arbitrary deprivation of liberty”.

The Special Rapporteur on violence against women has commented that “[u]nless women come to be seen as individual beings with rights to determine their sexuality, their inferior social position will continue to permit violence against them.”⁷¹ Yet, the prevalence in society of sexism and homophobia creates a climate where lesbians are at grave risk of abuse. AI has documented cases of young lesbians being beaten, raped and attacked by family members to punish them and break their spirit.⁷² Regardless of how they define themselves, women who are perceived to be attracted to other women are at particular risk of ill-treatment in societies where they are viewed as bringing “shame” on their families or communities.⁷³

Around the world organizations have emerged to defend the rights of LGBT people and to address the connections between human rights and sexuality. Often they face particular obstacles including social stigma, physical attacks and denial of legal status.⁷⁴ In 2001, the Special Representative of the Secretary-General on human rights defenders noted that those defending sexual rights are at particular risk of repression and marginalisation.⁷⁵

A small number of LGBT people, relative to the total facing discrimination, have managed to flee their countries of origin in search of refuge from persecution. However, many countries are still reluctant to grant asylum to people who fear persecution as a result of their sexual orientation or gender identity.

⁶⁵ On and around 11 May 2001 some 60 men, alleged to be gay, were arrested in various locations in Cairo, Egypt. While in police custody, the men were reportedly subjected to torture and ill-treatment. In March 2003, 21 of the defendants were sentenced to three years’ imprisonment on the charge of “habitual debauchery”.

⁶⁶ CCPR/CO/76/EGY, 28 November 2002

⁶⁷ CAT/C/XXIX/Misc.4, 20 November 2002

⁶⁸ E/CN.4/2003/8/Add.1.WGAD Opinion No. 7/2002, adopted on 21 June 2002

⁶⁹ E/CN.4/2002/72, 11 February 2002, para.57

⁷⁰ European Parliament Resolution 29 November 2001, B5-0740/2001; European Parliament Resolution 4 July 2002, P5_TA-PROV(2002)0378, Human rights: Persecution of homosexuals in Egypt.

⁷¹ Report of the Special Rapporteur on violence against women, 2000. Addendum on Economic and Social Policy, and its impact on violence against women. (E/CN.4/2000/68/Add.5) 24 February 2000, section A. See also A/CONF. 177/20, 15 September 1995, para.96, reaffirmed in the UN Declaration of Commitment on HIV/AIDS, A/S-26/L.2, New York, 2001, para.59.

⁷² See ‘Crimes of hate, conspiracy of silence: Torture and ill-treatment based on sexual identity’ (AI Index: ACT 40/016/2001).

⁷³ Report of the Special Rapporteur on violence against women (E/CN.4/1997/47), 12 February 1997, para.8.

⁷⁴ Honduras: Human Rights violations against lesbian, gay, bisexual and transgender people (AI Index: AMR 37/014/2003)

⁷⁵ Report of the Special Representative of the Secretary General on Human Rights Defenders, E/CN.4/2001/94, para 89 (g).

The definition of a refugee does not explicitly reference sexual orientation or gender identity.⁷⁶ However, it has been widely recognized in case law, in state practice generally and in authoritative guidance from the UN High Commissioner for Refugees (UNHCR) that people sharing sexual orientation can constitute a “particular social group” under the Refugee Convention.⁷⁷

AI considers the use of “sodomy” laws – retained by at least 70 states – to imprison men and women for same-sex relations in private as a grave violation of human rights, including the rights to privacy, to freedom from discrimination, and of expression and association. It has also been condemned by the HRC,⁷⁸ the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women. Since 1999, the HRC has called on states not only to repeal laws criminalising homosexuality, but also to include in their constitutions the prohibition of any discrimination based on sexual orientation.⁷⁹ AI has also reported the rape and torture of men and women in detention in Uganda where homosexuality is a criminal offence.

Amnesty International calls on the Commission to:

- Adopt a resolution affirming the universality of human rights and condemning human rights violations against a person on the grounds of their sexual orientation or gender identity;
- Call on states to promote and protect the human rights of all persons regardless of their sexual orientation or gender identity;
- Call on states to support the recommendations by the treaty bodies and the Special Procedures to end human rights violations on the grounds of sexual orientation or gender identity.

⁷⁶ Article 1 A (2) of the 1951 Convention relating to the Status of Refugees defines a refugee as a person who has “a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”

⁷⁷ In its Guidelines on gender-related persecution, UNHCR states that “a claimant’s sexuality or sexual practices may be relevant to a refugee claim where he or she has been subject to persecutory (including discriminatory) action on account of his or her sexuality or practices”. UNHCR, Guidelines on International Protection: Gender-related persecution within the context of Article 1 A (2) of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees.

⁷⁸ See: Australia (*Toonen v. Australia* Case No. 488/1992, *Edward Young v. Australia* 18/09/2003, CCPR/C/78/D/941/2000); Austria (19/11/98); Chile (30/03/1999); Egypt (28/11/2002 CCPR/CO/76/EGY); El Salvador (22/07/2003 CCPR/CO/78/SLV); Finland (*SETA v. Finland* Communication No. R.14/61 (7 August 1979), Un. Doc. Supp. No. 40 (A/37/40) at 161 (1982); Hong Kong (12/11/1999); New Zealand (*Juliet Joselin et al v. New Zealand* Communication No. 902/1999, UN Doc CCPR/C/75/D/902/1999 (30 Nov 1998)); Poland (29/07/1999 CCPR/C/79/Add.100, para. 23); Trinidad and Tobago (03/11/2000); UK and Northern Ireland (27/03/2000).

⁷⁹ Poland 29/07/1999 CCPR/C/79/Add.110, para. 23.

Human rights of refugees, asylum seekers, and other migrants and non-nationals

AI has long advocated the increased use of international human rights mechanisms for the protection of refugees and asylum seekers.⁸⁰ Refugees and asylum seekers have been forced to leave their homes and places of origin because they are at risk of, and have suffered, human rights abuses. In addition, many refugees and asylum seekers continue to endure violations of their human rights, including their economic, social and cultural rights, in countries that they initially arrive at in search of protection. Very often, such violations continue as they move onward from such countries of first asylum, in search of effective protection. Many of the abuses suffered by refugees, asylum seekers, and other migrants and non-nationals are the result of the unwillingness or inability of states to uphold and protect the rights of these individuals. The vilification of 'non-nationals' in a world preoccupied with narrowly and selectively defined security is often at the root of such discriminatory and abusive policies and practices. It is AI's view that international human rights bodies, such as the Commission, must address the human rights abuses suffered by these particularly vulnerable individuals.

As it did in 2003, AI asks the 60th Session of the Commission to pay specific attention to the protection of refugees and asylum seekers as a human rights issue. The organization would also remind the Commission of the need to bring the protection of human rights standards to bear on the treatment of non-nationals more generally, including regular and irregular migrants, and stateless persons.

At the 59th session, the Commission adopted resolution 2003/52 on 'Human rights and mass exodus', in which it called on the Office of the High Commissioner for Human Rights to prepare an analytical report on measures taken to implement the resolution and obstacles to its implementation. This analytical report would be accompanied by an annex, consisting of a thematic compilation of relevant reports and resolutions of the Commission and the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission). The report and its annex will be submitted to the Commission at its 61st Session in 2005. In order to ensure that the content of the report and the annex reflects a strong focus on the rights of refugees, asylum seekers, and other migrants and non-nationals, AI will attempt to ensure that the specific vulnerabilities of this group of individuals are reflected in all relevant resolutions adopted by the Commission. AI will also continue to call on the Special Procedures of the Commission to pay specific attention to the human rights, including the economic, social and cultural rights, of refugees, asylum seekers and other migrants and non-nationals.

A resolution adopted at the 55th session of the Sub-Commission in August 2003 on the human rights of non-citizens will be brought to the 60th Session of the Commission for decision. The resolution asks the Commission *inter alia* "to appoint one of its members as Special

⁸⁰ See Amnesty International and International Service for Human Rights, *The UN and refugees' human rights : A manual on how UN human rights mechanisms can protect the rights of refugees* (AI Index: IOR 30/02/97) and Amnesty International, *Refugee protection is human rights protection: AI statement to the Ministerial Meeting of States Parties to the 1951 Refugee Convention and/or its 1967 Protocol* (AI Index: IOR 51/011/2001).

Rapporteur with the task of furthering the study of the rights of non-citizens based on the final report⁸¹. This mandate, which would be based within the Sub-Commission, would aim to monitor the rights of non-citizens, and take effective action *inter alia* through recommendations to the Sub-Commission, other relevant UN bodies, and other interested parties, and through the preparation of an annual report to the Sub-Commission on the rights of non-citizens. AI believes that everyone is entitled to respect for their human rights, regardless of the labels they are given, and will be following this debate surrounding this mandate with interest.

Amnesty International calls on the Commission to:

- Work towards effective respect for the human rights of non-citizens, including refugees, asylum seekers, and other migrants;
- Ensure that the human rights of refugees, asylum seekers, and other migrants and non-nationals are reflected in all relevant resolutions of the Commission;
- Call on the Special Procedures of the Commission to give attention to the rights of refugees, asylum-seekers and other migrants and non-nationals.

Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights

At its 55th session in August 2003, the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission) approved the draft *Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to Human Rights*⁸² (hereafter the Human Rights Norms for Businesses) and decided to transmit the Norms to the Commission for consideration and adoption.⁸³

In AI's view, governments, advocates and companies should support the Human Rights Norms for Businesses as offering an authoritative and comprehensive statement of the responsibilities of companies in relation to human rights. The Human Rights Norms for Businesses provide clarity and credibility amidst many competing voluntary codes that too often lack international legitimacy, and provide far less detail on human rights issues. AI supports efforts to strengthen the legal basis for the Human Rights Norms for Businesses, and calls on governments, companies and advocates to disseminate and apply them.

The UN Charter of 1945 and the Universal Declaration of Human Rights (UDHR) of 1948 spelt out a number of important human rights obligations for nations, individuals, and other groups. In many instances, these obligations have now become customary international law, binding on all

⁸¹ Sub-Commission resolution 2003/23.

⁸² E/CN.4/Sub.2/2003/12/Rev.2

⁸³ Sub-Commission resolution 2003/16, of 13 August 2003, included in *Report of the Sub-Commission on the Promotion and Protection of Human Rights on its Fifty-fifth Session* (E/CN.4/2004/2 and E/CN.4/Sub.2/43), 20 October 2003. Resolution 2003/16 recommends that the Commission first disseminate the Norms and ask for comments to the 61st session of the Commission in 2005.

states. Significantly, the UDHR calls not only on nations, but also on individuals and “every organ of society” to respect, promote, and secure human rights -- laying the foundation for obligations which apply not only to states but also to non-state actors including private businesses.

Scrutiny of the activities of global businesses led many companies to adopt codes of conduct during the 1980s and 1990s, and an emerging movement toward greater corporate social responsibility led to numerous voluntary codes. However, voluntary codes of conduct, while a welcome signal of corporate commitment, have proved insufficient in preventing the involvement of companies, directly or indirectly, in human rights abuses. This has resulted in calls for a more detailed, comprehensive and effective instrument. The Human Rights Norms for Businesses took shape in this context.

The Human Rights Norms for Businesses constitute an authoritative interpretation of the extent to which human rights obligations apply to companies. They are rooted in and derive from existing human rights law. There is a clear basis in international law for extending direct legal obligations to companies in relation to human rights and, although themselves not a formal treaty, the Human Rights Norms for Businesses clarify the scope of these obligations. The Norms highlight best practice and various modes of monitoring and enforcement. AI is committed to ensuring that there is a clear international legal framework establishing the obligations of companies in relation to human rights.⁸⁴

The Human Rights Norms for Businesses set forth basic, minimal business obligations regarding human rights. They reaffirm that “*states still bear the primary responsibility*” for promoting and protecting human rights, but recognize that transnational corporations and other businesses, as organs of society (and collections of individuals), carry responsibilities as well. The first operative paragraph states that the responsibilities apply to businesses “*within their respective spheres of activity and influence*”. Within these spheres of activity and influence, the Human Rights Norms for Businesses require companies to “promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law”.⁸⁵

The norms are intended to reinforce the approach that is most protective of human rights, whether that is found in international law, national law, or other sources, now or in the future. The norms attribute both positive and negative obligations on businesses: in order to avoid complicity in violations as well as promote respect for human rights, businesses can no longer be wilfully ignorant of the circumstances in which they operate; they must become much more aware of and sensitive to those circumstances, and much more engaged in taking action to influence human rights positively. The Norms are intended to reaffirm and rationalise the array of existing standards relating to the human rights responsibilities of companies, which include UN treaties, the UN Global Compact, the Geneva Conventions, International Labour Organization (ILO) conventions and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.

The Norms will assist companies that want to conduct themselves in a way that is socially responsible, they will provide a level playing field for competition among all businesses, and will

⁸⁴ See AI's oral statement to the 55th session of the Sub-Commission, 8 August 2003 (AI Index : POL 30/012/2003)

⁸⁵ E/CN.4/Sub.2/2003/12/Rev.2, paragraph 1

help assess risks associated with human rights problems. The Norms are also a useful indicator of the growing expectations of consumers, investors, employees and civil society organizations with regard to the human rights responsibilities of business.

Human rights abuses destabilise the investment climate. At stake are employee safety, company assets, project viability and corporate reputation. It is evident that businesses' licence to operate and their reputation depend on their acceptability to society at large. Respect for human rights is at the core of this acceptability. Without a firm commitment to upholding international human rights standards, companies are exposing themselves to risk.

There is widespread agreement that companies ought to respect human rights, avoid being complicit in human rights abuses, and, within their sphere of influence, do what they can to promote human rights principles. The Human Rights Norms for Businesses provide a helpful framework of universal principles detailing what corporate human rights commitments mean in practice.

The time has come for a stronger international framework for corporate accountability, and the Human Rights Norms for Businesses are a significant contribution in this direction. By bringing together international human rights, labour rights, and environmental laws and standards pertaining to global business, and by surveying key international instruments and best practices, the Human Rights Norms for Businesses provide helpful guidance and leadership opportunities for businesses willing to comply with their legal and ethical responsibilities.

Amnesty International calls on the Commission to:

- Support the Human Rights Norms for Businesses, including by welcoming their adoption by the Sub-Commission.
- Ensure the dissemination of the Human Rights Norms for Businesses to governments, UN bodies, specialized agencies, members of the Global Compact, non-governmental organizations (NGOs) and other interested parties, invite them to submit their comments on the Norms and ask the OHCHR to assist in producing a compilation of such comments for consideration by the Commission at its 61st session (2005) and by the Sub-Commission at its 57th session (2004).

Standard-setting

A number of standard setting exercises are currently underway at the Commission. AI is following in particular the work of the inter-sessional working group mandated to draft a legally binding instruments on enforced disappearances, the working group considering options regarding the elaboration of an optional protocol to the ICESCR, and the work to finalize the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law”.

Draft binding instrument on enforced disappearance

Thousands of people around the world remain "disappeared". They were arrested or abducted by state agents, but governments deny holding them. New cases of “disappearances” are recorded each year. "Disappearances" cause extreme agony for the victims and their relatives: the victims are often tortured or killed, and their relatives are unable to find out whether their loved ones are alive or dead.

After more than two decades of campaigning by organizations of relatives of the "disappeared", the Commission established in 2001 an “inter-sessional open-ended working group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance”.⁸⁶ The working group held its first formal session in January 2003 and the second is due to take place in January 2004.

The draft treaty will include measures to prevent “disappearances”, to bring perpetrators to justice and to afford reparations to victims. Also under discussion is an urgent judicial remedy which relatives can invoke to discover victims’ whereabouts and ensure their well-being. AI believes that the instrument should require the establishment of enforced disappearance as an independent crime under national law, following the similar provision in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which requires a state party to ensure that “all acts of torture are offences under its criminal law”.⁸⁷ Enforced disappearances should be treated as a continuous crime until the fate of the disappeared person is established. Due to the supreme seriousness of the crime, there should no statute of limitation, in civil as well as criminal proceedings, for those responsible for “disappearances”. The new instrument should set out the obligation to conduct prompt, thorough and impartial investigations into complaints and report of enforced disappearances and should specify how such investigations should be conducted.⁸⁸ No amnesties or pardons should be granted on the grounds that these may prevent a final judicial determination of guilt or innocence and full reparations to the victims and their families.

⁸⁶ Commission resolution 2001/46 of 23 April 2001.

⁸⁷ Article 14 of the Convention against Torture.

⁸⁸ Article 13 of the *Declaration on the Protection of All Persons from Enforced Disappearances*, adopted by General Assembly resolution 47/133 of 18 December 1992, sets out the process of investigation of cases of “disappearances”, including that “... the State shall promptly refer the matter to that authority for such an investigation, even if there has

At the 59th session in 2003, the Commission welcomed “the substantial progress made during the first session of the working group”⁸⁹ as reported in the report of the Chairperson of the working group.⁹⁰ Further progress was made at the working group’s informal session in September 2003. At the second formal session in January 2004, the working group will have before it a draft text prepared by the working group’s presidency.

Amnesty International calls on the Commission to:

- Welcome the progress made by the inter-sessional working group and continue to support its work including by adopting by consensus a resolution on the “Question of enforced or involuntary disappearances”;
- Request the working group to submit a proposal to the 61st session of the Commission in 2005.

An optional protocol to the International Covenant on Economic, Social and Cultural Rights

At its 59th session, the Commission received the second report of the Independent Expert appointed in 2001 to examine the question of a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (hereinafter OP to the ICESCR).⁹¹ In his report, the Independent Expert focused on three questions in particular: the questions of the nature and scope of states parties’ obligations under the ICESCR; the question of justiciability of economic, social and cultural rights; and the question of the benefits and the practicability of a complaint mechanism under the ICESCR.⁹²

The resolution adopted by the Commission in 2003 requested the working group, established in 2002,⁹³ to consider “options regarding the elaboration of an optional protocol to the ICESCR” and “to meet for a period of ten working days prior to the 60th session of the Commission”.⁹⁴ As a contribution to this meeting (which will take place in February 2004) NGOs will submit a joint submission listing a number of issues to be considered by the working group as well as the core elements that should be included in the OP to the ICESCR.

been no formal complaint. No measure shall be taken to curtail or impede the investigation. [...] The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.”

⁸⁹ Commission resolution 2003/38 on the “Question of enforced or involuntary disappearances”, 23 April 2003.

⁹⁰ E/CN.4/2003/71.

⁹¹ Commission resolution 2001/30.

⁹² E/CN.4/2003/53.

⁹³ Commission resolution 2002/24.

⁹⁴ Commission resolution 2003/18.

The UN World Conference on Human Rights, held in Vienna in June 1993, requested the Commission to continue the examination of optional protocols to the ICESCR.⁹⁵ Together with other NGOs, AI continues to campaign for its early elaboration and adoption:

- An optional protocol to the ICESCR would provide individuals and groups with international recourse with respect to violations of economic, social and cultural rights;
- The creation of a complaints mechanism would greatly assist the realization of economic, social and cultural rights;
- It would mark an important step towards strengthening the principle of progressive realization of economic, social, and cultural rights to which states parties to the ICESCR have committed themselves;
- The consideration of specific cases of violations of economic, social and cultural rights would contribute to the development of jurisprudence;
- It would strengthen the relationship between the Committee on Economic, Social and Cultural Rights and states parties by creating an impetus at the national level for states parties to ensure effective national implementation of the rights guaranteed in the ICESCR;
- It would ensure complementarity and consistency with the ICCPR for which an individual complaints mechanism is in place already.⁹⁶

Amnesty International calls on the Commission to:

- Mandate the inter-sessional working group of the Commission to draft an optional protocol to the ICESCR, in close cooperation with the Committee on Economic, Social and Cultural Rights, the Independent Expert, relevant special rapporteurs, governments and NGOs, on the basis of the guidelines contained in the annex to the report of the Committee on Economic, Social and Cultural Rights;⁹⁷
- Request the Secretary-General to provide the working group with the necessary resources.

Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law

At its 41st session in 1989, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission) requested Special Rapporteur Theo van Boven to undertake a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms.⁹⁸ Following this study,⁹⁹ the Secretary-

⁹⁵ The *Vienna Declaration and Programme of Action* (A/CONF.157/23), 12 July 1993, in article 75 encouraged the Commission, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the ICESCR.

⁹⁶ The Optional Protocol to the ICCPR entered into force in 1976.

⁹⁷ E/CN.4/1997/105.

⁹⁸ Sub-Commission resolution 1989/13.

General in 1996 transmitted to the Commission the revised draft basic principles and guidelines prepared by Mr. van Boven.¹⁰⁰

In 1998, at its 54th session, the Commission appointed Mr. Cherif Bassiouni as independent expert to prepare a revised version of the draft basic principles and guidelines.¹⁰¹

At its 59th session in 2003, the Commission requested the OHCHR to hold a second consultative meeting for all interested parties with a view to finalizing the “Basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law” (the Basic Principles), and if appropriate, to consider options for the adoption of these principles and guidelines.¹⁰²

AI has followed closely the development of the Basic Principles and has been campaigning for their early adoption. Once adopted the Basic Principles will add a unique perspective to the current international system of human rights, by addressing the right to reparation from the perspective of victims of violations of international human rights and humanitarian law.

The Basic Principles address both international and domestic human rights forums, while setting out the state’s obligations under international law. For example, proposed article 21 of these principles points out that “States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition”.

The right to remedy and reparation for victims of violations of human rights and international humanitarian law and the families of such victims is well established in international and regional treaty and practice; however there is currently no instrument that brings all these standards together. For example:

- The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights has a substantial amount of jurisprudence on reparation.
- Article 75 of the Rome Statute, provides that the ICC may award reparations to victims of crimes under its jurisdiction.
- Article 14 of the Convention against Torture guarantees the right of torture victims to obtain reparation, including redress, fair and adequate compensation and the means for as full rehabilitation as possible.
- Redress involves official recognition that harm has been done to the person in question. Article 14 of the Convention against Torture guarantees the right of torture victims to obtain reparation, including redress, fair and adequate compensation and the means for as

⁹⁹ Final report to the Sub-Commission, E/CN.4/Sub.2/1993/8.

¹⁰⁰ E/CN.4/1997/1004, annex.

¹⁰¹ Commission resolution 1998/43.

¹⁰² Commission resolution 2003/34.

full a rehabilitation as possible. Members of the CAT have regularly emphasised that the obligation of Article 14 involves not only the provision of material compensation and redress, but also physical, mental and social rehabilitation.

AI has participated in the process of drafting the principles, including by calling for the text to ensure the inclusion of all rights to reparation and remedy.¹⁰³ At the close of the last consultative meeting in October 2003, the Chair of the meeting recommended that a further meeting should take place before the 60th session of the Commission to finalise the text for approval by the Commission. If this meeting goes ahead, AI will issue a set of recommendations to further strengthen of the draft principles, and in due course recommendations for decision by the Commission.

¹⁰³ See *Amnesty International's concerns and recommendations on the revised Basic Principles on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law*, submitted to the second consultative meeting, Geneva, 20, 21 and 23 October 2003.

Protection of human rights in individual country situations

“At the outset of its work the Commission set for itself the task of establishing an International Bill of Human Rights which would have three parts: a universal declaration, one or more covenants, and measures of implementation. The first two parts have been well realized. The Commission is still engaged on the third part: measures of implementation. Effective implementation is a test of the credibility of the human rights enterprise.”

Statement by Bertrand Ramcharan, Acting High Commissioner for Human Rights, at the opening of the 60th session of the Commission, 19 January 2004

The Commission is the main UN body charged with the promotion and protection of human rights world wide and mandated to take action against human rights violations wherever these occur.¹⁰⁴ As such AI, civil society, victims and their families look to the governments serving on the Commission to unequivocally denounce grave and systematic violations of human rights wherever these occur and whoever the perpetrators, to call on governments to implement concrete measures to protect human rights and to support its own mechanisms in addressing violations of human rights.

Over the years an extensive body of international human rights standards and a wide range of mechanisms have been developed to scrutinize states' human rights record and hold them politically and legally accountable. Although the Commission is seized of the human rights situation in some 20 countries, this list does not fully represent the range of concerns reported by AI and other human rights organizations as well as by the Commission's own mechanisms. Countries with a poor human rights record, such as Algeria, China, Indonesia, Nepal, Russian Federation, Saudi Arabia, United States and Zimbabwe, continue to escape serious scrutiny by the Commission. This is not because information about the human rights situation in these countries is not available to the Commission's members – it is abundantly so – but because member states of the Commission refuse to take the necessary action because it conflicts with their own perceived economic, political and security interests. The credibility of the Commission is severely damaged as a result.

The Commission has established its own human rights mechanisms, including country and thematic experts, to help it investigate the human rights situation in specific countries and provide detailed analysis and recommendations to enable it to make decisions about how to address patterns of human rights violations. Outside the Commission the treaty monitoring bodies also provide critical analysis and conclusions which can inform decisions by the Commission. Yet, all too often the Commission chooses to ignore the findings and recommendations of these experts and the perpetrators of human rights violations are left to continue to operate with impunity. By

¹⁰⁴ ECOSOC resolutions 1235 and 1503.

failing to act promptly and appropriately the Commission is at risk of becoming irrelevant in today's world where the human rights system and the values underpinning it are under attack.

The special rapporteurs, independent experts and working groups who collectively make up the Special Procedures are among the most valuable tools that the Commission has at its disposal. This was highlighted by the UN Secretary-General as part of his continuing reform proposals where he set out a number of proposals aimed at improving the work of the Special Procedures, including through the selection of appointees.¹⁰⁵ At this Commission, states will have the opportunity to vote for the renewal of several mandates,¹⁰⁶ as well as nominate candidates for a number of special procedures posts which will become vacant.¹⁰⁷ The Commission has called for candidates to meet basic criteria of independence, impartiality and expertise.¹⁰⁸ In support of this commitment, the Commission should encourage states to embark on a process at the national level that is public, transparent, broadly consultative, and aimed at attracting the best candidates for the special procedures posts, including women.¹⁰⁹ To compliment these national-level activities, the OHCHR should develop criteria for determining the suitability of potential candidates by clarifying standards of independence and impartiality, competence, skills and expertise, and draw up standardized "profiles" for each mandate to outline the requirements of the post in greater detail. Nominations of individuals for special procedures posts may then be measured against the established criteria and profile, and a final list of candidates presented to the Commission's Bureau for final decision. As is practice with the treaty bodies, the curriculum vitae of special procedure mandate-holders should be posted on the OHCHR website.

The rate of implementation of the Commission's resolutions, decisions and Chairperson's statements is also a cause for serious concern. All too often the Commission itself notes, year upon year, a failure on the part of the countries concerned to take action to implement the recommendations by the Commission and its Special Procedures. The introduction of the interactive debate between states and the Special Procedures which was introduced at the 59th session is a welcome development and may in the longer term become an element in the Commission's review of implementation of its recommendations; however, it is vital that comprehensive mechanisms be put in place to monitor state accountability for measures to protect human rights and to assist them in fulfilling their international human rights obligations.

¹⁰⁵ *Strengthening the United Nations: an agenda for further change* (A/57/387), 9 September 2002.

¹⁰⁶ The following 14 mandates come up for renewal at the 60th session: The Special Rapporteurs on extrajudicial, summary or arbitrary executions; on torture and other cruel, inhuman or degrading treatment or punishment; on freedom of religion or belief; on the right to education; on the situation of human rights and fundamental freedoms of indigenous people; on the sale of children, child prostitution and child pornography; on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights; on the situation of human rights in Burundi; on the situation of human rights in Iraq; on the use of mercenaries; the Independent Experts on the question of human rights and extreme poverty; and on the right to development; the Representative of the Secretary-General on internally displaced persons, and the Working Group on enforced or involuntary disappearances.

¹⁰⁷ The ultimate responsibility for electing candidates lies with the Chairperson of the Commission, after consultation with regional groups through the expanded Bureau. Candidates may be put forward by governments, NGOs and the OHCHR

¹⁰⁸ Commission resolution 2002/86 "Human rights and thematic procedures".

¹⁰⁹ Given the low representation of women among the Special Procedures, all member states should be urged to fulfil their commitments to present and promote more women candidates in international bodies, such as those arising from ECOSOC resolution 2002/23 "Mainstreaming a gender perspective into all policies and programmes in the United Nations system".

AI takes the opportunity of the 60th session to challenge the Commission to review its approach to human rights promotion and protection and to instigate whatever reform is necessary to enable it to better perform its role as the main human rights body in the UN system. In particular AI calls on the Commission to:

- Reaffirm that promotion and protection human rights in all countries is one of the key functions of the Commission;
- Support the Special Procedures by calling on governments to fully and promptly respond to their communications, implement their recommendations, extend a standing invitation to the Special Procedures to visit, and facilitate any visits requested without delay;
- Renew the thematic and geographical Special Procedure mandates which are coming up for renewal and call on states to nominate suitable candidates, including women;
- Establish objective and transparent mechanisms for invoking scrutiny by the Commission of the human rights situation in individual countries, taking into account the recommendations by the Special Procedures and the treaty monitoring bodies as well as the demonstrated failure by many states to cooperate with the human rights mechanisms of the UN;
- Create an effective system of monitoring and evaluating implementation by governments of recommendations by the Commission as well as by the Special Procedures in order to achieved increased accountability by states.

Regional overviews

It is AI's mission to undertake research and action to prevent and end grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of promoting all human rights. Based on its research,¹¹⁰ AI presents the following regional overviews of the human rights situation in the past year followed by individual chapters on the 18 countries currently on the Commission's agenda: Afghanistan, Belarus, Burundi, Cambodia, Chad, Colombia, Cuba, DRC, Haiti, Iraq, Israel and the Occupied Territories, Liberia, Myanmar, North Korea, Sierra Leone, Somalia, Timor-Leste, and Turkmenistan.

In providing this information, AI wishes to stress that the 18 countries do not fully represent AI's specific country concerns. It is, however, AI's hope that the information provided will assist the Commission in taking concrete action to end human rights violations wherever these occur.

Africa¹¹¹

The human rights situation across Africa is characterized by widespread armed conflict, large-scale flows of refugees and internally displaced people, repression of political opponents, persecution of human rights defenders, and discrimination against women. Ongoing illicit trade in resources and arms, near total impunity for past and continuing human rights abuses, and the failure of many governments to live up to professed standards of governance contribute to the denial of civil, political, economic, social and cultural rights particularly of women and children, refugees and the internally displaced, people living with HIV/AIDS, the poor and those who lack formal education.

Armed conflict

Government forces and armed political groups frequently abuse human rights in the context of conflicts in Burundi, Central African Republic (CAR), Côte d'Ivoire, Democratic Republic of Congo (DRC), Liberia, Sudan and Uganda, including by using and recruiting child soldiers as combatants.

In Sudan a new security agreement was signed in September 2003 by the government and the Southern Peoples' Liberation Army (SPLA); however, the conflict in Darfur continued to claim hundreds of lives and led to the displacement of hundreds of thousands of people. In the CAR, a coup in March 2003 involving armed groups from neighbouring DRC led to the intervention of Chadian soldiers and French logistical support troops. Numerous extrajudicial executions and widespread sexual violence were reportedly carried out by several parties

¹¹⁰ For a comprehensive overview of AI's findings please see Amnesty International Report 2003 (AI Index: POL 10/003/2003), available on AI's website www.amnesty.org.

¹¹¹ See also separate chapters below on Burundi, Chad, Democratic Republic of Congo, Liberia, Sierra Leone and Somalia.

involved in the coup. In Uganda, a government military initiative against the armed group, Lord Resistance Army (LRA), led to an intensification of the conflict in the north. The LRA continue to abduct children to abuse them as combatants and sex slaves.

Violence against women

Violence against women continues to be widely seen as socially acceptable, and women are frequently and blatantly denied their civil, political, economic, social and cultural rights. Legislation on domestic violence is being prepared in several countries, but progress is slow. Female genital mutilation is still widely practised in some countries, and only few effective measures have been taken at state level to eradicate the practice, despite growing campaigning by civil society to end its use.

Africa continues to have the highest regional rate of people living with HIV/AIDS; in some countries close to 40 per cent of the population is infected. The weaker position of women in the negotiation of safe sex practices and their greater vulnerability to sexual violence has led to higher infection rates of HIV/AIDS among women than among men. While some progress was achieved in 2003, the majority of states and the international community continue to fail people living with HIV/AIDS in Africa by not making anti-retroviral drugs and treatment available to the most vulnerable.

As the most vulnerable group in society in armed conflict and as refugees or when internally displaced, women and girls suffer rape and other forms of sexual violence by perpetrators from different parties to the conflicts in Burundi, CAR, Côte d'Ivoire, the DRC, Liberia, Sudan, Uganda and elsewhere. The human rights of women are further denied by the acute failure of the state to protect them effectively from criminally motivated sexual violence or to support them as survivors of violence.

Political repression

Only in a few African countries are political opponents free to exercise their rights to freedom of conscience, expression and association. AI has received reports of malicious prosecution, arbitrary arrest and excessive force against demonstrators as tools of political repression in countries such as Cameroon, Chad, Eritrea, Ethiopia, Rwanda, Togo and Zimbabwe. Journalists and human rights defenders continue to be harassed by the security forces or accused, charged and detained on grounds of libel to silence dissent and prevent criticism of government acts and policies. In some countries detainees were denied their right to a fair trial on "security" grounds, and in Kenya, legislation is being prepared that would allow the derogation of some human rights on grounds of combating "terrorism". In many countries, including Burundi, Eritrea, Ethiopia, Sudan, Togo and Zimbabwe, torture and ill-treatment of suspects continue to be widespread. Across the region too, the judiciary is often undermined and politically influenced by governments to silence opposition.

Death penalty

The worldwide trend towards abolition of the death penalty was reflected in Africa, with several countries abolitionist in law or practice. However, many people remained in detention under threat of execution across the region. In Nigeria, *Shari'a* (Islamic law) courts continued to hand down death sentences based on new penal legislation passed since 1999, and in Zambia more

than 40 people were sentenced to death for participation in an alleged coup attempt. In Chad, nine men were executed – the first executions in the country since 1991.

Americas¹¹²

The “war on terror”

Two years on from the attacks of September 11 2001, hundreds of foreign nationals remain in prolonged indefinite detention without charge or trial in the United States. For those detained as so-called “enemy combatants” outside any framework of law, the only way out of their legal black hole appeared to be through grossly unfair trials before military commissions. Despite judicial rulings and authoritative worldwide legal opinion, and the human rights mechanisms of the Commission, condemning the blatant contravention of international and US constitutional standards, the measures taken by the US to protect its “homeland security” continue to undermine international law, by bypassing or redefining unilaterally well-established human rights norms. Outside the US, the main scenario for the “war on terrorism” in the region is Colombia (see separate chapter below). Anti-terrorism legislation was adopted in the Bahamas and Guyana extending the scope of the death penalty and included dangerously broad definitions of “terrorism”.

The rule of law

Deteriorating economic and social conditions in Bolivia prompted mass demonstrations by trade unionists, miners, peasant organizations and indigenous people, sparked by the signing of coca-eradication agreements with the US and plans to export Bolivia’s natural gas via Chile. Civil unrest throughout left more than 80 people dead, many as a result of apparently excessive use of force by police, and forced the President’s removal from office. Haiti appeared on the verge of being ungovernable as it approached its bicentennial celebrations in 2004 (see separate chapter below). Political polarization continues to destabilize Venezuela. In early 2003, a national strike organized by the opposition paralysed the country and crippled the economy, but failed to force President Chávez from office. International mediation led to a commitment to resolve the political crisis through peaceful, constitutional and electoral means.

Impunity

Efforts across the continent to combat impunity for gross human rights violations committed in previous decades gained momentum in 2003. In Argentina legal barriers to the investigation and prosecution of “disappearances” and other human rights violations were lifted and former high ranking members of the military face charges at home and abroad. In Chile there are plans for dealing with the legacy of human rights violations under military rule, including the transfer of ongoing cases from military to civilian courts.

In Mexico, the Special Prosecutor investigating abuses during the “dirty war” has issued arrest warrants against officers implicated in “disappearances” following a Supreme Court ruling that such crimes are continuous until the person is released. A Paraguayan court has ordered the arrest of former President Stroessner in connection with a case of torture and killing in 1974 and a law was passed creating a Truth Commission to examine violations under Stroessner’s rule. The

¹¹² See separate chapters below on the human rights situation in Colombia, Cuba and Haiti.

Peruvian Truth and Reconciliation Commission has called for justice and reparation for the thousands of victims and relatives of killings and “disappearances” between 1980 and 2000 by the armed forces and armed opposition groups. The Peace Commission in Uruguay published its report on “disappearances” under military rule, concluding that 26 “disappeared” had died under torture. Killings under military rule in Suriname were also under investigation, both by the Surinamese courts and before the Inter-American Court of human Rights.

Less progress has been made, however, in tackling the legacy of the more recent conflicts in Central America. El Salvador’s National Assembly has failed to support efforts by relatives and NGOs to uncover the fate of children who “disappeared” during the conflict, and in Guatemala, human rights defenders attempting to bring to justice those responsible for the widespread abuses during the internal conflict have been among the main targets of threats, attacks and killings. The recommendations of the Historical Clarification Commission, which concluded that genocide had been committed, remains unimplemented, and General Ríos Montt, head of state at the height of the genocide, was allowed to run for president in the November elections, despite being constitutionally barred.

Torture and killings

In Sao Paolo and Rio de Janeiro in Brazil, hundreds of people were unlawfully killed by police, which is significantly more than previous years. Torture and ill-treatment by police and prison officers remained endemic. In Jamaica police brutality and unlawful killings are commonplace, although in a rare breakthrough, it was announced in November 2003 that six officers would be charged for the 2001 killing of seven young men in Braeton in circumstances suggesting extrajudicial execution.

The death penalty continues to be imposed in the United States and the Caribbean. The USA is the only country in the region to execute juvenile offenders. While the commutation of death sentences in the state of Illinois marked an increased awareness of the unfairness and discrimination surrounding the death penalty in the US, the state of Texas carried out its 300th execution in 2003. In the Caribbean, death sentences were passed but no executions were carried out, except in Cuba where the execution of three ferry hijackers by firing squad ended a three-year moratorium.

Violence against women

The impunity surrounding the murder and abduction of hundreds of women and girls in the state of Chihuahua, Mexico, highlights the obstacles to justice faced by women at risk of violence in the community and home. Sexual violence against women, including rape and mutilation, were used as a weapon of war in the Colombian armed conflict. Cases of violence against lesbian, gay, bisexual and transgender people, including by police, were also documented.

Asia and the Pacific¹¹³

The “war on terror”

The belief of several governments in the region that human rights can be curtailed under the “war on terror” umbrella has been particularly apparent in countries such as China, India, Malaysia, Pakistan and Thailand. Hundreds of people “disappeared” into legal black holes as the authorities have chosen to operate outside national and international legal frameworks. In China, thousands of members of the Uighur community were arrested as “separatists, terrorists and religious extremists”. In Gujarat, India, hundreds of members of the Muslim community were held in solitary confinement under the Terrorist and Disruptive Activities Act. In Pakistan, hundreds of people, including Arabs and Afghans, were arbitrarily arrested and handed over to the US on suspicion of membership of *al Qa'ida* and the *Taliban* in violation of Pakistan’s Extradition Act of 1974. Others are thought to be held at undisclosed locations in Pakistan, but the authorities have refused to provide any information about them.

There are grave concerns about detention conditions at the US Airbase at Bagram in Afghanistan where approximately 100 detainees are held outside the normal legal framework. In March 2003, US military officials reportedly confirmed reports that “homicide” was the cause of death of two detainees who died in Bagram in December 2002. The US authorities opened investigations into their deaths, but the result of these was not made public.

Armed conflict

Armed conflict continues to ravage parts of the region. The seven-year-old conflict in Nepal has deteriorated again following the collapse of the cease-fire in August 2003. Both sides to the conflict missed an opportunity to strengthen human rights protection when the National Human Rights Commission presented a draft Human Rights Accord to them in May 2003. Although both sides agreed in principle to the Accord, neither had signed up to it by the time the cease-fire collapsed and efforts by civil society and the international community to put in place an effective framework for human rights protection have so far been unsuccessful. In the meantime, the delivery of weapons from USA, India and United Kingdom to the Royal Nepal Army may contribute to an escalation of the conflict.

The cease-fire also collapsed with disastrous consequences in Nanggroe Aceh Darussalam Province (NAD), Indonesia. With the imposition of a military emergency in May 2003, grave human rights violations were reported, including extrajudicial executions, “disappearances”, arbitrary detention and torture, although verification of such reports is very difficult as the province remains closed to independent human rights monitors, humanitarian workers and journalists.

Regional human rights protection

Amid these massive political, economic and security challenges, the international legal framework for the protection of human rights remains very weak, as the only region with no regional human rights mechanism. Governments in the region appear reluctant to become party to key

¹¹³ See separate chapters below on Afghanistan, Cambodia, North Korea, Myanmar and Timor-Leste.

international human rights instruments.¹¹⁴ The fact that no less than 13 countries in the region signed impunity agreements with the US is also an indication of the lack of commitment among states in the region to fight against impunity. Moreover, weak and corrupt criminal justice systems in countries such as Bangladesh or Cambodia continue to impact on human rights, and torture, “disappearances” and extrajudicial executions are widespread.

The death penalty

Despite the world-wide trend towards abolition of the death penalty, 2003 saw a sharp increase in the number of reported executions, particularly for drug-related offences. Countries in Asia execute more people than the rest of the world combined; according to AI’s information Singapore has the highest number of executions per capita in the world since 1991.

Europe and Central Asia¹¹⁵

The “war on terror”

The impact of the 11 September attacks in the USA continues to be felt across the region, with states using the “war on terror” to privilege security over human rights. In some states those suspected of “terrorism” are detained without trial. In the UK foreign nationals remain interned under legislation which allows for indefinite detention, without charge or trial and on the basis of secret evidence. Many of those detained are held in inhuman or degrading conditions in high-security prisons. Spain continues to ignore long-standing recommendations by international bodies to introduce greater safeguards for suspects held under “anti-terrorist” legislation.¹¹⁶

States also use the “war on terror” as a pretext to crack down on internal opposition. The authorities in Uzbekistan have continued to clampdown on religious and political dissent – at least 6,000 political prisoners remained in jail, and members of independent Islamic congregations are among those who face detention and intimidation. In Spain the only entirely Basque language newspaper has been closed down, and 10 persons associated with the paper are held under “anti-terrorist” for exercising their right to freedom of expression.

Efforts by governments to limit asylum provisions and immigration also benefit from the new language of “national security” and “counter-terrorism”, with an emphasis on control rather than protection. A human rights perspective is lacking from the European Union’s (EU) thinking on asylum, which continues to promote a further sealing off of the EU at the expense of international protection obligations. Some states such as Italy have expelled asylum-seekers without a full and fair hearing of their claims, including to countries where they were at risk of human rights violations.

¹¹⁴ Asia remains the region with the lowest ratification rate for both the ICCPR and the Convention against Torture.

¹¹⁵ See separate chapters on Belarus and Turkmenistan below.

¹¹⁶ *Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 22 to 26 July 2001.*

Racism

Racism, discrimination and intolerance continue to be a major concern across the region, including in the spheres of economic, social and cultural rights. Discrimination against Roma is widespread in many European states, including in access to education, housing, employment and social services. Many people seeking to return home after being displaced by war in the Balkans face discrimination on ethnic grounds, particularly in access to employment, education and health care. Racist application of citizenship laws in the Russian Federation has resulted in members of the mainly Meskhetian population having been rendered effectively stateless, and as such denied access to pensions, child benefits and higher education.

Racism is also a backdrop to human rights abuses by law enforcement officials in the administration of justice. AI has received reports of race-related ill-treatment by law enforcement officials from a wide range of states across the region, including Belgium, France, Greece, Italy, Bulgaria, Poland, Slovakia, Slovenia and the Russian Federation. There is also a lack of due diligence by some states in investigating and prosecuting assaults by private actors on minorities, ethnic as well as religious. In **Georgia**, for example, religious minorities continue to face harassment, intimidation and violent attacks, while the police has failed to provide adequate protection of those targeted and to bring those responsible to justice.

Torture and ill treatment

Torture and ill-treatment generally is also a feature in states across the region, including in Albania, Moldova, Romania, Serbia and Montenegro. In other states, such as Macedonia, Greece and Spain there have been reports of reckless or excessive use of firearms, sometimes resulting in deaths. In Germany, there was an intense public debate on the permissible use of torture after it emerged that a senior police officer had ordered a subordinate to use force against a criminal suspect. Prison conditions are cruel and degrading in many states; and people with mental disabilities are reported to have been subjected to inhumane treatment in some countries, including in social care homes in Bulgaria, through the use in some instances of cage beds, e.g. in the Czech Republic, Hungary and Slovakia.

Rule of law

The lack of political will on behalf of the EU to confront human rights violations within its own borders is increasingly disturbing, particularly in the light of the planned accession of 10 new member states in 2004. Many states lack independent scrutiny mechanisms to address such violations. One state abolished the death penalty, but at least three others continue to carry out executions. Corruption and organized crime continue to erode the rule of law in some areas, and economic factors fuel migration and trafficking of people, including of women and girls into forced prostitution.

In spite of some positive legislative reforms, torture and ill-treatment in police detention remain a matter of grave concern in Turkey. Russian Federation security forces continue to act with virtual impunity in the conflict in the Chechen Republic, amid ongoing reports of their involvement in torture and “disappearances”. Continued impunity for war-time violations is a concern in the western Balkans; while some war crimes suspects have been transferred to the custody of the International Criminal Tribunal for the former Yugoslavia, others continue to evade arrest, some apparently protected by authorities in Bosnia-Herzegovina, Croatia and Serbia and Montenegro.

Freedom of expression and association is flouted with impunity in Uzbekistan, where dissent from official policies in civic, religious and political life was repressed on a systematic and wide scale, and often in a brutal fashion, including through intimidation and imprisonment. Human rights defenders in a number of countries face threats and detention, including in Azerbaijan where a campaign by the state-sponsored media against several prominent defenders culminated in violent attacks on their offices and raised fears for the safety of the defenders and their families.

The death penalty

There have been some positive moves on the death penalty during the past year. Armenia abolished capital punishment, Kazakhstan announced a moratorium pending legislation to enshrine abolition and Kyrgyzstan maintained its moratorium on executions. Tajikistan, while retaining the death penalty, reduced its scope. However, the two other retentionist states in the region, Belarus and Uzbekistan, continue to carry out executions. The scale of executions is believed to be particularly high in Uzbekistan, where scores of people have been executed in recent years after unfair trials, frequently amid allegations of torture, and with corruption an integral part of the investigation, trial and appeal in such cases.

Violence against women

Serious human rights violations against women and girls continue to be reported across the region in the context of trafficking and forced prostitution, amid concerns that victims of forced trafficking are being failed by the judicial systems in source, transit and destination countries. Domestic violence is also an entrenched problem across the region, from Belgium to the Russian Federation. Contributory factors include states regarding domestic violence as belonging to the “private sphere”; a lack of legal provisions in some states specifically prohibiting or criminalizing domestic violence; a lack of specialist police units and training; insufficient provisions to provide protection to victims; and court decisions which do not always reflect the gravity of such offences.

Middle East and North Africa¹¹⁷

The human toll, particularly of civilians, in armed conflicts in the region continues to rise with the war in Iraq, and the on-going conflicts in Algeria and Israel and the Occupied Territories. In these conflicts and in other countries across the region, including Morocco and Saudi Arabia, attacks by armed groups – often unidentified – have escalated against both civilian and government/military targets.

Political, judicial and legal reforms are increasingly debated in many countries in the Middle East and North Africa, with growing pressure from civil society for greater freedom of expression and association, representation and participation in governance, and against discriminatory treatment of women in law and practice.

¹¹⁷ See also separate chapters on Iraq and Israel and the Occupied Territories below.

Despite government promises of reform, grave human rights violations continued across the region. While most governments have ratified major international human rights treaties these are rarely incorporated into law and practice. The absence of basic safeguards facilitates patterns of arbitrary political arrest and detention, prolonged *incommunicado* detention, torture and ill-treatment. Minimum standards for fair trial are often disregarded, resulting in the incarceration of prisoners of conscience, long-term political imprisonment and executions, following unfair trials. There are few independent systems or mechanisms to carry out thorough and impartial investigations into human rights abuses, and alleged perpetrators are rarely brought to justice.

The “war on terror”

The “war on terror” continues to erode fundamental human rights. States members of the League of Arab States continued to implement the Arab Convention against Terrorism, but this contains only a few human rights safeguards. Combined with a range of bilateral security arrangements, this may facilitate the transfer of individuals between states of the region in the absence of judicial proceedings or legal counsel and deny recourse to asylum procedures. While some states, such as Egypt and Syria, have long-standing states of emergency, the “war on terror” has been used by other states as a pretext to legitimize existing practices, such as long-term administrative detention and unfair trials by special courts, whose proceedings fall far short of international standards. Other states, such as Morocco and Tunisia, have introduced new “anti-terrorism” laws during the year, which pose a further threat to basic human rights.

Armed conflict

The US-led military intervention in Iraq in March 2003 marked the start of a protracted occupation by US, UK and other forces under the Coalition Provisional Authority (CPA). In the months leading up to the war, AI called repeatedly on the US and UK authorities as well as the Security Council to consider the human rights and humanitarian impact of war on the people of Iraq, drawing attention to the needs of the civilian population. The post-war period was marked from the outset by the absence of basic security for ordinary Iraqis, as witnessed by AI delegates who entered the country for the first time in 20 years in April 2003. Armed conflict continued in Israel and the Occupied Territories with the *intifada* now into its third year and a grim toll of killings, including many children (see separate chapter below). Although there has been some reduction in the human toll of the conflict in Algeria, hundreds of civilians were killed by armed groups, hundreds of members of security forces and state-armed militias were killed in attacks and ambushes, and hundreds of suspected members of armed groups were killed during security force operations.

Human Rights Defenders

While the human rights debate has flourished in the region, those engaged in “front line” work in defence of human rights often find themselves at risk. In Algeria, Morocco/Western Sahara, Tunisia, Syria, Egypt and Lebanon, women and men were detained or threatened because of their human rights work. Human rights organizations are not easily granted legal status under restrictive laws governing NGOs which effectively curtail their human rights work as well as their funding.

Women's Rights

While women's rights are debated in the region, concrete reforms were few. A series of proposed reforms to the Family Code were announced by King Mohamed VI of Morocco in October 2003 which will strengthen the protection of women's rights. In Jordan, amendments proposed to make Article 340 of the Penal Code, relating to family killings, more favourable to women, were rejected by the Lower House of Parliament. The more frequently used Article 98, which allows a reduced sentence for perpetrators whose crimes were committed in a "fit of rage" remain on the statute books.

Women in Kuwait have protested their continuing exclusion from the electoral process, women in Bahrain are calling for a Family Code and much vaunted promises by the Saudi Arabian authorities to address women's rights have yet to result in substantive measures to protect women's most basic human rights. The Iranian parliament's attempts to press for further reforms as well as the state's accession to the Women's Convention were repeatedly blocked by the Guardian Council.

Refugees, migrants and internally displaced

Refugees and asylum seekers in the region continue to suffer from a widespread lack of protection mechanisms. Only Algeria, Egypt, Iran, Israel, Morocco, and Yemen are party to the 1951 Convention relating to the Status of Refugees (1951 Convention) and/or its 1967 Protocol. For North African countries, the African system for human rights protection remains widely underused. Most countries in the region lack national asylum legislation, which further diminished the protection accorded to asylum-seekers and refugees.

Palestinian refugees continued to suffer from a lack of a protection mechanism in the areas of operation of the United Nations Relief and Works Agency for the Near East (UNRWA). Palestinian refugees endure particularly severe, including in Iraq where hundreds of families found themselves homeless after the fall of the previous regime and in Lebanon where the livelihood of hundreds of thousands of Palestinian refugees was aggravated by policies discriminating against them and effectively restricting many of their economic and social rights.

Internal displacement continues to be a major issue in Iraq, affecting Kurdish, Marsh Arab, Shi'a, and Sunni populations alike, whereas the number of Iraqis seeking asylum in other countries decreased significantly as a result of the war.

Individual country situations

AI considers that the list of countries currently on the Commission's agenda does not fully reflect the organization's range of concerns in individual countries; there are serious omissions as the preceding chapters indicate.

Afghanistan

Background

Two years after the international military intervention in Afghanistan, the security situation in the country remains precarious and human rights abuses continue to be committed on a vast scale. The lack of security and control by the Afghan Transitional Authority (ATA) outside of Kabul is widely seen as a major factor hindering Afghanistan's transitional process to a system that is based upon the rule of law.

The International Security Assistance Force (ISAF), authorized by the Security Council in December 2001,¹¹⁸ is credited with increasing security in Kabul. However, in the rest of Afghanistan, factional fighting continues between rival armed groups. The ATA has been unable to establish control outside of Kabul, where powerful regional commanders wield power through the control of private armies. These armed groups continue to commit serious human rights abuses, including abductions and kidnapping, arbitrary detention in private prisons, confiscation of land and property, rape, and forced conscription of boys and men. In 2003 UN agencies and other humanitarian organizations were forced to withdraw from several districts, particularly in the south and east, following an increase in attacks on aid workers. In October 2003, the North Atlantic Treaty Organization (NATO) agreed 'in principal' to extending ISAF's operations beyond Kabul after repeated calls by the ATA, the UN and NGOs; however, NATO has had problems securing the necessary troops and equipment for a meaningful expansion.

US-led forces are still engaged in combat operations in parts of the country and continue to carry out arbitrary arrests and detentions. Ongoing bombings by the US-led coalition continue to cause civilian casualties, including two cases in December 2003 which killed a total of fifteen children.

Against this backdrop, Afghanistan is scheduled to hold elections in 2004. Instability and the precarious security situation threaten both their legitimacy and viability.

Violence against women

Afghan women and girls still face a high level of violence.¹¹⁹ Rape and sexual violence by members of armed factions and former combatants continue to be reported. Forced marriage and

¹¹⁸ Security Council resolution 1386 (2001).

¹¹⁹ See also *Situation of women and girls in Afghanistan*, report of the Special Rapporteur on violence against women to the 58th session of the General Assembly (A/58/421).

violence against women within the family remain widespread with the active support or passive complicity of state agents, armed groups, families and communities. In some cases this violence results in the death or deliberate killing of women and girls. The criminal justice system is still too weak to offer effective protection of women's right to life and physical security, and itself subjects them to discrimination and abuse. No safeguards are in place to protect women from sexual abuse while in police custody and detention. Despite the Commission's emphasis on investigation and protection at its 59th session, prosecutions and investigations of crimes of violence against women, rape and forced marriages are rare, and protection for women who are at acute risk of violence, including through the provision of shelters, is virtually absent.¹²⁰

AI has questioned the effectiveness of intervention undertaken by the United Nations Assistance Mission to Afghanistan (UNAMA)¹²¹ in cases of violence against women. UNAMA's reliance on informal mediation between women and perpetrators of violence against them does not facilitate legal redress. It is essential that all UNAMA staff have substantial gender training, particularly those working on cases of violence against women. It is regretful that the post of Senior Gender Adviser remained unfilled from late 2002 until November 2003, even after a specific request from the Commission to the Secretary-General to fill it.¹²²

Steps to combat impunity

Ending impunity is crucial to ensuring that Afghanistan builds a future based upon the rule of law. Atrocities against civilians and combatants have not been subject to full and impartial investigations and no one has yet been brought to justice for these crimes. Large numbers of human remains have been discovered in what appear to be mass graves. AI is concerned that investigations of such sites, including any exhumations, must be impartially and independently conducted such that any evidence collected is admissible in court. While abuses of that scale have ceased, reports of extrajudicial killings, arbitrary detention and torture continue to be reported; yet few if any investigations are carried out.¹²³ The Afghan Independent Human Rights Commission, formed in June 2002, is attempting to map past abuses and has requested training and technical expertise to help them undertake this work. However, so far the international community has not taken concrete steps to support this initiative to ensure accountability for past human rights violations.

Reform of the legal system

The international community has acknowledged that re-establishing the rule of law is an essential pre-requisite for peace and security in Afghanistan, after 23 years of armed conflict. AI believes there is an urgent need for legal reform to ensure that all Afghan laws comply fully with international law.¹²⁴ At present, the Afghan courts lack legitimacy and there is a general

¹²⁰ Commission resolution 2003/77, paragraph 10 (b), (e) and (g).

¹²¹ UNAMA was established by UN Security Council resolution 1401 of 28 March 2002 and is mandated to promote national reconciliation, fulfil the UN's duties under the Bonn agreement and manage UN humanitarian action in Afghanistan.

¹²² Commission resolution, paragraph 15 (a)

¹²³ In *Situation of human rights in Afghanistan* (E/CN.4/2003/39) of 13 January 2003 paragraph 40 (d), the Special Rapporteur recommended that the new "National Human Rights Commission should be enabled, through the provision of adequate resources, to develop its capacity at an accelerated pace in order to be able to build a progressively more effective role in investigation and monitoring of human rights violations".

¹²⁴ Afghanistan has ratified the ICCPR, the ICESCR, the Convention against Torture, the Rome Statute and the Women's Convention.

perception that the judicial system is unable to properly serve the interests of justice. The lack of public confidence in the court system is compounded by a history of reliance on informal judicial mechanisms in the country which in some cases themselves lead to human rights violations, particularly against women and girls.

The rights of the accused are not being protected by the criminal justice system. Those accused, including children, are denied the right to a fair trial, and there is widespread use of arbitrary detention. The Afghan police have not been provided with the necessary equipment to investigate crimes and many judges lack the necessary qualifications and training to properly apply domestic law, let alone international law.

Death Penalty

The provision of the death penalty is of particular concern in Afghanistan, where the courts do not currently have the capacity to ensure the most basic minimum standards for fair trial. To AI's knowledge no judicial executions have taken place since the overthrow of the Taliban; however, the organization is aware of at least one death sentence being passed during this period. At its 59th session, the Commission called upon the ATA to declare a moratorium on the death penalty;¹²⁵ this call is yet to be heeded.

Amnesty International calls on the Commission to:

- Support the establishment of an international and independent commission of inquiry as an important step towards ensuring accountability, as recommended by the Special Rapporteur on extrajudicial, summary and arbitrary executions;¹²⁶
- Ensure full and prompt implementation of Security Council resolution 1325 on Women, Peace and Security, in particular to ensure that women are represented at all levels of decision-making, and to guarantee the protection of the human rights of women and girls as they relate to the constitution, the electoral system, the police and the judiciary;
- Urge the ATA to ensure that their obligations under international law are reflected in national legislation;
- Urge the ATA to declare a moratorium on the death penalty.

Belarus

Investigating human rights abuses

In January 2003, the Belarusian government discontinued criminal investigations into the alleged "disappearances" of three opposition figures: Yury Zakharenka (former Minister of Internal Affairs), Viktor Gonchar and Anatoly Krasovsky, as well as journalist Dmitri Zavadsky, alleging that the opposition had staged these "disappearances" to attract international attention.¹²⁷ The investigations were reopened later in the year. The trial behind closed doors and subsequent

¹²⁵ Commission resolution 2003/77, paragraph 14 (d); and *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/2003/3/Add.4, paragraph 66.

¹²⁶ *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, E/CN.4/2003/3/Add.4, paragraph 77.

¹²⁷ See also AI's report, *Without Trace: Uncovering the Fate of Belarus: "Disappeared"* (AI Index: EUR 49/013/2002).

conviction of two former members of *Almaz* special police unit accused of Dmitri Zavadsky's "disappearance" has been viewed by local sources as a scapegoat exercise. High-level government officials are thought to be implicated in the alleged "disappearances". Despite international criticism and recommendations from the Parliamentary Assembly of the Council of Europe,¹²⁸ the Commission¹²⁹, and the CAT,¹³⁰ the Belarusian government has failed to establish prompt, impartial and full investigations into these allegations. Other allegations of torture¹³¹ and operations of 'death squads' remain unanswered.

The Belarusian government's failure to provide information or investigate alleged cases of human rights violations can also violate the human rights of victims' families. In 2003, the HRC considered two individual complaints of death sentences being carried out in secret in Belarus. The mothers of the executed men were not given any information or even the location of the burial site and the Committee found they had suffered inhuman treatment in violation of article 7 of the ICCPR.¹³²

Freedom of opinion and expression curtailed

AI is increasingly concerned about the use of criminal prosecution to stifle the independent media as well as peaceful protestors. In April 2002, at least 85 peaceful demonstrators were detained and more than 30 were sentenced to periods of imprisonment of three to 15 days. Many of those detained received prison sentences, while others received official warnings and fines.

AI condemned the conviction on 24 June 2002 of two journalists, Nikolai Markevich and Pavel Mozheiko, for allegedly slandering the Belarusian President in an article in which they alleged that the President was involved in the "disappearances" of leading opposition figures. A group of 13 journalists was detained for peacefully protesting against the trial and six of them were sentenced to prison terms of three to 10 days. In March 2003 the custodial sentences passed on Nikolai Markevich and Pavel Mozheiko were reduced to conditional sentences and they both returned home. Another editor, Viktor Ivashkevich, who had been sentenced in September 2002 to two years in prison under the same charge, also had his sentence reduced and was released on 16 December 2003. The Parliamentary Assembly of the Council of Europe had recommended the release of all three, stating that in a democracy it was unacceptable that journalists should be sent to prison for carrying out their work.¹³³

AI considers those detained for the non-violent exercise of their rights to freedom of expression and association as prisoners of conscience, and had campaigned for the men's immediate and unconditional release.

¹²⁸ Council of Europe Parliamentary Assembly Recommendation 1441: Situation in Belarus, January 2000, paragraph 14 (ii) ; Council of Europe Parliamentary Assembly Recommendation 1589: Freedom of Expression in the media in Europe, 28 January 2003, paragraph 31; see also OSCE Parliamentary Assembly Working Group Chair visits Minsk Press Release, 1 November 2003.

¹²⁹ Commission resolution 2003/14, 17 April 2003, paragraph 2 (b).

¹³⁰ *Concluding Observations/Comments*, 13-24 November 2000, paragraph 46 (b), see also paragraph 45 (c) and (e).

¹³¹ *Reports of the Special Rapporteur on torture* (E/CN.4/2002/76/Add.1), 14 March 2001, paragraphs 139-144 (E/CN.4/2003/68/Add.1), 27 February 2003, paragraph 170, noting the Belarusian authorities' intention to respond.

¹³² Case No 886/1999 and 887/1999: *Bondarenko v. Belarus, Lyashkevich v. Belarus* (17 March - 4 April 2003).

¹³³ Council of Europe Parliamentary Assembly Recommendation 1589 Freedom of Expression in the media in Europe, 28 January 2003, paragraph 4.

Obstacles to freedom of association and assembly

Throughout 2003 human rights defenders have faced harassment and intimidation by the Belarusian authorities. Several prominent human rights organizations, including *Legal Assistance to the Population* and *Spring-96*, were closed after receiving official warnings from the Ministry of Justice. Other organizations were refused registration or had their registration annulled. The spate of closures elicited considerable international condemnation, including from the Organization for Cooperation and Security in Europe (OSCE).¹³⁴

Cooperation with the UN

To AI's knowledge the Belarusian government has not fully implemented recommendations made by UN or European bodies. Several of the Special Procedures of the Commission have received individual complaints and transmitted these to the government of Belarus for response.

The Working Group on enforced or involuntary disappearances has been unable to report the fate or whereabouts of three outstanding "disappearance" cases in 1999, after investigations by the authorities failed to 'shed light' upon them.¹³⁵ The government has yet to respond fully to the cases transmitted by Special Rapporteur on torture in 2001.¹³⁶ The Special Representative of the Secretary-General on human rights defenders has not received a response to her request for an invitation, while the Working Group on arbitrary detention awaits an invitation.¹³⁷ Although the government has been most responsive to the Special Rapporteur on freedom of opinion and expression, who has visited the country in the past, it has continued to justify prosecutions and detention by referring to domestic law.¹³⁸

Amnesty International calls on the Commission to:

- Urge the government of Belarus to carry out full and impartial investigations into allegations of all cases of forced "disappearances", extra-judicial executions and torture and ensure that the perpetrators are brought to justice in trials in accordance with international standards for fair trial;
- Call on the government to end harassment and intimidation of human rights defenders and undertake an immediate review of laws, regulations and administrative practices relating to the registration and activities of NGOs in order that their establishment and free operation may be facilitated in accordance with Articles 21 and 22 of the ICCPR and the principles of the Declaration on Human Rights Defenders;
- Call on the government to end the practice of detaining people solely for the peaceful exercise of their fundamental rights to freedom of expression and association and ensure

¹³⁴ See 'OSCE Office seriously concerned over continued governmental pressure on NGOs in Belarus', Minsk, 29 October 2003.

¹³⁵ *Reports of the Working Group on enforced or involuntary disappearances* (E/CN.4/2002/79), 18 January 2002 paragraph 53, and (E/CN.4/2003/70), 21 January 2003, paragraphs 38-41 noting that Belarusian authorities had assured they would continue investigations.

¹³⁶ *Report of the Special Rapporteur on torture* (E/CN.4/2003/68/Add.1), 27 February 2003, paragraph 170.

¹³⁷ *Report of the Special Representative of the Secretary-General on Human Rights Defenders* (E/CN.4/2003/104) 3 January 2003 paragraph 11; *Report of the Working Group on arbitrary detention* (E/CN.4/2003/8) 16 December 2002 paragraph 37 (c) and 72.

¹³⁸ See *Report of the Special Rapporteur on freedom of opinion and expression* (E/CN.4/2003/67/Add.1), 20 February 2003, paragraph 76-84; see also *Report on the mission of the Special Rapporteur to the Republic of Belarus (28 May - 1 June 1997)* (E/CN.4/1998/40/Add.1), 19 December 1997.

that those rights are fully protected and guaranteed in Belarusian law and practice in accordance with international standards;

- Encourage the government to cooperate fully with the human rights mechanisms of the UN, including through issuing a standing invitation to the Special Procedures of the Commission and promptly facilitating the visits requested.

Burundi

AI has reported killings of unarmed civilians, often in apparent reprisal for the military activities by armed political groups. Those killed were often ill or elderly. Government armed forces have also indiscriminately shelled areas of the countryside, as well as systematically looting and destroying property and crops sometimes as a form of reprisal. Soldiers also force local populations to work for them.

Armed political groups are also responsible for unlawful killings of unarmed civilians, suspected collaborators and government officials. Both the CNDD-FDD (Nkurunziza)¹³⁹ and the FNL (Rwasa)¹⁴⁰ operated a system of taxation on an already impoverished population. Scores of people were robbed and some held hostage for exorbitant ransom demands. Both groups shelled military targets in civilian areas without taking evident steps to protect the civilian population. Following an upsurge in fighting in July, the Special Rapporteur on Burundi called on parties to the conflict to respect the rights of civilians.¹⁴¹

Proliferation of small arms

Armed criminality, facilitated by the proliferation of small arms, has increased dramatically. Government soldiers are reported to have rented their weapons to armed criminal gangs in certain provinces; others have deserted with their weapons and formed armed gangs systematically robbing, and often raping, the local population.

Violence against women

The scale of rape reported by the Burundian armed forces and armed political groups, in particular the CNDD-FDD (Nkurunziza), strongly suggests that rape is being used as a deliberate strategy and weapon of war. Armed criminal gangs are also responsible for rape and other forms of violence against women and young girls. In Ruyigi province alone, between May and August 2003, 60 cases of rape were treated at the local hospital. The victims were aged between 9 and 77. Doctors believe that this is merely a fraction of the cases which occur.

¹³⁹ *Conseil National pour la Défense de la Démocratie – Forces pour la Défense de la Démocratie* (National Council for the Defence of Democracy – Forces for the Defence of Democracy).

¹⁴⁰ *Parti pour la libération du peuple Hutu - Forces nationales de libération* (PALIPEHUTU-FNL) (National Liberation Forces), Party for the Liberation of the Hutu people – National liberation forces, commonly referred to as the FNL.

¹⁴¹ UN press release dated 9 July 2003.

Torture and ill-treatment

People continue to suffer ill-treatment and torture in Burundi, including by being tied in excruciating positions for extended periods of time, being made to kneel on bottle tops for long periods, as well as being stabbed or beaten.

Administration of justice

More than half of the prison population of approximately 8000 are awaiting trial. These cases include people in long-term detention without trial mainly on suspicion of involvement in the massacres which followed the assassination of President Melchior Ndadaye in 1993.

The justice system failed to bring to justice members of the Burundian armed forces responsible for the massacre of between 173 and 267 unarmed civilians, many of them women and children, who were deliberately and unlawfully killed in Itaba commune in September 2002. The two officers accused of being responsible for the massacre were arrested and tried in February 2003 by a military court. Charged merely with failing to follow orders, they were sentenced to four months' imprisonment – the time they had already spent in detention - and immediately released. Although the state public prosecutor has ordered their cases to be reopened, no further investigations into the killings are known to have taken place.

Child soldiers

All belligerents continued to use child soldiers, including children under the age of 15 at the time of recruitment, although detailed information on the extent of child recruitment is not available. Preparations for the demobilisation of two marginal armed political groups, the CNDD-FDD (Ndayikengurikiye) and PALIPEHUTU-FNL (Mugabarabona) led to further recruitment, including of child soldiers under the age of 15, as the leaders struggled to prove their claims of having fighting forces.

Internally displaced people and refugees

An estimated 500,000 people remain internally displaced in Burundi, some of whom for over a decade. Humanitarian organizations have been prevented from having access to some displaced populations, particularly in Ruyigi province, due to lack of security and obstruction by military commanders controlling the area. At least 70,000 refugees returned from Tanzania despite insecurity in Burundi. Many cited poor conditions in the camps as the main reason for their return, as well fear of losing their land.

Amnesty International calls on the Commission to:

- To urge the transitional government of Burundi to take immediate steps to end impunity, including by carrying out full and open investigations into all allegations of human rights violations and bringing those responsible to justice in accordance with international standards for fair trial and without recourse to the death penalty, and through undertaking reform of the legal system, including ensuring that the jurisdiction of military courts is limited to purely military disciplinary offences;
- To take immediate steps to eradicate violence against women, including through investigating all reported cases and bringing those responsible to justice; supporting government and NGO initiatives to raise awareness on preventing and eradicating violence

against women, and ensuring all women have access to appropriate affordable medical care;

- Urge the government, as well as neighbouring governments, to refrain from promoting the voluntary repatriation of refugees until it has been independently assessed that there is a fundamental and lasting change in the human rights situation in Burundi;
- Stop the recruitment of child soldiers and ensure their prompt demobilization, rehabilitation and reintegration;
- Ensure full and safe access to all areas of Burundi for international humanitarian organizations, the UN's human rights mechanisms, the OHCHR field office and NGOs;
- Renew the mandate of the Special Rapporteur on the situation of human rights in Burundi and call on all parties to implement the recommendations made by the Special Rapporteur, including those contained in her interim report to the 58th session of the General Assembly.¹⁴²

Cambodia

Cambodia's culture of impunity

AI's main concern in Cambodia is an on-going culture of impunity for the perpetrators of human rights violations. To date no one has been brought to justice for hundreds of cases of political killings over recent years. For example, the Cambodian government has failed to make public an investigation into the killing of at least 16 people in a grenade attack on a peaceful demonstration outside the National Assembly building in Phnom Penh in March 1997, despite promising to do so, and have not accounted for the extrajudicial killing of more than 50 members of the FUNCINPEC political party following a violent political upheaval in July 1997. The 2002 commune elections and 2003 national elections were both marred by numerous cases of unlawful killings of political party activists. Despite government denials, AI believes that at least some of these killings were politically motivated. Although some prosecutions have taken place, there are concerns about the way in which investigations have been carried out. Without thorough, transparent, and impartial investigations, justice will not be seen to have been done and the prevailing climate of impunity will persist.

Torture reportedly continues to be routinely inflicted in prisons and police stations despite Cambodia being party to international human rights treaties including the Convention against Torture and the ICCPR. To AI's knowledge there have been no successful prosecutions of persons accused of torture.

Despite the government's expression of willingness to undertake legal reforms to fulfil Cambodia's international human rights obligations, the judicial system remains weak and corrupt. Interference by government authorities in high profile cases continues, and instances of high level officials and their families being protected from prosecution under Cambodian law continue to be reported. Both the Special Representative of the Secretary-General for human rights in Cambodia

¹⁴² *Situation of human rights in Burundi (A/58/448)*, 20 October 2003.

and the CAT have urged judicial reform and prosecution of alleged perpetrators of human rights violations.¹⁴³

Cooperation with UN agencies

The Cambodia Office of the High Commissioner for Human Rights (COHCHR) in Phnom Penh has continued its activities under a series of periodically reviewed agreements (Memorandum of Understanding) with the Cambodian authorities. However, the functions of the UNHCR in Cambodia have been severely limited by a near total absence of cooperation from the Cambodian authorities. There are serious concerns that Cambodian authorities have forcibly returned Vietnamese Montagnard as well as other asylum seekers and refugees in contravention of article 33 of the 1951 Refugee Convention and article 3 of the Convention against Torture, to which Cambodia is a party.¹⁴⁴ UNHCR has been denied free access to border areas, limiting its ability to provide full protection to asylum-seekers.

The Khmer Rouge Tribunal

At its 57th Session the General Assembly approved a Draft Agreement between the UN and the Royal Government of Cambodia concerning the creation of Extraordinary Chambers in the Courts of Cambodia, with international assistance.¹⁴⁵ The purpose of this domestic tribunal is to try those “most responsible” for violations of Cambodian penal law, international humanitarian law, custom and international conventions committed during the period of “Khmer Rouge” rule (1975-1979).¹⁴⁶ The agreement is yet to be ratified by the Cambodian National Assembly in order that it may proceed. AI has concerns that the agreement, whilst an improvement on earlier drafts, still contains serious flaws that threaten the integrity of the legal process.¹⁴⁷ The proposed tribunal consists of a majority of Cambodian judicial officials assisted by international nominees, which is problematic given the weak state and lack of independence of the Cambodian judiciary. There is minimal provision for victim and witness protection. The potential consequences are unfair trials, impunity for all but a handful of perpetrators, and no significant progress towards national conciliation and closure for those Cambodians who have directly and indirectly suffered grave human rights violations. The Secretary-General has previously expressed concerns that trials would not meet international legal standards.¹⁴⁸ Without amendment, this tribunal risks setting a dangerous precedent for other future international or mixed tribunals.

Protection of Human Rights Defenders

AI remains concerned about intimidation and harassment of human rights defenders which continues in Cambodia. Human rights defenders are frequently targeted by the authorities for their peaceful advocacy and exercise of their rights to freedom of opinion and expression and assembly.

¹⁴³ *Report of the Special Representative of the Secretary-General for Human Rights in Cambodia* (E/CN.4/2003/114), 18 Dec 2002, paragraphs 77-82; *Concluding Observations and recommendations of the Committee against Torture*, (CAT/C/CR/30/2), 27 May 2003, paragraph 7.

¹⁴⁴ *Montagnard* is the collective reference to indigenous minorities in the Central Highlands region of Viet Nam

¹⁴⁵ General Assembly resolution on Khmer Rouge Trials (A/RES/57/228B), 13 May 2003 (Draft Agreement Annexed).

¹⁴⁶ Commission resolution 2003/79, 23 April 2003, paragraph 16.

¹⁴⁷ See ‘*Kingdom of Cambodia: Amnesty International’s position and concerns regarding the proposed “Khmer Rouge” tribunal*’ (AI Index: ASA 23/005/2003), April 2003.

¹⁴⁸ UN Secretariat “Daily Press Briefing by the Office of the Spokesman for the Secretary-General”, 20 August 2002; UN News Centre “Mandate from Key UN Bodies to Restart talks on Khmer Rouge Trial, 20 August 2002.

Amnesty International calls on the Commission to:

- Urge the Cambodian government to initiate full and independent inquiries into human rights violations since 1991;
- Continue to support the Special Representative of the Secretary-General on the situation of human rights in Cambodia and the COHCHR, and urge the Cambodian government to renew the Memorandum of Understanding with the COHCHR to ensure its continued presence in Cambodia, and permit its staff to carry out their work without obstruction;
- Ensure that, in the event of a UN-sponsored Khmer Rouge Tribunal taking place, there is, at a minimum, a regular, public, and independent reporting mechanism to ensure that the Tribunal provides justice in accordance with international standards for fair trial;
- Urge the Cambodian authorities to enable national NGOs, working to protect and promote human rights, to operate freely and without obstruction;
- Urge the Cambodian authorities to ensure respect of their international obligations under the 1951 Refugee Convention and the Convention against Torture by cooperating fully with UNHCR.

Chad

Impunity

Judicial investigations by Belgian and Chadian courts continue into human rights violations including “crimes of torture, murder and enforced disappearance” alleged to have been committed by former President Habré and his collaborators. A case against President Habré is proceeding in Belgium despite restrictions to a law on universal jurisdiction and related investigations in Chad are reported to have concluded. No one has yet been charged.

Following the death of an opposition supporter, Brahim Selgnet, at a gathering of opposition supporters awaiting presidential election results in May 2001, and the wounding of several women during a peaceful protest against the elections in June 2001, victims, led by lawyer Jacqueline Moudeïna, herself wounded in the protest, and supported by human rights groups, lodged a claim for damages for “unlawful violence, intentional lethal bodily harm, and aggravated grievous bodily harm”. In September 2003, an N’Djaména court ruled that two police officers had no case to answer.

Executions

Nine people were executed in Chad in November 2003, the first executions known to have been carried out in the country since 1991. At least one person, a woman, remains under sentence of death.

Four of those executed had been sentenced to death on 25 October 2003 by the criminal court in N’Djaména for the murder a month earlier of a member of Sudan’s parliament, who was then director of the Chad Petroleum Company. The executions were carried out despite serious procedural and legal flaws, including allegations that incriminating statements had been made following torture.

Under Chadian law there is no right to appeal in capital cases. The convicted prisoner may only submit a cassation plea to the supreme court on grounds of gross error of fact and law; if successful the case is sent for retrial. The only other option is presidential clemency.

Freedom of expression curtailed

Freedom of expression has again come under serious attack in Chad. Bénoudjita Nadjikimo, publication director, and Bétoubam Mbainaye, deputy chief editor, both of the independent newspaper, *Notre Temps*, were found guilty of libel by a high court in N'Djaména in February 2003. AI is concerned that their trial did not meet international standards of fairness. They were sentenced to six months' imprisonment and ordered to pay a fine. The judge further ordered a three-month closure of *Notre Temps* and ruled that the journalists should not be allowed to exercise their profession for eight months. The severity of their sentences may have been due to other articles published by the paper which were critical of the government. AI considered both men to be prisoners of conscience. The journalists were released in April 2003.

In October 2003, the independent radio station *FM Liberté* was closed indefinitely after criticising the President of Chad. *FM Liberté*, which is owned by a leading Chadian human rights activist, has been a vocal critic of human rights abuses. The measure was lifted in December 2003.

Amnesty International is calling on the Commission to:

- Urge the government of Chad to end impunity for human rights violations, including by prompt and impartial investigations into all allegations of human rights violations and by bringing those responsible to justice in accordance with international standards for fair trial;
- Urge the government to stop further executions, guarantee the right to appeal of those currently under sentence of death, and to commute all death sentences pending the total abolition of the death penalty for all crimes;
- Urge the government to take immediate steps to ensure the right to freedom of expression, including by enabling the media in Chad to operate freely and without restrictions;
- Support the implementation of a program of technical assistance, including aimed at reforming and strengthening the judicial system in Chad, and ensure support to the government with the preparation of its periodic reports to the treaty bodies, many of which are overdue.

Colombia

Some key indicators of politically-related violence, such as kidnappings and numbers of internally displaced persons, fell sharply in 2003. However, this masks some significant regional variations. The human rights situation in the special security areas, the Rehabilitation and Consolidation Zones (RCZs), deteriorated during the period they were in operation, as did the situation in several conflict zones. In some areas there has been a significant increase in forced "disappearances". Reports of a decline in certain human rights violations coincided with a context in which the work of human rights defenders has become increasingly difficult. In April 2003, the Constitutional Court ruled against a further extension of the State of Emergency and the RCZs. In Colombia as a

whole, grave violations of human rights and breaches of international humanitarian law by all parties to the long-running internal armed conflict – the armed forces, army-backed paramilitaries, and armed opposition groups – remain widespread, and the civilian population continue to bear the brunt of the armed conflict.

Continued impunity for human rights violations

The government has failed to take decisive measures to dismantle mechanisms of impunity for human rights violations, including by failing to adhere to the 1997 Constitutional Court ruling excluding all cases involving human rights violations from military courts. Cases before civilian courts that implicate high-ranking security force officers have frequently not advanced.

The government has implemented a series of measures which are contrary to the UN recommendations and commitments made by the Colombian government during the July 2003 London Meeting on International Support for Colombia¹⁴⁹ attended by the European Union, nine other governments, UN bodies and international financial institutions. These measures included:

- The approval by Congress in December 2003 of a law granting judicial police powers to the armed forces. This law allows the military to detain individuals, raid homes and intercept communications without judicial authorization.
- Measures which may guarantee *de facto* amnesties to human rights violators and abusers.

The continued paramilitary strategy

AI continues to receive credible information which points to the ongoing consolidation of paramilitary forces in heavily-militarized areas and indicating strong collusion between paramilitaries and the security forces.

Following the declaration of a cease-fire by the umbrella paramilitary organization, *Auto defensas Unidas de Colombia*¹⁵⁰ (AUC) on 1 December 2002, the government signed an agreement with the AUC on 15 July under which the AUC would demobilize by the end of 2005. AI is concerned, however, that this demobilization process provides a means for paramilitaries to be “re-cycled” into the conflict by allowing them to join private security firms, civilian informer networks and the army of “peasant soldiers”.

This “recycling” of paramilitaries risks being facilitated *inter alia* by measures which effectively grant amnesties to combatants implicated in human rights violations, including Decree 128 of January 2003 which grants pardons to members of illegal armed groups who surrender to the authorities and a bill presented to Congress that, if passed, would release “on licence” incarcerated combatants and members of illegal armed group who surrender to the authorities, even if they are responsible for serious human rights abuses.

¹⁴⁹ In the 10 July 2003 London Declaration, governments attending the London Meeting on International Support for Colombia “noted with satisfaction the Colombian Government’s pledge to implement the recommendations made by the UN High Commissioner for Human Rights. They urged the Colombian Government to implement these recommendations promptly and to take effective action against impunity and collusion especially with paramilitary groups”.

¹⁵⁰ United Self-Defence Forces of Colombia.

Abuses by the armed forces

The armed forces are also reported to be directly responsible for serious human rights abuses, including killings, “disappearances” and torture. According to the Office of the High Commissioner for Human Rights in Colombia,¹⁵¹ there has been a significant increase in reported violations attributed directly to members of the armed forces.

Abuses by armed opposition groups

Guerrilla groups, mainly the *Fuerzas Armadas Revolucionarias de Colombia*¹⁵² (FARC) and the *Ejército de Liberación Nacional*¹⁵³ (ELN), are responsible for repeated and serious breaches of international humanitarian law, including kidnappings, hostage-taking, abduction and killing of civilians whom they accuse of collaborating with their enemies. They are also alleged to have carried out disproportionate and indiscriminate attacks which resulted in the death of civilians.

Human rights defenders, peace activists and trade unionists

Human rights defenders, peace activists and trade unionists exposing abuses committed by the parties to the armed conflict and campaigning for socio-economic rights are themselves killed, attacked, threatened and arbitrarily detained. Over the past year there have been scores of detentions and raids on the homes and offices of these activists carried out by the armed forces who relied on the participation of agents of the Offices of the Attorney General and Procurator General to legalize such raids and captures.

Violence against women

Sexual violence against women, including rape and genital mutilation, is committed by all armed actors as a weapon of war to generate terror. Women have been targeted for their role as activists campaigning for human rights, peace or socio-economic alternatives or because they are members of communities in conflict zones.

Abuses against civilians

Internally displaced people, peasant farmers, and Afro-Colombian and indigenous communities living in conflict zones continue to be disproportionately affected by the violence. Over 170,000 people were forcibly displaced in 2003 while reports indicated that many others were prevented from leaving their areas of habitation. AI is concerned that government policies of return and resettlement of displaced people are not in line with the *UN Guiding Principles on Internal Displacement*.¹⁵⁴

Government policies, such as the creation of an army of peasant soldiers and the network of civilian informers, continue to drag civilians into the conflict by blurring the distinction between combatants and civilians. The families of peasant soldiers who, unlike regular soldiers, live at home, were threatened by armed opposition groups in several departments.

¹⁵¹ *Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia* (E/CN.4/2003/13), 24 February 2003.

¹⁵² Revolutionary Armed Forces of Colombia.

¹⁵³ National Liberation Army.

¹⁵⁴ These Principles were prepared by the Special Representative of the Secretary-General on internally displaced persons and included in his report to the 54th session of the Commission (E/CN.4/1998/53/Add.2).

Amnesty International calls on the Commission to:

- Express profound disappointment that recommendations adopted previously by the Commission remain unimplemented, that the government is pursuing policies contrary to these recommendations and urge the government to draw up a national plan of action for full and prompt implementation of these recommendations and the concluding observations of the CAT;¹⁵⁵
- Urge the Colombian government to end impunity for human rights violations, including by undertaking prompt and impartial investigations into all allegations of human rights violations and ensuring that the alleged perpetrators are brought to justice in trials in accordance with international standards for fair trial and by repealing legislation that may consolidate impunity for human rights abuses;
- Take effective action to combat and dismantle paramilitary groups, including by severing the links between the security forces and paramilitary groups and to abolish policies which risk legitimizing paramilitarism;
- Guarantee the protection of human rights defenders and other activists, including by implementing in full the recommendations of the Special Representative of the Secretary-General on human rights defenders;
- Secure adequate funding for the Colombia office of the OHCHR, including for an additional sub-regional office;
- Implement in full the *Guiding Principles on Internal Displacement*, including prevention of forced displacement, protection of the internally displaced, access to humanitarian aid and the right to return or resettlement in conditions of safety;
- Call on armed opposition groups to respect international humanitarian law and on the government and armed opposition groups to sign a humanitarian agreement to protect the civilian population and ensure full respect for international human rights and humanitarian law, as called for by the Secretary-General.¹⁵⁶

Cuba

2003 saw a sharp deterioration in the human rights situation in Cuba.¹⁵⁷ In mid-March the Cuban authorities carried out an unprecedented crack-down on the dissident movement. Seventy-five long-term activists were arrested, and sentenced to up to 28 years' imprisonment following trials that did not meet international standards for fair trial; AI considers them to be prisoners of conscience. AI is also seriously concerned about the health of many of them; some have reportedly been denied access to appropriate medical attention and are held in harsh conditions.

¹⁵⁵ *Concluding observations of the Committee against Torture (CAT/C/CR/31/1)*, November 2003.

¹⁵⁶ *Report of the Secretary-General on the work of the Organization*, paragraph 30 (A/57/1).

¹⁵⁷ AI has traditionally not raised the human rights situation in Cuba at the Commission. AI believes that the nature of the bilateral relationship between Cuba and the USA has undermined objective consideration by the Commission of human rights violations in Cuba. However, AI recognizes that during 2003 there has been a sharp deterioration in the human rights situation in Cuba and, therefore, takes this opportunity to draw to the attention of the Commission AI's recommendations to the Cuban government and the US government.

In another development in April, three men convicted of involvement in a hijacking were executed by firing squad, ending a three-year *de facto* moratorium on executions. Although the Cuban authorities have sought to justify these measures as a necessary response to the threat to national security posed by the USA, the international community, including countries and individuals previously supportive of the Cuban government, has become increasingly critical of these developments. The US embargo and related measures continued to have a negative effect on the enjoyment of the full range of human rights in Cuba. In November 2003, for the 12th consecutive year, the General Assembly¹⁵⁸ passed a resolution calling on the US to end the embargo.

Dissident activities have stalled after the imprisonment of the mid-rank of the opposition movement. In the first big movement of opposition after the crackdown, Osvaldo Payá Sardiñas, leader of the unofficial political group *Movimiento Cristiano Liberación*, (Christian Liberation Movement), presented in October more than 14,000 new signatures for the *Varela Project* - a petition for referendum on political and economic reforms under the current constitution - to the country's General Assembly even though the Constitutional and Legal Affairs Committee of the Cuban Parliament had ruled the initiative "unconstitutional" in January 2003.

Amnesty International reiterates its call to the Cuban government to:

- Immediately and unconditionally release all prisoners of conscience, imprisoned solely for having peacefully exercised their rights to freedom of expression, association and assembly and to ensure that, pending their release, their conditions of detention meet international standards, including access to medical care;
- Put an immediate end to all forms of harassment and intimidation directed against dissidents, or against family members of prisoners of conscience, who are solely exercising their fundamental human rights;
- Reverse the regressive decision to resume executions, and to publicly commit itself to respecting the *de facto* moratorium in place prior to the April executions, as a first step towards abolishing the death penalty for all crimes;
- Take the necessary steps to ratify the ICCPR; the ICESCR; the Second Optional Protocol to the ICCPR; the Optional Protocol to the Women's Convention (already signed); and the Optional Protocol to the CRC on the involvement of children in armed conflict (already signed).

Amnesty International also calls on the US government to:

- Review its policy with the aim of ending the economic, commercial and financial embargo against Cuba, and place the enjoyment of the full range of human rights at the forefront of its concerns in developing new policy towards Cuba

¹⁵⁸ General Assembly resolution A/RES/58/7, "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", adopted on 4 November 2003.

Democratic People's Republic of Korea

Investigating human rights violations

The Democratic People's Republic of Korea (hereinafter North Korea) has ratified several of the key human rights treaties, undertaking obligations to ensure civil, political, economic, social and cultural rights¹⁵⁹. However, AI continues to receive reports of repression of fundamental human rights, including freedom of movement and expression. AI has been denied access to the country since 1995, and access also continues to be denied to other independent human rights monitors restricting the ability to investigate human rights situations¹⁶⁰. The Special Procedures of the Commission have also been unsuccessful in their attempts to visit the country,¹⁶¹ and the government appears to have taken no action to implement recommendations made by the Commission at its 59th session.¹⁶²

Restrictions on freedom of expression and assembly

Opposition to the ruling Korean Workers Party is not tolerated in North Korea. According to reports, any person who expresses an opinion contrary to the position of the party faces severe punishment, and in many cases so do their families. North Koreans who are caught listening to foreign media broadcasts also face harsh punishment, including forced labour. Any unauthorised assembly or association is regarded as a 'collective disturbance', liable to punishment. There are reports of restrictions on religious practice and persecution of thousands of Christians who are being held in labour camps, subjected to torture, starvation and death.¹⁶³

Persecuting the starving

A series of natural disasters, geo-political changes and a weak infrastructure have led to food shortages and famine in North Korea and the government continues to rely on international aid to feed its population. Humanitarian and aid agencies have reported that food aid has been distributed by the authorities in a way that discriminates against some of the most vulnerable groups of society, e.g. the unemployed, elderly, homeless, and prisoners¹⁶⁴. About 20 percent of North Korea, containing some 13 percent of the population, is inaccessible to international humanitarian agencies, and because of restrictions on movement faced by ordinary North Koreans, they are unable to gain access to food in other parts of the country. The economic reforms launched in July 2002 could worsen the situation. North Korean currency has lost value, food prices have risen, while subsidies for food rationing and subsidised housing have been phased out.

¹⁵⁹ ICCPR, ICESCR, Women's Convention, and the CRC.

¹⁶⁰ *Concluding Observations of the Human Rights Committee* (CCPR/CO/72/PRK), 27 August 2001, recommendation 11.

¹⁶¹ *Report of the Special Rapporteur on the right to freedom of opinion and expression* (E/CN.4/2003/67/Add.1), 20 February 2003, paragraph 167

¹⁶² Commission resolution 2003/10 *inter alia* urged the government to cooperate with the Special Rapporteurs on the right to food, on torture, and on religious intolerance; the Working Group on arbitrary detention, and the Working Group on enforced or involuntary disappearances (paragraph 2).

¹⁶³ These reports suggest serious violations of articles 18, 19, 21, 22 and 25 of the ICCPR. Note also *Concluding Observations of the Human Rights Committee* (CCPR/CO/72/PRK), 27 August 2001, paragraphs 22-25.

¹⁶⁴ See also *Democratic People's Republic of Korea: Persecuting the Starving: The Plight of North Koreans Fleeing to China* (AI Index: ASA 24/003/2000); and *Concluding Observations of the Committee on Economic, Social and Cultural Rights* (E/C.12/1/Add.95), 28 November 2003, paragraphs 21 and 22.

Thousands have attempted to flee to China. However, in North Korea the act of leaving the country without permission is criminalised in penal law,¹⁶⁵ in violation of article 12 of the ICCPR to which North Korea is a party.¹⁶⁶ The numbers of refugees who have been forcibly returned from China to North Korea have increased, where they are detained for up to six months for interrogation; some are alleged to have been subjected to torture, while others have been sent to prison and labour camps.

Those who are not repatriated face life on the streets in China, and women and girls are at the risk of falling prey to Chinese bride traffickers or becoming prostitutes. To AI's knowledge no North Koreans have been recognised as refugees under the 1951 Convention relating to the Status of Refugees in China.

Detention, torture and forced labour

Both the Commission and the Sub-Commission have expressed concerns regarding reports of systematic and widespread violations of human rights, including the detention of thousands of political prisoners, extrajudicial executions, "disappearances" and forced labour.¹⁶⁷ AI has received consistent reports from various sources (some of which are difficult to confirm) which suggest that torture and ill-treatment are widespread in prisons, labour camps, and detention centres holding forcibly returned refugees. The HRC has expressed concern regarding the government's insufficient response to individual complaints.¹⁶⁸ Conditions in prisons and labour camps are reported to be extremely harsh, and prisoners are often beaten.

Death penalty

North Korean officials submitted to the HRC in July 2001 that the last public execution took place in 1992. However, AI has continued to receive reports from North Koreans in China of public executions carried out before large crowds, with advance notice being given to schools, farms and enterprises. Some prisoners have reportedly been executed in front of their families. Executions are carried out by hanging or firing-squad.

There is serious concern that the remaining capital offences apply to political offences¹⁶⁹ and are vaguely worded, potentially applicable to a wide range of peaceful political activities.

Amnesty International calls on the Commission to:

- Express deep concern at reports of systematic, wide-spread and grave violations of human rights in North Korea, including torture and ill-treatment; severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association;

¹⁶⁵ 1987 North Korean Criminal Code article 47, and article 117.

¹⁶⁶ *Concluding Observations of the Human Rights Committee* (CCPR/CO/72/PRK), 27 August 2003, recommendation paragraph 20.

¹⁶⁷ Sub-Commission resolution 1998/2, and Commission resolution 2003/10.

¹⁶⁸ *Concluding Observations of the Human Rights Committee* (CCPR/CO/72/PRK), 27 August 2003, paragraphs 15-16

¹⁶⁹ i.e. anti-national treachery, conspiracy against state power, high treason, terrorism; see also *Concluding Observations of the Human Rights Committee* (CCPR/CO/72/PRK), 27 August 2003, recommendation 13.

- Urge the North Korean government to ensure that humanitarian organizations, in particular UN agencies, have free and unimpeded access to all parts of North Korea to ensure that humanitarian assistance is delivered impartially on the basis of need;
- Call on the government of North Korea to halt all public executions and abolish the death penalty for all crimes;
- Urge the government of North Korea to grant unimpeded access to the country to the Special Procedures of the Commission and international human rights monitors.

Democratic Republic of Congo

Building Peace

There can be no peace or reconciliation without an end to human rights abuses which continue throughout the Democratic Republic of Congo (DRC)¹⁷⁰. The failure by the governments of DRC, Rwanda, Uganda, Burundi and Zimbabwe to investigate and prosecute cases where there is evidence to suggest that personnel within their armed forces are responsible for large-scale killings and grave human rights abuses in the DRC, has encouraged repeated abuses by their forces costing the lives of hundreds of thousands of Congolese civilians. Although a new transitional government of national unity was sworn in July 2003, the country remains under the fragmented control of different armed forces.

Transition to peace, stability and free and fair elections will be impossible without first resolving the human rights and humanitarian crisis in the east of the country. This requires the transitional government, in cooperation with Uganda and Rwanda and with the full support of the UN and donor community, to disarm, demobilize and reintegrate into civilian life tens of thousands of armed group combatants, and to reconstruct and reform the national judicial system, police and army.

The government and all its constituent parties must ensure that the transitional process moves forward within the framework of national and international justice. AI has welcomed the commitment by the Prosecutor of the International Criminal Court to open a preliminary investigation into atrocities in the Ituri district of DRC that could constitute genocide, crimes against humanity and war crimes.¹⁷¹ However, the ICC investigation is hampered by the lack of an agreement between the *Mission de l'Organisation des Nations Unies en République Démocratique du Congo* (MONUC)¹⁷² and the ICC which would formalize the collaboration between the ICC investigation team and MONUC regarding exchange of information, security arrangements, procedures for arrest of suspects and other practical matters. A similar agreement between the UN and the ICC is in draft awaiting approval by the General Assembly.

¹⁷⁰ This view is supported by the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo, Interim Report (A/58/534), 24 October 2003, paragraph 53.

¹⁷¹ As stated by the Prosecutor on 16 July and 9 September 2003.

¹⁷² United Nations Mission in the Democratic Republic of the Congo

Two national bodies established in the DRC, the *Observatoire National des Droits de l'Homme*¹⁷³ (ONDH) to monitor ongoing human rights abuses, and the *Commission vérité et réconciliation*¹⁷⁴ (CVR), lack sufficient independence and integrity, proper resources and clear mandates.

A need for immediate and greater protection of civilians

In 2003 mass killings took place in the Ituri district of Oriental province in the context of the conflict between Hema and Lendu ethnic groups that has raged since 1999. Tensions between the two communities were manipulated into open warfare by Ugandan government forces and the leaders of Congolese armed political groups, for their economic, military and political gain. The majority of those who died were reportedly women and children killed by machetes, homemade weapons and small arms. Hundreds of thousands fled the violence to other areas of eastern DRC and across into Uganda and are living in very precarious circumstances, often inaccessible to humanitarian aid.

While much of international attention focussed on the situation in Ituri, unlawful killings of civilians, torture, widespread rape and large-scale recruitment of child soldiers were also committed by combatants in the Kivus and other areas of eastern DRC.

Both the Security Council and the Commission have persistently urged all parties to the conflict to respect international human rights and international humanitarian law, and to cease military activity.¹⁷⁵ AI welcomes the strengthening of the mandate and resources of MONUC, which is now authorized to use "all necessary means" to protect civilians under imminent threat of physical violence in Ituri district and the Kivu provinces.¹⁷⁶ The presence of a reinforced MONUC contingent in Bunia has improved the security situation in and around the town. However, ethnically motivated mass killings, rape, burning of villages and other human rights abuses have continued elsewhere in Ituri. Significant reinforcement of MONUC in the Kivus, although reported to be planned, has yet to take effect.

Violence against women

Systematic rape and sexual violence against women and girls has become a weapon of war used by most of the forces involved in the conflict. Armed political groups have committed numerous rapes to terrorize civilian populations whom they accuse of collaborating with enemy forces. Thousands of women and girls have been abducted from their homes and forced to remain with armed groups as sex or domestic slaves. Many of them have been infected with the HIV/AIDS virus adding to the trauma already suffered by these women and girls.

Recruitment and use of child soldiers

All armed groups in the DRC use children as soldiers. In the east of the country, children reportedly constitute more than 40 per cent of some armed political groups. Boy and girl soldiers, some as young as seven years old, have been subjected to torture and ill-treatment, rape and other forms of sexual violence by soldiers in their own units; AI has reported cases of child soldiers

¹⁷³ National Human Rights Observatory

¹⁷⁴ Truth and Reconciliation Commission

¹⁷⁵ Most recently in Commission resolution 2003/15, paragraph 4 (a) and (c); Security Council resolution 1468, 20 March 2003, paragraph 6.

¹⁷⁶ Security Council resolution 1493, adopted 28 July 2003.

who committed murder, rape and torture under duress; some were reportedly forced to kill their own families. Child soldiers suffer severe trauma and psychological consequences, and many are rendered physically disabled or deaf.

Despite child protection units attached to MONUC and the efforts of local and international organizations, only a fraction of child soldiers have been demobilised. None of the commitments to demobilize children given by the various armed forces have proved genuine; in the east of the country the small number of children who were officially demobilized are at constant risk of re-recruitment, whether by their former armed group or an opposing group.

Amnesty International calls on the Commission to:

- Call on all parties to the conflict in the DRC to uphold human rights and humanitarian standards and urge all leaders of armed forces to instruct their combatants to end all human rights abuses and to adhere to international human rights and humanitarian law;
- Support the establishment of an international commission of inquiry into allegations of grave abuses of human rights and international humanitarian law;¹⁷⁷
- Support measures, including the rapid deployment of MONUC forces throughout the conflict zones of eastern DRC, aimed at providing greater protection of Congolese civilian populations;
- Support reconstruction and reform of the DRC's criminal justice system, including by providing technical assistance and training at all levels of the judiciary and police;
- Urge the UN and MONUC to enter promptly into cooperation agreements with the ICC;
- Call on the DRC government to promptly enact effective implementing legislation for the Rome Statute;
- Renew the mandate of the Special Rapporteur on the DRC, ensure the provision of adequate financial support to enable her to undertake her work effectively;
- Ensure adequate resources for the OHCHR field office in the DRC, in particular to enable it to support the government strategy to demobilize child soldiers, ensuring adequate resources are in place to receive large numbers of demobilized children and to cater for their long-term care and rehabilitation into civilian life, and to develop a coordinated program of care to women and girl victims of sexual violence.

Haiti

With the Bicentennial of its independence celebrated in January 2004, the human rights challenges facing Haiti have increased. The political stalemate stemming from disputed 2000 elections continues, and no progress has been achieved towards legislative elections in 2004. In addition to ongoing concerns related to impunity, attacks on freedom of expression, violations by security forces and abuses by illegal armed groups linked to government officials, AI has reported a new set of concerns.

¹⁷⁷ This is also the recommendation of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo, in her Interim Report to the General Assembly (A/58/534), 24 October 2003, paragraph 57

Supporters of both pro- and anti-government political parties have committed abuses, particularly in the form of attacks on activists or demonstrators with opposing views. Abuses have also been committed by unofficial, apparently politically-motivated groups during armed attacks against government supporters in Haiti's lower Central Plateau, including targeted attacks on civil servants, ruling party loyalists and police officers in and around the commune of Belladère, causing several deaths. Government spokespeople have publicly accused opposition parties of links to the armed group; opposition leaders, however, have repeatedly and publicly denied any such ties.

The Haitian National Police has been accused of human rights violations whether against individuals in custody or in crowd control situations, particularly with regard to policing of anti-government demonstrations. They have also been accused of allowing unofficial armed groups 'attached' to their police stations to participate in law enforcement activities and to commit abuses with impunity. In responding to attacks carried out in the country's Central Plateau, members of the Haitian National Police and its specialised units have burnt homes and beaten residents they apparently suspected of being sympathetic towards the attackers. Journalists attempting to cover the story have reportedly been threatened, particularly those alleged to have interviewed members of the armed group.

In the context of escalating political violence, freedom of expression, already under threat in Haiti, has been placed under even greater risk. Journalists in Haiti have frequently come under threat from government supporters claiming that their reporting undermine the authorities or strengthen the hand of government opponents. Several cases of intimidation of journalists by anti-government activists have also been reported. In February 2003, *Radio Haïti Inter* closed indefinitely due to fears for the security of the station and staff.

Authorities have routinely failed to conduct in-depth investigations of alleged abuses or to bring those believed responsible to justice.

Amnesty International calls on the Commission to:

- Call on the government of Haiti to end impunity for human rights violations by law enforcement officials by undertaking prompt and impartial investigations into all allegations of human rights violations and ensuring that the perpetrators are brought to justice in trials in accordance with international standards for fair trial;
- Call on the government to ensure that all reports of human rights abuses by political activists should be promptly, thoroughly and impartially investigated, and remind them that they should be seen to be tackling abuses by both pro- and anti-government armed groups with the same degree of diligence and independence. In addition, urge all political leaders, both in government and opposition, to send a clear message to their supporters that such abuses will not be tolerated.

Iraq

The Coalition Provisional Authority (CPA) which took control of Iraq following the fall of Saddam Hussain's government in April 2003, has failed to fully live up to its responsibilities as occupying power under international law, including in its duty to restore and maintain public order and safety and to provide essential services. In the immediate aftermath of the war, widespread looting of public and private buildings took place and there was a sharp rise in criminal activities across the country. Millions of people faced grave dangers to their health owing to power cuts, shortages of clean water and lack of medical services.

Since May 2003, there has been an increase in incidents of targeted and indiscriminate attacks carried out by armed groups apparently opposed to the occupation against US military targets, Iraqi security personnel, Iraqi-controlled police stations, religious leaders and buildings, foreign embassies, media workers, international NGOs, the International Committee of the Red Cross and UN agencies.

In July 2003 the CPA appointed a 25-member Iraqi Governing Council from among the various religious, political and ethnic groups. The Council is vested with some executive powers, but the US Administrator who heads the CPA retains power to overrule or veto its decisions. In September 2003, the Governing Council appointed an Iraqi 25-member interim government, including a Human Rights Minister. Responsibility for security and law and order, however, remains under the CPA.

Former President Saddam Hussein was arrested by coalition forces on 13 December 2003. As the former commander-in-chief of Iraq's armed forces, Saddam Hussein is a prisoner of war and must be treated accordingly. In this regard, AI regretted that aspects of Saddam Hussein's medical examination were shown on television, contrary to the duty not to humiliate prisoners.

On 10 December 2003, the Iraqi Governing Council announced the establishment of the Iraq Special Tribunal which is expected to try Saddam Hussein and others. AI is concerned that this tribunal was set up without wide consultations with Iraqi civil society or input from international legal experts, and urges that the option of including non-Iraqi expertise in the tribunal is fully explored to ensure the best make up of the tribunal.

In December 2003, AI issued a memorandum¹⁷⁸ on concerns related to legislation introduced by the CPA, including relating to the independence of the judiciary, freedom of expression and association, freedom of movement, access to information and property disputes. AI called on the CPA to suspend those provisions that clearly contravene international law and standards.

“Disappearances”

¹⁷⁸ Memorandum on concerns related to legislation introduced by the Coalition Provisional Authority (AI Index: MDE 14/176/2003).

Mass graves containing thousands of bodies have been uncovered in many parts of Iraq. The victims are believed to have been executed by Iraqi security forces in the 1980s, in the aftermath of the 1991 uprisings, and in early 2003. Many bodies were exhumed by people trying to locate missing relatives. AI is concerned at the apparent lack of a comprehensive program to deal with these and other serious violations of human rights committed in the past.

Violations in the context of the war

Hundreds of civilians were killed by US and UK forces during the war. Some were victims of cluster bombs; others were killed in disputed circumstances. Unexploded bomblets from cluster bombs continue to pose a threat to civilians, particularly children.

Iraqi forces also used unlawful tactics during the war that endangered civilians, including siting weapons near or inside civilian facilities and wearing civilian clothes in order to launch surprise attacks. However, under international humanitarian law such action can never justify unlawful military methods by opposing forces.

AI is concerned by the apparent lack of accountability of Coalition forces personnel. Under international law, any credible allegations of violations of human rights, in the context of use of force, treatment while in custody, or any other context, must be properly investigated and anyone found responsible brought to justice.¹⁷⁹ Victims or their families must receive full reparation, including compensation. Coalition forces, however, appear to continue to use excessive force on a wide-scale resulting in civilian deaths.

One example is the case of 12-year old Mohammad al-Kubaisi, who was shot in Baghdad, on 26 June 2003. Mohammad was watching US troops carrying out search operations from the stairs of his house. A US soldier saw him from the house opposite, aimed his gun at him and opened fire. About 20 US soldiers entered and searched the house after the shooting but didn't offer any medical treatment to the bleeding boy. Two neighbours, Yaser Ala', aged 17, and Jassem Mohammad rushed the wounded boy to the hospital, a seven-minute drive away. On the way there they were stopped by a tank guarding the road. They explained to the interpreter that there was a wounded boy in the back of the car, but the US soldiers handcuffed them and threw them face down on the ground. After about 15 minutes they were allowed up and told to go home; it was 11pm and the curfew had started. They then discovered that Mohammad was dead already.¹⁸⁰ The incident was raised in a meeting in Baghdad between AI delegates and CPA officials who argued that Mohammad was carrying a gun. AI is not aware that an independent investigation has been undertaken into this case.

Torture and ill-treatment

Torture and ill-treatment by Coalition forces have been frequently reported. Detainees held in tents suffered extreme heat and were given insufficient water. Detainees have been routinely subjected to cruel, inhuman or degrading treatment during arrest and the first 24 hours of detention, including being restrained with plastic handcuffs causing unnecessary pain, being forced to lie face down on the ground, while handcuffed, hooded or blindfolded, and being denied water or food and

¹⁷⁹ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War 1949 articles 146 and 147

¹⁸⁰ See also AI report *Iraq: Memorandum of Concerns relating to law and order*, 23 July 2003, AI Index MDE 14/157/2003.

access to a toilet. AI has also reported allegations of torture and ill-treatment by US and UK troops during interrogation. These include prolonged sleep deprivation; prolonged restraint in painful positions, sometimes combined with exposure to loud music; prolonged hooding; and exposure to bright lights. Such treatment would amount to torture or inhuman treatment prohibited by the Fourth Geneva Convention and by international human rights law.¹⁸¹ Investigations into these allegations have been inadequate.

Violence against women

Iraqi women have for many years been subjected to serious human rights violations including torture and extrajudicial execution. Methods of torture included rape and beatings on the soles of the feet. In one well-documented case the rape of a woman was videotaped and sent to a relative abroad in order to put pressure on him to cease anti-government activities. In October 2002, dozens of women suspected of prostitution were beheaded without any judicial process in Baghdad and other cities. Some women were also beheaded for political reasons.

Effects of war have caused women to become more vulnerable to violence, particularly domestic violence. Women have also been the victims of family killings, so-called “honour” killings. The Special Rapporteur on violence against women reported in 2002 that more than 4,000 women had been victims of such killings in Iraq, since 1991.¹⁸² Women and children have also formed the majority of refugees and the internally displaced.

In the aftermath of war, as law and order broke down, women and girls have faced violent attacks, including abduction, rape and murder. Many women are too afraid to leave their homes, and girls are kept away from school. AI is not aware of steps being taken by either the CPA or the interim government to ensure adequate protection of women’s human rights.

This legacy of abuse will be a major factor in post-conflict Iraq and there is an urgent need to address past violations, investigate and bring perpetrators to justice. There is concern that women are not being consulted or taking part fully in the debate on the future of their country.

Amnesty International calls on the Commission to:

- Support adequate monitoring of human rights in Iraq, security permitting. The mandate of the monitors should cover human rights abuses in Iraqi territory by any party, and their reports should be regularly and publicly available;
- Extend the mandate of the Special Rapporteur on the situation of human rights in Iraq for a further year clarifying that the mandate covers all past and present human rights violations in Iraq;
- Support the sending of UN experts to work with Iraqi experts and civil society in developing proposals for building the rule of law in Iraq;
- Ensure that any trial of senior and other officials of the former Iraqi government respects fully international standards for fair trial.

¹⁸¹ Fourth Geneva Convention article 146; International Covenant of Civil and Political Rights article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹⁸² Report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/2002/83), 31 January 2002.

Israel/Occupied Territories

Impunity for killings and violence in the occupied territories

In June 2003, the “Road Map” peace plan was agreed by the Israeli government and the Palestinian authority. It called on Palestinian armed groups to cease attacks on Israelis and on the Israeli government to stop assassinations of Palestinians and destruction of houses, to freeze settlement activity and to ease movement restrictions on the Palestinian population.¹⁸³ However, the “Road Map” did not include any mechanisms to ensure compliance, and negotiations quickly collapsed.

Over the past year, the number of deaths has continued to rise. In 2003 the Israeli army killed more than 550 Palestinians, most of them unarmed and including some 120 children and some 50 bystanders killed when the army carried out assassinations of wanted militants. Palestinian armed groups killed more than 120 Israeli civilians, 21 of them children, and some 55 soldiers in suicide bombings and other attacks. The Israeli authorities detained thousands of Palestinians known or suspected of involvement in killings and other attacks, but consistently failed to investigate and bring to justice Israeli soldiers responsible for killings of unarmed civilians and other crimes. The Palestinian authority consistently failed to investigate and bring to justice members of armed groups responsible for killings and other attacks against Israelis.¹⁸⁴

Israel, as the occupying power, bears the responsibilities provided by the Fourth Geneva Convention relative to the Protection of Civilians in Time of War,¹⁸⁵ and remains bound by human rights obligations under conventions to which it is a party, when acting in regard to all territories under its effective control, including the Occupied Territories.¹⁸⁶ The Israeli authorities have continued to justify widespread human rights violations on the grounds of self-defence, ‘military necessity’ and ‘security’, seeking to evade their obligations under international human rights and humanitarian law. While the Israeli authorities have the right to take reasonable, necessary and proportionate measures to protect their citizens and borders, this does not include unlawful killings of civilians, wanton destruction of their property and other forms of collective punishment.

Increasing restrictions on the human rights of Palestinian

The Israeli authorities have increased restrictions on the movement of Palestinians to an unprecedented level. Israel has continued the construction of a fence/wall, which it claims is intended to stop potential Palestinian attackers from entering Israel. However, this fence/wall does not follow the ‘Green Line’ separating Israel from the Occupied Territories, but runs deep

¹⁸³ Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (S/2003/529), phase 1

¹⁸⁴ See also *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967* (E/CN.4/2004/6), 8 September 2003, paragraph 28

¹⁸⁵ Affirmed by General Assembly resolution A/56/60, 10 December 2001, paragraphs 1 and 2, and Commission resolution 2003/6, 14 April 2003, paragraph 16.

¹⁸⁶ See *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel* (E/C.12/1/Add.90), 23 May 2003, paragraph 31, in which the Committee “reaffirms the view that the States Party’s obligations under the Covenant apply to all territories and populations under its effective control...even in a situation of armed conflict fundamental human rights must be respected...”.

into the occupied West Bank,¹⁸⁷ confining hundreds of thousands of Palestinians to isolated enclaves and cutting off communities from each others and from their work, health, education and other essential services in nearby towns and villages. In some areas the fence/wall cuts off farmers from their land, a main source of subsistence. Palestinians living in these areas must obtain special permits to move in and out of their own homes.

Stringent closures remain in place inside the Occupied Territories, with some 700 military check-points and blockades, confining some 3,500,000 Palestinians to their homes or immediate surrounding most of the time. These restrictions are usually tightened in retaliation for suicide bombings and other attacks by Palestinian armed groups. Israeli soldiers frequently resort to excessive use of force to enforce these restrictions; routine live fire, tear gas, stun grenades, detention, ill-treatment; and confiscation of vehicles and identity cards. The passage of ambulances and patients in ordinary vehicles is often delayed or refused and pregnant women have been forced to give birth on the road by check points.

These restrictions on the movement of people and goods within the Occupied Territories prevent Palestinians from reaching their workplaces and have paralyzed the Palestinian economy. As a result, unemployment has risen to almost fifty percent and two thirds of the Palestinian population are living below the poverty line.¹⁸⁸ NGO workers, journalists and UN delegates have also been denied access to areas under control of Israeli soldiers, and those who enter are at risk of being fired upon by Israeli soldiers.¹⁸⁹

In the past year Israeli soldiers destroyed hundreds of Palestinian homes, commercial and public facilities, including water, electricity and communications infrastructure, and large areas of cultivated land.¹⁹⁰ At times the Israeli authorities admitted that the destruction was in retaliation for Palestinian attacks and at other times they invoked “security reasons”. Such measures constitute a form of collective punishment on the Palestinian population, and as such a violation of international law.¹⁹¹

Illegal Israeli settlements

AI has called for an immediate end to Israel’s settlement policy and for measures to evacuate Israeli civilians living in the Occupied Territories. Despite the “Road Map” agreement, Security Council and Commission resolutions reaffirming their illegality, building and expansion of settlements continues.¹⁹² The fence/wall is being built to encompass many Israeli settlements in

¹⁸⁷ In some areas the fence/wall extends six-seven kilometres east of the Green Line.

¹⁸⁸ See also *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel* (E/C.12/1/Add.90), 23 May 2003, paragraph 19: “...The Committee continues to be gravely concerned about the deplorable living conditions of the Palestinians in the occupied territories, who - as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints - suffer from impingement of their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, water, health care, education and food.”

¹⁸⁹ Israeli soldiers have often fired live ammunition at international peace activists and human rights workers and journalists. In the past year at least four, two US and two UK citizens, were killed or very seriously wounded.

¹⁹⁰ The deliberate and wanton destruction of homes and civilian property is a grave breach of the Fourth Geneva Convention, article 147 (and also prohibited by articles 33 and 53), and a war crime as defined by the Rome Statute of the International Criminal Court (article 8 (2) (a) (iv)).

¹⁹¹ Geneva Convention (IV), article 33.

¹⁹² Security Council resolution 465 (1980), Commission resolution 2003/6. See also *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel* (CERD/C/304/Add.45), 30 March 1998, paragraph 10.

the West Bank, in what the Special Rapporteur on the situation of human rights in Palestinian territories has described as “a clear act of territorial annexation under the guise of security”.¹⁹³

The Israeli settlements take away crucial Palestinian resources, such as land and water and result in discrimination against Palestinians, who are not permitted to live on or make use of settlement land, and may not even pass through it. The appropriation of such vital resources by Israel has had a devastating impact on the lives of the local Palestinian population, and their rights to an adequate standard of living and health.¹⁹⁴ Israeli settlers in the Occupied Territories have also repeatedly attacked Palestinians and their property and the Israeli authorities have consistently failed to investigate such crimes and bring those responsible to justice.

A discriminatory amendment to the “Citizenship and Entry into Israel law” was passed in 2003. It denies family reunification to Israeli citizens married to Palestinians from the Occupied Territories, thus discriminating against Israeli citizens of Palestinian origin who marry Palestinians from the Occupied Territories. The Committee on the Elimination of Racial Discrimination has called on Israel to revoke this law.¹⁹⁵

Israeli conscientious objectors

Scores of Israeli conscientious objectors have been imprisoned for up to two years for refusing to perform military service or to serve in the Occupied Territories, on the grounds that they believe that by so doing they would be participating in human rights violations. AI considers them to be prisoners of conscience.

Amnesty International calls on the Commission to:

- Urge the Israeli government to immediately stop building the fence/wall inside the West Bank; and to end the extensive and punitive closures imposed on Palestinians inside the Occupied Territories;
- Urge the Israeli authorities to put an immediate end to the unlawful destruction of Palestinian houses, land and other property in the Occupied Territories;
- Urge the Israeli government to cease immediately the establishment and expansion of Israeli settlements in the West Bank and Gaza Strip and take measures to evacuate the Israeli civilians living in existing settlements;
- Urge the Israeli army and Palestinian armed groups to put an immediate end to killings of civilians
- Urge the Israeli government and the Palestinian Authority to ensure that prompt and impartial investigations are carried out into all killings and that those responsible are brought to justice in trials in accordance with international standards for fair trial;
- Urge the Israeli government to repeal the discriminatory law which bars family reunification for Palestinian spouses of Israeli citizens;

¹⁹³ *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967* (E/CN.4/2004/6), 8 September 2003, paragraph 6.

¹⁹⁴ See *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel* (E/C.12/1/Add.90), 23 May 2003, paragraphs 16, 19, 25, 41 and 42.

¹⁹⁵ Decision 2 (63) of the Committee on the Elimination of Racial Discrimination of 14 August 2003, CERD/C/63/Misc.11/Rev.1

- Urge the Israeli government to immediately and unconditionally release all detained conscripts and reservists who are refusing to serve in the army on grounds of their conscientiously held beliefs.

Liberia

At its 59th session the Commission appointed an independent expert to facilitate cooperation between the government of Liberia and the Office of the High Commissioner for Human Rights.¹⁹⁶ The human rights situation in Liberia subsequently deteriorated dramatically. The armed opposition Liberians United for Reconciliation and Democracy (LURD) advanced towards the capital, Monrovia, and a second armed group, the Movement for Democracy in Liberia (MODEL), emerged in the east of the country. Thousands of civilians have been killed, raped, beaten, forcibly recruited to fight, used as forced labour and driven from their homes. More than a thousand people died in June and July 2003 in Monrovia in cross-fire or as a result of deliberate indiscriminate shelling. Protracted conflict had forced an estimated 1.3 million Liberians to flee their homes; whether as refugees in neighbouring countries or internally displaced; they remained particularly vulnerable. This grave deterioration prompted the Acting High Commissioner for Human Rights on 8 August 2003 to submit a report for urgent consideration by the Commission.¹⁹⁷

The departure of former President Charles Taylor, who was indicted by the Special Court for Sierra Leone, was followed by a comprehensive peace agreement signed in Accra, Ghana, on 18 August 2003. This agreement, signed by the former government, LURD and MODEL, commits its signatories to promote “*full respect for international humanitarian law and human rights*”. A power-sharing National Transitional Government of Liberia (NTGL) was inaugurated and the UN Mission in Liberia (UNMIL)¹⁹⁸ began deployment on 1 October 2003. While these events provide some grounds for hope of an improvement in the human rights situation, major challenges remain, and the efforts of the international community must be maintained and consolidated.

UNMIL’s mandate to protect civilians

Security Council resolution 1509 gives a clear mandate to UNMIL “*to protect civilians under imminent threat of physical violence, within its capabilities*” and the presence of international troops does afford some protection to civilians. The security situation in Monrovia and other areas under UNMIL control remains relatively stable, although in early December 2003, shortly after official commencement of the disarmament and demobilization process, rioting by armed former combatants demonstrated the precariousness of the peace. In other areas where peace-keeping troops have yet to deploy, civilians remain at risk.

The ability of UNMIL to implement its mandate to protect civilians is seriously hampered by delay in deployment of its projected full complement of 15,000 peace-keeping troops. Large

¹⁹⁶ Commission resolution 2003/82 appointed an independent expert mandated for an initial period of three years, 25 April 2003.

¹⁹⁷ Report of the UN High Commissioner for Human Rights on the situation of human rights and fundamental freedoms in Liberia (E/CN.4/2004/5), 12 August 2003.

¹⁹⁸ UNMIL was established by UN Security Council resolution 1509 of 19 September 2003 and will be the largest current UN peace-keeping operation.

sections of the civilian population in areas where UNMIL has yet to deploy, particularly in Bong and Nimba Counties, continue to be subjected to killings, rape, beatings, forced labour and extensive looting. The number of internally displaced people has continued to increase. Those responsible for these abuses are from all three parties to the peace agreement.

A strong human rights component within UNMIL

Security Council resolution 1509 also reflects the strong commitments by the Secretary-General in his report on Liberia to the Security Council which identified “*the improvement of the human rights situation and the protection of civilians, including women and children*” as a priority area of support to be provided by UNMIL.¹⁹⁹ It signalled the need for “*an adequate human rights presence, capacity and expertise within UNMIL to carry out human rights promotion, protection and monitoring activities*”.²⁰⁰ AI is concerned to see this acted upon urgently by establishing a strong human rights section with full political support and adequate resources. It is important that human rights officers are deployed throughout the country, security permitting, and able to monitor the human rights situation and provide regular public reports.

Ending impunity

The international community must take concerted action to end impunity for crimes against humanity, war crimes and other serious violations of international humanitarian law. So far, however, there appears to be no sense of urgency to bring those responsible for these crimes to justice. Moreover, the Chairman of the NTGL has stated publicly that he favours a blanket amnesty which, according to the peace agreement, may be considered. The peace agreement also provides for a truth and reconciliation commission. However, while this may have an important role in establishing the facts, it cannot be a substitute for a court of law to try alleged perpetrators of serious violations of international law. The Secretary-General, the Security Council and the Acting High Commissioner for Human Rights have repeatedly stated that those committing such crimes in Liberia will be held individually accountable.²⁰¹

Amnesty International calls on the Commission to:

- Urge the NTGL to fulfil its commitments under the peace agreement to respect international human rights and humanitarian law;
- Call on the international community to ensure that sufficient resources are dedicated to UNMIL so that it can effectively fulfil its mandate to protect civilians as well as promote and protect human rights;
- Ensure that the independent expert appointed by resolution 2003/82 is provided with adequate resources to carry out her mandate, including visits to Liberia, detailed assessments of the human rights situation and public reports to the Commission;
- Ensure that those responsible for crimes against humanity, war crimes and other serious abuses of international humanitarian law are held accountable and state that a general amnesty would not apply to these crimes; and as a first step, request the establishment of

¹⁹⁹ Report of the Secretary-General to the Security Council on Liberia (S/2003/875), 11 September 2003.

²⁰⁰ Security Council resolution 1509, 19 September 2003, paragraph 3 (m)

²⁰¹ In his report of 8 August 2003 (E/CN.4/2004/5) the Acting High Commissioner stated explicitly that the atrocities committed against civilians constitute crimes against humanity, war crimes and serious violations of international humanitarian law, adding that “[t]his culture of impunity cannot be allowed to stand”.

- an international, independent investigation in order to establish accountability and identify an appropriate court for trying those alleged to have been responsible for such crimes;
- Encourage the international community to provide adequate and sustained financial, material and technical support to strengthen national institutions in order to ensure long-term protection of human rights and the rule of law.

Myanmar

AI's concerns about human rights situation in Myanmar are serious and wide-ranging. As a result of detailed research conducted throughout 2003, including during two official visits to Myanmar,²⁰² the organization has deepened and updated its knowledge of political imprisonment in the country, one of its most grave concerns. There are approximately 1,350 political prisoners in Myanmar, many of whom are prisoners of conscience. Moreover, people continue to be arbitrarily arrested and sentenced to long terms of imprisonment for conducting peaceful political opposition activities.

Forced labour of civilians by the military continues in many parts of the country, particularly in counter-insurgency areas. Forced labour takes the form of work on infrastructure projects or at military installations and portering for the army. Common criminal prisoners are frequently taken out of prisons by the security forces to serve as porters carrying supplies in these areas, or to act as human mine-sweepers. Porters are also often subjected to various forms of ill-treatment, sometimes resulting in death. Among civilians, small-scale farmers and day labourers living in areas where armed opposition groups operate, are most at risk of forced labour. The security forces also confiscate land belonging to local farmers for their own use, which further compromises the farmer's ability to earn a living.

Since 30 May 2003, the human rights situation in Myanmar has deteriorated considerably, following the attack on the National League for Democracy (NLD)²⁰³ that day in Upper Myanmar. NLD leaders and supporters were attacked at night in a remote area near Depeyin in Sagaing Division. At least four people were killed, and scores of people were injured in the attack which was reportedly instigated by the government-backed Union Solidarity and Development Association (USDA).²⁰⁴

According to detailed reports, the assailants beat NLD supporters with iron bars and bamboo staves, some of them reportedly to death. Several NLD female members were badly beaten, and their clothes ripped. NLD General Secretary Daw Aung San Suu Kyi and U Tin Oo, NLD Vice Chairman, who were both at the scene, were arrested along with scores of NLD supporters. Daw Aung San Suu Kyi and two other senior NLD leaders are still held under *de facto* house arrest. Twenty-three others arrested on 30 May are believed to remain in prison, including U Tin Oo.

²⁰² AI visited Myanmar for the first time ever in February 2003 and returned in December 2003.

²⁰³ The main opposition party in Myanmar.

²⁰⁴ The USDA was established by the government as a "social organization" in 1993, with millions of members nationwide. Widespread reports indicate that many people have been forced to join the USDA.

Immediately after 30 May AI strongly urged the State Peace and Development Council (SPDC), Myanmar's military government, to permit an independent, impartial, and effective investigation into the 30 May events, and to bring those responsible to justice. At the time of writing, the SPDC has not permitted such an investigation, which contributes to the overall climate of fear and impunity prevailing in the country.

Following the Depeyin violence, there has been an upsurge in the detention of those peacefully exercising their right to freedoms of expression and association. They continue to be held without charge, or have been prosecuted under repressive and deeply flawed legislation in trials that do not meet international standards for fair trial. Among these is a solitary demonstrator who called for the release of all political prisoners, and others who had simply expressed concern about the quality of education in personal letters. In December 2003, several NLD members from Mandalay Division who were attacked at Depeyin were reportedly re-arrested, and NLD members from Tanintharyi Division were also arrested for unknown reasons.

On 28 November 2003, seven people were sentenced to death for high treason under article 122(1) of the Penal Code. AI opposes the death penalty in all cases. Although the Myanmar government has not executed anyone for many years, a total of eleven people have been sentenced to death for treason in the past two years. Political trials in Myanmar demonstrably fall far short of international standards for fair trial. Moreover, some of those recently sentenced to death may be prisoners of conscience. In previous resolutions the Commission has called for the immediate and unconditional release of prisoners of conscience, yet freedom of opinion, expression and assembly continue to be silenced by arbitrary detention and misuse of the law.²⁰⁵

Other major concerns with regard to political imprisonment include arbitrary arrests and prolonged interrogation during *incommunicado* detention by military intelligence and other security personnel without judicial oversight. *Incommunicado* detention during interrogation facilitates the use of torture and other forms of ill-treatment. Political detainees who have recently been tried were denied access to a lawyer or only permitted to talk to a lawyer minutes before their trial. In some cases, political detainees have not been able to speak in their own defence or cross examine prosecution witnesses. As a result, long sentences have been handed down solely on the basis of statements provided by police officers or military intelligence personnel.

Administrative detention provisions are used by the Myanmar authorities to prolong the detention of political prisoners who have already completed their sentences. For example, at the end of 2003 three elderly prisoners of conscience detained after serving their sentences under article 10a of the 1975 State Protection Act had their detention renewed by one year. AI knows of at least 21 other individuals who are being held under this provision.

Other developments relating to human rights in Myanmar

In August 2003, the government reassigned duties to senior officials, including the appointment of General Khin Nyunt as Prime Minister. That month he announced a seven-point plan for Myanmar to enter a transition phase to democracy. Mostly notably, the National Convention,

²⁰⁵ Most recently in Commission resolution 2003/12.

convened in 1993 and adjourned in 1996, would be reconvened in order to draft a new constitution. At that time AI reported on the human rights situation in context of the first National Convention process, which failed to protect the rights to freedom of expression and assembly. Delegates were not permitted to speak or meet openly, and some of those who objected to these procedures were arrested and sentenced to long terms of imprisonment.

During its most recent trip to Myanmar in December 2003, the AI delegation raised all these issues about the National Convention process directly in discussions with government officials. AI remains concerned that political arrests continue and that dozens of members of parliament-elect and others are still imprisoned and unable to participate in the National Convention. All of these factors fuel a climate of fear and insecurity in Myanmar, which undermines the credibility of transition process.

Amnesty International calls on the Commission to:

- Renew the mandate of the Special Rapporteur on the situation of human rights in Myanmar and urge the SPDC to provide him with full cooperation, including access to all the people of Myanmar;
- Urge the government to immediately and unconditionally release all prisoners of conscience and to review the sentences of those political prisoners who have been sentenced in trials which did not meet international standards of fair trial;
- Call on the government to permit an independent, effective and impartial investigation into the events of 30 May 2003;
- Immediately put an end to forced labour of civilians and portering of criminal prisoners by the security forces;
- Call upon the government to ensure that the National Convention, charged with drafting a new Constitution, incorporates extensive human rights safeguards.

Sierra Leone

Further consolidation of the peace process has resulted in a corresponding improvement in the human rights situation. Significant progress has been made in addressing impunity for past human rights abuses committed by both government and armed opposition forces as the Special Court for Sierra Leone announced its first indictments and began preliminary hearings. Also welcome is the government's decision at the Commission's 59th session to extend a standing invitation to the Special Procedures of the Commission.

The Special Court for Sierra Leone

During 2003, 13 individuals were indicted by the Special Court for bearing the greatest responsibility for war crimes, crimes against humanity and other serious violations of international humanitarian law committed after 30 November 1996; nine of them are in the custody of the court.

Several states, however, have failed to cooperate fully with the Special Court. Although former Liberian President Charles Taylor was indicted on 4 June 2003 while in Accra, Ghana, and

an international arrest warrant was issued, he was allowed to return to Liberia. He subsequently travelled to Nigeria with implicit guarantees that he would be neither prosecuted in Nigeria nor surrendered to the Special Court. Although Nigerian President Olusegun Obasanjo sought to justify his action as necessary to secure a political settlement to Liberia's conflict, this nonetheless violated Nigeria's obligations under international law. Calls to either surrender Charles Taylor to the Special Court or to open an investigation with a view to determining whether to pursue criminal or extradition proceedings in Nigerian courts have so far gone unheeded.

The Special Court continues to face severe funding shortfalls, placing in jeopardy its continued operation: pledges for its second year were not fully met, compounding concerns about meeting the projected budget for its third year.

Fair trial concerns and political detention without charge or trial

AI continues to be concerned about the lack of due process in trials before Sierra Leonean courts. The trial of some 90 former combatants charged with murder, conspiracy to murder and other offences failed to advance during 2003. The defendants include former RUF members and renegade soldiers known as the "West Side Boys", most of whom were arrested in May 2000 following the deaths of about 20 people and injuries to many others when RUF members fired on civilians in Freetown. They were not charged until March 2002 when emergency regulations allowing indefinite detention without charge or trial were lifted. Contrary to international standards for fair trial, none of the defendants has benefited from legal representation, which is exacerbated by the fact that, if convicted, the defendants could face the death penalty.

In addition, the case of 17 people charged in March 2003 with either treason or misprision of treason in connection with an attack on a military barracks also made no progress in the past year. The defendants have still not been informed of the date of their trial.

Twenty-three detainees, all military personnel and most arrested in 2000, remain in detention without charge or trial. There is no legal basis for their continued detention and they continue to be denied access to lawyers and family members.

Strengthening national institutions

Despite some progress in rehabilitating the national justice system, serious problems persist in the effective administration of justice. Although magistrate courts have been restored, the lack of magistrates remains a major constraint. Criminal suspects continue to be held in police custody beyond legal limits and serious inadequacies in the juvenile justice system remain.

The permanent National Human Rights Commission envisaged in the peace agreement has yet to be established, despite assistance from the Office of the High Commissioner for Human Rights. Although draft legislation to establish the Commission was submitted to the government in September 2003, following consultation with civil society groups, legislation has yet to be submitted to parliament.

UN Mission in Sierra Leone (UNAMSIL)

The UNAMSIL human rights section has continued to monitor the human rights situation, including in relation to police stations, prisons, the judicial system and national institutions. It has also continued to document human rights abuses during the conflict to contribute to addressing

impunity and fostering national reconciliation. Additional regional offices have been established and the human rights section has provided training in international human rights and humanitarian law for peace-keeping troops, members of the judiciary, law enforcement officials, local human rights organizations and civil society organizations.

Amnesty International calls on the Commission to:

- Encourage all states to contribute generously towards the funding of the Special Court to enable it to complete its mandate, and urge all states to cooperate fully with the Special Court, including by entering into legal agreements with the Special Court and surrendering those indicted;
- Call on the government of Sierra Leone to ensure due process of the law and trials before national courts which conform to international standards for fair trial;
- Encourage continuing efforts by the international community to assist in strengthening the national justice system;
- Urge the government to establish without delay the National Human Rights Commission with full guarantees of independence, impartiality and adequate resources;
- Ensure that an effective, fully resourced UNAMSIL human rights section remains in Sierra Leone for as long as necessary, irrespective of the gradual withdrawal of UNAMSIL troops.

Somalia

Following the collapse of the state in 1991 there has been no national government in Somalia, and no army, police or justice system. In the central and southern regions, particularly in Mogadishu and Baidoa, there is a constant level of insecurity as well as intermittent faction fighting, leaving the October 2002 ceasefire mostly ineffective. Ceasefire monitoring is in the process of being established by an African Union military group.

In August 2003, the Transitional National Government (TNG) extended its 3-year term pending the establishment of a new inclusive transitional parliament and government as envisaged by the peace talks. Although nominally recognised by the UN and part of the international community, the TNG controls only a small part of the capital, Mogadishu; other areas are controlled by armed faction leaders, i.e. "warlords". There is little progress towards establishing a new interim government that would be acceptable to all sides.

After more than a year of conflictive talks the Somalia Peace and Reconciliation conference is still deadlocked. The talks are organised by the Intergovernmental Authority on Development and comprise over 430 delegates. The six committees of the conference have produced reports on a wide range of social and political issues, leading to the declaration in September 2003 of a transitional Charter for a four-year interim federal government. However, not all factions accepted it.

International humanitarian organizations are for the most part unable to work in the south for security reasons. In July 2003, a leading Mogadishu NGO reported that over 530 civilians had been killed in the past year and 185 kidnapped.

Somaliland

Multi-party presidential elections were held in April 2003 in the self-declared independent Somaliland Republic. Somaliland has refused to participate in the peace talks in Kenya or to consider rejoining a federal Somalia, while pursuing its demand for international recognition. Security concerns for humanitarian workers there increased following the murders of three international health and education workers in October 2003, although police arrested and charged several suspects.

Puntland

In the self-declared federal regional state of Puntland in the northeast, a peace and reconciliation agreement was agreed in May 2003 between President Abdullahi Yusuf Ahmed and the Puntland Salvation Council, an armed opposition group. Opposition political leaders and militias have been integrated into the Puntland government and its security forces, and all captured opposition militias were released.

Violence against women

Female genital mutilation continues to be inflicted on most girls, despite educational campaigns by Somali women's organizations. Members of the Coalition of Grassroots Women's Organizations have also documented rape by faction militias and gunmen in Mogadishu of internally displaced women and girls, most of whom belong to discriminated minorities.

Refugees and internally displaced people

The flow of refugees from the south continues as civilians flee faction fighting and abuses. There are also major Somali refugee and asylum-seeker populations in neighbouring countries.

In April 2003, the UN Resident Humanitarian Coordinator for Somalia appealed to Somali political and militia leaders to protect 350,000 internally displaced persons in over a dozen areas, the majority of them women and children, many from the minorities. They are subject to sexual violence, abductions, looting by armed elements, and poor conditions in camps.

Freedom of opinion and the media

Activists and journalists in all areas are frequently at risk on account of reporting on human rights abuses and criticising political authorities. Political parties exist only in Somaliland where they have had considerable freedom to express opinions, publicly criticise the government, and campaign in elections.

Human rights defenders

In nearly all areas of the country, organizations of human rights defenders work for peace, human rights and development, often at great personal risk, but with some international support.

In February 2003 AI organised a workshop in Hargeisa, which produced a declaration calling on all Somali political authorities to recognise the legitimate role of human rights defenders,

and opposing impunity for faction leaders responsible for past war crimes and crimes against humanity.

Amnesty International calls on the Commission to:

- Urge all political authorities in the south to take immediate steps to end human rights abuses by their forces in the areas they control, observe the ceasefire and contribute positively to measures aiming at national reconciliation;
- Call on all parties to the peace talks to place human rights at the centre of all discussions and to ensure implementation of Security Council resolution 1325 in particular ensuring that women are represented at all levels of decision-making and guaranteeing the protection of human rights of women and girls from violence and discrimination;
- Urge the Security Council to establish a Panel of Experts to investigate war crimes, crimes against humanity and gross violations of basic human rights in the past, both under the Siad Barre government, during the post-1991 civil wars, and up to the present, in order to contribute to the process of genuine and lasting peace and reconciliation, through a possible Truth and Reconciliation;
- Urge the African Union to activate ceasefire monitoring plans as soon as possible, including also observance of international humanitarian law and international human rights law, ensuring public reporting and accountability procedures
- Support and strengthen the field presence of the OHCHR in Somalia, including through projects to support to civil society groups; projects contributing to peace, democratisation and development; the rights of women, children and minorities; freedom of the media, and access to justice;
- Extend the mandate of the Independent Expert on the situation of human rights in Somalia and provide the necessary assistance and adequate resources to enable him to carry out his work effectively.

Timor-Leste

The Democratic Republic of Timor-Leste (formerly East Timor) gained independence only two years ago. The new country joined the UN in 2002. The government has acceded to several key human rights treaties, although limited progress has been achieved in developing a national legal framework to protect human rights and strengthen the newly established judiciary, police force and other key institutions. These weaknesses within the justice system, particularly the lack of human resources, training and oversight of officials, continue to undermine the rule of law, security and human rights. However, underlying the country's efforts to build a nation founded on the rule of law, is an entrenched legacy of impunity for human rights violations committed in Timor-Leste while under Indonesian rule and in the context of the August 1999 ballot which resulted in the country becoming independent.

It is estimated that 1,400 people were killed in the months proceeding and in the aftermath of the ballot, and that 30 percent of the population were forcibly deported or fled to West Timor, where an estimated 28,000 remain in refugee camps. Other human rights violations including torture, rape and other forms of sexual violence were committed, overwhelmingly against

supporters of independence.²⁰⁶ These widespread and systematic violations were carried out by militia, set up and supported by, and sometimes with the direct involvement of, the Indonesian security forces, in order to influence the outcome of the ballot and disrupt the implementation of the result.

In response to this violence the Commission convened a Special Session in September 1999 to consider the human rights situation in Timor-Leste. In recognition of the responsibility of the international community to bring to justice perpetrators of crimes of such a serious nature as those committed in Timor-Leste, it adopted a resolution affirming that the international community would exert every effort to ensure those responsible for the violence are brought to justice.²⁰⁷ The demand that perpetrators be brought to justice in a manner consistent with international fair trials standards has been reiterated in statements by the Commission Chairperson in subsequent years.²⁰⁸

Obstructions to Accountability

Two parallel processes were established to bring to justice alleged perpetrators of human rights violations in Timor-Leste.

In Indonesia, a Human Rights Court was established in 2001 by a Presidential Decision²⁰⁹ to hear some of the most egregious cases of violence in Timor-Leste. These trials have all but come to an end, but have not succeeded in delivering justice to the thousands of victims and their families in Timor-Leste. Throughout the process AI repeatedly drew attention to the shortcomings in these trials, including the limited territorial and temporal jurisdiction of the court,²¹⁰ the decision of the Attorney General's Office to investigate only five out of the many hundreds of crimes committed; the decision to prosecute only 18 lower and middle-ranking officials²¹¹ out of potentially hundreds of suspects and the weakness of the cases presented by the prosecution, including their failure to present before the court well-attested evidence.²¹²

In Timor-Leste, the work of the Special Panels, established by the UN in 2000, is proceeding. As of the beginning of December 2003, indictments had been issued against 369 people of whom many are charged with committing crimes against humanity. Of the 369, 280 are currently in Indonesia, including senior military and police officials, some of whom have been tried and acquitted in Indonesia's Human Rights Court and others who were never subjected to investigation. The Indonesian authorities have publicly stated that they will not transfer these

²⁰⁶ Persons particularly targeted included political activists (or their family members), students, priests and nuns, local people working for the UN, or anyone suspected of supporting independence.

²⁰⁷ Fourth Special Session of the Commission, 23-24 September 1999, Resolution S-4/1, 27 September 1999, paragraph 4.

²⁰⁸ Chairperson's statements on the situation of human rights in Timor-Leste: OHCHR/STM/CHR/00/24 (2000); OHCHR/STM/CHR/01/1(2001); OHCHR/STM/CHR/02/1(2002); OHCHR/STM/CHR/03/3 (2003).

²⁰⁹ Decision No. 96/2001.

²¹⁰ A 2001 Presidential Decision establishing the court allowed the court to hear only those cases which took place in the two months of April and September 1999 and restricted its jurisdiction to just three out of 13 districts in Timor-Leste.

²¹¹ Twelve of those prosecuted were acquitted.

²¹² See *Report of the Special Rapporteur on the independence of judges and lawyers* (E/CN.4/2003/65/Add.2), paragraphs 58-68 and conclusions 99-101,106, and paragraph 116; *Amnesty International Briefing to Security Council Members on policing and security in Timor-Leste* (AI Index: ASA 57/001/2003); and *Indonesia & Timor Leste: International responsibility for justice* (AI Index: ASA 03/001/2003).

suspects to Timor-Leste for trial,²¹³ claiming the Special Panels have no jurisdiction over these international crimes.²¹⁴

In responding to the failure so far to provide justice to the people of Timor-Leste it is important that the international community realizes that the pattern of human rights violations committed by the Indonesian security forces, or their militia proxies, in Timor-Leste in 1999 continues to take place elsewhere in Indonesia. Following the imposition of a military emergency in Nanggroe Aceh Darussalam on 19 May 2003 grave human rights violations have been reported, including extrajudicial executions, including of children, arbitrary detention, torture, sexual violence including rape and forcible displacement. Local human rights defenders have been subjected to arbitrary detention, harassment and intimidation. Combined with restrictions on access to international humanitarian and human rights workers, this means that there is virtually no independent monitoring of the human rights and humanitarian situation in the province. In Papua peaceful expressions of support for independence are prohibited and individuals have been brought to trial for involvement in flag raising ceremonies. Other human rights violations, including extrajudicial executions and torture, also continue to be documented.

Amnesty International calls on the Commission to:

- Condemn in the strongest terms Indonesia's failure to fulfil its stated commitment and duty to bring to justice, in a credible manner that conforms to international standards for fair trial, all perpetrators of serious crimes, including crimes against humanity, committed in Timor-Leste during 1999;
- Express serious concern at the continued reluctance of the Indonesian authorities to cooperate with the serious crime investigations, prosecutions and trials process in Timor-Leste, including by urging them to transfer the 281 suspects against whom indictments have been served, to Timor-Leste for trial;
- Support all efforts to ensure that credible and effective trials of all perpetrators, including those residing in Indonesia, be brought to justice;
- Express serious concern at reports of grave human rights violations in Nanggroe Aceh Darussalam (NAD) Province under the current military emergency, and urge the government of Indonesia to grant access to international humanitarian and human rights workers and to guarantee the protection of local human rights defenders.

Turkmenistan

The Turkmen authorities have shown no political will to improve Turkmenistan's appalling human rights record. They have failed to implement the recommendations by the international community, including the Organization for Security and Co-operation in Europe (OSCE), the Commission on Human Rights, and the European Union. In December 2003, the General

²¹³ To date, Indonesia has not ratified the Memorandum of Understanding regarding cooperation in legal, judicial and human rights related matters, of 6 April 2000, signed by the Indonesian Attorney-General and the Special Representative of the Secretary General on the situation in East Timor (for UNTAET).

²¹⁴ The argument that the Special Panels do not have jurisdiction, contradicts the principle of universal jurisdiction.

Assembly added its voice of concern with the adoption of a resolution on the human rights situation in Turkmenistan by a large majority.²¹⁵ Key to the failure to address impunity or counter the widespread abuse of human rights is the domination by President Saparmurad Niyazov of all aspects of life in the country, and the personality cult he promotes.

Clampdown on alleged coup-plotters and their families

At least 59 people accused of involvement in the alleged assassination attempt, in November 2002, have been sentenced to prison terms ranging from five years' to life imprisonment by the Supreme Court and Ashgabat City Court in a series of closed trials in December 2002 and January 2003. As of December 2003, the prisoners reportedly continue to be held in *incommunicado* detention.

The majority were convicted on charges including "conspiracy to violently overthrow the government and/or change the constitutional order", and "attempting to assassinate the President". Initially the authorities refused to disclose information about the defendants; only on 31 January 2003 did they publish a list of names, charges and sentences in the state-controlled *Adalat* (Justice) newspaper.

The defendants were not allowed independent legal counsel. In court some of the court appointed lawyers reportedly began their plea with the words "I am ashamed to defend a person like you...". The defendants were also reportedly forced to sign a document stating they were familiar with the documentation of their criminal case and with the indictment, but without being given the chance to study these documents. Independent bodies and family members were denied access to the prisoners and to the court proceedings. Relatives continue to be targeted because of their family relationship with those implicated in the November 2002 events; many have faced harassment, intimidation, torture and ill-treatment, eviction from their homes, and severe limitations of their freedom of movement.

Freedom of expression curtailed

Anyone attempting to exercise their right to freedom of expression risks serious repercussions. The authorities continue to target relatives of exiled dissidents to punish those in exile for criticizing government policies and speaking out about human rights violations in Turkmenistan.

The activities of civil society activists are severely controlled, including through routine summoning to the security service, detention, and imprisonment. Several civil society activists and others were prevented from meeting senior UN and OSCE representatives during their visits to Turkmenistan. Many were threatened with "serious repercussions" by the security service if they attended such meetings or raised issues that could shed a negative light on the authorities. A new law came into force in November 2003 which further curtails the rights of civil society organizations and the Dashoguz Ecological Club was subsequently de-registered by a court ruling.

Religious groups harassed

Members of unregistered religious groups face harassment and intimidation by the authorities. These groups include the Armenian Apostolic Church, Baha'i, Buddhists, Hare Krishna devotees, Jehovah's Witnesses, Jews and Shia Muslims. The only two registered denominations -- the

²¹⁵ General Assembly resolution A/RES/58/194.

Russian Orthodox Church and Sunni Muslims – operate under strict state control. A new law came into force in November 2003 criminalizing all activities of unregistered religious organizations, and a new amendment to the Criminal Code introduced penalties for breaking the law of up to one year of “corrective labour”. At least five Jehovah’s Witnesses are reported to serve prison terms for refusing on religious grounds to perform military service.

Amnesty International calls on the Commission to:

- In view of the lack of progress on implementing the recommendations made at the 59th session, establish a Special Rapporteur on the situation of human rights in Turkmenistan mandated to report to the 59th session of the General Assembly and the 61st session of the Commission;
- Urge the government to release immediately and unconditionally all prisoners of conscience, to order the re-trial of those sentenced in unfair trials and to allow all citizens to freely exercise their human rights, including the rights to freedom of expression and religion;
- Urge the government to cooperate fully with the human rights mechanisms of the Commission, including through facilitating visits by the Special Rapporteurs on torture; extrajudicial, summary and arbitrary executions; and freedom of opinion and expression; the Working Group on arbitrary detention; and the Special Representatives of the Secretary-General on internally displaced persons and on human rights defenders;
- Urge the government of Turkmenistan to grant immediate access to independent bodies, including international organizations, NGOs, independent media and the UN human rights mechanisms.

Further Background Information

The following documents are available from Amnesty International section offices, the International Secretariat in London, and the AI UN Offices in Geneva and New York. Most of the documents are available on the AI website: www.amnesty.org

General

- Amnesty International Report 2003 (AI Index: POL 10/003/2003)
- Statements and press releases issued by Amnesty International during the 59th session of the UN Commission on Human Rights (AI Index: IOR 41/016/2003)
- United Nations: Proposals to Strengthen the Treaty Monitoring Bodies (AI Index: IOR 40/018/2003)

Thematic issues

Violence against women

- Afghanistan: ‘No one listen to us and no one treat us as human beings’, Justice denied to women (AI Index: ASA 11/023/2003)
- The Americas: It’s time to put an end to violence against women. 25 November - International Day for the Elimination of Violence Against Women (AI Index: AMR 01/013/2003)
- Democratic Republic of Congo: Ituri: a need for protection, a thirst for justice (AI Index: AFR 62/032/2003)
- Democratic Republic of Congo: Children at war (AI Index AFR 62/034/2003)
- Mexico: Intolerable killings: Ten years of abductions and murder of women in Ciudad Juárez and Chihuahua (AI Index: AMR 41/026/2003)
- Russia’s hidden shame (AI Index: EUR 46/029/2003)
- Senegal: Casamance women speak out (AI Index: AFR 49/002/2003)
- Slovakia: Failing to ensure an impartial and thorough investigation into allegations of illegal sterilization of Romani women. (AI Index: EUR 72/002/2003)
- Slovakia: Failed investigation into allegations of illegal sterilization of Romani women. (AI Index: EUR 72/005/2003)
- Turkey: End sexual violence against women in custody (AI Index: EUR 44/006/2003)
- United Kingdom: Decades of impunity: Serious allegations of rape of Kenyan women by UK army personnel (AI Index: EUR 45/014/2003)
- Submission to the Parliamentary Portfolio Committee in Justice and Constitutional Development, Parliament of South Africa, on the draft Criminal Law (Sexual Offences) Amendment Bill, 2003, from Amnesty International and Human Rights Watch (AI Index: AFR 53/006/2003)
- Shattered Lives: The case for tough international arms control, published jointly with Oxfam (AI Index: ACT 30/001/2003)

The death penalty

- The exclusion of child offenders from the death penalty under general international law (ACT 50/004/2003)

Additional information on the death penalty is available on the death penalty page of the AI website at www.amnesty.org

Human rights and counter-terrorism

- Bosnia-Herzegovina: Unlawful detention of six men from Bosnia-Herzegovina in Guantánamo Bay (AI Index: EUR 63/013/2003)
- Colombia: Security at what cost? The government's failure to confront the human rights crisis (AI Index: AMR 23/132/2002)
- Cuba: "Essential Measures"? Human rights crackdown in the name of security (AI Index: AMR 25/017/2003)
- Malaysia: The Internal Security Act (AI Index: ASA 28/006/2003)
- People's Republic of China: China's anti-terrorism legislation and repression in Xinjiang Uighur Autonomous Region (AI Index: ASA 17/010/2002)
- Philippines: Torture persists: appearance and reality within the criminal justice system (AI Index: ASA 35/001/2003)
- Republic of Korea: 'Terrorism Prevention Bill: granting greater scope for increased human rights violations.' (AI Index: ASA 23/003/2002)
- Rough Justice: The law and human rights in the Russian Federation (AI Index: EUR 46/054/2003)
- United Kingdom: Justice perverted under the Anti-terrorism, Crime and Security Act 2001 (AI Index: EUR 45/029/2003)
- United States of America: The threat of a bad example -- Undermining international standards as "war on terror" detentions continue (AI Index: AMR 51/114/2003)
- United States of America: Guantánamo detainees: Human rights are not negotiable (AI Index: AMR 51/141/2003)
- Tunisia: New draft "anti-terrorism" law will further undermine human rights (Amnesty International briefing note to the European Union EU-Tunisia Association Council 30 September 2003) (AI Index MDE 30/021/2003)
- Tunisia: The cycle of injustice (AI Index: MDE 30/001/2003)
- Yemen: The rule of law sidelined in the name of security (AI Index: MDE 31/006/2003)
- Statement by Amnesty International on the implementation of Security Council Resolution 1373 (AI Index: IOR 52/002/2001)
- Amnesty International Australia's submission to the Senate Legal and Constitutional Legislation Committee regarding the Inquiry into the Security Legislation Amendment (available at www.amnesty.org.au)
- Security and respect for Human Rights: Amnesty International's appeal to the EU and its Member States (AI Index: ACT 30/039/2001)

Human rights and sexual orientation

- Argentina: Vanessa Lorena Ledesma and repeated threats to other transvestites in the Province of Cordoba (AMR 13/015/2001)
- Ecuador: Pride and Prejudice: Time to break the vicious circle of impunity for abuses against lesbian, gay, bisexual and transgendered people (AI Index: AMR 28/001/2002)
- Egypt Appeal Case: The Giza Fourteen - Imprisonment for actual or perceived sexual orientation (AI Index MDE 12/028/2003)

- Egypt Appeal Case: Imprisonment for Actual or Perceived Sexual Orientation in Agouza (AI Index: MDE 12/031/2003)
- Honduras: Human rights violations against lesbian, gay, bisexual and transgender people (AI Index: AMR 37/014/2003)
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