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UN Commission on Human Rights: Overview of developments at the 61st session, 14 March -- 22 April 2005

Torture and cruel, inhuman or degrading treatment

Amnesty International (AI) welcomes the adoption by the Commission on Human Rights (the Commission) of its annual resolution on torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment). AI has been increasingly concerned to note that within the context of the "war on terror" the absolute prohibition of torture and ill-treatment is being challenged. Acts which only a few years ago would have been unacceptable are increasingly tolerated through the refusal to hold persons and governments to account. Such omissions have the potential to undermine the prohibition of torture and ill-treatment. As the architect of international standards to combat torture as well as the mandate of the Special Rapporteur on torture, the Commission has a particularly important role to safeguard and continue to reinforce these standards especially when these come under attack.

AI is pleased to note that this year's resolution incorporates language introduced in the resolution by the UN General Assembly at its most recent session -- that requires states to ensure that "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings", and not to "expel, return (*"refouler"*), extradite or in any other way transfer a person to another state where there are substantial ground for believing that the person would be in danger of being subjected to torture". AI also notes that the Commission confirmed that torture and ill-treatment "are and shall remain prohibited at all times". However, AI regrets that the Commission did not seize this opportunity to further strengthen the language adopted by the General Assembly in 2004 by extending these requirements to include also "cruel, inhuman or degrading treatment or punishment". While the word "torture" is associated with a stigma that has, until recently, prevented almost any country from admitting to practising it, attention to the absolute prohibition of ill-treatment has not received similar attention in public debate and government policies. International law is nonetheless clear -- it prohibits, without exception, all forms of cruel, inhuman and degrading treatment or punishment. Just like torture, such acts are, in the relevant contexts, war crimes and crimes against humanity.

Abolition of the death penalty

AI welcomes the adoption by the Commission again this year of a resolution which calls for a worldwide moratorium on executions. The resolution clearly states that "the abolition of the death penalty is essential" for the protection of the right to life and calls for the ending of mandatory death sentences. AI is also pleased to note that the resolution condemns the use of the death penalty "on the basis of any discriminatory legislation, policies or practices" and its disproportionate use against "persons belonging to national or

ethnic, religious and linguistic minorities". The number of co-sponsors rose to 81, five more than in 2004 and the highest number since the Commission's first resolution on the question of the death penalty was adopted in 1997.

Human rights and counter-terrorism

AI welcomes the establishment by the Commission of a Special Rapporteur mandate on the promotion and protection of human rights and fundamental freedoms while countering terrorism. AI and other NGOs have campaigned for this mandate for several years as an important human rights complement to the Counter Terrorism Committee set up by the Security Council in 2001, following the 11 September attacks on the United States of America. The Independent Expert, mandated by the Commission in 2004 to study ways and means of strengthening the promotion and protection of human rights and fundamental freedoms while countering terrorism, concluded in his report to this year's session that there is pressing need for monitoring under a single mandate that has a comprehensive overview of the relationship between human rights and counter-terrorism measures. This proposal was endorsed by both the UN Secretary-General and the High Commissioner for Human Rights. The new mandate will monitor counter-terrorism laws and practices for their compatibility with human rights and provide technical assistance to states.

Violence against women

This resolution once again calls for important measures to eradicate violence against women: It stresses states' duty to exercise due diligence to prevent, investigate and punish all acts of violence against women and girls, although regrettably it no longer establishes that violence against women constitutes a violation of their human rights. The resolution emphasizes the impact of violence on women's health, including their sexual and reproductive health and stresses the right of women to control matters related to their sexuality. The resolution also picks up on issues raised by this year's report by the Special Rapporteur that violence against women is both a cause and a consequence of HIV/AIDS. However attempts to include language that "promote and protect women's and girls' human rights, including sexual and reproductive rights, in the context of HIV/AIDS" were defeated (see also below under sexual rights). The proposal by the Special Rapporteur in her report to last year's session to develop indicators for violence against women and state accountability for its eradication continues to be referred to in the resolution, but regrettably it does not firm up this proposal, for instance, by mandating her to implement this proposal.

In other developments, AI welcomes the inclusion in the resolution of reference to violence related to dress codes and the criminalization of marital rape. During negotiations this proved contentious; however, an amendment to replace "marital rape" with "domestic sexual violence" was rejected.

Sexual rights

Yet again, issues of human rights and sexuality proved contentious at the Commission. Proposals by some countries (Switzerland and New Zealand) to adopt a rights-based approach to sexual and reproductive health in the resolution on the right to health were not taken up. The resolution on protection of human rights in the context of HIV/AIDS also met with opposition when it tried to quote from the Beijing Platform for Action, recently reaffirmed by consensus at the Commission on the Status of Women. The resolution was eventually adopted by consensus.

An earlier version of the resolution on violence against women had sought to address "sexual and reproductive rights"; however, in the face of fierce opposition this was amended to "reproductive rights and sexual health". Even in the context of the HIV/AIDS pandemic issues of sexuality and human rights proved controversial. References in the resolutions on violence against women and on HIV/AIDS to the UN *Guidelines on HIV/AIDS and Human Rights* (which mention sex between men, the repeal of "sodomy" laws, same-sex marriage and decriminalisation of sex work) were challenged even though these Guidelines were adopted in 1997 and have been referred to numerous Commission resolutions since then.

The resolution on extrajudicial, summary or arbitrary executions was again voted on and proved far more contentious than in previous years. In a separate vote on the paragraph listing the various motives behind such killings the paragraph was narrowly retained. The resolution on protection of human rights in

the context of HIV/AIDS also met with opposition when it tried to quote from the Beijing Platform for Action, recently reaffirmed by consensus at the Commission on the Status of Women. The resolution was eventually adopted by consensus.

However, in a year of such opposition to sexual rights issues and that finally saw the lapse of the draft resolution on human rights and sexual orientation (first proposed in 2003 by Brazil), there were two positive developments at this year's Commission. The resolution on access to medications took some significant steps to address prevention of HIV/AIDS as well as treatment. New Zealand delivered a statement on behalf of 32 countries Andorra, Argentina, Austria, Belgium, Canada, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Iceland, Ireland, Luxembourg, Mexico, New Zealand, Netherlands, Norway, Portugal, Republic of Korea, Romania, Slovenia, Spain, Sweden, Switzerland, UK, Uruguay and Venezuela. expressing regret that the Commission was not ready to address the issue of sexual orientation and recognising that it is "a fundamental aspect of every individual's identity and an immutable part of self."

Human rights of refugees, asylum-seekers, internally displaced people, migrants and non-nationals

AI welcomes the attention that has been paid at the 61st session of the Commission to the human rights of refugees, asylum seekers, internally displaced people and migrants. In particular, AI is pleased to see that the resolution on "Human Rights and Mass Exodus" calls on states to combat impunity for human rights violations, explicitly recognizing that impunity is a key cause of displacement and a barrier to the sustainable return of persons in safety and dignity. AI also welcomes the recognition, for the first time in this resolution, of the "severe and long-lasting physical and psycho-social impacts of prolonged displacement". This recognition ought to be extended to a call on states to promote and protect the human rights, including such fundamental rights as the right to food, to health, to adequate housing and employment, of all those refugees compelled to live in protracted refugee situations.

The resolution on the "Human Rights of Migrants" continues to provide strong standards for the protection of all migrants, and AI welcomes the acknowledgement in the resolution of the increased feminization of international migration movements, and the consequent call on states to "better protect women and girls against dangers and abuse during migration". AI also welcomes the concern that is raised by the resolution about "legislation and measures" adopted by states which restrict the rights of migrants, and would welcome an explicit recognition that most often it is migrants in an irregular situation who are subject to discrimination, abuse and denial of their fundamental human rights.

Finally, AI notes the call on states in the resolution on "Human Rights and the Arbitrary Deprivation of Nationality" to "consider accession" to the two Statelessness Conventions (1961 Convention on the Reduction of Statelessness and the 1954 Convention relating to the Status of Stateless Persons), welcomes the call on states to refrain from the arbitrary deprivation of nationality, especially when this would render a person stateless, and looks forward to the information on this subject that will be presented by the Secretary-General to the 62nd session in 2006.

Business and human rights

AI welcomes the Commission's resolution requesting the UN Secretary-General to appoint a Special Representative on the issue of Human Rights, Transnational Corporations and Other Business Enterprises. Building on work initiated by the Commission in 2004, this is an important development in the UN's efforts to strengthen standards on the human rights responsibilities of companies as well as mechanisms for implementation. AI considers that the *UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*, which were approved by the Sub-Commission on the Promotion and Protection of Human Rights in 2003, constitute the most comprehensive statement of standards and rules relevant to companies in relation to human rights and expects that these will figure prominently in work of the Special Representative.

However, AI is very disappointed that the USA called a vote on this resolution. Participants in the

Geneva consultations attached great importance to work on business and human rights proceeding on the basis of consensus. Many compromises were made in an effort to allow the USA to join consensus, and the USA has utterly failed to reciprocate these efforts.

The challenge facing the Special Representative is not only to define the human rights standards to which companies should be held accountable, but also to identify the mechanisms to ensure these standards are respected. AI calls on the Secretary-General to promptly appoint a Special Representative who is an experienced and independent expert on the impact of business activities on human rights and who is able to carry out effective consultation with a broad range of stakeholders, including communities affected by business operations.

Colombia

AI is seriously concerned at the delay in agreeing a Chairperson's statement on the human rights situation in Colombia. Such a statement should acknowledge the existence of an internal armed conflict, express concern that the human rights situation remains critical, highlight the need for a comprehensive legal framework for demobilizing paramilitaries in compliance with international standards on truth, justice and reparation, underline support for the Colombia office of the Office of the High Commissioner for Human Rights and its integral mandate, and condemn human rights violations carried out by the security forces and army-backed paramilitaries, as well as breaches of international humanitarian law carried out by armed opposition groups.

Democratic Republic of Congo

AI welcomes the adoption, again this year, of a comprehensive resolution on technical assistance in the areas of human rights in the Democratic Republic of Congo (DRC). The resolution calls for an end to impunity for human rights violations and for perpetrators to be brought to justice in accordance with international standards for fair trial; however, it does not stipulate that there must be no recourse to the death penalty, despite the fact that the resolution calls on the government to reinstate the moratorium on executions and to persevere with efforts to progressively abolish the death penalty. The mandate of the Independent Expert is renewed for one year only; AI had recommended that his mandate be extended for three years to enable him to develop a sustainable programme of technical assistance. Finally, AI notes that the resolution does not call on all governments to respect the arms embargo to the DRC, nor does it call on governments in region to extend adequate human rights protection to internally displaced persons and refugees.

Israel/Occupied Territories

AI welcomes the adoption on the resolution on Israeli settlements in the Occupied Palestinian Territory, which this year was drafted by the Arab Group. The resolution expresses grave concern at the continuing Israeli settlements, in violation of international law, and calls on the Israeli government to reverse its settlement policy and prevent the installation of new settlers in the Occupied Territories. Unlike in previous years, the resolution does not refer to the high level of casualties on both sides. AI urges the government of Israel demonstrate the necessary political will to implement the provisions of this resolution without delay.

Nepal

AI welcomes the Commission's item 19 resolution on Nepal which is comprehensive, strongly worded and reflects the gravity of the situation in the country. In particular it draws attention to the wide range of abuses being committed by both parties to the conflict; raises concerns about the independence and effectiveness of institutions intended to safeguard human rights, such as the courts and the National Human Rights Commission; and calls on both the government of Nepal and the CPN (Maoist) rebels to take specific steps on areas of concern, such as detention and violence against women. Most importantly, the international pressure generated at the Commission resulted in an agreement between the government of Nepal and Office of the High Commissioner for Human Rights (OHCHR) for a country-wide OHCHR presence to carry out human rights monitoring and reporting. In AI's view this is the most important mechanism needed at this time to curb the spiralling human rights crisis and culture of impunity. AI now hopes that this monitoring presence will be swiftly and effectively implemented.

Sudan

AI welcomes the fact that the resolution passed under Item 19 includes elements necessary to address the human rights crisis in Darfur, including the establishment of a Special Rapporteur to monitor the situation of human rights in the Sudan. It calls on the international community to continue to provide relief assistance and to expand logistical and financial support to the African Union Mission in Sudan and on the UN High Commissioner for Human Rights to augment and speed up deployment of human rights monitors. In addition, the resolution calls on all parties to grant unhindered humanitarian access to Darfur, to protect girls and women from sexual violence and the rights of refugees and internally displaced people to voluntary return in safety, and to cooperate with UN Security Council Resolutions, including Resolution 1593 which refers the situation of Darfur to the International Criminal Court. It further calls on the government of Sudan to stop and investigate violations of human rights, end impunity, disarm the *Janjaweed*, strengthen access to courts for all victims, ensure their protection and grant them reparation and compensation. For a while it looked as though addressing the crisis in Sudan would be one of the Commission's failures; however, it is a positive development that the resolution, although tabled under Item 19, establishes a Special Rapporteur.

Turkmenistan

AI was dismayed that the UN Commission on Human Rights did not review the human rights situation in Turkmenistan at its 61st session in March and April 2005. The human rights situation in Turkmenistan remains a grave concern for AI and the organization was concerned that the failure to adopt another resolution to follow-up from its previous resolutions sent the wrong signal to the Turkmen authorities. It is now particularly crucial that the international community press for implementation of its previous resolutions and recommendations in a consistent and principled way, including through the General Assembly which had adopted resolutions on the human rights situation in Turkmenistan since 2003.

Draft Declaration on the Rights of Indigenous Peoples

AI welcomes the renewed commitment to advance the draft Declaration on the Rights of Indigenous Peoples with a view to presenting a final draft for adoption as soon as possible. AI also notes with appreciation the decision that the Working Group will meet for 10 working days prior to the 62nd session of the Commission with the possibility of convening additional meetings of the working group and of holding a workshop with broad participation.

Draft legally binding instrument for the protection of all persons from enforced disappearance

AI is pleased that in the resolution on enforced or involuntary disappearances, the Commission mandates the intersessional open-ended working group established to draft a legally binding normative instrument for the protection of all persons from enforced disappearance to meet again for a period of 10 days before the end of 2005 with a view to the completion of its work.

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

AI welcomes the resolution on the realization in all countries of economic, social and cultural rights in which the Commission continues to support the work of the open-ended Working Group established to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. AI continues to call for the early adoption of an Optional Protocol which establishes a comprehensive complaint and inquiry procedure for individuals and groups whose economic, social and cultural rights have been violated.

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

AI welcomes the adoption by the Commissions of the *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*. The Chilean-led draft resolution that put the draft Basic Principles and Guidelines before the Commission was adopted by a vote of 40 in favour, none against and 13 abstentions. The resolution also recommends the *Basic Principles and Guidelines* to ECOSOC for

adoption.

The USA called for a vote on the resolution on the pretext that its request for a neutral reference to the ICC in the fifth preambular paragraph of the *Basic Principles and Guidelines* had not been accommodated. Given that the USA had sought to replace language in the preambular paragraph that was drawn directly from the Rome Statute, the real reason for the request for a vote would appear to lie elsewhere.

Although the large number of abstentions in the vote on the resolution was not anticipated or welcome, this resolution is very important for the Commission's adoption of the *Basic Principles and Guidelines* sixteen years after work on them started.

Pre-draft declaration on human responsibilities

AI regrets that the Commission adopted by a vote of 26 in favour, 25 against and one abstention a decision requesting Mr. Miguel Alfonso Martinez to prepare a new initial version of the pre-draft declaration on human responsibilities. AI considers that the Commission on Human Rights is not an appropriate forum in which to address the broad moral and ethical issues associated with the responsibilities of the individual to the community. AI believes that efforts to elaborate a declaration on human responsibilities in the Commission will be exploited by some governments in an effort to qualify existing internationally-recognized human rights standards, to avoid their basic human rights obligations to persons subject to their jurisdiction and to restrain or prevent human rights defenders from carrying out their activities.

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