

**AMNESTY
INTERNATIONAL**



UN HUMAN RIGHTS COUNCIL FIFTEENTH SESSION

13 SEPTEMBER - 1 OCTOBER 2010

AMNESTY INTERNATIONAL WRITTEN STATEMENTS:

- ALTERNATIVES TO IMMIGRATION DETENTION
- KYRGYZSTAN
- SUDAN
- CAMBODIA
- SOMALIA

Amnesty International Publications

First published in August 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

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Index: IOR 41/022/2010
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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ITEM 3: PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS¹

THE HUMAN RIGHTS COUNCIL MUST ENGAGE WITH AND PROMOTE ALTERNATIVES TO IMMIGRATION DETENTION

Too often, criminalization and detention are used as the option of first resort to address irregular migration. The conditions of detention and the safeguards afforded to immigration detainees, who have committed no crime, are often worse than those of prisoners in criminal custody. Around the globe, alternatives to detention are used too infrequently.

Several human rights treaty bodies and Special Procedures of the Human Rights Council have increasingly stressed the need to adopt and use alternatives to the detention of migrants in irregular situations. These assessments have been echoed in resolutions of the General Assembly and Human Rights Council, calling on states to put an end to arbitrary arrest and detention of irregular migrants and to adopt alternatives to detention.

The human rights obligations of states clearly dictate that governments must adopt effective measures to put an end to the arbitrary arrest and detention of irregular migrants and ensure that immigration detention is carried out in compliance with international and regional human rights standards.

Given the impact of immigration detention on the human rights of migrants, states must act to develop alternatives to detention and ensure that they are available and accessible to all irregular migrants and asylum-seekers, in law and in practice, without discrimination. Resort to detention must only be considered and used only when it is established that no alternative will be effective.

The obligation to provide alternatives

Everyone, including all migrants and asylum-seekers, regardless of legal status, has the rights to liberty and to freedom of movement, including protection from arbitrary arrest and detention. International standards applicable to irregular migrants and asylum-seekers contain a strong presumption against detention and place clear restraints on its use.

The routine or automatic use of detention against irregular migrants, including mandatory detention of irregular migrants, violates the spirit and frequently the letter of states' international human rights obligations. The availability of alternative measures means that a policy of routinely detaining irregular migrants, without considering the use of less restrictive alternatives, is disproportionate and unjustifiable in international human rights law.² Detention of irregular migrants must be the exception, and not the rule.

International human rights standards restrict the use of detention for immigration purposes by requiring that it is necessary and proportional, and that no less restrictive measure would suffice.³ States must consider the least restrictive means first.⁴ In other words, state authorities must use and make available alternative measures both in law and in practice.⁵

Any decision to detain should always comply with international and regional standards pertaining to the lawfulness of detention, and should be based on a detailed individualized assessment, including the individual's personal history and the risk of absconding. International law makes clear that state authorities must demonstrate in each individual case that detention is necessary and proportionate to the objective to be achieved, which must be one of three recognized legitimate objectives: preventing absconding, verifying identity or ensuring compliance with a deportation order.

Alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention. Refugees and victims of trafficking should never have their liberty or freedom of movement restricted for immigration purposes. Children should be protected from detention. As UNICEF has stressed, detention of children will never be in the best interests of the child.⁶

In some states, national immigration regulations include measures that subject irregular migrants to criminal penalties, including detention, in an attempt to discourage irregular migration. Various UN bodies have opposed both the treatment of irregular migration as a criminal offence and any associated detention, stating clearly that detention of migrants on the grounds of their irregular status should always be a measure of last resort.⁷ The detention of non-citizens who enter the country without the necessary visa or who remain in the country without valid immigration papers, should in general be avoided.⁸

The Human Rights Impact of Detention

Research on immigration detention practices in several countries has underlined the need for practical alternative measures and to reduce the harmful effects of detention.

Migrants are often detained routinely, sometimes sentenced for irregular entry, and then left to languish in administrative detention until their deportation can be effected. Many stay in detention for months. The conditions and safeguards afforded to immigration detainees, who have committed no crime, are often worse than those afforded persons convicted of crime crimes.

In many cases, detained migrants are not adequately informed of their rights, denied access to a lawyer, and offered no interpretation. Many do not have access to an independent judicial review process. Lack of knowledge of the language or the legal system of the country, limited access to relevant files, lack of interpretation and translation services, and a general absence of information in a language detainees can understand, often mean that migrants and asylum seekers are effectively unable to challenge or appeal the decision to detain them. Without lawyers or interpreters to assist them, migrants often feel they have no choice but to sign papers presented to them, without fully understanding their content.

Conditions in which migrants are held are too often severely inadequate. Administrative detention centres can be overcrowded and unsanitary. Often, there are few basic services available including access to health services, safe drinking water and sanitation. Some detained migrants, in particular those who cannot be removed because of practical or legal obstacles, are subjected to indefinite administrative detention, amounting to inhumane and degrading treatment. Access to detainees by friends, family members, or independent observers and NGOs is often severely restricted.

Too often, little account is taken of the needs of women, families and children. Families with children are detained, without access to school, or recreational facilities. In some countries, unaccompanied children are kept in immigration facilities with adults.

Migrants and asylum-seekers are also detained at points of entry, such as airports or land borders, before being returned to their countries. The lack of access to the outside world can effectively obstruct the right of detained migrants to challenge the lawfulness of the decision to detain and return them, as well as limiting the right to seek asylum.

Many who apply for asylum are kept in detention for duration of their claim, regardless of whether there is a risk they are likely to abscond. Fleeing persecution and often forced to enter the country through irregular means, asylum seekers in many countries are detained because they have no valid documents.

Victims of trafficking in particular are sometimes detained based on charges of using false documents or irregular entry. They may be penalized because of the work they were forced to do or because they do not have valid documents.

The Role of the Human Rights Council and UN Member States

The Human Rights Council, as the UN body with the primary responsibility for strengthening the promotion and protection of human rights internationally, has a central role to play in promoting alternatives to detention for irregular migrants and asylum seekers as a means to promote and protect their human rights.

The Council and states should promote efforts to share and learn from alternatives to immigration detention currently in use. It should encourage measures to reduce recourse to detention for persons who enter or remain in a country in an irregular manner. Further consideration of this issue at the Council would allow for better sharing of information, good practices and lessons learned, while also strengthening support for the implementation of alternative measures.

The Human Rights Council should also encourage relevant Special Procedures to continue to examine ways and means of overcoming obstacles to the full and effective protection of the human rights of migrants.

ITEM 4: HUMAN RIGHTS SITUATIONS REQUIRING THE COUNCIL'S ATTENTION

KYRGYZSTAN: THE HUMAN RIGHTS COUNCIL MUST REMAIN SEIZED OF THE SITUATION

The violence that broke out on 10-14 June 2010 in southern Kyrgyzstan devastated large parts of the regions of Osh and Jalal-Abad. The violence reportedly started with clashes between rival gangs of mostly Kyrgyz and Uzbek youths on the night of 10 June; it rapidly escalated and resulted in the deaths of hundreds; thousands more were wounded. The attacks were perpetrated mainly against Uzbek-populated neighbourhoods in Osh and Jalal-Abad cities and some surrounding towns and villages. While most of the victims appear to be Uzbek, other minorities were also attacked, and there were reports of armed Uzbek gangs reportedly attacking Kyrgyz people resulting in injuries and deaths.

At the time of writing, the situation in the region remains calm but tense. According to the Office for the Coordination of Humanitarian Affairs (OCHA), there remains potential for renewed large-scale violence,⁹ and the south is particularly vulnerable given its strong support network for the deposed President Kurmanbek Bakiyev.

Accountability

Amnesty International has been calling for an international independent and impartial investigation into the June violence to ensure that both armed individuals and security forces are held accountable for human rights abuses.

The death toll remains disputed. As of 2 August, the official death toll was 356¹⁰ although this figure has been widely contested. Hundreds of thousands were forced to flee their homes and according to UN figures, 375,000 people remain in need of humanitarian assistance. 75,000 remain internally displaced, half of them as a result of damage to their homes.¹¹

There have been consistent and credible reports that the predominantly ethnic Kyrgyz security forces either failed to intervene to prevent violence or colluded in human rights violations; these reports appear to be substantiated by widely-available video and photographic material. Repeated allegations claim that during the violence armoured personnel carriers and men in military uniforms forcibly entered barricaded Uzbek villages and neighbourhoods. They were followed by armed men in police or military uniform who reportedly shot at groups to disperse

them and entered homesteads, making way for looters. These incidents resulted in a high number of deaths and injuries and damage to property.

On 10 August OCHA reported that following the violence, further human rights violations by Kyrgyzstani security officers during search operations also disproportionately targeted Uzbek communities. OCHA has reported arbitrary arrests, deaths in custody, and detainees being subjected to torture and ill-treatment to extract confessions, denied access to medical treatment or private meetings with a lawyer of their choice, confiscation of documentation and other evidence and widespread theft and extortion by officials. Trials of those charged with criminal offences have been taking place in police departments rather than courts and have been closed to monitors¹².

On 15 July, the Kyrgyzstani president issued a decree to establish a National Commission of Inquiry to investigate the violence, which may include international experts 'if necessary'. The authorities have initiated over 3,500 criminal investigations. Amnesty International is concerned that the mandate of the National Commission of Inquiry is unclear, that the Kyrgyzstani authorities lack the necessary independence of investigative institutions and forensic expertise to carry out prompt, effective, independent and impartial domestic investigations into the violence, and that high levels of corruption cast doubt on the independence and impartiality of a national investigation. There is currently a pervasive mistrust of the security forces amongst the ethnic Uzbek population. Many citizens, mostly Uzbeks, have left or are trying to leave the country which, in turn, has led to increased incidents of extortion by state officials.

In the current climate of fear, mistrust, rumour and political instability, only an international investigation is likely to be considered unbiased and credible by all affected groups. It would be key to restoring sustainable peace and the rule of law. Such an investigation must be conducted independently from the National Commission of Inquiry.

Allegations of Stolen Arms

Testimonies that military weapons and vehicles were used to carry out human rights violations indicate the participation of Kyrgyzstani security forces or the use of stolen equipment. Soon after the violence in June, the Kyrgyzstani authorities alleged that civilians had stolen arms and military vehicles from nearby military bases. On 17 August, the Chairman of the National Commission of Inquiry stated that civilians did have arms and ammunitions and drove military vehicles, conceding that some military units, commanders and police officers were accountable for this.

The protection of civil society

Human rights defenders, journalists, lawyers and other civil society actors who are documenting or responding to the June events are being targeted by the authorities in an attempt to obstruct their legitimate work. Such incidents disproportionately affect the ethnic Uzbek community and are exacerbating an environment of fear. This has led to a deficit in legal representation, particularly in parts of Jalal-Abad such as the towns of Bazar Korgan and Suzak.

Azimzhan Askarov is the director of the human rights organization Vozdukh (Air) which documents police ill-treatment in detention in Jalal-Abad region. He reportedly filmed and photographed some of the violence, including killings and arson attacks in Bazar Korgan. He was detained on 15 June in Bazar Korgan and officially charged on 12 August according to 10 Articles of the Kyrgyzstani Criminal Code. His trial is scheduled for 2 September; if convicted, he faces life imprisonment.

Azimzhan Askarov has reportedly been tortured in detention, but the authorities have refused to open an investigation. His lawyer and family have faced harassment, including being physically assaulted by unidentified groups in separate incidents on the premises of the police detention centre in Bazar Korgan, when visiting him.

Ulugbek Abdusalamov is a prominent member of the Uzbek community in Jalal-Abad region and Chief Editor of a regional Uzbek newspaper. He was detained on 14 June and on 10 August was charged according to four articles of the Kyrgyzstani Criminal Code. If convicted he faces between three and 12 years' imprisonment.

Due to serious health concerns, Mr. Abdusalamov has been transferred to hospital three times since he was detained, most recently on 7 August with severe heart pain. He is handcuffed and under constant police guard.

Amnesty International maintains that the charges against both men are unfounded and constitute part of a broader pattern of obstruction and harassment by the Kyrgyzstani authorities, aimed predominantly at active members of the ethnic Uzbek community. Both men are prisoners of conscience and must be released immediately and unconditionally.

Internally displaced people

OCHA estimated that at the start of August 375,000 people had experienced displacement internally or across the border, and 75,000 remain displaced and in need of shelter.¹³ One thousand and five hundred homes were destroyed in Osh and 500 in Jalal-Abad.¹⁴ Each house would be home to seven people, on average.

Despite international aid efforts to secure transitional shelter to those most in need, there are concerns about the lack of transparency regarding urban redevelopment plans for some of the most affected neighbourhoods in Osh and Jalal-Abad. Although the office of the Mayor of Osh committed to finalising plans only with the consent of the local populations, the construction of multi-storey apartment buildings has also been announced and in certain places already started.¹⁵ Communities claim they have not been consulted and have stated their preference to rebuild houses on their own land, in keeping with Uzbek social traditions where extended families live in one or two-storey houses grouped together.

The situation is exacerbated by the widespread loss of personal documents, destroyed or lost during the violence or in the aftermath with reports that, in some cases, Kyrgyzstani security officials deliberately destroyed identity documents of ethnic Uzbeks while carrying out search operations following the violence. This has left those who have lost documents particularly vulnerable to further abuses as they struggle to confirm property ownership or destruction or access public services. There are widespread reports of bribes being requested by state officials.

It is vital that those displaced by the violence participate fully in the search for durable solutions. The needs, rights and legitimate interests of internally displaced people should be the primary considerations guiding all such policies and decisions - this is key to building a sustainable peace. The authorities must assist all those internally displaced to recover their property and possessions, including women, children, persons with special needs and others who are potentially marginalized. Where this is not possible, those same people must be able to obtain appropriate compensation or another form of reparation in an effective process that they are able to access and without discrimination.

Amnesty International calls on the Human Rights Council:

- To remain seized of the situation in Kyrgyzstan;
- To urge the Kyrgyz authorities to:
 - facilitate the establishment of an international commission of inquiry to ensure that both armed individuals and security forces are held accountable for human rights abuses;¹⁶
 - ensure that allegations of the use of military and police equipment in the violence is addressed by both the National Commission of Inquiry and an international commission of inquiry; an inventory of allegedly stolen military and police equipment must be compiled and this information should be made publicly available;
 - take additional measures without delay to secure official stockpiles of arms and ensure the effective management and use of all arms in conformity with UN and OSCE standards so as to minimise the risk of arms being further used to facilitate violations of international human rights or humanitarian law;
 - ensure that human rights defenders, journalists, lawyers and other civil society activists are able to carry out their legitimate work without harassment or obstruction;
- ensure that the needs, rights and legitimate interests of internally displaced persons are the primary considerations when seeking durable solutions and that appropriate compensation or another form of reparation is available through an effective process that all those internally displaced are able to access, without discrimination.

SUDAN: A CALL FOR HUMAN RIGHTS COUNCIL'S DECISIVE ACTION TO STOP VIOLATIONS BY NATIONAL SECURITY SERVICES

The practice of human rights violations including arbitrary arrests, torture and other forms of ill-treatment remains widespread in Sudan. Human rights defenders, political dissidents, students and journalists are arbitrarily arrested and often detained without charges. Human rights violations carried out by the National Intelligence and Security Service (NISS), whose members benefit from immunity from prosecution for all crimes committed in the course of their work, have created a climate of fear in Sudan¹⁷.

Violations and immunity of the National Intelligence and Security Services

Amnesty International has documented many cases of arbitrary arrest and detention, torture and other forms of ill-treatment, as well as enforced disappearances and deaths in detention at the hands of the NISS. Torture and other forms of ill-treatment of dissidents and members of specific ethnic groups, especially Darfurians, have been systematic.

The legitimate exercise of the rights to freedom of expression and association has been repressed through censorship and harassment of journalists and human rights defenders, amongst others. Journalists have been prosecuted in relation to their work and some sentenced to lengthy prison terms.

The vast majority of cases of human rights violations documented by Amnesty International have been committed by the NISS.

The Comprehensive Peace Agreement (CPA), which in 2005 ended more than two decades of war between the North and the South, set out a timetable for general elections, which took place in April 2010, and for a referendum on the secession of southern Sudan in 2011. One of the pillars of this agreement was the reform of a number of laws, including the 1999 National Security Forces Act (the 1999 Act), which was to be brought in line with the CPA's provision for the National Security Force as an agency charged with gathering information and providing analysis and advice to appropriate authorities rather than a policing body with extensive powers of search, seizure, arrest and detention.

A new National Security Act was passed by the National Assembly in December 2009 and came into force in February 2010. The 2010 National Security Act, however, does nothing to ensure that detainees held by the NISS are not deprived of judicial review and other human rights guarantees. Detainees can still be held for up to four and a half months without judicial oversight. The 2010 Act maintains the extensive powers of arrest and detention and immunity from prosecution that were provided to NISS agents under the 1999 Act. By doing so, the 2010 Act maintains the culture of impunity for these violations.

Limitations to freedom of expression

Throughout Sudan, freedom of expression remains under attack. The NISS in the north has been implementing censorship of newspapers since February 2008. Between February 2008 and September 2009, and between May and August 2010, NISS agents imposed a pre-print censorship on all newspapers in Sudan. During these periods, NISS agents visited opposition newspapers and printing houses on a daily basis, removing articles they considered to be of a sensitive nature. Newspapers were closed down for having published articles that were seen as critical of the government. Between May and August 2010, more than five newspapers were closed by the NISS, and six journalists and newspaper staff members taken to court in relation to articles they had published.

Although in August 2010 the director of the NISS announced an end to pre-print censorship in northern Sudan, limitations remain with a "code of journalistic honour" that expects editors-in-chief to impose a self-regulated censorship. In July 2010, the NISS distributed forms that journalists are obliged to fill in, providing personal information such as their family details and address. These are but

examples of the harassment and intimidation journalists have to endure in Sudan today.

Rai Al Shaab, a newspaper affiliated with the Popular Congress Party is one of the newspapers that were closed by the NISS. On 15 May, three staff members of the newspaper were arrested; Abuzar Al Amin, deputy editor in chief, Ashraf Abdelaziz, a newspaper editor, and administrator Nagi Dahab.

Abu Baker Al Sammani, a printer for the newspaper, was reportedly arrested and released a few days later. On 16 May, Al Tahir Abu Jawhara, head of the political news desk, was arrested, followed by Ramadam Mahjoub, editor, on 27 May. The men were interrogated about articles that were published in Rai Al Shaab.

At the same time, the NISS closed the newspaper. The temporary closure became final when the Press and Publications Prosecution issued an order in July to close Rai Al Shaab and confiscate its assets.

Abuzar Al Amin, Ashraf Abdelaziz, Nagi Dahab and Al Tahir Abu Jawhara were transferred to the 'Crimes Against the State' prosecution office in Khartoum on 19 May.

During his initial detention, Abuzar Al Amin was reportedly tortured and otherwise ill-treated. His family was allowed to visit him 5 days after his arrest. Abuzar was injured and complained of back pain, blood in his urine and insomnia. Al Tahir Abu Jawhara was also reportedly tortured and otherwise ill-treated.

On 2 June Nagi Dahab was released. Abuzar Al Amin, Ashraf Abdelaziz, Al Tahir Abu Jawhara and Ramadam Mahjoub were charged with several criminal offences and brought to trial on 9 June.

On 14 July, Abuzar Al Amin was sentenced to 5 years imprisonment for undermining the constitutional system and publishing false news. Ashraf Abdelaziz and Al Tahir Abu Jawhara were sentenced to 2 years imprisonment for publishing false news. Ramadam Mahjoub was acquitted.

Amnesty International considers that the three men are prisoners of conscience, detained solely for expressing their opinion without advocating violence.

With the referendum approaching in January 2011, the respect and protection of the right to freedom of expression is all the more essential to help ensure that human rights violations do not go unreported.

With a re-emergence of conflict in Darfur, the culture of impunity and violations by the NISS, and the rising violence in southern Sudan, the role of the Independent Expert on the situation of human rights in Sudan remains essential, particularly in continuing to bring these human rights violations to the attention of the Council.

Amnesty International renews the calls expressed in its May 2010 written statement¹⁸ to the 14th session of the Human Rights Council, that the Council:

- Call on the Government of Sudan to close all unofficial places of detention and stop the practice of arbitrary arrest and incommunicado detention;
- Demand that the Government issue clear instructions to NISS agents not to resort to torture or other forms of cruel, inhuman or degrading treatment or

punishment , and informing them that perpetrators of these human rights violations will be brought to justice;

- Urge the Government to reform the 2010 National Security Act by removing the NISS powers of search, seizure, and arrest and detention without judicial review and ensuring that the NISS respects human rights while carrying out its functions of information gathering, analysis and advice to relevant authorities as spelled out in the Comprehensive Peace Agreement;
- Call on the Government to report to the Council on steps taken to address impunity of NISS agents for human rights violations they commit in the course of their work, by providing detailed information on complaints filed in connection with such acts, the number of NISS agents prosecuted and convicted, and reparations disbursed to victims;
- Demand that the Government immediately stop the harassment of human rights defenders and allow them the peaceful exercise of their activities.

Amnesty International also urges the Council to ensure adequate and comprehensive monitoring of violations at the hands of NISS and other serious violations, including by:

- Renewing the mandate of the Independent Expert for at least three years or until a subsequent explicit decision of the Council to terminate it;
- Regularly reviewing the implementation by the Government of Sudan of the recommendations of the Experts Group to the Government for the implementation of Human Rights Council resolution 4/8¹⁹;
- Requesting the Government to inform and update the Council on implementation at each future Council's session;
- Requesting the Independent Expert to bring to the Council's attention, for consideration at its immediately following session, any information about significantly increased numbers or severity of human rights violations.
- Calling on the Government to accept outstanding mission requests and agree dates for visits by Special Procedures, in particular the Working Group on Enforced or Involuntary Disappearances; to extend an invitation to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and to provide substantive and timely responses to all Special Procedures' urgent appeals and communications.

ITEM 10: TECHNICAL ASSISTANCE AND CAPACITY-BUILDING

CAMBODIA: ONGOING SERIOUS HUMAN RIGHTS VIOLATIONS MUST BE ADDRESSED

Introduction

"The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights."(Article 31 of the 1993 Constitution of the Kingdom of Cambodia)

The systemic lack of protection of human rights in Cambodia arises from long-standing impunity for human rights violations, very serious shortcomings in the rule of law and slow legal and judicial reform. The legal system remains biased against the poor and marginalized. Forced evictions continue to affect thousands of families across the country in urban and rural areas, predominantly people living in poverty. Actions in the courts against housing rights defenders, journalists and other critical voices stifle freedom of expression.

Forced evictions

At least 26 forced evictions displaced around 27,000 people during 2009. Those with political or economic power can arbitrarily expropriate land with impunity. They often do so by colluding with local authorities in issuing dubious land titles and eviction orders and misuse the court system to prevent victims from defending their rights. Affected communities have often had inadequate or no prior consultation on alternative remedies before eviction, and many have been left homeless. Others have been relocated to inadequate resettlement sites with poor infrastructure, lacking basic amenities such as sanitation, clean water and electricity, and with limited access to work opportunities and health care.

The extent to which people are affected by land disputes and evictions was demonstrated in June 2010, when around 350 representatives from communities nationwide gathered in Phnom Penh to deliver petitions signed by 60,000 people. The petitions called on the Prime Minister to intervene and solve land disputes putting their homes, farms and livelihoods at risk. Military police and police prevented the peaceful protesters from approaching the Prime Minister's residence, and they met instead with the Special Rapporteur on the situation of human rights in Cambodia, who was on mission at the time.

After civil society criticism, the World Bank attempted to strengthen safeguards in a multi-donor supported land titling exercise (the Land Management and Administration Project, LMAP) to protect security of tenure for people in urban

slums and other vulnerable areas. In early September 2009, the government responded by terminating its LMAP contract with the Bank.

In connection with the LMAP project, the World Bank Inspection Panel is currently investigating a complaint that up to 20,000 people living around Boeung Kak Lake in Phnom Penh have been excluded from consideration under the project, and as a consequence are now facing forced eviction. The lake is currently being filled in by a company granted a 99 year lease by the municipality of Phnom Penh to develop 133 hectares of land.

In one important case in July 2009, security forces forcibly evicted Group 78, a community group in Phnom Penh, after a deeply flawed legal process. The last 60 families had no choice but to dismantle their houses and accept inadequate compensation. Most of the families were relocated to a place outside the city offering few work prospects. Those subsequently interviewed by Amnesty International reported that their access to basic amenities had deteriorated and that they were facing more difficulties in making a living. Many of the original 150 or so families belonging to Group 78 had been living on the land since the early 1980s, which under Cambodian law should have given them legal entitlement.

Human rights defenders

Rich and powerful persons continue to abuse the criminal justice system to silence people protesting against evictions and land grabs. During 2009, police arrested at least 149 activists, for their peaceful defence of the right to housing. An increasing number of informal community representatives defending the right to housing in both urban and rural areas face prosecution and imprisonment.

In one incident on 22 March 2009, security forces shot at unarmed villagers in Siem Reap province, injuring at least four people. The villagers, from Chikreng district, were protesting against the loss of farmland in a long-running dispute. No authority has investigated the shooting, but at least 12 villagers arrested in connection with the dispute have been the subject of protracted court proceedings on-going some 18 months later. Two of them were convicted of robbery for attempting to harvest their rice on the disputed land, and sentenced to one years' imprisonment in October 2009 and ordered to pay compensation of USD 750. Others remain in detention.

Continuing impunity

Those responsible for the homicide of several civil society figures have still not been identified and brought to justice. Those killed include trade unionist Chea Vichea shot dead in January 2004; trade unionist Hy Vuthy killed in February 2007; and Khim Sambor, a journalist for the opposition affiliated newspaper Moneaksekar Khmer (Khmer Conscience), and his son murdered during the 2008 election campaign. Since 1994, nine journalists working for opposition media have been killed, with no perpetrators brought to justice in any of the cases.

Freedom of expression and assembly

Prosecutions of people who criticize government policies have a stifling effect on freedom of expression in Cambodia.

For example, courts sentenced newspaper editor Hang Chakra, and Moeung Sonn, director of the NGO Khmer Civilisation Foundation, both affiliated to the opposition Sam Rainsy Party (SRP), to one and two years in

prison respectively for “disinformation” in 2009 for peacefully expressing views. Hang Chakra was granted a Royal Pardon and released in April 2010. Sonn is in exile. In August 2009 the Phnom Penh Court convicted member-of-parliament Mu Sochua, Secretary-General of the SRP, of defamation for filing a complaint – also for defamation – against the Prime Minister. She had no legal counsel because her lawyer had withdrawn from the case after receiving threats of legal action for speaking about the case at a press conference. Mu Sochua received a non-custodial sentence. Her appeal against conviction was rejected by the appeal court in July 2010.

Requests for permission to hold demonstrations are routinely denied by the authorities. On numerous occasions, police and security forces have used force to break up peaceful protests. A new Law on non-violent demonstrations passed in late 2009 has been criticized by opposition parliamentarians and civil society for substantially curtailing freedom of expression and association.

Violence against women and girls

Amid a culture of impunity and widespread corruption, victims of sexual violence in Cambodia are often denied justice. Poor law enforcement, corruption in the courts and widespread use of out-of-court financial settlements are contributory factors in the small number of prosecutions of rapists. Settlements are typically arranged by law enforcement officials and stipulate that the victim withdraw any criminal complaint. The acute lack of adequate services and assistance for survivors of rape further compounds the suffering and distress of victims. Reports indicated that rapes of women and girls, including sex workers, continued to increase, with the age of victims falling. In June 2010, Cambodian human rights NGO Adhoc reported that in 70 percent of the 194 rape cases they had recorded during the first five months of 2010 the victims were under 18.

The judicial system and international justice

Legal and judicial reform has been slow. The entry into force of the new Penal Code in late 2010 will be a welcome development after over a decade of consideration. However, in practice the legal system fails to deliver justice in many cases. Trials often demonstrate lack of independence of prosecutors and judges, corruption and serious failures to apply and enforce the law. There are reports of failure to uphold the presumption of innocence and widespread unquestioning acceptance of coerced confessions by the courts. Lack of integrity, independence and equal treatment within the court system are serious difficulties which deprive ordinary Cambodians of the protections the reformed legal system is set out to guarantee.

Amnesty International welcomes the first conviction in the Extraordinary Chambers in the Courts of Cambodia (ECCC) on 26 July 2010, as a first step towards justice for the deaths of up to two million people during the Khmer Rouge period. The organization is however concerned that this conviction and the current caseload of just a handful of suspects is not sufficient to fulfil the mandate of the ECCC, and render accountability and justice for victims and their families. Political interference from Cambodian officials openly opposing more prosecutions risks undermining further progress and the legacy which the ECCC should leave to the Cambodian national justice system.

Amnesty international urges the Human Rights Council:

- to extend the mandate of the Special Rapporteur for at least three years or until a subsequent explicit decision of the Council to terminate it;
- to call on the government:
 - to guarantee and safeguard the independence and impartiality of the court system, court personnel and judges in accordance with international standards;
 - to end all forced evictions and introduce a moratorium for all mass evictions until legislation and policy is put into place that requires any further evictions to be conducted in full compliance with international human rights laws and standards;
 - to respect and protect the right of human rights defenders, including those protecting the right to adequate housing and other rights associated with forced evictions and land disputes, to conduct their work without hindrance, intimidation or harassment;
- to ensure that the rights to freedom of expression, association and assembly provided for in the Constitution and relevant international human rights instruments are fully guaranteed in practice;
- to ensure prompt, impartial and effective investigation of all reports of sexual violence against women, that those responsible are brought to justice in fair trials, and that victims are granted reparations and provided necessary assistance.

SOMALIA: AN ON-GOING URGENT NEED TO PROTECT CIVILIANS AND ADDRESS IMPUNITY

Amnesty International shares the assessment of the Independent Expert on Somalia that the human rights situation in Somalia continues to deteriorate and calls for efforts to establish effective measures to address the serious human rights situation in the country, as expressed in the decision of the Human Rights Council of June 2010 (A/HRC/DEC/14/119).

The following statement draws the Council's attention to three of Amnesty International's human rights concerns in Somalia:

- the protection of civilians in the south and centre of the country;
- the shrinking access to populations in need by humanitarian agencies; and
- the prevailing impunity for serious human rights abuses, some of which constitute war crimes under international law.

Protection of civilians

Since June 2010, hundreds more civilians have been killed and injured in Mogadishu in clashes between armed Islamist groups and forces of the Transitional Federal Government (TFG) and the Africa Union Mission in Somalia (AMISOM). Civil society actors have reported that some of the most deadly clashes since the

beginning of this year took place in July. Field reports claimed as many as 50 deaths in one day. Medical records of a hospital in Mogadishu for 2010 showed that almost half of its patients were suffering war-related injuries, and of these, 38 percent were women and children under 14. Mortars and heavy artillery shelling, used indiscriminately or disproportionately by all parties to the conflict in areas inhabited or frequented by civilians, appear to account for a large proportion of such deaths and injuries. On 29 June, a shell hit Keysaney hospital in northern Mogadishu, killing a patient; two more shells hit the same hospital in the following days, despite the International Committee of the Red Cross publicly reminding parties to the conflict to spare medical facilities. In other areas of south and central Somalia, armed Islamist groups have also used mortars and heavy artillery when fighting against each other or against groups allied to the TFG.

Armed clashes continue to destroy houses and shelters, generate widespread displacement²⁰, the separation of families and enormous humanitarian needs. Despite efforts to record conflict-related incidents, Somali civilians suffer largely in silence, as parties to the conflict exploit insecurity and the absence of independent observers.

During its last two visits to the region in March and June 2010, Amnesty International documented an alarming scale of recruitment of children, mainly by al-Shabab armed groups, to participate in hostilities. Children are either coerced or deceived into joining armed groups; many have no other option but to join for their survival²¹.

With al-Shabab groups now controlling vast territories in south and central Somalia, civilians have also bore the brunt of the groups' efforts to eliminate any dissent and to impose its own interpretation of Islamic law. There have been reports of unlawful killings (such as execution by stoning), public executions, beheadings, and torture, including amputations and floggings, throughout the regions under their control. Declarations attributed to al-Shabab local leaders ostensibly claim that such acts are carried out to impose conformity with their interpretation of Islamic law. However, several testimonies gathered by Amnesty International show that many such abuses target persons suspected of being affiliated with the opposition or who refuse to comply with an al-Shabab order, and are designed to instil fear among the population and prevent any opposition to al-Shabab control of territory. The secrecy within which al-Shabab leaders operate and the dangers associated with circulating information about the group's actions ensure that the number of such abuses remains under-reported.

Civil society actors, including human rights activists and journalists, risk being targeted for killing, mainly by armed groups opposed to the TFG, because of their role in receiving and disseminating information on the suffering of civilians, or because they are perceived as opposing the actions of the armed groups. They receive continuous death threats. Many have already paid with their life.

The latest victim of such killings was Nur Mohamed Abkey, a journalist working for the TFG-owned Radio Mogadishu, who was reportedly abducted by gunmen near his home in southern Mogadishu and then shot repeatedly in the head on 4 May 2010. His body was found dumped in an alleyway in Mogadishu, and reportedly bore

traces of torture. His colleagues said that they received a phone call from people saying they were al-Shabab members and claiming responsibility for the killing.

Journalists and other civil society actors who have fled Somalia often find little protection and assistance in countries where they seek refuge, and report receiving continuous death threats.

Humanitarian access

At least two million Somalis, including an estimated 1.4 million internally displaced persons, depend on humanitarian aid, yet access to them continues to shrink. The insecurity stemming from the armed conflict is one factor, but the closure and banning of aid agencies by armed groups, particularly al-Shabab groups, now constitute the biggest threat to humanitarian aid. Al-Shabab has issued orders banning many aid organisations, including UN humanitarian agencies, in areas under its control, accusing them of spying, disrupting local markets, or proselytising. Al-Shabab and other armed groups have also seized compounds and aid, threatened national staff and in certain areas demanded that agencies pay taxes or fees in order to operate. The killings of dozens of humanitarian workers and civil society actors in 2008 and 2009 have not been investigated and remain unpunished.

Al-Shabab and other armed groups totally disregard the humanity, let alone the human rights, of the population by impeding their access to essential humanitarian aid. Yet, the international community also has a role to play to improve humanitarian aid to Somalia, by fully funding humanitarian projects for Somalia, and by ensuring that its actions do not erode the impartiality and neutrality of humanitarian action. The international community must not be seen as taking sides when crimes are committed against civilians, and must publicly condemn abuses committed by all parties to the conflict, not only those committed by armed opposition groups.

Impunity

Absolute impunity continues to prevail in Somalia for serious human rights abuses, some of which constitute war crimes. No one has been held accountable for the massive human rights abuses committed in Somalia over the past two decades of armed conflict. Amnesty International believes that addressing accountability for war crimes and other human rights abuses is essential to improve the protection of civilians and the human rights situation in Somalia.

The TFG has itself acknowledged the massive suffering of the civilian population over the past two decades of armed conflict. It committed under the 2008 Djibouti peace agreement to address justice and reconciliation. The Human Rights Council has stressed the need to “support Somali-led efforts to identify the most appropriate mechanism for prevention and accountability”²².

In the current context, where insecurity and direct threats against those documenting the suffering of civilians in the country prevent effective independent monitoring, ensuring that most abuses remain unreported, it is urgent that effective measures are adopted to adequately investigate and document human rights violations.

Amnesty International urges the Human Rights Council:

- to act in support of the establishment of an independent Commission of Inquiry, or similar mechanism, to investigate serious crimes under international law committed in Somalia and to make recommendations to address impunity in the country.
- To extend the mandate of the Independent Expert for at least three years or until a subsequent explicit decision of the Council to terminate it.

ENDNOTES

¹ Full title: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

² Report of the Special Rapporteur on the human rights of migrants, Mission to the United States, 5 March 2008, UN Doc. A/HRC/7/12/Add.2, paragraph 112.

³ See, *inter alia*, Human Rights Committee, *C v. Australia*, 13 November 2002, CCPR/C/76/D/900/1999, paragraph 8.2.

⁴ See, *inter alia*, Human Rights Committee, Concluding Observations: Australia, 24 July 2000, UN Doc. A/55/40 vol. I (2000), paragraphs 526 and 527; Committee for the Elimination of All Forms of Discrimination (CERD), Concluding Observations: Bahamas, 28 April 2004, UN Doc. CERD/C/64/CO/1, paragraph 17; Working Group on Arbitrary Detention, Addendum: Report on the Visit of the Working Group to the United Kingdom on the issue of immigrants and asylum-seekers, E/CN.4/1999/63/Add.3, paragraph 26.

⁵ See, Amnesty International, *Irregular Migrants and Asylum Seekers: Alternatives to Immigration Detention*, 1 April 2009, AI Index: POL 33/001/2009.

⁶ UNICEF Australia, Submission to the National Inquiry into Children in Immigration Detention, written submission to the Human Rights and Equal Opportunity Commission, 2003, Summary of Recommendations.

⁷ See Report of the Working Group on Arbitrary Detention, 10 January 2008, UN Doc. A/HRC/7/4, paragraph 53; OHCHR, "Migration, Asylum and Trafficking-Related Detention", information note No. 7, Dignity and Justice for Detainees week, October 2008; Report of the Special Rapporteur on the human rights of migrants, 30 December 2002, UN Doc. E/CN.4/2003/85, paragraphs 17, 60, 73.

⁸ See, Report of the Working Group on Arbitrary detention, Addendum: Mission to Equatorial Guinea: A/HRC/7/4/Add.3, 18 February 2008, paragraph 100.

⁹ OCHA Geneva, 6 August 2010 Member States Briefing on the humanitarian situation in Kyrgyzstan

¹⁰ OCHA Kyrgyzstan Humanitarian Bulletin No.2, 4 August 2010:
<http://www.reliefweb.int/rw/rwb.nsf/db900sid/MDCS-87ZHA7?OpenDocument>

¹¹ OCHA Geneva, 6 August 2010 Member States Briefing on the humanitarian situation in Kyrgyzstan

¹² OCHA Kyrgyzstan Humanitarian Bulletin Issue #3, 10 August:
<http://www.reliefweb.int/rw/rwb.nsf/db900sid/SKEA-887GVA?OpenDocument>

¹³ OCHA Geneva, 6 August 2010 Member States Briefing on the humanitarian situation in Kyrgyzstan

¹⁴ OCHA Kyrgyzstan Humanitarian Bulletin No.2, 4 August 2010:
<http://www.reliefweb.int/rw/rwb.nsf/db900sid/MDCS-87ZHA7?OpenDocument>

¹⁵ OCHA Kyrgyzstan Humanitarian Bulletin Issue #3, 10 August:
<http://www.reliefweb.int/rw/rwb.nsf/db900sid/SKEA-887GVA?OpenDocument>

¹⁶ See, Amnesty International, *Recommendations for an effective investigation into human rights*

violations and abuses committed during the June violence and its aftermath, (AI Index: EUR 58/009/2010).

¹⁷ For more information about the NISS, including the laws that apply and the violations committed by NISS agents, please see “*Agents of fear: the National Security Service in Sudan*”, Index: AFR 54/010/2010, July 2010, <http://www.amnesty.org/en/library/info/AFR54/010/2010/en>

¹⁸ UN Index: A/HRC/14/NGO/14; AI Index: AFR 54/016/2010

¹⁹ Annex I of A/HRC/5/6

²⁰ More than 23,000 in Mogadishu in July alone, according to UNHCR estimates.

²¹ The recruitment and use of children in hostilities can constitute a war crime.

²² Human Rights Council resolution 10/32, September 2009

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW

www.amnesty.org

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