

2005 UN Commission on Human Rights:

The UN's chief guardian of human rights?

Introduction

“The Commission on Human Rights suffers from a legitimacy deficit that casts doubts on the overall reputation of the United Nations.”

Extract from: *“A more secure world: our shared responsibility”*,
Report of the High-level Panel on Threats, Challenges and Change¹

Reform of the Commission on Human Rights

The report of the High-level Panel on Threats, Challenges and Change, set up by United Nations (UN) Secretary-General in 2003, discusses a wide range of threats to international peace and security. The report, *“A more secure world: our shared responsibility”*, forcefully argues the interconnectedness of present day threats to human security: terrorism and civil wars cannot be seen in isolation from extreme poverty and infectious diseases. Both “new” and “old” threats must be tackled in a comprehensive strategy of collective security that applies to rich and poor nations alike. Amnesty International (AI) welcomes the report’s emphasis on the central role of the UN to protect human rights when dealing with global threats and challenges.

AI also welcomes the opportunity that the report presents to reform the UN human rights institutions. There is a strong case for reform of the Commission on Human Rights (the Commission), and of the handling of human rights by ECOSOC and the General Assembly, especially at a time that there is, as the Secretary-General emphasized in presenting the report, “a unique opportunity to refashion and renew our institutions”.

Any renewal of the UN’s chief human rights body must give it a stronger and more authoritative position that corresponds with the primacy which the UN Charter accords to encouraging respect for human rights as a purpose of the UN. Reform must address the longstanding problems faced by the Commission, notably that its members routinely resort to double standards in addressing country situations and that membership is too often used to shield the Commission members from human rights scrutiny instead of to protect and promote human rights. AI firmly believes that membership of the UN’s chief human rights body attracts distinct responsibilities to strengthen domestic and global respect for human rights standards. Each member of the Commission is accountable for fulfilling these responsibilities.

The reform must also aim to create a more effective UN human rights body capable of addressing protection and promotion of human rights in all countries at all times and capable of responding effectively to crisis situations. AI considers that reform of the Commission is most

¹ A/59/565, page 60.

likely to be effective as part of a broader reform process envisaged by the High Level Panel and the UN Secretary-General. The organization looks forward to occasions to discuss reform of the Commission and other measures to reinforce the international community's commitment to and support for human rights on the margins of the 61st session of the Commission.

AI does not encourage the Commission to take time away from its 61st session to discuss reform. However, AI does encourage each member of the Commission to bear in mind the findings of the High Level Panel as it prepares for the 61st session of the Commission. The High Level Panel observed:

- “The Commission on Human Rights is entrusted with promoting respect for human rights globally, fostering international cooperation in human rights, responding to violations in specific countries and assisting countries in building their human rights capacity.”²
- “In recent years, the Commission’s capacity to perform these tasks has been undermined by the eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by states that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”³

Responsibility for the Commission begins with each member. Each member that calls on the Commission to address some human rights situations, but turns a blind eye to others; each member that supports or abstains from “no-action motions”; each member that fails to cooperate with the Special Procedures of the Commission contributes to undermining the credibility and professionalism of the Commission. Observer states that are active at the Commission must also bear their share of responsibility for the current situation of the Commission. AI calls on each member and each observer state to make its own demonstrable commitment to re-establishing the credibility and professionalism of the Commission at its 61st session.

Issues before the 61st session of the Commission on Human Rights

Building on the momentum created by the report of the High-level Panel to revitalize the Commission as the chief human rights body of the UN, AI calls on all member states to rise above national and regional interests and avoid accusations of selectivity and double standards, and to address on their merits the thematic and country specific human rights issues before it. Members must demonstrate their commitment to making the Commission a more effective human rights body capable of addressing protection and promotion of human rights on their merits in all countries at all times and capable of responding effectively to crisis situations.

In this document, AI makes a number of recommendations in respect of some of the issues on the Commission’s agenda, including in relation to reaffirming the absolute prohibition of torture, abolishing the death penalty, limiting the negative impact of counter-terrorism measures on human

² “A more secure world: Our shared responsibility: Report of the High-level Panel on Threats, Challenges and Change”, (A/59/565), para. 282.

³ *Ibid*, para. 283.

rights, ending violence against women, and controlling the impact on human rights of business corporations. AI is also calling on states to facilitate and support current efforts to develop new standards, including the draft Declaration on the Rights of Indigenous Peoples, the draft legally binding instrument for the protection of all persons from enforced disappearance, an optional protocol to the International Covenant on Economic, Social and Cultural Rights, and the draft 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.

With regard to human rights violations in specific countries, AI is this year focusing on achieving strong measures by the Commission to promote and protect human rights in the following six countries: Colombia, Democratic Republic of the Congo, Israel and the Occupied Territories, Nepal, Sudan and Turkmenistan. AI's concern about national human rights situations, however, extends far beyond these six countries as the organization's annual report and other publications amply demonstrate. In particular, AI regrets the Commission's silence and lack of action with regard to the grave human rights situation in Chechnya, Guantánamo Bay, Indonesia, Iraq, and Zimbabwe, and calls on all member states to explore options to contribute to ensuring respect for human rights in those countries, among others.

**"A primordial obligation"
-- the duty to eradicate torture⁴**

"Sadly, experience shows us that torture and other cruel, inhuman or degrading treatment remain all too common in too many countries. Yet the prohibition of such acts is not ambiguous: it is absolute. It is binding on all States in all territories under their jurisdiction or effective control. It applies in all circumstances, in times of war as in times of peace. Nor is torture permissible when it is called something else. Euphemisms cannot be used to bypass legal obligations."

Statement by the United Nations Secretary-General Kofi Annan
on the occasion of the International Day in support of Victims of Torture, June 2004

The Universal Declaration of Human Rights, crafted by the Commission on Human Rights (the Commission) in 1948, established a fundamental tenet of international law: the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. This principle has underpinned all relevant international human rights instruments elaborated since that time, including the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the Rome Statute of the International Criminal Court.

Yet governments regularly violate the prohibition against torture and ill-treatment, some failing to regulate effectively the export of equipment used to perpetrate these violations, while impunity persists. In the last year, Amnesty International (AI) has continued to document cases of torture and ill-treatment in all regions of the world, including in more than half of the states which are currently members of the 61st session of the Commission.⁵

Khava (not her real name) is a Chechen woman who worked for a humanitarian organization in the North Caucasus in the *Russian Federation*. Khava alleges that she was detained by Russian and Chechen law enforcement officials in 2003 and taken to a detention centre, where she was held for about a month and questioned about her work. During the interrogation Khava states that she was tortured, including raped, and beaten on the kidneys and head. She has stated that her hands were tied behind her back and she was blindfolded for several days. Months after her release, her hands, eyes and kidneys caused her regular pain. Because she had been told she would be killed if she spoke out about being tortured, she did not dare to seek medical care.⁶

⁴ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (E/CN.4/1987/13), 9 January 1987, paragraphs 81-82, in which the Special Rapporteur states that the source of torture "is invariably the same: contempt for the personality of the other individual which has to be destroyed and annihilated. It is for that reason that torture is one of the most heinous violations of human rights as it is the very denial of the essence of human rights, namely the recognition that each living being has a personality of his own which has to be respected. Therefore, a society that tolerates torture can never claim to respect other human rights; the duty to eradicate torture is thus a primordial obligation."

⁵ In its *Annual Report 2004*, Amnesty International recorded allegations of torture and ill-treatment in 132 states – two-thirds of the member states of the United Nations. *Statistics covering January to December 2003* (AI Index: POL 10/015/2004).

⁶ *Russian Federation: The risk of speaking out: Attacks on human rights defenders in the context of the armed conflict in Chechnya* (AI Index: EUR 46/059/2004), November 2004.

In Nanggroe Aceh Darussalam (NAD), *Indonesia*, torture and ill-treatment during investigation appear to be routine in both military and police detention. Female detainees are subjected to torture, including rape and other forms of sexual violence. A 27-year-old human rights activist, who was arrested in Pidie District in June 2003 by the troops from both Delima Sub-district Military Command (Koramil Delima) and Brimob, was reported to have been subjected to sexual violence while in detention. According to an interview in the media, the activist had her headscarf and shirt ripped off, was forced to fondle the genitalia of a soldier, and was threatened with gang rape if she did not admit to being a member of Free Aceh Movement (GAM). She is also reported to have been punched, kicked, slapped and throttled as a confession was demanded from her. The activist was released after two weeks and has since left the province.⁷

In *Zimbabwe*, Tonderai Machiridza, a member of the Movement for Democratic Change, was reportedly kicked and hit with truncheons and handcuffs by police officers on 13 April 2003. The same day police officers took him to a hospital in Harare where he was kept chained to the bed under police surveillance. On 17 April, a judge ordered his release on bail and he was moved to a private hospital. He died of his injuries one day later.⁸

Erosion of standards

The “war on terror” has been a challenge to the framework of international law, as governments have trampled human rights and fundamental freedoms in the name of countering terrorism. The United States government has taken one step further by attempting to legitimize some interrogation methods and other treatments that amount to torture or cruel, inhuman or degrading treatment or punishment. The justification for doing so emerged after images from Abu Ghraib prison in Iraq showing a hooded detainee with wires dangling from his hands, a naked man cowering in terror as soldiers threaten him with snarling dogs, and other detainees forced into sexually humiliating poses were broadcast around the world.

The United States is not the first government to justify its actions on the grounds of necessity or self-defence. However, as the most powerful democracy in the world, and one which actively seeks to export the human rights standards that it claims for itself, the government’s manipulation of its international obligations is deeply disturbing for the signal that it gives to other states about what is permissible, and for the standards which determine its own actions. The United States government has been widely criticized by human rights experts and organizations. The Special Rapporteur on torture’s report to the 59th General Assembly stated that “*the condoning of torture is per se a violation of the prohibition of torture*”.⁹

That report went on to identify further challenges to the prohibition of torture that have arisen in the context of “countering terrorism”, including the use of evidence elicited as a result of torture in proceedings other than for bringing to justice alleged perpetrators of torture. For example, in the United Kingdom, the Court of Appeal of England and Wales ruled that evidence obtained under

⁷ *Indonesia: New military operations, old patterns of human rights abuses in Aceh (Nanggroe Aceh Darussalam, NAD)* (AI Index: ASA 21/033/2004), October 2004.

⁸ *Amnesty International Report 2004* (AI Index: POL 10/015/2004).

⁹ *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (A/59/324), 23 August 2004.

torture in third countries may be used in special terrorism cases, provided that the British government has “neither procured the torture nor connived at it”.¹⁰

Further violations of international law have been perpetrated by states which have failed to ensure that no-one is expelled, extradited or returned (“*refouled*”) to a country where they may be in danger of being subjected to torture or ill-treatment. In 2001, AI opposed and condemned the forcible deportation of Muhammad Muhammad Suleiman Ibrahim El-Zari and Ahmed Hussein Mustafa Kamil Agiza from Sweden to Egypt, arguing that they were at grave risk of torture and unfair trial in Egypt. Although recognizing that both men had a well-founded fear of persecution, the Swedish government refused them protection on the basis of secret evidence provided by the Swedish security police which linked them to “terrorist” organizations, but which was not disclosed in full to the men and their legal counsel. Sweden proceeded to their deportation on the basis of written guarantees from the Egyptian authorities that they would not be ill-treated. However, following their forcible return in December 2001, the two men were held incommunicado for over a month, unable to contact their lawyers and relatives. On 23 January 2002, the two men were visited by the Swedish ambassador to Egypt. The family of Ahmad Hussein Mustafa Kamil Agiza¹¹ was also able to see him and reported he had been subjected to torture. AI is not aware that any investigation has been opened.

Strengthening the international framework

The Commission has been the architect of several international standards to combat torture, including the Convention against Torture, which entered into force in 1987. Today 139 states have ratified this international treaty, 56 of which have made the necessary declaration under Article 22 to provide for individual communications.¹² Under Article 21, 57 states have recognized the competence of the Committee against Torture to consider inter-state communications.

The Commission also established a complementary instrument to the Convention against Torture, aimed at the prevention of torture and ill-treatment, i.e. the Optional Protocol, which was adopted by the General Assembly in 2002. It requires 20 ratifications before it can enter into force. As of 15 January 2005, Albania, Argentina, Denmark, Liberia, Malta and the United Kingdom have ratified the Optional Protocol, and a further 32 states have signed it and are working towards its ratification.

The 61st session of the Commission will coincide with the 20th anniversary of the establishment of the Special Rapporteur on torture (Special Rapporteur). The mandate was created in response to calls for a mechanism with global coverage to seek, receive and respond effectively to credible information about torture. The Special Rapporteur still performs a critical function

¹⁰ Article 15 of the Convention against Torture states that: “Each state party shall 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, except against a person accused of torture as evidence that the statement was made”.

¹¹ In April 2004, Ahmad Hussein Agiza was condemned to 25 years of prison after an unfair trial before the Supreme Military Court. He had initially been convicted *in absentia* in 1999 for his alleged links with an armed Islamist group. His second trial in 2004 constituted a retrial. In June, his sentence was reduced to 15 years by President Mubarak.

¹² The Convention against Torture has not been ratified or signed by: Andorra, Angola, Bahamas, Barbados, Bhutan, Brunei Darussalam, Central African Republic, Comoros, Democratic People’s Republic of Korea, Dominica, Dominican Republic, Eritrea, Federal States of Micronesia, Fiji, Gambia, Grenada, Guinea-Bissau, Haiti, India, Iraq, Islamic Republic of Iran, Jamaica, Kiribati, Lao People’s Democratic Republic, Madagascar, Malaysia, Marshall Islands, Myanmar, Nauru, Nicaragua, Oman, Pakistan, Palau, Papua New Guinea, Rwanda, St. Kitts and Nevis, St. Lucia, Samoa, San Marino, Sao Tome and Principe, Singapore, Solomon Islands, Sudan, Suriname, Thailand, Tonga, Trinidad and Tobago, Tuvalu, United Arab Emirates, United Republic of Tanzania, Vanuatu, Vietnam, and Zimbabwe.

throughout the year of promoting respect for the absolute prohibition of torture worldwide and assisting in the development of the international community's understanding of the issues including corporal punishment, incommunicado detention and impunity. In 2002, the Special Rapporteur presented a revised list of detailed recommendations to assist states in efforts to combat torture.¹³

Despite the pivotal role that the Special Rapporteur performs, this mechanism is often subjected to attempts by governments to undermine its valuable and necessary work. For example, the Special Rapporteur's public reports document repeated failures by some states to respond at all or in full to communications concerning both urgent and routine correspondence. Several states have failed to respond positively to requests from the Special Rapporteur to undertake a visit, some of which have been outstanding for more than ten years.¹⁴ Country visits enable the Special Rapporteur to respond to particularly urgent situations, as well as to examine at first-hand the measures in place to prevent and prohibit torture and other forms of ill-treatment. States can facilitate country visits by extending a standing invitation to the Special Procedures of the Commission, including the Special Rapporteur on torture, and ensuring that missions requested take place without undue delay and according to the guidelines used by the Special Procedures.¹⁵

Since 1988, 27 countries have been visited by the Special Rapporteur, on the basis of which the mandate-holder has been able to elaborate detailed recommendations for implementation by the governments concerned.

Indeed, the Commission's annual resolution on torture and other cruel, inhuman and degrading treatment or punishment calls on governments to engage in a "constructive dialogue" with the Special Rapporteur with respect to follow-up on recommendations.¹⁶ The Commission has an opportunity to engage actively in reviewing implementation of recommendations by governments on the basis of these reports and taking action accordingly, including the provision of technical assistance.

Amnesty International's recommendations

When it launched its latest global campaign against torture in 2000, AI elaborated a 12-Point Programme for the prevention of torture, which represents the organization's key findings for measures to be taken by states to eradicate torture.¹⁷

AI calls on all member states to use the occasion of the 61st session of the Commission to condemn torture and ill-treatment unreservedly, to pledge to implement the 12-Point Programme for the prevention of torture, and to take the following steps:

- ratify the Convention against Torture without reservations, and make the declarations under Articles 21 and 22;
- withdraw any reservations to the Convention against Torture (including declarations made under Article 28);

¹³ *General Recommendations of the Special Rapporteur on torture* (E/CN.4/2003/68, paragraph 26), 17 December 2002.

¹⁴ According to the *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (E/CN.4/2004/56), 23 December 2003, these include: Algeria (1997), Egypt (1996), India (1993), Indonesia (1993), Israel (2002), the Russian Federation with respect of the Republic of Chechnya (2000) and Tunisia (1998).

¹⁵ *Report of the meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the Special Procedures of the Commission on Human Rights and of the advisory services programme* (E/CN.4/1998/45), 20 November 1997.

¹⁶ See for example resolution 2004/41, operative paragraph 34, adopted by the Commission in April 2004.

¹⁷ See Annex 1.

- implement fully the Convention against Torture and comply with the reporting obligations contained therein;
- implement the concluding observations and views of the Committee against Torture;
- ratify the Optional Protocol to the Convention against Torture;
- cooperate fully with the Special Rapporteur on torture, including by facilitating the Special Rapporteur's requests to visit, responding in full to urgent and routine correspondence, implementing country-specific and general recommendations and providing information about follow-up.

Amnesty International calls on the Commission on Human Rights to adopt a comprehensive and progressive resolution on the prohibition of torture and ill-treatment, which:

- reaffirms unequivocally the absolute prohibition of torture and ill-treatment;
- reminds states that statements and any other evidence which has been obtained as a result of torture or ill-treatment shall not be invoked in any proceedings, except against a person accused of torture or ill-treatment;
- reaffirms that states shall not expel, return or extradite a person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture or ill-treatment.

Abolition of the death penalty

Each year since 1997 the Commission on Human Rights (the Commission) has adopted a resolution on the question of the death penalty.¹⁸ 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.¹⁹ A similar draft resolution is expected to be presented to the 61st session of the Commission.

The resolutions affirm that "abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights". They call upon states that retain the death penalty to establish a moratorium on executions and to observe agreed safeguards in death penalty cases.

In 2004 the text also welcomed the entry into force in 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 the end of 2004, the protocol had been ratified by 29 of the 44 Council of Europe member states and signed by a further 14 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 54, 44 and eight states respectively.

For the Commission's consideration of the question this year, an important source of information will be the Secretary-General's quinquennial report on capital punishment, to be submitted to the 61st session of the Commission.²⁰ AI's information indicates continuing progress towards worldwide abolition. In 2004 Bhutan, Samoa, Senegal and Turkey abolished the death penalty for all crimes and Tajikistan established a moratorium on the death penalty. By the end of 2004, 83 countries had abolished the death penalty for all crimes; 13 had abolished it for ordinary crimes only, and 22 were abolitionist in practice, giving a total of 118 countries abolitionist in law or practice. Seventy-eight countries and territories retained the death penalty, but many of these did not carry out executions during 2004.

Despite these positive developments, executions have continued, and in some countries the safeguards referred to in Commission resolution 2004/67 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, Sri Lanka, announced the lifting of a moratorium on executions. The death penalty was reinstated in Iraq after its suspension in 2003. Afghanistan, India and Indonesia resumed executions after periods of several years without them.

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 Commission resolution 2004/67 as well as the Commission resolutions 2004/43 (Human rights in the

¹⁸ Most recently Commission resolution 2004/67.

¹⁹ General Assembly resolution 32/61 of 8 December 1977.

²⁰ Commission resolution 2004/67, paragraph 8.

administration of justice, in particular juvenile justice, para. 11) and 2004/48 (Rights of the child, para. 35(a)). 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*). In 2004, AI recorded three executions of child offenders in Iran and one in China.²¹

At the 61st 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.

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the question of the death penalty which reiterates all of the important provisions of the Commission's previous resolutions on the subject and also:

- affirms that the death penalty *violates human rights*, particularly the right to life and the right not to be subjected to torture or cruel, inhuman or degrading punishment as enshrined in the Universal Declaration of Human Rights and other international and regional human rights instruments;²²
- recalls the *resolutions of the Economic and Social Council* concerning the 1984 Safeguards guaranteeing protection of the rights of those facing the death penalty, namely ECOSOC resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996;²³
- welcomes the adoption by several states of *constitutional provisions* precluding the death penalty;²⁴
- welcomes the efforts of various *sectors of civil society* at national and international levels to achieve the abolition of the death penalty;²⁵
- welcomes the *seventh quinquennial report* of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty and refer to its conclusions;
- requests the Secretary-General to continue to submit a *yearly supplement* to his quinquennial report to the CHR at its next session;

²¹ See *Amnesty International, Stop Child Executions! Ending the death penalty for child offenders under general international law* (AI Index: ACT 50/015/2004), September 2004.

²² The death penalty is increasingly recognized as a violation of human rights. The Human Rights Committee has stated that "all measures of abolition should be considered as progress in the enjoyment of the right to life" (General Comment 6 on Article 6 of the ICCPR, para. 6). Several national constitutional courts have found that the death penalty violates the right to life and/or the right not to be subjected to cruel, inhuman or degrading treatment or punishment.

²³ ECOSOC resolutions 1989/64 and 1996/15 contain important provisions relating to the implementation of the 1984 Safeguards. They recommend, for example, that the death penalty be eliminated for "persons suffering from mental retardation or extremely limited mental competence" and call for the observance of relevant UN standards and norms in death penalty cases.

²⁴ Over 30 countries have prohibited the death penalty in their constitutions, often on human rights grounds. By enshrining abolition in its constitution, a country shows the importance it attaches to the decision it has taken to abolish the death penalty. Supplementing the removal of the death penalty from the penal law, the enactment of a constitutional prohibition is a way of "solidifying" abolition by providing an additional legal basis which can serve as an impediment to any hasty attempt to reinstitute the punishment.

²⁵ One recent example of such an effort is the convening of the Second World Congress against the Death Penalty in Montreal in October 2004. Another is the holding of the annual World Day against the Death Penalty on 10 October by the World Coalition against the Death Penalty.

- decides that the Commission will discuss the issue again at its 62nd session in 2006.

Human rights and counter-terrorism

Over the past year, Amnesty International (AI) has continued to observe a negative impact on human rights by legislation and measures introduced by states to counter terrorism²⁶ in a range of countries. AI condemns, in the strongest terms, terrorist attacks, whoever the perpetrator and whatever the motive, but at the same time the organization urges governments to ensure that any measure taken to prevent or respond to such attacks fully conform with their obligations under international law, in particular international human rights, refugee and humanitarian law.²⁷

Under the banner of fighting the “war on terror”, the *United States* (US) government has blatantly disregarded human rights and fundamental freedoms. Graphic images of torture and ill-treatment of detainees in US custody in Iraq and other locations dramatically illustrated how human rights can be sacrificed in the name of security and demonstrated the US government’s failure to ensure respect for fundamental principles of human rights and humanitarian law. Since May 2004, AI has been calling for the establishment of an impartial and independent commission of inquiry, composed of credible experts independent of government and mandated to carry out a comprehensive investigation on all US “war on terror” detention policies, practices and facilities worldwide. A thorough inquiry is crucial to ensure full accountability of those responsible for any torture and other cruel, inhuman or degrading treatment or punishment, “disappearances”, or other human rights violations, at all levels of the chain of command and in all government agencies. Hundreds of foreign nationals remain in prolonged indefinite detention without charge or trial in Guantánamo Bay, in blatant contravention of international human rights treaties to which the US is a party. Despite the ruling by the US Supreme Court on 28 June 2004²⁸ that the federal courts have jurisdiction over the detainees held in Guantánamo Bay, the US government continues to try to keep any review of the detentions as minimal and as far from a judicial process as possible. In addition, the government has appealed against the ruling by a federal court that suspend trial by military commission. The proposed military commission fall far short of legal standards; the process entirely lacks independence from the executive, there are severe restrictions on the right to a lawyer of the defendant's own choosing and to mount an effective defence and it allows no appeal to another court. The process is also discriminatory in that only non-US nationals can be tried by military commissions, which may admit coerced or secret evidence and have the power to hand down death sentences.

In *Afghanistan*, hundreds of people suspected of connections with the *Taleban* or *al Qa’ida* remain in long-term arbitrary detention without trial in Bagram airbase and other detention centres under US control without access to judicial authorities. In *Pakistan*, abuses against people believed to be associated with the *Taleban* or *al Qa’ida* include arbitrary arrest and detention, possible extrajudicial executions and deliberate house destruction.

²⁶ AI notes that to date there is no agreed legal definition of the term “terrorism”.

²⁷ This has also been called for by the Commission in its resolution 2004/87, paragraph 1.

²⁸ Decision of the Supreme Court of the United States, *Rasul et al. v. Bush, president of the United States, et al.* (cases 03-334 and 03-343), 28 June 2004.

The international “war on terror” has become a convenient pretext for the authorities in *China* to justify their policies of repression in the predominantly Muslim Xinjiang Uighur Autonomous Region and to stifle any independent expression of Uighur ethnic, cultural or religious identity. People branded as “separatists, terrorists and religious extremists” continue to be detained and are at serious risk of torture or ill-treatment, unfair trials and in some cases execution. The repression by the government has also resulted in the closure of unofficial mosques, arrest of imams, restrictions on the use of the Uighur language and the banning of Uighur books and journals. The Chinese government has also put pressure on other states to forcibly return Uighurs to China, including asylum seekers and refugees.

In the *United Kingdom*, a panel of nine Law Lords sitting as the Appellate Committee of the House of Lords (the UK's highest court) ruled in a landmark decision²⁹ in December 2004 that indefinite detention, without charge or trial, of foreign “suspected international terrorists” – allowed by Section 23 of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) adopted after the 11 September 2001 attacks in the USA – discriminated against foreign nationals unjustifiably and was, therefore, unlawful. However, by the end of 2004, 11 men continued to be detained in high security establishments under severely restrictive regimes. A twelfth person had been “released” in April 2004 under strict bail conditions amounting to house arrest. In August 2004, the Court of Appeal of England and Wales had ruled that the ATCSA permitted, indeed required, the admission of “evidence” procured by torture of a third party, provided that the torture was not committed nor connived at by UK officials, in breach of the international prohibition of torture, including the use of “evidence” obtained through torture except against a person accused of torture.

In countries including *Morocco, Saudi Arabia, Tunisia* and *Yemen*, scores of people have been arrested and arbitrarily detained, and in some cases allegedly tortured, in connection with suspected “terrorist” acts or links to opposition armed groups.³⁰ In some of these countries, individuals were detained following their forcible return from the USA and Europe. Security co-operation and “counter terrorism” measures, often with little regard to human rights guarantees, figured prominently in multilateral and regional meetings of MENA countries. In Kenya, counter-terrorism measures have led to detention without trial and unfair trials. Joint operations by South African Home Affairs officials and members of intelligence and police services in 2004 against individuals suspected of links with international “terrorist” organizations have resulted in the incommunicado detention, ill-treatment or forcible repatriation of immigrants or asylum-seekers.

AI welcomes the decision by the Executive Director of the Security Council’s Counter-Terrorism Committee (CTC) to appoint a human rights expert, but regrets that the CTC has not yet taken the necessary steps to redress the human rights deficit in its important work, notably by ensuring that the counter-terrorism measures it recommends to states to take meet international human rights standards. AI also welcomes the appointment by the Commission on Human Rights (the Commission), for a period of one year, of an independent expert mandated to report to its 61st session on ways and means to strengthen the promotion and protection of human rights and fundamental freedoms while countering terrorism.³¹ On 25 June 2004, the Special Procedures of the Commission issued a joint statement, in which they reaffirm their determination to “monitor, each within the framework of his or

²⁹ Judgment of the House of Lords, *A. and others v. Secretary of State for the Home Department* ([2004] UKHL 56), 16 December 2004.

³⁰ *The Gulf and the Arabian Peninsula: human rights fall victim to the “war on terror”* (AI Index: MDE 04/002/2004), June 2004.

³¹ Commission resolution 2004/87, paragraph 10.

her mandate, those policies, legislation, measures and practices developed by States in the name of the fight against terrorism, with a view to ascertaining that they are consistent with international human rights standards.” The statement also calls for a joint visit by several Special Procedures³² to the persons detained on grounds of alleged terrorism or other violations in Iraq, Afghanistan and the Guantánamo Bay military base, with a view to ascertain the application of international human rights standards to these prisoners. AI is concerned that this call has not been implemented and regrets that the US failed to respond adequately to this important request and restricted themselves to inviting the Special Rapporteur on torture to come to Washington for a ‘briefing’.

In her report to the 59th session of the General Assembly, the High Commissioner for Human Rights (HCHR) analyzes the actions taken by the Special Procedures, the Sub-Commission, the treaty monitoring bodies, and concludes that there are “significant gaps in the consideration of national counter-terrorism measures by the UN human rights system” which has been “unable to address the compatibility of national counter-terrorism measures with international human rights obligations in a comprehensive and integrated way”.³³ The HCHR recommends that it may be “necessary to consider taking steps that may affect mandates, processes and resources.” AI agrees fully with this analysis and takes the opportunity of the 61st session to reiterate its call for the establishment of a new mechanism on protecting human rights while countering terrorism. In addition to monitoring developments on a global basis, such a mandate would also function as an effective counter-part to the CTC. A new Commission mandate would also contribute to a “more integrated and coherent” approach to human rights and counter-terrorism called for by the Secretary-General³⁴ and would also be a highly appropriate response to the recommendation by the High-level Panel on Threats, Challenges and Change to the UN to develop better instruments for global counter-terrorism cooperation, all within a legal framework that is respectful of civil liberties and human rights.³⁵

Amnesty International calls on the Commission on Human Rights to include in its resolution on the “Protection of human rights and fundamental freedoms while countering terrorism” provisions that:

- urges states to ensure that in taking measures to counter terrorism, they make sure that these are fully consistent with their obligation, under international law, to respect human rights, including the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment;
- continue and upgrade the mandate on counter-terrorism, established by the Commission in 2004, to a Special Rapporteur mandated to monitor and analyze the impact on human rights of measures taken by states to combat terrorism;
- call for sufficient resources and support to enable the new mandate to carry out its functions effectively, including the means to liaise effectively with the Counter-Terrorism Committee and its Executive Directorate in New York;

³² The Special Rapporteurs on the independence of judges and lawyers; on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; on torture and other cruel, inhuman or degrading treatment or punishment; and the Chairperson-Rapporteur of the Working Group on arbitrary detention.

³³ *Study of the United Nations High Commissioner for Human Rights, Protection of human rights and fundamental freedoms while countering terrorism* (A/59/428), 8 October 2004.

³⁴ *Protecting human rights and fundamental freedoms while countering terrorism, Report of the Secretary-General* (A/59/404), 1 October 2004, paragraph 22.

³⁵ “*A more secure world: our shared responsibility*”, *Report of the High-level Panel on Threats, Challenges and Change* (A/59/565), 2 December 2004.

- endorse the request by the Special Procedures, on 25 June 2004, to visit detainees in Guantánamo, Afghanistan and Iraq, and urge the states concerned to cooperate fully and effectively to enable the Special Procedures to visit as soon as possible;
- ensure the protection of the human rights of refugees, asylum seekers and migrants within the context of any "counter-terrorism" operations by states, including full respect of the principle of non-refoulement;
- include a reference to General Comment 29 of the Human Rights Committee³⁶ in the operative parts of the resolution, with an emphasis on the importance of remedies for violations of ICCPR provisions;
- strengthen the language regarding the “*Digest of Jurisprudence of the UN and regional organisations on the protection of human rights while countering terrorism*” prepared by Office of the High Commissioner for Human Rights and ask states to distribute it to all relevant judicial and law enforcement authorities.

Violence against women

Women face discrimination and violence at the hands of the state, the community and the family. Rape and sexual abuse by relatives, other men, security officials or armed combatants are inflicted on millions of women and girls every year. Violence against women is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race and culture. The underlying cause of violence against women lies in the discrimination that denies women equality of rights with men. In some countries, the state enforces gender-based violence against women and discrimination is written into the law; in others the laws are inadequate; and even where the laws are not discriminatory, the practices of government authorities, agencies, police and prosecutors often foster discrimination and violence against women.

Some women are at particular risk of violence by virtue of a multiplicity of factors such as discrimination on the basis not only of their gender, but also their race, ethnicity, nationality, religion, sexual orientation, class, caste, health status (particularly HIV status), status as indigenous peoples, language, age, poverty, gender identity or expression and physical or mental ability. These dimensions of discrimination intersect, forcing many women into situations of multiple marginalization.³⁷ Amnesty International (AI) has documented cases in *Canada* which show that indigenous women remain at particular risk of violence because they are indigenous women, and that Canadian police often fail to provide them with an adequate protection. The social and economic marginalisation of this group of women has left them even more vulnerable to attacks by men.³⁸

Amnesty International's Campaign to Stop Violence Against Women

Launched in 2004, AI's campaign highlights the continuum of violence against women, in times of peace and times of war, at the hands of the state, the community and the family. It emphasizes the

³⁶ *General Comment 29 on states of emergency (article 4) of the Human Rights Committee (CCPR/C/21/Rev.1/Add.11)*, 31 August 2001.

³⁷ See *Report by the Special Rapporteur on violence against women to the Preparatory Committee on the subject of race, gender and violence against women (A/CONF.189/PC.3/5)*, 27 July 2001.

³⁸ *Stolen Sisters: Discrimination and Violence Against Indigenous Women in Canada* (AI Index: AMR 20/001/2004), 4 October 2004.

need for preventative measures, as well as the need to bring the perpetrators to justice, to provide remedy and reparation to survivors and, in conflict or post-conflict situations, to promote women's role in peace and other reconciliation processes. AI places the fight against gender-based violence within the human rights framework, and considers that such violence is caused by discrimination and the inequality between women and men in society. AI emphasizes the obligation of governments to exercise due diligence to prevent, investigate and punish all acts of violence against women, including through ensuring adequate access to justice, timely and effective protection, fair compensation, and measures to help overcome their experience of abuse.

Ten year appraisal of the Beijing Declaration and Platform for Action

This year marks the tenth anniversary of the Beijing Declaration and Platform for Action adopted at the Fourth UN World Conference on Women held in Beijing, China in September 1995. The Platform for Action identified violence against women as one of twelve "critical areas of concern". It included important commitments to take measures to prevent and eliminate violence against women and to address its causes and consequences. Other areas of concern identified in the Platform for Action which are of particular relevance to the eradication of violence against women include: the effects of armed conflict on women, women's access to health and lack of respect for the full range of women's human rights.

On the occasion of the ten year review and appraisal of states' implementation of the Beijing Platform for Action, AI is taking these critical areas of concern as the framework for its work at the Commission on the eradication of violence against women. The findings and recommendations below draw on the research and action undertaken worldwide as part of AI's campaign, which has included a particular focus on violence against women in conflict and the health dimensions of gender-based violence.³⁹ This work has highlighted the yawning gap between the commitments made ten years ago in Beijing and the continuing practice of states across the globe.

The Commission on Human Rights work to eradicate violence against women

Over the last decade, the Commission on Human Rights (the Commission) has begun to address the contexts, causes and consequences of violence against women, most notably through the mandate of the Special Rapporteur on violence against women, its causes and consequences. AI's campaign aims to contribute to that analysis by focusing on violence against women in the context of conflict, on the consequences of violence for women's health and on the denial of women's rights as a cause of violence.

Violence against women in armed conflict

Situations of armed conflict reinforce and exacerbate existing patterns of discrimination and all forms of violence against women increase, including rape and other forms of sexual violence. Rape is used

³⁹ Amnesty International: *Lives blown apart, Crimes against women in times of conflict* (AI Index: ACT 77/075/2004); *Women, Violence and Health* (AI Index: ACT 77/001/2005); *Women HIV/AIDS and human rights* (AI Index: ACT 77/084/2004); *Kosovo (Serbia and Montenegro): "So does that mean I have rights?" Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo* (EUR 70/010/2004); *Rwanda: "Marked for death", rape survivors living with HIV/AIDS in Rwanda* (AFR 47/007/2004); *Sudan: Darfur: rape as a weapon of war: sexual violence and its consequences* (AFR 54/076/2004); *Colombia: "Scarred bodies, hidden crimes": Sexual violence against women in the armed conflict* (AMR 23/040/2004); *Democratic Republic of Congo: Mass rape – time for remedies* (AFR 62/018/2004); *Democratic Republic of Congo: Surviving rape: Voices from the east* (AFR 62/019/2004); *Liberia: No impunity for rape – a crime against humanity and a war crime* (AFR 34/017/2004); *Mexico: Indigenous women and military justice* (AMR 41/033/2004); *Solomon Islands: Women confronting violence* (ASA 43/001/2004); *Turkey: Women confronting family violence* (EUR 44/013/2004); *Central African Republic: Five months of war against women* (AFR 19/001/2004).

as a weapon of war to conquer, expel or control women and their communities in times of war or internal conflict. A form of gender-based torture rape is used to extract information, to punish, intimidate and humiliate women, and to strip them of their dignity. Rape is also sometimes used as a form of collective violence to drive people from their land.

In *Sudan*, perpetrators of rape and other forms of sexual violence continue to enjoy impunity. Many of the human rights violations which have taken place in Darfur, including killing of civilians, widespread rape and mass forced displacement by the Sudanese army and members of government-supported militias, have happened over many years of past conflict in the south and the Nuba mountains. The evidence of large-scale rape and sexual violence in Darfur was at first vehemently denied by the Sudanese government and later admitted only as a few individual cases which had taken place during armed conflict.

The impact and trauma of rape extends far beyond the attack itself. In addition to physical injuries, women survivors may face emotional damage, disease and social ostracism. Being publicly identified as a rape victim can severely damage a woman's status within her community and she may be reluctant to talk about what has happened to her for fear of ridicule and rejection. The damage caused by conflict often means that women no longer have access to healthcare appropriate to their needs, whether in their communities, in camps for refugees and displaced people, in prisons or in demobilization camps established in the aftermath of conflict.

Women and children form the majority of the millions of refugees and displaced people fleeing situations of conflict, exposing themselves to heightened risk of sexual violence, including rape. Women are likely to be among the primary victims of direct or indiscriminate attacks on the civilian population as they are usually the majority of the non-combatant population.

In spite of lobbying efforts of women's groups and human rights organizations, and in spite of positive developments in international law to protect women's human rights, governments persistently fail to investigate allegations of violence against women and to bring to justice those responsible. As a result the overwhelming majority of perpetrators of violence against women enjoy complete impunity. Perhaps even more than in times of peace, survivors of violence during conflict face even greater barriers to justice. Women are often reluctant to bring complaints or testify for fear of further attacks or of being stigmatized, the perpetrators are often given licence to commit crimes of violence without fear of sanction and the administration of justice may itself have been destroyed or disabled by armed conflict.

In *Mexico*, for example, where a number of indigenous women have been raped by government soldiers in the state of Guerrero over the past decade, all the cases have been transferred to military jurisdiction, which has consistently failed to conduct proper investigations, allowing the alleged rapists to go unpunished.

Violence against women and health, including sexual and reproductive health

As the Beijing Platform for Action affirms, women have the right to the enjoyment of the highest attainable standard of physical and mental health.⁴⁰ Sexual and reproductive rights embrace human rights that are already recognized in international human rights standards and rest on the recognition of the right of all women to have control over and decide freely and responsibly on matters related to

⁴⁰ Beijing Platform for Action, paragraph 89.

their sexuality.⁴¹ They include the basic right of all couples and individuals to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents, including deciding freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.⁴²

Violence against women is a major barrier preventing women from enjoying these rights. Rape and other sexual violence against women can have devastating consequences for women's health. As the Special Rapporteur on the right of everyone to the highest attainable standard of health has noted, "Rape and other forms of sexual violence, including forced pregnancy, non-consensual contraceptive methods (e.g. forced sterilization and forced abortion), forced marriage all represent serious breaches of sexual and reproductive freedoms, and are fundamentally and inherently inconsistent with the right to health."⁴³

Lack of access to adequate sexual and reproductive health care services can compound the impact of violence against women. Women who become pregnant after being raped sometimes lose their lives as a result of complications at birth, although these complications could be easily treated if appropriate care was available.

During the conflict in **DRC**, healthcare infrastructure in the east of the country completely has collapsed, with the result that most women suffering from injuries or illnesses caused by the widespread rapes during the conflict are unable to access appropriate medical treatment. Some have sustained injuries that require long-term and complex treatment, including for infection with HIV or other sexually transmitted diseases, injuries to the reproductive system or rectum, internal bleeding, broken pelvises, difficult pregnancies and births. Childbirth in the absence of adequate and accessible health services poses risks for all Congolese women, and young female rape survivors, whose bodies are not sufficiently developed to bear children, are particularly vulnerable. Many women, including some rape survivors, have been imprisoned for abortion offences. Abortion is illegal in the DRC except in cases of certified medical emergencies, when a doctor considers that the pregnancy could be fatal for the mother. However, this exception does not include cases of pregnancy as a result of rape, or adolescent pregnancy under circumstances which are not considered life-threatening. In this context, many young girls and women seek abortions outside the formal health system with the help of traditional "doctors" or "midwives", often in dangerously unhygienic conditions and using unsafe practices and equipment.⁴⁴

Women face a number of gender-specific circumstances which increase their risk of HIV infection. They are exposed to sexual violence and coerced sex inside and outside marriage, as well as to traditional practices such as female genital mutilation, early marriage, and wife inheritance. Many women lack information about and access to HIV prevention measures and to healthcare as well as to support and medication after infection.

Women in **Swaziland** face longstanding legal discrimination, for instance in the area of property rights, as well as public acceptance of gender-based violence, and this makes them vulnerable

⁴¹ Beijing Platform for Action paragraph 96.

⁴² Beijing Platform for Action paragraph 95.

⁴³ *Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health* (E/CN.4/2004/49), 16 February 2004, paragraphs 24 and 25.

⁴⁴ *Democratic Republic of Congo: Mass rape - time for remedies* (AI Index: AFR 62/018/2004), 26 October 2004.

to both sexual violence and HIV infection resulting from coercive sexual relations. Their access to police services and health care is also hampered by lack of reliable and affordable transport to distant treatment facilities, and lack of financial resources to pay for treatment. Rates of HIV infection are soaring in Swaziland and the majority of the infected are young women.⁴⁵

Many forms of violence against women arise from coercive policies and practices aimed at controlling women's reproductive autonomy. In *China*, some women are forced to terminate their pregnancy. In one case reported to AI, a woman who was facing the death penalty on drugs charges, was reportedly forced to undergo an abortion in police custody in February 2004, apparently so that she could be "legally" put to death. She did not realize she was pregnant until she underwent a routine medical examination, and reportedly wanted to continue with the pregnancy. Her trial, which began in July, was suspended when her lawyer presented an "operation consent form" to the court, signed by a police officer from the Chengguan police station in Lanzhou where she was held, which stated that the abortion was performed under general anaesthetic, and that "[b]ecause the patient was uncooperative, Chengguan substation director requested forced implementation." She was sentenced to life imprisonment when her trial was reconvened in November.⁴⁶

AI has also raised concerns with the authorities in *Slovakia* regarding reports that Romani women were sterilized without their informed consent. Investigations into these allegations were not conducted independently, thoroughly and impartially.⁴⁷

The Special Rapporteur on violence against women has stated: "Forced abortions, forced contraception, coerced pregnancy and unsafe abortions each constitute violations of a woman's physical integrity and security of person. In cases, where, for instance, government officials utilize physical force and/or detain women in order to force them to undergo these procedures, these practices may amount to torture and cruel, inhuman and degrading treatment."⁴⁸ In its General Recommendation 19, on Violence against Women, the Committee on the Elimination of Discrimination against Women recommends that states "ensure that measures are taken to prevent coercion in regard to fertility and reproduction", and that women "are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control".⁴⁹

Violence is also inflicted on women as a means of restricting their sexual autonomy. In *Colombia*, lesbian women are reported to have been attacked by paramilitary forces and guerrilla groups on account of their sexual orientation. In 2002, a 14-year-old girl in the city of Medellin was stripped in the street and a sign saying "I am a lesbian" was hung around her neck. According to witnesses, she was then raped by three men. Her body was found days later; her breast had been cut off.

Violence against women and the promotion and protection of women's human rights

⁴⁵ *Swaziland: Human rights at risk in a climate of political and legal uncertainty* (AI Index: AFR 55/004/2004), 29 July 2004.

⁴⁶ *People's Republic of China: Fear of imminent execution* (AI Index: ASA 17/043/2004), 26 August 2004.

⁴⁷ *Medical Action: Allegations of illegal sterilization of Romani women, Slovak Republic* (AI Index: EUR 72/004/2003), 22 September 2003.

⁴⁸ *Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum, Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women* (E/CN.4/1999/68/Add.4), 21 January 1999, paragraph 45.

⁴⁹ *General Recommendation 19 on violence against women* (A/47/38), 29 January 1992, paragraph 24(m).

In the Beijing Platform for Action, member states committed themselves to working towards the ratification and implementation of international and regional human rights treaties to promote and protect women's human rights, and in the last ten years, many states have ratified the Convention on the Elimination of All Forms of Discrimination against Women bringing the total number of states parties to 179. Twelve states have yet to do so: Brunei Darussalam, Cook Islands, Marshall Islands, Nauru, Niue, Oman, Palau, Qatar, Somalia, Sudan, Tonga and the US (which has signed but not ratified). Contrary to Article 28 of the Convention, several states parties have made declarations or reservations which are contrary to the spirit and purpose of the treaty, thereby limiting the extent to which the fundamental human rights of women are enjoyed. The entry into force of the Optional Protocol to the Convention in 2000 has offered a direct means for women and those advocating for their rights to seek remedy and reparations at the international level for violations of their rights. Sixty-two states have ratified the Optional Protocol so far.

Amnesty International calls on the Commission on Human Rights to adopt an effective resolution on the elimination of violence against women, which reaffirms and strengthens the commitments made in Beijing, and which:

- Calls on states take concrete steps, including through the implementation of national action plans, accompanied by gender-specific budgets, to end discrimination and violence against women, including rape and other forms of sexual violence,
- Urges states to undertake prompt and impartial investigations into all allegations of violence against women, including rape and other forms of sexual violence, and to bring to justice those responsible in accordance with international standards for fair trial;
- Urges governments to exercise fully and without delay their duty of due diligence to prevent, investigate and punish all acts of violence against women, including by enacting, reinforcing or amending national legislation to end discrimination against women and protect their human rights in accordance with relevant international standards;
- Urges all parties to conflict to take concrete steps to protect the human rights of women in accordance with international human rights and humanitarian law and through full implementation of Security Council resolution 1325 on women, peace and security;
- Ensure access for survivors of rape and other forms of violence against women to comprehensive and confidential sexual and reproductive health services;
- Promote and protect the sexual and reproductive rights of all women, including their right to have control over and decide freely and responsibly on matters related to their sexuality free of discrimination, coercion and violence;
- Urges all states that have yet to do so to ratify and implement the UN Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Rome Statute for the International Criminal Court, and relevant regional standards;
- Urges all states parties to the UN Convention on the Elimination of All Forms of Discrimination against Women to withdraw reservations that are incompatible with the object and purpose of the Convention;
- Calls on all states to support the work of the Special Rapporteur on violence against women, including her proposal to develop indicators to assess violence against women and state accountability for its eradication;
- Encourages all the Special Procedures of the Commission to pay particular attention to gender-based violations of human rights within their respective mandates and to reflect these in their reports and recommendations;

- Encourages all states, UN bodies and NGOs to contribute to the study of the Secretary-General on violence against women, requested by the 58th session of the General Assembly.

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

Amnesty International (AI) reiterates its call to the Commission on Human Rights (the Commission) to promote and ensure the protection of the individual human rights of refugees, asylum seekers, migrants and non-nationals at its 61st session. AI also calls on the Commission to ensure respect of the human rights of internally displaced persons (IDPs). While there are many reasons for these various groups of people to have left their place of origin, many will suffer human rights violations at different stages of their displacement. Individuals that have been forced to flee their country of origin are particularly vulnerable as, having lost an effective link of protection to the country of their origin, they rely on the country of asylum and the international community for security, assistance and protection of their fundamental human rights. AI once again calls on the Commission to pay specific attention to the protection of refugees and asylum seekers as a human rights issue.

Refugees and IDPs are often housed in camp situations in the immediate aftermath of mass exoduses. All too often, such situations become protracted; refugees and IDPs are compelled to live in camps and similar settlements for years, sometimes for generations. “Warehoused” refugees and IDPs are in many cases unable to enjoy many of their human rights, including their economic, social and cultural rights, and many live without access to a durable solution, or have “solutions” imposed on them.⁵⁰ Camps and settlements that house refugees and IDPs are often unsafe and unsanitary. In many such situations displaced persons are denied access to the right to employment, to adequate housing, or even in some cases to adequate food and clean water. Women, girls, the elderly and the ill are often discriminated against in the provision of basic services, and sexual and gender-based violence can be rife in such camps and settlements. In some camps and settlements, many displaced children are unable to receive an education, particularly a secondary or vocational education.

The practice of routinely denying the right to freedom of movement and arbitrarily detaining refugees and asylum seekers within camps, settlements or detention facilities, including as a deterrence measure, is another worrying indication that effective protection remains out of the reach of many persons entitled to international protection.⁵¹ UNHCR Guidelines state explicitly that the detention of asylum seekers is “inherently undesirable”, yet many states continue arbitrarily to detain refugees and asylum seekers. Migrant workers and members of their families, especially when they are in an irregular situation, are also often particularly at risk of arbitrary arrest and detention.⁵² The rights to liberty and freedom from arbitrary detention are fundamental human rights standards enshrined in

⁵⁰ See www.refugees.org/warehousing/docs/statement.pdf for a joint NGO Statement Calling for Solutions to End the Warehousing of Refugees. Also see Amnesty International, *Rwanda: Protecting their rights – Rwandese refugees in the Great Lakes region* (AI Index AFR 47/016/2004)

⁵¹ Amnesty International, *Australia-Pacific: Offending human dignity – the “Pacific Solution”* (AI Index ASA 12/009/2002, August 2002) and also Amnesty International, *Bahamas: Forgotten detainees – human rights in detention* (AI Index AMR 14/005/2003).

⁵² See, for example, Amnesty International, *Malaysia – Human rights at risk in mass deportation of undocumented migrants* (AI Index ASA 28/008/2004).

Articles 3 and 9 of the 1948 Universal Declaration of Human Rights. These rights are also enshrined in the International Covenant on Civil and Political Rights, and should be enjoyed by all persons, including migrants, whether documented or undocumented.

Resolution 2003/52 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.⁵³ This report, to 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, will be presented to the Commission at its 61st Session. AI looks forward to it and calls on the Commission to ensure that effective action is taken on its findings in order to promote and protect the human rights of refugees and asylum seekers.

In order to ensure the effective protection of the human rights of refugees, asylum seekers, migrants and non-nationals as well as IDPs, AI calls on the Commission to mainstream focused attention on these vulnerable groups. Accordingly, AI is calling on the 61st session of the Commission to make the protection of the human rights of refugees, asylum seekers, migrants and non-nationals a reality, by recommending specific action in the context of various country resolutions. These recommendations can be found in the country sections below.

Amnesty International calls on the Commission on Human Rights to:

- work towards ensuring effective respect and protection of the human rights of refugees, asylum seekers, migrants, non-nationals, and internally displaced persons;
- ensure that the human rights of refugees, asylum seekers, migrants and non-nationals, and internally displaced persons are reflected in all relevant resolutions of the Commission;
- include in its annual resolution on arbitrary detention language that
 - encourages States to, in particular, avoid the arbitrary and/or indefinite detention of refugees and asylum seekers and to seek to ensure that any detention of these persons is in full conformity with international legal standards and principles;
 - encourages States to ensure that any detention of refugees and asylum seekers is subject to periodic judicial review that considers the necessity for the continuation of detention and provides an effective opportunity for the refugee or asylum seeker or his or her representative to rebut any findings made.
 - ensure that the analytical report and thematic annex on measures taken to implement resolution 2003/52 and obstacles to its implementation are taken into consideration in the Commission's deliberations and that effective follow-up action is instituted.

⁵³ Resolution 2003/52 on "Human Rights and Mass Exodus", which recognized the serious human rights violations that cause such exoduses, as well as the problems of protection that arise as a result of the mass displacement of persons.

Business and human rights: Giving effect to the UN Norms

Economic globalization has expanded the reach of corporate power. Decisions to transfer capital, labour, technology and other resources are predominantly based on economic factors, rather than social factors. A growing number of businesses operate across boundaries in ways that exceed the regulatory capacities of any one national system. Economically powerful actors are in a position to dramatically influence the society around them – whether for good or ill – and thereby affect the human rights of millions of people.

Although the activities of businesses provide employment and benefits for countless millions of persons, the practices of some businesses also negatively affect human rights. Some companies abuse human rights through their employment practices or the effect of their production processes on workers, communities and the environment. Others are implicated in abuses through their association with repressive governments or political authorities and the activities of their security forces.

Civil society and human rights advocates have campaigned to ensure that international human rights law applies to corporations, no less than to other significant actors. A growing number of companies accept that they should act in conformity with human rights standards, but hesitate to support any move that could lead to comprehensive human rights standards for the conduct of corporations.

Several high-profile crises and cases have prompted many leading companies to address human rights within their own operations and within their sphere of influence.⁵⁴ Individual corporations and groups of companies have drawn up voluntary codes of conduct to guide their performance. However, because such codes are voluntary measures, they carry no legal authority, have no accountability mechanisms, and in most cases lack mechanisms for verification or enforcement.

Existing initiatives such as the *OECD Guidelines for Multinational Enterprises*, the United Nations Global Compact, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, are valuable in raising awareness of general human rights issues among corporations. To date, however, such voluntary initiatives have not been sufficient to prevent human rights abuses caused by company activities or to ensure corporate accountability for respect for human rights.

⁵⁴ Such crises in the last decade include the Niger Delta involving local communities and oil companies, which include joint ventures entered into by international oil companies with the Nigerian state oil company; the conflicts in Aceh and Colombia, where transnational oil corporations are active; the crisis in the former Irian Jaya, and now West Papua; the two-decade-old war in Sudan; the controversial role of trade in rough diamonds which facilitated transfer of resources to armed opposition groups in Angola, DRC and Sierra Leone; the international consortium building a pipeline through Turkey, Azerbaijan and Georgia; and the role of oil companies in Myanmar.

Recent research by Amnesty International (AI) shows that abuses continue to take place in some countries, year after year, sometimes involving the same companies, as witnessed in Bhopal, India,⁵⁵ the Niger Delta⁵⁶ and Sudan.⁵⁷

For instance, twenty years after the 1984 chemical disaster in Bhopal more than 100,000 people continue to suffer chronic and debilitating illnesses for which treatment is largely ineffective. The only source of water available to the affected communities remains contaminated because the company (Union Carbide Corporation (UCC)) never cleaned the Bhopal site. Efforts by survivors to seek justice and redress through the US and Indian courts have so far been unsuccessful. The transnational corporations involved – UCC and Dow Chemicals (which took over UCC in 2001) – have publicly stated that they have no responsibility for the leak and the consequent pollution. UCC continues to refuse to appear in criminal proceedings before the courts in India and the civil settlement, endorsed by the Indian Supreme Court, has left survivors living in penury.

The human rights of the victims of the Bhopal tragedy have not been adequately protected by existing standards and procedures. That tragedy illustrates that sometimes it can be more advantageous for companies to risk accidents and pay fines and damages than to invest in management and structural changes to prevent accidents from happening. For the victims litigation is expensive and time-consuming, and individual litigants, especially if they are from poor and vulnerable groups like the Bhopal victims, are not likely to be able to proceed with their claims for justice and compensation. Many victims fear reprisal and social stigma if they seek compensation from companies for abuses of their human rights, and if they are employed by the company they risk losing their job. Even for those persons that are prepared to seek redress through the courts, the complex structure of many multinationals, with headquarters in one country and subsidiaries and operations in others, poses real challenges for local courts in exercising jurisdiction over the entire corporation.

Governments often fear that if they exercise strict control over businesses, this will drive away foreign investors. This dissuades some governments from holding corporations accountable for human rights abuses committed while operating in their country. Other governments are unable to hold large powerful corporations accountable.

The need for global standards

With so many different voluntary codes and the various existing standards, there are many divergent views about the best way to clarify the human rights responsibilities of corporations. At its 60th session, the Commission on Human Rights (the Commission) asked the Office of the High Commissioner for Human Rights (OHCHR) to prepare a report for the 61st session setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights.⁵⁸ The Office was instructed to consult with all relevant stakeholders in the preparation of the report. On 22 October 2004, the OHCHR hosted a multi-stakeholder consultation as part of its preparations for its report to the 61st session of the Commission in 2005. AI believes that the open consultative process initiated by the

⁵⁵ See *Clouds of Injustice: Bhopal Disaster 20 Years On*, Amnesty International (ASA 20/015/2004), November 2004.

⁵⁶ See *Nigeria: Are Human Rights In The Pipeline?* Amnesty International (AFR 44/020/2004), November 2004.

⁵⁷ See *Sudan: Arming the Perpetrators of Grave Abuses in Darfur*. Amnesty International (AFR 54/139/2004), November 2004, and *Sudan: the Human Price of Oil* (AFR 4/01/2000), May 2000.

⁵⁸ Commission decision 2004/116 of 20 April 2004.

OHCHR has been valuable in identifying converging views and issues that need to be addressed in the elaboration of human rights standards for corporations. It should be pursued.

AI believes that the *UN Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*⁵⁹ (the UN Norms) form the best basis from which to develop a set of global standards for the human rights responsibilities of transnational corporations and other business enterprises. Such standards would provide a common framework for the elaboration of national law and regulations and would act as a catalyst for national legal reform. Moreover, global standards would help establish compatible legislation across national borders to guide company operations. If effectively implemented, international standards would also offer the basis for remedies for victims of abuses in situations where there are no effective remedies at the national level. It is imperative that effective mechanisms for enforcement and accountability be established.

Drawing from international human rights law and standards, the Norms make clear that states have the primary responsibility for the promotion and protection of human rights and for ensuring that corporations respect human rights. However, AI also believes that corporations have corresponding responsibilities not to abuse human rights in the course of their operations. The Norms constitute the benchmark by which corporations can assess the compatibility of their activities with relevant human rights standards. They are also the basis for evaluating national legislation to assess whether governments are living up to their obligations to ensure that transnational corporations and other business enterprises respect human rights.

Amnesty International calls on the Commission on Human Rights to adopt a resolution on business and human rights that:

- ensures that the issue of corporate responsibility for human rights remains on the Commission's agenda and builds on the UN Norms and the work of the Sub-Commission on the Promotion and Protection of Human Rights,
- ensures the continuation of the consultation process initiated by the Commission in 2004. The process should be led by the HCHR and should build on the UN Norms.
- ensures that this consultation process is open to all stakeholders, including trade unions, business, governments, UN agencies and civil society, including victims or representatives of victims of human rights abuses allegedly committed by companies;
- calls for the appointment of a special adviser to the Secretary-General on business and human rights, on the recommendation of the High Commissioner for Human Rights, to examine key issues such as "sphere of influence" and "complicity", to provide advice to the consultation process and to look into and propose options for the strengthening of standards.
- Decides to review annually, starting in 2006, the progress made in strengthening standards on the responsibilities of transnational corporations and related business enterprises with regard to human rights and possible means of implementation.

⁵⁹ These norms were approved by the Sub-Commission on the Promotion and Protection of Human Rights at its 55th session in 2003 and transmitted to the Commission. At its 60th session, the Commission, through Decision 2004/116, confirmed the importance and priority of the question of the responsibility of transnational corporations and related business enterprises with regard to human rights and requested the OHCHR to report to the 61st session on the scope and legal status of existing initiatives and standards.

Protection of human rights in individual countries

“The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”

Extract from: “A more secure world: our shared responsibility,
Report of the High-level Panel on Threats, Challenges and Change”⁶⁰

All too often the silence of the Commission on Human Rights (the Commission) about certain situations involving gross and systematic violations of human rights stuns and disheartens the victims and their relatives. They cannot understand why the UN will not address their suffering. Each time the members of the Commission fail to allow the Commission to act in accordance with its mandate to promote and protect human rights – wherever violations occur and whoever the perpetrator – they erode further its relevance and credibility.

At last year’s session, 27 members of the Commission voted to take “no action” in the face of blatant violations of human rights in Zimbabwe.⁶¹ A “no-action” motion in relation to the human rights situation in China was also adopted,⁶² while a similar motion was narrowly defeated with regard to the human rights situation in Belarus.⁶³ A draft resolution on the human rights situation in Chechnya was robustly defeated⁶⁴ for the third consecutive year, and for the first time in more than a decade, the Commission did not even address the human rights situation in Iraq, thus ending the mandate of the Special Rapporteur. A draft resolution on arbitrary detentions at Guantánamo Bay was withdrawn before the Commission could consider it. While the Commission had before it information about massive human rights violations in Darfur, it adopted a decision on the human rights situation in Sudan so bland that the Sudanese delegation could vote in favour of it.

Unfortunately, last year’s session of the Commission was not an anomaly; it only continued a trend. In recent years, in addition to ending review of certain country situations altogether and failing to even consider others, the Commission moved the consideration of some country situations from item 9, “Question of the violation of human rights and fundamental freedoms in any part of the world”, to item 19, “Advisory services and technical cooperation in the field of human rights”. In some instances, this move was justified by a demonstrated commitment of the government concerned to take concrete steps, in cooperation with the UN’s human rights machinery, to address human rights violations within its jurisdiction. However in other instances, the manifest lack of improvement in the human rights situation or a sincere commitment of the government to improve the situation made a mockery of the Commission’s credibility.

⁶⁰ A/59/565, 2 December 2004, page 60.

⁶¹ No-action motion by the African Group, adopted by 27 votes in favour, 24 against, with 2 abstentions, 15 April 2004.

⁶² No-action motion by China, adopted by 28 votes in favour, 16 against, with 9 abstentions, 15 April 2004.

⁶³ No-action motion by the Russian Federation, rejected by 22 votes in favour, 22 against, with 9 abstentions, 15 April 2004.

⁶⁴ Draft resolution L.29 was rejected by 12 votes in favour, 23 against, with 18 abstentions, 15 April 2004

A demonstration of commitment

It is time for more members of the Commission to demonstrate more commitment to promoting respect for human rights globally. They must do this by addressing human rights violations wherever they occur and whoever the perpetrator.

The Commission also all too often disregards the findings of its own human rights mechanisms, including country and thematic experts, and fails to support their recommendations for addressing patterns of human rights violations. The same is true of recommendations from the treaty monitoring bodies, which also provide critical analysis and conclusions that ought to inform the decisions of the Commission. The result is that perpetrators of human rights violations are allowed to operate with impunity. Amnesty International (AI) urges all governments to:

- Establish objective and transparent mechanisms for scrutiny of the human rights situation in individual countries, taking into account the recommendations by the Special Procedures and the treaty monitoring bodies;
- 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 achieve increased accountability by states;
- Support the work of the Special Procedures by fully and promptly responding to their communications, implementing their recommendations, extending a standing invitation to them to visit, and facilitate any visits requested without delay; and
- Renew the thematic and geographical Special Procedure mandates that are up for renewal and call on states to nominate qualified candidates, including women.

Members that are committed to the promotion and protection of human rights should also reject the abusive “no-action” motions⁶ that have become a regular feature of the Commission’s deliberations – and for the first time in 2004 were used at the General Assembly to preclude consideration of particular country situations.⁷

After the 61st session of the Commission, members of ECOSOC, which are responsible for electing states to the Commission, can show their commitment to human rights by refusing to elect those states who seek membership on the Commission to protect themselves against criticism. They can also demand of candidates for election that they make pledges to specific measures to strengthen domestic and global human rights performance.

The Commission’s blind eye

Each year, the Commission has failed to act on a number of countries with a poor human rights record. Some of these situations include:

⁶ No-action motions are taken pursuant to Rule 65, paragraph, of the Rules of Procedure of the functional commissions of the Economic and Social Council.

⁷ No-action motion by the Russian Federation on a draft resolution on Belarus, adopted by 75 votes in favour, 65 against, with 28 abstentions, 18 November 2004; no-action motion by South Africa on a draft resolution on Sudan, adopted by 91 votes in favour, 74 against, with 11 abstentions, 24 November 2004; no-action motion by South Africa on a draft resolution on Zimbabwe, adopted by 92 votes in favour, 72 against, with 9 abstentions, 24 November 2004; no-action motion by Turkmenistan on a draft resolution on Turkmenistan, rejected by 60 in favour, 76 against, with 33 abstentions, 20 December 2004.

- **Zimbabwe:** The government is continuing its campaign of repression aimed at eliminating political opposition and silencing dissent. Numerous human rights violations, including torture, assault and arbitrary detention, have been committed by members of the police or army, supporters of the ruling Zimbabwe African National Union - Patriotic Front and youth militia. Hundreds of people have been arrested for holding meetings or participating in peaceful protests; and a new legislation has been enacted which bans foreign human rights groups from operating in Zimbabwe and imposes severe restrictions on local human rights organizations. Most international food aid programmes have been terminated by the authorities, and AI has received reports of politically biased distribution of government-controlled maize. Yet despite this grim picture, the Commission has since 2002 decided to take “no-action”.
- **United States of America:** Hundreds of detainees continue to be held without charge or trial in Guantánamo Bay, while thousands of people have been detained in the course of US military and security operations in Iraq and Afghanistan and routinely denied access to their families or lawyers. Allegations of torture, ill-treatment and deaths in custody of detainees in Iraq, Afghanistan, and Guantánamo have been investigated and evidence has come to light that the US administration sanctioned interrogation techniques that violated the UN Convention against Torture. At the 60th session of the Commission in 2004, a draft resolution on arbitrary detention in Guantánamo Bay was withdrawn from consideration by the Commission.
- **Indonesia:** Gross human rights violations, including extra-judicial executions, arbitrary detention, torture, sexual violence and destruction of property, have been committed by the security forces in the context of the repression of pro-independence movements in the provinces of Nanggroe Aceh Darussalam (NAD) and Papua. Armed pro-independence groups in these provinces have also been responsible for human rights abuses. Hundreds of alleged pro-independence activists have been sentenced to imprisonment after unfair trials. Elsewhere, police continue to resort to excessive, and sometimes lethal, force in responding to protests and when carrying out arrests. Torture of detainees in police and military custody is widespread. People continued to be imprisoned for the peaceful exercise of their right to freedom of expression. Yet, the majority of human rights violations are not investigated and few investigations lead to prosecutions. A three year de facto moratorium on death penalty ended in 2004 with the execution of three people. The Commission has never addressed the human rights situation in Indonesia except in the context of the situation in Timor-Leste. This year, the Indonesian Ambassador and Permanent Representative to the UN in Geneva, holds the chairship of the Commission and AI calls on the Indonesian government to take this opportunity to take concrete steps to promote and protect human rights both nationally and internationally.
- **Chechnya:** Far from “normalizing”, the Chechen Republic (Chechnya) continues to be plagued by serious human rights abuses, notably torture, including rape, and ill-treatment in detention facilities in Chechnya, including at unofficial sites. Chechen women are being targeted as alleged potential suicide bombers. AI has learned about many cases of women, who were arbitrarily detained and subjected to torture, including rape and ill-treatment, others “disappeared” or were extrajudicially executed. The Russian federal and Chechen security forces enjoy virtual impunity for such violations of human rights and investigations into these are often inconsistent and inadequate. People who have submitted cases of human rights violations to the European Court of Human Rights have been threatened and intimidated; several have been killed. Chechen armed groups are also responsible for abuses, including bomb attacks and hostage-taking in which hundreds of people have been killed. Human rights defenders have been harassed and several

were killed or “disappeared” while monitoring and campaigning against human rights abuses. Several thousand internally displaced people still remain in Ingushetia, where they are under strong pressure from the authorities to return to Chechnya without sufficient guarantees of safety. For the last three sessions of the Commission, a draft resolution on the human rights situation in Chechnya has been defeated.

- **Iraq:** US-led forces in Iraq committed gross human rights violations, including unlawful killings, torture and ill-treatment, and arbitrary detention without charge or trial. Thousands of Iraqi civilians were killed during the armed clashes. Armed groups were also responsible for grave human rights abuses, including targeting civilians, hostage-taking and killing hostages. The death penalty was reinstated in August by the new interim government. For the first time since 1991, the Commission did not adopt a resolution on the human rights situation in Iraq at last year’s session.

AI has little expectation that the Commission will take action on the human rights violations in each of these situations. Power politics and other considerations extraneous to the promotion and protection of human rights will prevail. Yet AI urges Commission members and observers to speak out in the Commission on each of these situations. The silence of the Commission must not become the silence of the international community.

In the chapters below, AI makes a number of detailed recommendations for action by the Commission in relation to six countries already on its agenda: Colombia, Democratic Republic of the Congo, Israel and the Occupied Territories, Nepal, Sudan and Turkmenistan. AI’s concern about the human rights situation in individual countries, however, extends far beyond these six countries as the organization’s annual report and other publications amply demonstrate.

Colombia

Colombia’s internal armed conflict continues to lead to the systematic violation of human rights and international humanitarian law by the warring parties – the security forces and army-backed paramilitaries on the one side and armed opposition groups on the other.

While, over the past year, some key indicators of politically-motivated violence, such as kidnappings, have fallen, others, such as torture, have increased, as have reports of extrajudicial executions carried out by the security forces. However, there are significant regional variations. The human rights situation in areas under military dispute by the armed actors, such as Arauca, continues to deteriorate.

Internally-displaced persons, peasant farmers, and Afro-descendent and indigenous communities living in conflict zones continue to be disproportionately affected by the violence. Over 130,000 people were forcibly displaced in the first half of 2004 while reports indicated that many others were prevented from leaving their areas of habitation. 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 government continues to undermine human rights and social activists through statements equating their work with terrorism. Activists also continue to be victims of serious human rights violations and abuses, including extrajudicial executions. Human rights defenders, community leaders and trade unionists have been subjected to arbitrary detention by the security forces, often solely on the basis of information from paid informants. Some of those detained have been threatened or killed following their release.

Women and girls have been raped, killed, “disappeared” and mutilated by all parties to the conflict, in order to sow terror and wreak revenge on adversaries. Other groups have also been targeted for attack because of their sexual orientation or gender identification. As is the case with most victims of human rights abuses, survivors of conflict-related sexual violence often face overwhelming obstacles in their search for justice. As a consequence, most cases of sexual violence end in impunity.

Armed opposition groups – the Revolutionary Armed Forces of Colombia, *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the smaller National Liberation Army, *Ejército de Liberación Nacional* (ELN) – continue to be responsible for serious and widespread breaches of international humanitarian law, including recruitment of children, hostage taking, the abduction and killings of civilians – particularly of those they suspect of siding with their enemies – and attacks using disproportionate and indiscriminate weapons which result in the death of numerous civilians. They have also continued to target and kill public officials following a “resign or die” threat issued to mayors, town councillors and judges in 2002.

Paramilitary demobilization could strengthen impunity

Army-backed paramilitaries continue to be responsible for most non-combat related killings. In the country as a whole, more than 1,800 killings and “disappearances” have been credibly attributed to the paramilitaries, despite their self-declared ceasefire, which came into operation in December 2002. The demobilization has also raised fears that paramilitaries are being “recycled” into the conflict, including via the civilian informer networks set up by the government. Moreover, on 31 August 2004, the government published Decree 2767, which enabled demobilized paramilitaries to “cooperate” with the security forces in return for payment.

Successive Colombian governments have and continue to argue that the links between the security forces and the paramilitaries are isolated incidents; however, evidence pointing to high-level coordination between paramilitaries and sectors of the security forces is overwhelming. AI has called on successive Colombian governments to dismantle such groups and break the links that continue to exist between them and the security forces.

Talks between the government and the army-backed paramilitary umbrella organization, the United Self-Defence Forces of Colombia, *Autodefensas Unidas de Colombia* (AUC), led to the reported demobilization of over 850 AUC combatants in Medellín in 2003 and some 2,500 paramilitaries from various parts of the country in 2004. However, serious concerns remain about the process, mainly over the issue of impunity, violations of the AUC ceasefire, and continuing paramilitary activity, including serious and widespread human rights violations, even in those areas where they have reportedly demobilized. Paramilitaries are also continuing to forcibly recruit children.

In 2004, the government withdrew the Justice and Reparation Bill – which, if approved, could have resulted in *de facto* amnesties for members of illegal armed groups implicated in human rights

violations and abuses – after national and international criticism over the legislation's failure to guarantee the right of victims to truth, justice and reparation. However, most paramilitaries who are reportedly demobilizing are benefiting from Decree 128, which allows members of illegal armed groups who are not convicted or under investigation for human rights abuses, i.e. most of them, to benefit from a pardon. This raises serious doubts about the government's commitment to fighting impunity. Moreover, many of the government's security policies and mechanisms run counter to UN recommendations and provisions in international standards to which Colombia is a party. These measures have been criticized by numerous international bodies such as the High Commissioner for Human Rights,⁶⁶ the Inter-American Commission on Human Rights,⁶⁷ the Human Rights Committee,⁶⁸ the Committee against Torture,⁶⁹ and Special Procedures of the Commission,⁷⁰ by Colombian NGOs and official bodies, such as the Human Rights Ombudsman, and by the international community, including the European Union.⁷¹

Continued impunity for human rights violations

The military justice system continues to claim jurisdiction over cases of potential human rights violations committed by the security forces despite the 1997 ruling of the Constitutional Court that such cases must be investigated by the civilian justice system.⁷² Although the civilian justice system has implicated members of the security forces in human rights violations committed in collaboration with paramilitaries, these investigations have rarely resulted in convictions. In March 2004, the Attorney General closed the investigation against General Rito Alejo del Río, accused of links with paramilitaries despite strong evidence against him. In January 2004, criminal investigations against General Álvaro Velandia Hurtado, accused of the "disappearance" and killing of Nydia Erika Bautista in 1987, were closed despite a request by the Procurator General to the Attorney General to advance criminal investigations against the former general. In January 2005, the Office of the Attorney General archived criminal investigations against former Rear-Admiral Rodrigo Alfonso Quiñónez Cárdenas for alleged dereliction of duty in failing to prevent the 2001 Chengue massacre by army-backed paramilitaries.

⁶⁶ See *Reports of the UN High Commissioner for Human Rights on the Office in Colombia*: (E/CN.4/1998/16) 9 March 1998; (E/CN.4/1999/8) 16 March 1999; (E/CN.4/2000/11) 9 March 2000; *Report of the UN High Commissioner for Human Rights on the meeting of experts on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination* (E/CN.4/2001/18), 20 March 2001; *Reports of the UN High Commissioner for Human Rights on the human rights situation in Colombia* (E/CN.4/2002/17), 28 February 2002; (E/CN.4/2003/13), 24 February 2003; (E/CN.4/2004/13), 17 February 2004.

⁶⁷ See *Third Report on the Human Rights Situation in Colombia* (OEA/Ser.L/V/II.102, Doc. 9 rev. 1), 26 February 1999.

⁶⁸ See *Concluding Observations of the Human Rights Committee: Colombia* (CCPR/CO/80/COL), 26 May 2004.

⁶⁹ See *Conclusions and Recommendations of the Committee against Torture: Colombia* (CAT/C/DR/31/1), 18 November 2003.

⁷⁰ See *Reports of the Working Group on enforced or involuntary disappearances* (E/CN.4/2004/58), 21 January 2004; (E/CN.4/2000/64), 21 December 1999; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (E/CN.4/2004/7), 22 December 2003; *Reports of the Special Representative of the Secretary-General on the situation of human rights defenders* (E/CN.4/2004/94), 15 January 2004; (E/CN.4/2002/106), 27 February 2002; *Report of the Special Representative of the Secretary-General on human rights defenders, Mission to Colombia*. (E/CN.4/2002/106/Add.2), 24 April 2002; *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related discrimination, Mission to Colombia* (E/CN.4/2004/18/Add.3), 24 February 2004; *Joint report of the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Visit to the Republic of Colombia* (E/CN.4/1995/111), 16 January 1995.

⁷¹ See for example the *Conclusions of the Council of the European Union*, January 2004.

⁷² The continued handling of human rights cases by the military justice system is contrary to the recommendations in the *Joint report of the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Visit to the Republic of Colombia* (E/CN.4/1995/111), 16 January 1995, and repeated recommendations made by the High Commissioner for Human Rights.

The Colombian government has publicly committed itself to implement the human rights recommendations of the UN High Commissioner for Human Rights, both by signing the *London Declaration* of July 2003⁷³ and by agreeing the Chairperson's Statement at the 60th session of Commission for Human Rights.⁷⁴

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Colombia that:

- acknowledges that, although some indicators of political violence have fallen, the human rights situation in Colombia continues to be very serious;
- condemns serious and widespread abuses of international human rights and humanitarian law by all parties to the conflict, including the armed forces, paramilitary groups and armed opposition groups, and calls for all perpetrators to be held to account;
- expresses concern about government policies that may lead to impunity for human rights abuses, including those on demobilizing illegal armed groups without respecting the right of victims to truth, justice and reparation and those leading to the increased use of military courts to hear cases of human rights violations;
- calls on the government to ensure the full and early implementation of the recommendations contained in the report of the High Commissioner for Human Rights, in accordance with its commitments in the July 2003 *London Declaration*, and through a time-bound calendar and plan of action;
- calls for guarantees for the safety of human rights defenders and other activists, as well as their right to carry out their human rights work freely and without harassment;
- calls for tangible measures to end violence against women, including by guaranteeing access by survivors of sexual violence to the justice system and to health services, and by demobilized women and girls to gender-sensitive demobilization programmes;
- calls for an end to attacks on civilian communities and their increased protection by both the government and armed opposition groups, in accordance with international humanitarian law;
- calls on the government to implement in full the *UN Guiding Principles on Internal Displacement*, including prevention of forced displacement, protection of the internally displaced, access to humanitarian aid, and the right to return, resettlement or reintegration in conditions of safety and dignity;
- calls for continued financial support for the office of the High Commissioner for Human Rights in Bogotá and support for its continued mandate;
- decides to forward the report of the High Commissioner for Human Rights on the human rights situation in Colombia to the 60th session of the General Assembly;

⁷³ On 10 July 2003, the *London Declaration* was signed at a Meeting on International Support for Colombia by representatives of the governments of Argentina, Brazil, Canada, Chile, Colombia, the European Union, Japan, Mexico, Norway, Switzerland and the United States of America and of the European Commission, the UN and agencies, the Andean Development Corporation, Inter-American Development Bank, IMF and World Bank, which met in London to discuss the situation in Colombia. The signatories "noted with satisfaction the Colombian government's pledge to implement the recommendations of the UN High Commissioner for Human Rights" and "urged the Colombian government to implement these recommendations promptly and to take effective action against impunity and collusion especially with paramilitary groups".

⁷⁴ Chairperson's statement on the situation of human rights in Colombia (E/CN.4/2004/Future.5), 21 April 2004.

- calls on the government to cooperate with the Special Procedures of the Commission by responding promptly and fully to their communications, and to facilitate their visits, including the visit by the Working Group on enforced or involuntary disappearances, so that it can report to the 62nd session of the Commission;
- calls on the government to cooperate with the treaty monitoring bodies, including by implementing the concluding observations from the Human Rights Committee's from March 2004 and its views in relation to cases submitted under the first Optional Protocol, and the concluding observations of the Committee against Torture from November 2003, to report back to those committees on the implementation of the recommendations; and to submit its overdue reports, particularly those in relation to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women;
- calls on the government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention against Torture.

Democratic Republic of Congo

The transitional power-sharing government of the Democratic Republic of Congo (DRC) has still not put in place laws and reforms which are essential to building stability and security and improve the human rights situation in the country. Government authorities remain weak or non-existent in many parts of eastern DRC, which is under the *de facto* control of armed political groups. The neighbouring states of Uganda and Rwanda continue to support these armed groups, in violation of peace agreements, while Rwandan and to a lesser extent Burundian and Ugandan insurgent groups continue to operate in the east of the country.

The UN peacekeeping force, the United Nations Organization Mission in the Democratic Republic of Congo, *Mission de l'Organisation des Nations Unies en République Démocratique du Congo* (MONUC), is struggling to contain the violence and protect civilians in eastern DRC. In October 2004, the UN Security Council authorized an increase in the size of the peacekeeping force from 10,700 to 16,600, but many areas of the east remain beyond MONUC's operational capacity.

In order to resolve the human rights and humanitarian crisis in the east of the country, the transitional government, in cooperation with Rwanda and Uganda and with the full support of the UN and donor community, must urgently establish the necessary reforms to improve security and achieve national unification. The integration of former combatant forces into a unified national army, and the disarmament, demobilization and reintegration (DDR) into civilian life of a further 200,000 other combatants had still to start, with the exception of a DDR programme for Ituri, and have to be backed by international financial and technical assistance.

The arms embargo, imposed by the UN in July 2003 and monitored by MONUC, has only been partially effective. In July 2004, the UN-appointed Group of Experts on the Democratic Republic of Congo⁷⁵ reported that direct and indirect assistance, including supply of arms and

⁷⁵ Established following Security Council resolution 1533 (S/RES/1533), 12 March 2004.

ammunition, was provided to armed groups operating in eastern DRC by neighbouring countries and from within the DRC in violation of the embargo.

The transitional government and all its constituent parties must ensure that the transitional process moves forward within the framework of national and international justice. Amnesty International (AI) welcomes the cooperation agreement signed in October 2004 by the International Criminal Court and the DRC government allowing the court to begin investigations into war crimes and crimes against humanity committed in the DRC.

Civilians need to be protected

Armed groups and militia continue to perpetrate grave human rights abuses against civilians in the provinces of North Kivu, South Kivu, Maniema, Orientale (notably the Ituri district), Kasai Oriental and Katanga. Insecurity, ethnic tension and grave human rights abuses continue in these areas, including unlawful killings, widespread rape, torture, and the continued recruitment and use of child soldiers.⁷⁶

In North and South Kivus, relations between the DRC and Rwandan governments deteriorated further in June, November and December 2004 when Rwanda threatened to re-enter the DRC in force to protect Congolese Tutsi and eliminate the Democratic Liberation Forces of Rwanda, *Forces Démocratiques de Libération du Rwanda* (FDLR), a Rwandan insurgent group opposed to the Rwandan government and present in eastern DRC.

In Ituri, where the armed conflict has a profoundly ethnic dimension, about 10 different armed groups are active, none of which are professionally structured or coordinated, and most of which have been formed on ethnic bases.

Violence against women

In the course of the armed conflict in eastern DRC, tens of thousands of women and girls have been systematically raped and sexually assaulted by combatant forces; many of them have been raped more than once or have suffered gang rapes. In many cases, women and young girls have been taken as sex slaves by combatants. Rape has often been preceded or followed by the deliberate wounding, torture (including torture of sexual nature) or killing of the victim.⁷⁷

In addition to the trauma of rape, survivors' rights are further violated in the aftermath of the rape, deepening their suffering immeasurably. Most women suffering injuries or illness caused by the rape – sometimes life-threatening – are denied medical care, which is one of their most pressing needs. However, in the DRC, where millions of civilians are suffering and dying from injuries and traumas of many years of conflict, the health care infrastructure, already severely under-resourced, has broken

⁷⁶ See *Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo* (E/CN.4/2004/34), 10 March 2004, in which the Special Rapporteur denounces the lack of security of the civilian population, especially children and women, as well as the continued difficulties faced by human rights defenders. See also *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (E/CN.4/2004/7), 23 December 2003; *Report of the Special Representative of the Secretary-General on the situation of human rights defenders* (E/CN.4/2004/94), 15 January 2004; and *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received* (E/CN.4/2004/56/Add.1), 23 March 2004.

⁷⁷ See *Report of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo* (E/CN.4/2004/34), 10 March 2004, paragraphs 92-95, in which the Special Rapporteur reiterates her concerns that women have been subjected to great cruelty during rapes and highlights the absolute need that victims receive full reparation.

down completely in many areas and is unable to offer even the most basic treatment. The transitional government has so far made little effort to address the suffering of the civilian population which is traumatized and debilitated by years of warfare, or to advance their human rights.

Recruitment and use of child soldiers

Amid the slow pace of integration of the army and continuing tension in the east of the country, armed groups continue to recruit and use child soldiers. In some cases former child soldiers, who were being assisted by local NGOs in eastern DRC, were forcibly re-recruited. Other children were reportedly persuaded to return voluntarily to armed groups by the prospect of receiving payments from the new DRC government to combatant forces, pending integration. Commanders enrol new recruits – mainly children – to boost this payment.⁷⁸

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in the DRC that:

- calls on all governmental and non-governmental armed forces and security services to uphold international human rights and humanitarian law to protect civilians;
- urges all leaders of armed forces to instruct their combatants to end all human rights abuses, including sexual violence, and the recruitment and use of child soldiers;
- calls on the government to investigate all allegations of human rights abuses and to bring to justice those responsible according to international standards for fair trial and without recourse to the death penalty;
- supports measures to protect civilians, including the reinforcement and deployment of MONUC throughout the conflict zones and the implementation of DDR (disarmament, demobilization, reintegration) programmes;
- urges all governments to respect the arms embargo on DRC and to improve its enforcement;
- calls on the government to enact effective implementing legislation for the Rome Statute;
- calls for measures to strengthen reconstruction and reform of the criminal justice system as well as the national healthcare system;
- calls on the government to take appropriate measures against "hate speech", as required by the Convention on the Elimination of Racial Discrimination, in advance of the national elections in June 2005;
- calls on all governments in the region to extend adequate human rights protection and humanitarian assistance to internally displaced persons (IDPs) and refugees forced to flee because of continued human rights violations;
- renews the mandate of the Independent Expert on the DRC for three years to enable him to develop a sustainable programme of technical assistance;
- calls on the government to issue a standing invitation to the Special Procedures of the Commission, to cooperate with the Special Procedures by responding promptly and fully to their communications regarding alleged violations, and to facilitate visits to the DRC by the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on violence against women, and the Special Representative of the Secretary-General on human rights defenders;
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its long overdue reports, in particular those under the ICCPR and the ICESCR,

⁷⁸ *Ibid.*, paragraphs 85-91, in which the Special Rapporteur analyzes the plight of children associated with armed groups.

and to implement the views of the Human Rights Committee in relation to cases considered under the first Optional Protocol.⁷⁹

Israel/Occupied Territories

The impunity enjoyed by those responsible for unlawful killings and other human rights violations remains a key factor contributing to the deterioration of the human rights situation in Israel and the Occupied Territories. Each side claims to be acting in response to attacks by the other side, perpetuating the cycle of violence and revenge.

Killings by the Israeli army of Palestinians, notably children, have increased. In 2004, Israeli soldiers killed some 700 Palestinians, including more than 150 children. Most were killed unlawfully, as a result of reckless shooting, tank shelling and air strikes in refugee camps and other densely populated areas throughout the West Bank and Gaza Strip. Israeli forces also extra-judicially executed dozens of members and leaders of *Hamas* and other Palestinian groups, frequently killing and injuring bystanders during these assassinations.

Although killings of Israelis by Palestinian armed groups decreased significantly in 2004, such attacks claimed the lives of some 100 Israelis, most of them civilians and including 8 children, in suicide bombings, shootings and mortar attacks launched by Palestinian armed groups both in Israel and in the Occupied Territories.

The Israeli military and judicial authorities consistently fail to investigate unlawful killings of unarmed Palestinians, including children and women, and other violations by Israeli forces and to bring to justice those responsible. On the rare occasions when investigations have been carried out – mostly prompted by wide publicity of the cases or by revelations of other soldiers – these have tended to focus on technicalities and resulted in charges such as negligence or illegal use of weapons. Not one soldier is known to have been charged with murder or manslaughter for the killings of Palestinians. The increasingly entrenched culture of impunity and lack of accountability in the Israeli army ultimately encourages soldiers to commit further violations. In some cases the Israeli authorities have expressed regret for the killings of Palestinian children, claiming they occurred as a result of mistakes. Even though Israeli army and government officials have long been aware that the use of certain weapons and/or munitions in certain situations invariably results in the killing or injuring of bystanders, but in spite of this such practices are allowed to continue.

Israeli settlers, who live in the Occupied Territories in violation of international law, have stepped up attacks against Palestinians and are waging a campaign of intimidation against international and Israeli human rights activists, seeking to eliminate the presence of witnesses to their attacks and to deprive the local Palestinian population of this form of limited protection. Rather than taking steps to stop such attacks and hold Israeli settlers accountable, the Israeli army and security forces routinely respond by imposing further restrictions on the local Palestinian population. In the

⁷⁹ In particular, *Communication 962/2001: Democratic Republic of Congo* (CCPR/C/81/D/962/2001), 23 July 2004, in which the Committee considered that the DRC had violated its obligations under articles 6 paragraph 1; 7; 9 paragraphs 1, 2 and 4; 10 paragraph 1; and 23 paragraph 1 of the Covenant, and requested the state to report back on implementation of its views in a period of 90 days.

vast majority of cases, Israeli settlers responsible for attacks on Palestinians and their properties or on internationals have not been brought to justice. Such impunity encourages them to commit further attacks and abuses.

The internal Palestinian situation has further deteriorated. Palestinian Authority (PA) security forces continue to be prevented from operating in much of the Occupied Territories by the Israeli army, which has also destroyed much of its infrastructure in previous years. However, the PA security forces' inaction in tackling abuses by Palestinian armed groups was also due to the unwillingness by the PA to take any measures to bring to justice members of Palestinian armed groups responsible for deliberately killing Israeli civilians and Palestinians suspected of "collaborating" with Israeli intelligence services.

Destruction of homes and property

Though destruction of Palestinian homes, land and property throughout the Occupied Territories by Israeli forces is routine, 2004 witnessed the biggest wave of house demolition in the Gaza Strip in recent years. In a large-scale offensive in May 2004, the Israeli army destroyed some 300 homes and damaged some 270 others in a refugee camp in Rafah, leaving close to 4,000 Palestinians homeless. Hundreds of other homes, large areas of agricultural land, roads, water, electricity and communication infrastructure have also been destroyed during frequent Israeli army incursions throughout the Occupied Territories.

The Israeli authorities seek to justify such human rights violations on grounds of self-defence, 'military necessity' and 'security'. While the Israeli authorities have the right to take reasonable, necessary and proportionate measures to protect their citizens and borders, these do not include unlawful killings of civilians, wanton destruction of their property and other forms of collective punishment, which Israeli forces commit on a large scale.

Moreover, Israel, as the occupying power, continues to ignore its responsibilities stipulated by the Fourth Geneva Convention relative to the Protection of Civilians in Time of War,⁸⁰ and its obligations according to the human rights treaties to which it is a party.⁸¹ Thus, the burden of providing shelter and relief for the tens of thousands of Palestinians made homeless and destitute by Israel's destruction continues to fall on UN agencies and humanitarian organizations, which are unable to respond adequately to the needs of a growing number of families affected by the destruction.

Israeli settlements in the Occupied Territories and associated human rights violations

The existence of more than 100 Israeli settlements throughout the Occupied Territories, established in violation of international law,⁸² continues to lead to widespread violations of the human rights of the Palestinian population. Despite the 2003 "Road Map" agreement, as well as Security Council and Commission resolutions reaffirming their illegality, building and expansion of settlements in the West Bank continue.⁸³ Prime Minister Sharon's "Disengagement Plan" envisages the dismantlement of all

⁸⁰ 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.

⁸¹ 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...".

⁸² Notably Article 49 of the Fourth Geneva Convention.

⁸³ See 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.

Israeli settlements in the Gaza Strip and four in the West Bank, which altogether house only about 2% of Israeli settlers in the Occupied Territories, while more than 100 settlements throughout the West Bank, in which live some 400,000 Israeli settlers, remain in place and continue to be expanded.

These 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 or nearby. 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.⁸⁴

The Israeli army continues to impose stringent restrictions on the movement of some 3,500,000 Palestinians inside the Occupied Territories in order to keep Palestinians away from Israeli settlements and from roads used by Israeli settlers. Palestinian farmers are prevented from cultivating their land near Israeli settlements or roads used by Israeli settlers and hundreds of military checkpoints and blockades prevent Palestinians from moving freely between towns and villages, but force them to take lengthy detours on tortuous and often dangerous roads.

Restrictions on the movement of Palestinians are often tightened in retaliation for suicide bombings and other attacks by Palestinian armed groups. Israeli soldiers frequently use excessive force to enforce these restrictions, including the use of live fire, tear gas and stun grenades, as well as detention, ill-treatment and confiscation of vehicles and identity cards. Patients are frequently delayed or refused passage, and workers and students are often unable to reach their workplaces, education facilities and other services. The resulting increase in unemployment and poverty and the negative impact on health, education and professional development standards have serious long-term implications for Palestinian society.

In the West Bank, Israel continues to construct a 600 km fence/wall, which encircles and cuts off Palestinian towns and villages, and which was declared illegal by the International Court of Justice (ICJ) in July.⁸⁵ Israel claims that the fence/wall is intended to stop potential Palestinian attackers from entering Israel. However, the fence/wall does not separate Israel from the Occupied Territories but mostly runs deep into the occupied West Bank, in order to encompass most of the Israeli settlements there, in what the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967 has described as “a clear act of territorial annexation under the guise of security”.⁸⁶ As a result of the fence/wall, farmers are separated from their land, Palestinians are cut off from each others, and their access to work, health, education and other essential services in nearby towns and villages is severely hindered.

Discriminatory legislation

⁸⁴ 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.

⁸⁵ On 9 July 2004, the ICJ concluded that the construction of the fence/wall by the Israeli army inside the West Bank, including in and around East Jerusalem, violates international human rights and humanitarian law and that “*Israel also has an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in Occupied Palestinian Territories*” noting that “... *reparation must, as far as possible, wipe out all the consequences of the illegal act...*”.

⁸⁶ See *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.

A discriminatory amendment to the “Citizenship and Entry into Israel Law”,⁸⁷ passed in 2003, was renewed in 2004. 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. In a decision taken under its urgent procedure, the Committee on the Elimination of Racial Discrimination (CERD) renewed its call on Israel to revoke this law and called for Israel to submit its overdue reports, as well as an urgent report by December 2004.⁸⁸

Amnesty International calls on the Commission on Human Rights to include recommendations in the resolution on Israeli settlements that:

- urges the Israeli government to immediately stop building the fence/wall inside the Occupied Territories, to dismantle the sections already built inside the West Bank, and to end the extensive and punitive restrictions on movement imposed on Palestinians living in the Occupied Territories;
- urges the Israeli government to end immediately the construction or expansion of Israeli settlements in the Occupied Territories, including in and around East Jerusalem, and to take concrete measures to evacuate Israeli civilians living there;
- calls on the Israeli government to end immediately the destruction and unlawful seizure of Palestinian homes, land and other property in the Occupied Territories;
- urges the Israeli armed forces and Palestinian armed groups to end immediately the killing of civilians;
- calls on the Israeli government and the Palestinian Authority to take concrete steps to end the impunity enjoyed by those responsible for unlawful killings and other abuses; including by ensuring prompt and impartial investigations into all alleged violations and bringing to justice those responsible in accordance with international standards for fair trial;
- urges the Israeli government to repeal discriminatory legislation barring family reunification for Palestinian spouses of Israeli citizens, as called for by the CERD;
- calls on the Israeli government to cooperate with the Special Procedures of the Commission, by facilitating the visits to Israel and/or the Occupied Territories of the Special Rapporteur on torture, the Special Rapporteur on violence against women and the Special Rapporteur on freedom of religion;
- calls on the Israeli government to cooperate with the treaty monitoring bodies by implementing their concluding observations and decisions, including the recommendations made by the Human Rights Committee in July 2003,⁸⁹ and by submitting the urgent report requested by the CERD in August 2004 as well as its overdue reports to the CERD and to the Committee against Torture.

⁸⁷ The Temporary Suspension Order.

⁸⁸ *Decision 2 (65)* of the Committee on the Elimination of Racial Discrimination (CERD/C/65/Dec.2), 20 August 2004. This request had already been made by the CERD in its *decision 2 (63)* (CERD/C/63/Dec.2), 14 August 2003.

⁸⁹ *Concluding Observations of the Human Rights Committee: Israel* (CCPR/CO/78/ISR), 24-25 July 2003.

Nepal

On 26 March 2004, in response to concerns about Nepal expressed at the 60th session of the Commission, the Nepal government issued “His Majesty’s Government’s commitment on the implementation of Human Rights and International Humanitarian Law”, which restated Nepal’s international human rights obligations and promised to facilitate the National Human Rights Commission (NHRC) in carrying out its mandate

However, Amnesty International (AI) believes the last year has been characterised by the failure of both parties to take measures to improve the human rights situation in Nepal, including those recommended by the Commission. The Nepal government has not implemented its 26 March Commitment and has continued to act in contradiction with its international obligations, and the Communist Party of Nepal (CPN) (Maoist) has also not kept its promises to abide by international humanitarian law. The Memorandum of Understanding between the Nepal government and Office of the High Commissioner for Human Rights (OHCHR) regarding technical assistance to the NHRC - which was explicitly called for in the Chairperson’s statement at the 60th session of the Commission⁹⁰ - was signed in December 2004. However as of January 2005, a “programme document” outlining the details of OHCHR’s support to the NHRC was still being negotiated and no additional OHCHR advisors had been deployed in the regions.

Human rights and political situation in Nepal

There has been a serious deterioration in the human rights situation since the breakdown of the last ceasefire in August 2003, with an increase in the scale and severity of human rights abuses by both sides.

In the absence of parliament the power of the closely aligned palace and Royal Nepal Army (RNA) has increased significantly, while the current government - appointed by the King in July 2004 - is weak and lacks legitimacy. Furthermore, there is no effective civilian oversight of the military. Nepali civil society has expressed increasing concern that there may soon be a more authoritarian government, with the King either declaring a state of emergency or assuming greater powers for himself. While the CPN (Maoists) appear militarily strengthened, the RNA have had little military success since the breakdown of the ceasefire.

Following the breakdown of the ceasefire, “disappearances” at the hands of the security forces took place in greater numbers than during the state of emergency in 2001 - 2002. More than 400 cases of “disappearance” have been reported to AI since August 2003.⁹¹ Illegal arrests are widespread⁹² and it is believed that hundreds of detainees continue to be held secretly in illegal detention, including in Royal Nepal Army (RNA) barracks. There are widespread reports of torture of detainees held in army

⁹⁰ Chairperson’s statement on Human rights assistance to Nepal (OHCHR/STM/CHR/04/3), 21 April 2004.

⁹¹ See *Report of the Working Group on enforced or involuntary disappearances* (E/CN.4/2004/58), 21 January 2004, in which the Working Group deplores the “dramatic situation” prevailing in Nepal and reports 117 outstanding cases of disappearances.

⁹² See *Report of the Working Group on arbitrary detention* (E/CN.4/2004/3), 15 December 2003. The Working Group transmitted 24 urgent appeals to the Nepalese government, but only received replies to three of them.

and police custody.⁹³ In October 2004, the government promulgated the *Terrorist and Disruptive Activities Ordinance* (TADO), extending from six months to one year the time detainees can be held in preventive detention in any place “suitable for human beings”, without being presented before a court.

Since mid-2004, the number of reported “disappearances” has fallen, partly in response to strong domestic and international pressure, including by the UN Working Group on enforced and involuntary disappearances (WGEID). However, this has been accompanied by an increase in reports of extra-judicial killings, suggesting a possible shift in tactics away from detaining suspects and towards killing them.⁹⁴ Such killings are often labelled as ‘encounters’ and there have been recent reports of security forces personnel executing unarmed civilians and then forcing their neighbours to sign statements saying that the civilians were CPN (Maoist) members and were killed during an ‘encounter’.

The CPN (Maoist) are also carrying out widespread human rights abuses, including abduction of schoolchildren,⁹⁵ teachers and workers for political education sessions; abduction and killing of civilians who do not comply with their demands; displacement of civilians; and attacks on civilian infrastructure. The CPN (Maoist) torture many of the people they abduct, as well as those they accuse of disobeying their orders.

Human rights defenders are coming under attack from both sides and their work and safety is being increasingly threatened.⁹⁶ One example is journalist and human rights defender, Dekendra Raj Thapa, who was abducted and killed by the CPN (Maoist) on 11 August 2004.

The conflict has resulted in increased discrimination and violence against women. There have been a number of reports of rape and sexual violence by security forces. In addition, many women’s husbands have fled, “disappeared” or been killed and these single women face severe legal and social discrimination, as well as serious poverty.⁹⁷

Although no exact figures are available, estimates suggest that between 100,000 and 200,000 people have been internally displaced by the conflict. The majority of those displaced do not receive any government support and many are unable to access basic services. Displaced women and children are particularly vulnerable to sexual exploitation and trafficking.

⁹³ See *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received* (E/CN.4/2004/56/Add.1), 23 March 2004.

⁹⁴ See *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (E/CN.4/2004/7), 22 December 2003, paragraph 86, in which the Special Rapporteur expresses her “extreme concern” at the situation in Nepal and also notes an increase in the number of extrajudicial executions.

⁹⁵ See *Annual Report of the Special Representative of the Secretary-General for children and armed conflict* (E/CN.4/2004/70), 28 January 2004, in which the Special Representative also reports abductions of children by the parties to conflict as part of systematic campaigns of violence against civilian population in Nepal and lists the CPN (Maoist) among the groups that recruit or use children in armed conflict.

⁹⁶ Also reported in *Report of the Special Representative of the Secretary-General on the situation of human rights defenders* (E/CN.4/2004/94), 15 January 2004, paragraphs 66 and 77.

⁹⁷ See *Report of the Committee on the Elimination of Discrimination against Women* (A/59/38), January 2004, paragraph 203. Considering the combined second and third periodic report submitted by Nepal, the CEDAW calls on the state, *inter alia*, to “ensure the full and equal participation of women in the process of conflict resolution and peace-building” and to “allocate sufficient resources to meet the needs of women who have suffered damage as a result of the conflict and to ensure their security and protection from violence.”

Impunity and the erosion of legal safeguards

A key factor fuelling the human rights crisis is the environment of impunity for human rights abuses. Since the 2004 Commission, neither the government nor the military has made any significant effort to investigate abuses by security forces or bring perpetrators to justice. For example, the authorities have failed to effectively proceed with prosecutions against RNA personnel alleged to have executed 19 Maoist prisoners at Doramba in August 2003. Following an international outcry over these killings, a court martial was initiated, but the case remains inexplicably stalled and nobody has yet been held to account.

Security forces regularly arrest and detain suspects illegally and undermine judicial processes, particularly those relating to *habeas corpus*. There have been frequent reports of security forces denying that they have received court notices; denying the arrest or continued detention of those in their custody at court hearings; refusing to comply with court orders for the further investigation of detentions; failing to implement court release orders; and immediately re-arresting, without warrant, those who have been released on the order of a judge.

The NHRC believes that hundreds of people are held illegally in RNA barracks, but NHRC staff has been prevented from accessing these places of detention, in violation of their mandated powers under the Human Rights Commission Act. The RNA insists that the NHRC seek permission before visiting barracks, which reportedly results in prisoners being hidden during inspections. The NHRC's findings and recommendations are widely ignored by the government.

An example is the case of Krishna K.C., who was arrested by security forces in September 2003. His family immediately filed a *habeas corpus* petition, but this was dismissed as the authorities denied his arrest. Following credible reports that Krishna K.C. was being held in Bhairabnath Gan army barracks and had been tortured, a second *habeas corpus* petition was filed in May 2004, and the Supreme Court ordered the NHRC to investigate the whereabouts of Krishna K.C. However, the RNA again denied detaining Krishna K.C. and refused entry to NHRC representatives when they attempted to visit Bhairabnath Gan barracks. The Supreme Court then ordered the Ministry of Defence to "make necessary and suitable arrangements" to implement its previous order for NHRC investigation of the case. However, when the NHRC was finally allowed to visit Bhairabnath Gan on 1 July, the RNA produced three other detainees but claimed that Krishna K.C. was not in their custody. Despite this, in October, further reliable evidence emerged that Krishna K.C. remains in the barracks.

The undermining of legal safeguards and impunity for security forces personnel who commit abuses directly contradict the 26 March Commitment, in which the government promises to "establish an appropriate mechanism for dealing with past human rights... violations", states that "the writ of *habeas corpus* will be honoured", and that the government will facilitate the NHRC in "visiting, observing and inspecting any agency under HMGN [His Majesty's Government of Nepal] or prison or any other institution".

The NHRC's future independence and effectiveness is threatened by the fact that the current term of its commissioners will end in May 2005. The Human Rights Commission Act (1997) requires the Chairperson and members of the Commission to be recommended by a committee consisting of the Prime Minister, Chief Justice and leader of the opposition. However, in the absence of parliament this procedure cannot be followed. Any unilateral appointment of new commissioners by the government would deeply undermine the independence of the NHRC and therefore it is vital that the

tenure of the current commissioners is extended until Parliament is reconvened and the provisions for appointing new commissioners can be met.

The government has taken some welcome steps to address the issue of “disappearances”, including establishing a committee under the Home Ministry to identify the whereabouts of the “disappeared”, and moving some detainees from RNA barracks to a new civilian detention centre. However, these measures are not adequate to deal with the scale of human rights abuses and impunity, and without the active support of the RNA such initiatives are unlikely to achieve results.

A Human Rights Accord was first drawn up by the NHRC in May 2003, but the government and CPN (Maoist) declined to sign it. This Accord has since been revised and is again being promoted by the NHRC. A strong Human Rights Accord could help to curb abuses and reduce impunity, as it would require both parties to abide by shared human rights commitments and to accept comprehensive monitoring.

Responses of the international community

There have been some welcome efforts by the international community to address the human rights situation in Nepal during 2004. In July, eight independent experts of the Commission issued a joint statement expressing concern at the human rights situation and calling on the government to implement the 26 March Commitment.⁹⁸ The diplomatic community have also spoken out on a number of occasions, including condemning the “gruesome” human rights violations committed by both sides and calling for the signing of the Human Rights Accord, in a statement issued in September and signed by 15 diplomatic missions and donor agencies.⁹⁹ The WGEID visited Nepal in December 2004 and the High Commissioner for Human Rights will visit in January 2005. The OHCHR will provide technical support to the five regional offices of the NHRC, the first of which opened in December 2004 in Nepalganj, and the remaining four are due to open in 2005.

However, given the scale of the human rights crisis and level of impunity in Nepal, AI believes more comprehensive and coordinated action by the international community is urgently needed. It is vital that the Commission acknowledges the extent of the human rights abuses in Nepal, calls on both the government and the CPN (Maoist) to end violations and impunity, and puts in place strong international initiatives that can have a positive and immediate impact on the human rights situation in Nepal.

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Nepal that:

⁹⁸ The statement was signed by the Special Rapporteurs on torture; violence against women, extrajudicial, summary and arbitrary executions; the independence of judges and lawyers; and promotion and protection of the right to freedom of opinion and expression, together with the Special Representative of the Secretary-General on human rights defenders, the Chair of the Working Group on enforced or involuntary disappearances, and the Chairperson-Rapporteur of the Working Group on arbitrary detention.

⁹⁹ Press Release, “NHRC’s briefing on 9 September 2004”, signed by British Embassy, Canadian Embassy, Delegation of the European Commission, DfID Nepal, Embassy of Finland, Embassy of the Federal Republic of Germany, Embassy of the French Republic, Embassy of the United States of America, GTZ (German Technical Cooperation), Royal Danish Embassy, Royal Norwegian Embassy, SDC (Swiss Agency for Development and Cooperation), SNV (Netherlands Development Organisation), United Nations, USAID (United States Aid Mission to Nepal).

- condemns the continued grave human rights situation and break-down of the rule of law, and urges both sides to the conflict to uphold international human rights and humanitarian standards and the rule of law;
- urges both sides to the conflict to sign the Human Rights Accord and ensure its early and full implementation;
- calls on the government to end impunity for human rights violations, including through prompt and impartial investigations into all allegations of human rights violations and to ensure that those responsible are brought to justice in accordance with international standards for fair trial;
- urges the government to ensure that national legislation, in particular regarding national security, conforms with international standards to which Nepal has adhered;
- urges the government and the CPN (Maoist) to take all necessary steps to ensure the respect of the human rights of women and girls, including their protection from violence in the context of the conflict;
- urges the government to enforce a complete prohibition on *incommunicado* detention in military barracks, as recommended by the WGEID;¹⁰⁰
- establishes a mandate for a Special Rapporteur on the situation of human rights in Nepal;
- supports an effective human rights presence by the OHCHR with a clear mandate to monitor the human rights situation throughout the country and to report publicly on its findings;
- calls on the government to support the NHRC in carrying out its mandate, by ensuring its continued independence and the full cooperation of all organs of the state with its investigations;
- calls on the government and the CPN (Maoist) to take all necessary measures to end the harassment of human rights defenders;
- calls on the government to ensure the promotion and protection of the human rights of internally displaced persons (IDPs), including through implementing in full the *UN Guiding Principles on Internal Displacement*, ensuring their access to humanitarian assistance, and the right to return, resettlement or reintegration in conditions of safety and dignity, and ensuring effective attention to the particular needs of vulnerable groups;
- expresses regret that the government did not give effect to the standing invitation extended to the Commission's Special Procedures in the Chairperson's statement adopted at the 60th session of the Commission;
- calls on the government to cooperate with the Special Procedures of the Commission, including by responding promptly and fully to their communications and facilitating their visits;
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its overdue reports, particularly under the ICCPR, and to implement the concluding observations of the CEDAW from January 2004 and of the CERD from March 2004.¹⁰¹

¹⁰⁰ Press release by the Working Group on Enforced and Involuntary Disappearances of the United Nations Commission on Human Rights following its visit to the Kingdom of Nepal, Kathmandu, 14 December 2004.

¹⁰¹ *Concluding observations of the Committee on the Elimination of Racial Discrimination: Nepal* (CERD/C/64/CO/5), 12 March 2004.

Sudan

A comprehensive peace agreement was signed on 9 January between the government of Sudan and the Sudan People's Liberation Movement (SPLM). The Power-Sharing Protocol of this agreement states that the "Republic of the Sudan, including all levels of Government throughout the country, shall comply fully with its obligations under the international human rights treaties to which it is or becomes a party." A peace based on human rights is the only way to end the conflict in Darfur as well as the conflicts in South and North Sudan, which have ravaged the lives of so many people. If the commitment to human rights is to be meaningful they must be respected and monitored, not just listed.

Grave breaches of international humanitarian law in Darfur

The Humanitarian and Security Agreements signed by the government of Sudan, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) on 9 November 2004 have been breached since day one. Although hostile flights are banned under this agreement, Sudanese aircraft continue to bomb villages indiscriminately killing civilians. The *Janjawid* militias, mostly incorporated into the government Popular Defence Forces, still raid villages, killing villagers, burning homes and looting. The rebel movement has also carried out attacks, including on humanitarian convoys, and has abducted and killed civilians.

The extent of rape of women, mostly by government supported militias, has become increasingly apparent. UN agencies have described gang rape of schoolgirls during an attack on Tawila in February 2004, and, after interviewing women refugees from Darfur in Chad who had suffered sexual violence and sometimes sexual slavery, Amnesty International (AI) considers that rape has been used frequently as a weapon of war to punish and humiliate the people. The Sudanese government has set up rape committees to investigate alleged cases, but has not acknowledged the extent of the problem.

After each attack and counter-attack, tens of thousands of people living in rural areas, often already displaced, flee the area and swell already overcrowded camps in Darfur or cross the border into Chad. New armed groups have been formed, in Darfur and in Kordofan, spreading the scale of the conflict and the displacement. Because of the continued insecurity of the rural areas and the failure of peace attempts, the displaced people are afraid to return home.¹⁰² Time has already run out for most displaced people to return home to cultivate the land before the start of the rainy season. Thus those who are displaced – 1.65 million, including 200,000 in Chad – will need food and other support for another year. The total number affected, including the host population who have become increasingly impoverished by helping others, is over 2 million. The exact number of those killed in the conflict is not yet known, but may be in the tens of thousands, with also a large number of people, dying from conflict-related diseases.¹⁰³

¹⁰² See *Report of the Representative of the Secretary-General on internally displaced persons, Mission to the Sudan – The Darfur crisis* (E/CN.4/2005/8), 27 September 2004, paragraph 41, in which the Representative states that "[A]ddressing the security situation must be the absolute priority" and recommends to the government "to work closely and transparently with the international community, and specifically with the AU, to take appropriate measures for disarming or neutralizing [the Janjaweed and their threat]".

¹⁰³ For estimates of conflict-related deaths, see World Health Organisation, *Mortality projections for Darfur*, 15 October 2004, and Médecins sans Frontières, *Violence and Mortality in West Darfur, Sudan: epidemiological survey from four*

A worrying factor is the harassment and intimidation of some of the displaced people by the government: moving camps (such as Meshtel and al-Jeer) violently in the middle of the night; arresting some of the community leaders who speak out against return and, in July and August 2004, arresting some 46 displaced persons for giving information to foreign delegations visiting camps or to the African Union monitors. Other alarming factors include the increased pressure on foreign humanitarian organizations which make statements which are critical of government policy, or collect sensitive data, e.g. on rapes or killings; and arrest or expulsion of humanitarian workers. At the same time, not only have detainees not been released as required by the November agreements, but more have been arrested and many beaten. Trials continue to be carried out under specialised criminal courts without adequate rights to defence.

Comprehensive peace agreement

The comprehensive peace agreement is a symbol of hope for the future and some 400,000 refugees and displaced are believed to have returned to the South last year. But there is a danger that many of the bodies to be set up under the agreements, such as the National Constitutional Review Commission, have inadequate provisions for the participation of civil society, including women. Civil society representatives can only participate if nominated by a political faction. It is important to ensure that Sudanese domestic legislation will be revised to conform to Sudan's obligations under international human rights treaties.

The peace agreement also has no provision for holding to account those alleged to have committed crimes under international law. Such crimes committed by all sides must be investigated and those responsible for gross human rights violations must be brought to justice.¹⁰⁴ The fate of thousands of people "disappeared" in the context of the civil war in South Sudan must be clarified. Whilst perpetrators of human rights violations must be brought to justice, the parties should also consider complementary mechanisms – such as a form of truth and reconciliation commission – that could play a role in ensuring that the traumas caused by past injustices are addressed. In addition, those who have suffered from war crimes or crimes against humanity have the right to redress and full reparations.¹⁰⁵

Northern Sudan

Freedom of the press continues to be restricted. Journalists have been detained and summoned for questioning by the authorities and newspapers censored. The security forces have also forced editors to withdraw articles about Darfur. Human rights defenders with a connection to Darfur are frequently targeted, among them Dr. Mudawi Ibrahim Adam, Director of the Sudan Social Development Organization, who was arrested at his home in Khartoum in December 2003 after visiting Darfur and

surveys, in the *Lancet*, 1 October 2004. AI has collected the names of more than 3,000 civilians who were killed in attacks on villages in Darfur.

¹⁰⁴ The Sudanese government has been called upon to put an end to impunity by identifying and bringing to justice all those responsible for the widespread violations of human rights and international humanitarian law in the *Report of the High Commissioner for Human Rights on the situation of human rights in the Darfur region in the Sudan* (E/CN.4/2005/3), 7 May 2004; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Mission to the Sudan* (E/CN.4/2005/7/Add.2), 6 August 2004; and Security Council resolution 1564. An international commission of inquiry was called for by the High Commissioner in his report, paragraphs 103-104, and was established by Security Council resolution 1564.

¹⁰⁵ See *Report of the High Commissioner for Human Rights on the situation of human rights in the Darfur region in the Sudan* (E/CN.4/2005/3), 7 May 2004, paragraphs 97, 99, 101 and 102, in which the High Commissioner urges the government to pursue a policy of national reconciliation for Darfur and ensure the rule of law and protection of minorities.

subsequently charged with offences relating to crimes against the state, some carrying the death penalty. The evidence against him included the fact that public AI documents were found in his possession. All charges against him were dropped in August. Detainees continued to be held under the National Security Forces Act which allows detention without access to lawyers and without charge or trial for up to nine months.

Torture was frequently reported and at least three detainees died in custody in circumstances which suggested that torture had caused their deaths. They included two students, Shamseddin Idris, a Nuba student, and Abdel Rahman Suleiman Adam, a student from Darfur, both members of the Popular Congress party (an Islamist opposition party to the ruling National Congress Party) arrested in September 2004. Both died on the day of their arrest, apparently after being severely beaten. In Khartoum, women and men continue to be brought before public order courts and sentenced to flogging for offences such as illegal sexual intercourse, breaching the dress code, selling alcohol or selling tea without a licence.

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Sudan that:

- addresses impunity by supporting recommendations for accountability mechanisms to be established throughout the country to investigate abuses of human rights and humanitarian law, including past abuses, and calling on the government to implement reform of the legal system to ensure justice for all;
- urges guarantees for the safety of civilians by ensuring the safe, dignified and voluntary return, resettlement or reintegration of IDPs and monitoring of the human rights situation of returnees;¹⁰⁶ and by supporting the African Union peace-keeping forces in Darfur to carry out their mandate to monitor and verify the disarmament of the militias;¹⁰⁷
- calls on all armed political groups in Sudan to issue clear instructions to all combatants under their control to respect human rights and international humanitarian law;
- calls on the government to ensure free access throughout the country for international and national human rights and humanitarian organizations;¹⁰⁸
- urges respect for the human rights of women and girls, including their protection from violence;
- urges guarantees for respect for the right to freedom of expression; such guarantees should be integral to the peace agreement to enable genuine monitoring and reporting;
- urges UN member states to respect the UN arms embargo on non-governmental entities in Darfur, to immediately suspend transfers of all arms and related logistical and security supplies to Sudan which are used by the armed forces or militias for grave human rights abuses, and to adopt mechanisms to monitor the suspension of arms transfers

¹⁰⁶ The right of refugees and displaced persons to return to their homes voluntarily in conditions of security and dignity has been affirmed in the reports of the Representative of the Secretary-General on internally displaced persons, paragraphs 41-42, and of the High Commissioner for Human Rights, paragraph 100, as well as in Security Council resolution 1564.

¹⁰⁷ See *Report of the Representative of the Secretary-General on internally displaced persons, Mission to the Sudan – The Darfur crisis* (E/CN.4/2005/8), 27 September 2004, paragraph 46, in which the Representative argues that the role of the African Union Cease Fire Commission should be developed and supported.

¹⁰⁸ See *Report of the High Commissioner for Human Rights on the situation of human rights in the Darfur region in the Sudan* (E/CN.4/2005/3), 7 May 2004, paragraph 98; *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Mission to the Sudan* (E/CN.4/2005/7/Add.2), 6 August 2004, paragraph 59; and *Report of the Representative of the Secretary-General on internally displaced persons, Mission to the Sudan – The Darfur crisis* (E/CN.4/2005/8), 27 September 2004, paragraph 42.

- recommends the strengthening of the UN human rights monitoring presence throughout the country,¹⁰⁹ including by ensuring public and transparent reporting and adequate funding;
- replaces the Independent Expert mandate with a Special Rapporteur mandate with a clear monitoring component;
- calls on the government to cooperate with the Special Procedures of the Commission, including by responding promptly and fully to their communications, facilitating their visits to Sudan and implementing their recommendations;¹¹⁰
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its overdue reports under the ICCPR and implementing the concluding observations and decisions of the committees, in particular the decision of the CERD of August 2004.¹¹¹

Turkmenistan

The human rights situation in Turkmenistan remains very bad. Small measures taken by the government were aimed at fending off international criticism, but do not adequately address the concerns raised by intergovernmental bodies, including the Organization for Security and Co-operation in Europe (OSCE), the UN Commission on Human Rights (the Commission) and the UN General Assembly, as well as by human rights groups.

Civil and political rights are systematically violated. Perpetrators of torture enjoy impunity, the legal system remains fundamentally flawed¹¹² and prison conditions are appalling.¹¹³ Ethnic minorities are discriminated against including through dismissal from employment, and child labour continues to be used in the cotton harvest. Many dissidents and their relatives are prevented from leaving the country on the basis of a “black list”, and freedom of movement inside the country is severely curtailed.

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.

Freedom of expression stifled

¹⁰⁹ See *Report of the High Commissioner for Human Rights on the situation of human rights in the Darfur region in the Sudan* (E/CN.4/2005/3), 7 May 2004, paragraph 105, in which the High Commissioner advocates a “continuous monitoring of the human rights situation in Darfur”.

¹¹⁰ *Ibid*, paragraph 106, in which the High Commissioner calls the government to “issue an open invitation to all special procedures of the Commission on Human Rights to visit the Sudan at any time” and to “facilitate their visit to Darfur as early as possible”.

¹¹¹ *Decision 1 (65)* of the Committee on the Elimination of Racial Discrimination (CERD/C/65/Dec.1), 18 August 2004.

¹¹² See *Report of the Special Rapporteur on the independence of judges and lawyers, Addendum, Situations in specific countries or territories* (E/CN.4/2004/60/Add.1), 4 March 2004, paragraphs 95-98.

¹¹³ See *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions* (E/CN.4/2004/7), 22 December 2003, paragraph 35, in which the Special Rapporteur expresses “her particular concern” over the case of Boris Shikhmuradov as a possible case of death in custody due to medical neglect. See also *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Summary of cases transmitted to Governments and replies received* (E/CN.4/2004/7/Add.1), 24 March 2004, paragraphs 562-564.

No independent political parties exist in Turkmenistan and all media is state-controlled. Political and other dissidents, religious minorities, civil society activists and their relatives continue to face harassment and imprisonment.¹¹⁴ The authorities routinely target relatives of exiled dissidents to punish those in exile for criticizing government policies and speaking out about human rights violations in Turkmenistan.¹¹⁵

Increased pressure forced several civil society activists and a Radio Liberty journalist into exile in 2003 and 2004. In November 2004, shortly before the Third Committee of the UN General Assembly adopted a draft resolution on the human rights situation in Turkmenistan, the authorities of Turkmenistan annulled the criminalization of activities of unregistered public organizations that had been introduced in November 2003. However, other restrictive legislation remains in force and it continues to be impossible for civil society groups to operate.

The forcible confinement to a psychiatric hospital of a dissident in February 2004 is typical of the regime's intolerance of any kind of dissent. Gurbandurdy Durdykulyev, aged 63, had sent a letter to President Niyazov and the Balkan region governor in January, urging them to authorize a peaceful demonstration critical of government policies and to refrain from using force against participants. He had earlier repeatedly criticized President Niyazov's policies in interviews with Radio Liberty, and had openly spoken about the necessity to form an opposition political party. Amnesty International (AI) considers him to be a prisoner of conscience targeted solely for peacefully exercising his right to freedom of expression.

Freedom of religion curtailed

In order to avoid designation as a "country of particular concern" under the USA's International Religious Freedom Act, Turkmenistan released six conscientious objectors to military service from prison in June 2004 and registered the Baha'i, Hare Krishna and Adventist communities as religious organizations. However, other conscientious objectors remain in jail and religious minorities, including those registered, continue to face intimidation.

The state also unduly interferes in the affairs of the registered Sunni Muslim and Russian Orthodox communities.¹¹⁶ Imams and Russian Orthodox priests are forced to display a copy of the President's own "spiritual" guidebook *Rukhnama*, a core element of his personality cult, in a

¹¹⁴ See *Report of the Special Representative of the Secretary-General on the situation of human rights defenders* (E/CN.4/2004/94), 15 January 2004, paragraphs 37, 62 and 69, in which the Special Representative notes that human rights defenders in Turkmenistan "have encountered serious obstacles", "faced serious threats against their physical integrity" and been barred or obstructed from travelling abroad "in order to prevent them from reporting about the situation inside their country to international forums and bodies, including the Commission on Human Rights." See also *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received* (E/CN.4/2004/56/Add.1), 23 March 2004, paragraphs 1789-1797.

¹¹⁵ See *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received* (E/CN.4/2004/62/Add.1), 26 March 2004, paragraphs 791-793.

¹¹⁶ See *Report of the Special Rapporteur on freedom of religion or belief* (E/CN.4/2004/63), 16 January 2004, paragraphs 97, 98 and 115(d). The Special Rapporteur lists Turkmenistan among the countries where people are barred from exercising their rights through "policies, legislation and regulations, practices and acts that constitute controls, interference, prohibitions and abusive restrictions on the freedom to manifest one's religion or belief". He transmitted four communications to the government, one of which drew attention to "information on the complete lack of freedom of religion or belief in the country, except for Sunni Muslims or members of the Russian Orthodox Church, who are allowed to congregate in a limited number of registered places of worship."

prominent position in their places of worship and to quote from it in their sermons. A new mosque, envisaged to become the largest in Central Asia, was inaugurated in the President's home village of Kipchak in October 2004. The walls show inscriptions of verses of the Koran alongside quotes from the *Rukhnama*.

One of the key reasons for the imprisonment of former Mufti Nasrullah ibn Ibadullah may have been his repeated objections to the extensive use of the *Rukhnama* in mosques. A court in Ashgabat sentenced him to 22 years' imprisonment on treason charges in an unfair trial and accused him of involvement in the 2002 alleged assassination attempt on President Niyazov. In May 2004, he was reportedly beaten by officers of the Interior Ministry in the maximum-security prison in Turkmenbashi.

International human rights monitors denied access

International human rights monitors and foreign journalists have in many cases been refused access to Turkmenistan. For example, the OSCE-appointed rapporteur on Turkmenistan, mandated to examine human rights concerns in the context of the investigations into the alleged assassination attempt, was denied a visa in 2003. None of the Special Procedures of the Commission have been able to undertake missions to the country.¹¹⁷

Dozens of people imprisoned following unfair trials in connection with the November 2002 alleged assassination attempt continue to be held in *incommunicado* detention despite repeated calls by international bodies, including the Commission, to grant access by independent bodies including the International Committee of the Red Cross (ICRC). In April 2004, the Turkmen Foreign Ministry informed the Office of the High Commissioner for Human Rights that no access would be granted to these prisoners for five years. The authorities did not respond to allegations that some of these prisoners died in custody as a result of torture, ill-treatment and harsh prison conditions.

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the human rights situation in Turkmenistan that:

- condemns the failure of the government of Turkmenistan to invite and to cooperate with any of the Special Procedures of the Commission;
- establishes a Special Rapporteur on Turkmenistan;
- urges the government to grant immediate access to the country for the Special Procedures, other independent bodies, NGOs, and independent media;
- calls on the government to grant immediate access for independent bodies, including the ICRC, to the prisoners held in connection with the November 2002 alleged assassination attempt;
- urges 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;
- calls on the government to cooperate with the treaty monitoring bodies, including by submitting its overdue reports, particularly under the ICCPR and the Convention on the Elimination of All Forms of Discrimination against Women..

¹¹⁷ The following Special Procedures of the Commission have requested visits to Turkmenistan: the Special Rapporteurs on extrajudicial, summary or arbitrary executions; on the promotion and protection of the right to freedom of opinion and expression; on freedom of religion or belief; on the independence of judges and lawyers; on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Representative of the Secretary-General on the situation of human rights defenders.

Standard-setting

Among the standard setting exercises currently underway at the Commission, Amnesty International follows in particular the open-ended inter-sessional Working Group on the draft Declaration on the Rights of Indigenous Peoples, 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 Declaration on the Rights of Indigenous Peoples

“For far too long the hopes and aspirations of indigenous peoples have been ignored; their lands have been taken; their cultures denigrated or directly attacked; their languages and customs suppressed; their wisdom and traditional knowledge overlooked; and their sustainable ways of developing natural resources dismissed. Some have even faced the threat of extinction... The answer to these grave threats must be to confront them without delay.”

United Nations Secretary-General Kofi Annan,
at the third session of the UN Permanent Forum on Indigenous Issues, 10 May 2004.

December 2004 marks the end of the United Nations (UN) International Decade of the World's Indigenous People (the Decade), which has seen a number of critical accomplishments: a Permanent Forum on Indigenous Issues now meets annually at the UN in New York, providing an opportunity for indigenous representatives to engage with and make recommendations to UN agencies and processes. A Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people was appointed in 2001 by the Commission on Human Rights (the Commission) and has undertaken a programme of country visits, including to Canada, Chile, Colombia, Guatemala, Mexico and the Philippines, and issued thematic reports on issues such as the administration of justice and the impact of large-scale development projects. There have also been a number of important decisions by human rights expert bodies, including the UN Human Rights Committee and the Inter-American Commission on Human Rights of the Organization of American States, that have helped advance the understanding of how human rights standards and mechanisms need to be interpreted and applied to meet the specific needs of indigenous peoples.

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, indigenous leaders and other experts have made clear that indigenous peoples around the world continue to face widespread discrimination, impoverishment and ill-health. Indigenous peoples are routinely excluded from decisions vital to their well-being and the survival of their unique ways of life. Discriminatory and illegal dispossession of their land and resources have often severely undermined the health and livelihoods of indigenous peoples and eroded the foundation of their distinctive cultures. The systemic failure of states to respect and uphold the land and cultural

rights of indigenous peoples often lies at the heart of violent conflicts leading to political killings, arbitrary arrest, torture and ill-treatment and other grave violations against indigenous leaders and communities as a whole. The perpetrators of grave human rights violations against indigenous peoples often enjoy impunity, while the harms they inflict go unaddressed for generation upon generation.

On the occasion of Human Rights Day, 10 December 2004, 28 independent experts of the Commission issued a statement calling attention to widespread violations of the human rights of indigenous peoples. The experts noted that indigenous peoples, who have suffered perennial prejudice and discrimination, were among the groups most at risk and in need of protection. They further stated that when they fight for the promotion and protection of human rights, and claim redress for violations, indigenous peoples are, in many parts of the world, specifically targeted and subjected to threats, intimidation, reprisals and attacks. In a pressing call for action, the experts urged civil society, the private sector, the international community, and every individual to step up efforts to promote and protect the human rights of indigenous peoples.

The pervasiveness of human rights violations against indigenous peoples highlights one of the critical failings of the International Decade of the World's Indigenous People. The UN General Assembly had made adoption of international human rights standards for the protection of indigenous rights one of the principle goals of the International Decade. This goal remains unfulfilled.

A draft text for an international Declaration on the Rights of Indigenous Peoples was prepared by a working group of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities¹¹⁸ between 1985 and 1993. Indigenous leaders, state representatives, non-governmental organizations, other agencies, and academics participated in its creation. The text was adopted by the Sub-Commission in 1994¹¹⁹ and subsequently submitted to the Commission.

The draft Declaration affirms that "indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such." A comprehensive body of interdependent rights relevant to individuals as well as to communities and nations is set out in the text. Consistent with indigenous cultures, traditions and laws, many of the rights elaborated in the draft Declaration are collective in nature,¹²⁰ including the right of indigenous peoples to control their own lives and futures, to maintain and develop their unique cultures and ways of life, and to control and benefit from their traditional lands, territories and resources. This is particularly important because, as has been affirmed by numerous UN expert bodies, including the Human Rights Committee, the fulfilment of the fundamental rights of indigenous individuals is often inseparable from the protection of the right of indigenous peoples to collectively maintain their distinctive cultures and determine their own futures.

For most of the last ten years, there has been little progress toward adoption of the Declaration, which has raised concerns about the international community's commitment to the recognition and

¹¹⁸ Now the UN Sub-Commission on the Protection and Promotion of Human Rights.

¹¹⁹ *Draft United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1994/45, 26 August 1994.

¹²⁰ The draft Declaration is not the first international human rights instrument to recognize collective rights, as both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights recognize the right of self-determination as a fundamental right of all peoples.

protection of the human rights of indigenous peoples. However, the last meeting¹²¹ of the open-ended inter-sessional Working Group on the draft Declaration on the Rights of Indigenous Peoples (the Working Group)¹²² was marked by many constructive developments achieved through improved dialogue and cooperation between states and indigenous representatives. The chair of the Working Group noted that there was now a basis for a wider consensus. The indigenous caucus was able to identify a large number of preambular and operative articles considered ready for provisional adoption. These included text that was unchanged from the draft Declaration, as well as new or modified articles considered likely to be supported by both the indigenous caucus and representatives of states. Effective collaboration of indigenous and state representatives in co-facilitating informal sessions also advanced considerably the debate on the remaining articles, including those addressing critical issues, such as those of self-determination, treaties, and lands, territories and resources. More importantly, however, the improved dialogue between indigenous peoples and a number of key states has shown that – given more time and continued constructive discussions – consensus can be still reached on a strong and effective Declaration.

Amnesty International calls on the Commission on Human Rights to adopt a resolution on the rights of indigenous peoples that:

- urges governments to work cooperatively with indigenous peoples towards the adoption of a strong and effective Declaration on the Rights of Indigenous Peoples;
- continues the standard-setting process in a manner that involves the full participation of indigenous peoples, that builds on the original draft text and the progress made to date within the Working Group, and that sets a realistic process and timetable for the adoption of the Declaration.

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

The inter-sessional open-ended Working Group mandated to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance¹²³ was created pursuant to resolution 2001/46.¹²³ At the time of writing, the Working Group has held three formal sessions and one informal session; and a fourth formal session is due to be held 31 January – 11 February 2005. At its third formal session, the Working Group had before a draft text of the proposed treaty, based on the outcome of previous discussions of the Working Group. The draft text establishes a new crime and proclaims a distinct right not be subjected to enforced disappearance.

Good progress was made at the most recent session, including on the nature and functions of the expert body that will monitor implementation of the instrument, and on the substantive areas dealing with the criminalization and prosecution of enforced disappearances.

¹²¹ Tenth session of the Working Group, 13 to 24 September and 29 November to 3 December, Geneva.

¹²² The Working Group was established in accordance with Commission resolution 1995/32 to consider the text submitted by the Sub-Commission and to elaborate a draft declaration for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People (1995-2004).

¹²³ Adopted by the 57th session of the Commission on Human Rights on 23 April 2001.

Amnesty International calls on the Commission on Human Rights to continue to support the “prompt completion” of the Working Group as agreed at the 60th session in resolution 2004/40.

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

Despite international recognition of the indivisibility of all human rights, the UN human rights system allows for individual complaints against violations of the International Covenant on Civil and Political Rights (ICCPR), but not violations of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This striking disparity would be finally addressed by the adoption of an optional protocol to the ICESCR.

Discussions on the elaboration of an optional protocol to the ICESCR started in 1990 within the Committee on Economic, Social and Cultural Rights (CESCR). The international community supported efforts towards the adoption of an optional protocol during the World Conference on Human Rights in Vienna in 1993, which “encouraged the Commission on Human Rights, in cooperation with the Committee on Economic Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights”.¹²⁴ In 1996, the CESCR submitted a draft optional protocol and commentary to the Commission on Human Rights (the Commission).¹²⁵

Since 1997, the Commission has solicited views of states and inter-governmental and non-governmental organisations¹²⁶ and appointed in 2001 an Independent Expert to examine the question of a draft optional protocol to the ICESCR,¹²⁷ who submitted two reports to the Commission. In 2002, the Commission established a Working Group,¹²⁸ which it requested in 2003 to consider “options regarding the elaboration of an optional protocol to the ICESCR”.¹²⁹ The following year, it extended the mandate of the Working Group for a further two years and authorized it to meet for ten working days prior to the 61st and the 62nd sessions of the Commission.¹³⁰

After holding its first meeting in 2004, the Working Group met for the second time from 10 to 21 January 2005 in Geneva and was attended by representatives of states, independent experts, UN specialized agencies and non-governmental organizations, including Amnesty International (AI). AI

¹²⁴ The *Vienna Declaration and Program of Action* (A/CONF.157/23), 12 July 1993, article 75.

¹²⁵ *Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/1997/105), 18 December 1996.

¹²⁶ *Report of the Secretary-General on the Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/1998/84), 16 January 1998; *Report of the Secretary-General on the Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/1998/84/Add.1), 16 March 1998; *Notes by the Secretariat on the Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/1999/112), 7 January 1999; and (E/CN.4/1999/112/Add.1), 4 March 1999; and *Report of the High Commissioner for Human Rights on the Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/2000/49), 14 January 2000.

¹²⁷ Commission resolution 2001/30.

¹²⁸ Commission resolution 2002/24.

¹²⁹ Commission resolution 2003/18.

¹³⁰ Commission resolution 2004/29.

was pleased to note that the large majority of states present expressed their support for an optional protocol which would establish an individual communications procedure, including two regional groups (the Latin American and Caribbean Group – GRULAC – and the African Group) and a growing number of European states. The Working Group will present a report to the Commission at its 61st session which calls on the Chairperson-Rapporteur to submit to the Working Group a paper on “elements for an optional protocol in order to facilitate a more focussed discussion at the third session of the working group”.¹³¹

AI is committed to working for the recognition of economic, social and cultural rights as enforceable human rights and believes that the adoption of an optional protocol is an essential step to allow victims of violations of economic, social and cultural rights a remedy at the international level. Together with other NGOs, AI continues to campaign for the elaboration and adoption of an effective optional protocol to the ICESCR which would:

- Recognize and reinforce the fact that economic, social and cultural rights are justiciable – that is, they can be claimed, enforced and guaranteed in a similar way to civil and political rights;
- Provide an international mechanism for holding states accountable to their international obligations and prompting them to ensure effective remedies at the national level;
- Allow for a more extensive and in-depth framework of enquiry in specific cases and build a body of case-law which can be used as a reference in other situations;
- Stimulate individuals and groups to frame their economic, social and cultural rights claims in more precise terms;
- Give economic, social and cultural rights a political salience which they currently lack by providing the possibility of an international finding of an economic, social and cultural rights violation.

Amnesty International calls on the Commission on Human Rights to include in its resolution on the “Question on the realisation in all countries of the economic social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these rights” language that:

- welcomes the report of the open-ended Working Group, including the request that its Chairperson-Rapporteur submit a paper on “elements for an optional protocol” to the third session of the Working Group;
- ensures that the process to explore options for an optional protocol to the International Covenant on Economic, Social and Cultural Rights continues as mandated by the 60th session of the Commission.¹³²

¹³¹ *Report of the Open-ended Working Group established with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights* (E/CN.4/2005/52), paragraph 114.

¹³² Commission resolution 2004/29.

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

In 1989, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Sub-Commission) requested Mr. 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.¹³³ In 1996, revised draft basic principles and guidelines, also prepared by Mr. van Boven, were submitted to the Commission on Human Rights (the Commission).¹³⁴ In 1998, the Commission appointed Mr. Cherif Bassiouni as independent expert to prepare a revised version of the draft basic principles and guidelines,¹³⁵ which were submitted to it in 2000.¹³⁶

Since then, a number of consultative meetings have been held on the draft basic principles and guidelines; the most recent meeting, 29 September-1 October 2004, resulted in what is thought to be a final text for submission to the Commission (although a further meeting on the finalized text is scheduled for 23 February 2005, it is thought that further revision of the text is unlikely). Amnesty International welcomes the emergence of this consensus text, after a process lasting more than 15 years, and considers the draft basic principles and guidelines an important tool to advance international standards on the right to reparations for violations of human rights and international humanitarian law.

Amnesty International calls on the Commission on Human Rights to adopt the Basic Principles and Guidelines as finalized by the consultative meeting and to resist any further weakening of the text.

¹³³ Sub-Commission resolution 1989/13; Final report to the Sub-Commission, E/CN.4/Sub.2/1993/8.

¹³⁴ E/CN.4/1997/1004, annex.

¹³⁵ Commission resolution 1998/43.

¹³⁶ Commission resolution 1998/43.

Annex 1

Amnesty International's 12-Point Programme for the Prevention of Torture by Agents of the State

Torture is a fundamental violation of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet torture persists, daily and across the globe. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Amnesty International calls on all governments to implement the following 12-Point Programme for the Prevention of Torture by Agents of the State. It invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and to work for its eradication worldwide.

1. Condemn torture

The highest authorities of every country should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.

2. Ensure access to prisoners

Torture often takes place while prisoners are held incommunicado - unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture takes place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture in law

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and

administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

8. No use of statements extracted under torture

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

10. Provide reparation

Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.