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Rights at risk

Amnesty International's concerns regarding security legislation and law enforcement measures

"While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that States strictly adhere to their international obligations to uphold human rights and fundamental freedoms."

Mary Robinson, the United Nations High Commissioner for Human Rights, Walter Schwimmer, Secretary-General of the Council of Europe, and Ambassador Gérard Stoudmann, Director of the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights, press release, 29 November 2001.

1. Security and human rights - conflicting aims or parallel goals?

Following the attacks in the United States of America on 11 September 2001, many states have taken steps to protect their populations from similar criminal acts. These measures include new security legislation and new law enforcement measures.

This report sets out some of Amnesty International's concerns regarding security legislation which infringes or undermines human rights. While focusing on the risks to human rights in new security legislation and procedures, it also gives examples of case histories which show the effects on individuals such measures have had in the past.

USA: detention without trial on secret and discredited evidence
In the USA a Palestinian detainee is currently being held in solitary confinement for 23 hours a day in a maximum security prison on the basis of allegations of involvement in "terrorism" that were rejected in a court hearing.

Mazen Al-Najjar, a Muslim cleric and academic, came to the USA in 1981 as a student and stayed to teach at a university. The Immigration Service moved to deport him for overstaying his visa. Government lawyers claimed that secret evidence showed that he had raised funds for a terrorist organization and he was detained for more than three and a half years while he appealed against his deportation. After a

full hearing in November 2000, a judge ruled that there were insufficient reasons for concluding that he posed a threat to national security and he was released on bail.

In November 2001 he was issued with a final deportation order. Immigration agents immediately took him back into custody and issued a press release saying that he "had established ties to terrorist organizations". No new evidence was presented for this claim. As a stateless Palestinian, he could be held indefinitely.

Amnesty International has monitored the use of security legislation and security measures in all regions of the world for 40 years. In many cases where there has been a "war" against political opponents of whatever kind, human rights have been violated, including the right not to be tortured, the right not to be detained arbitrarily, and the right to life. Those affected frequently include the wider population who are innocent of any illegal activity. Examples of this broad use of security law leading to the violations of the rights of ordinary people include the "dirty wars" (*guerras sucias*) in Latin American countries such as Argentina and Chile in the 1970s; South Africa during the *apartheid* era; Turkey, Spain and the UK when they were responding to minority nationalist movements; India, especially in states with high levels of political violence; and Israel to the present day.[1]

Amnesty International recognizes the duty of states under international human rights law to protect their populations from violent criminal acts. However, such measures should be implemented within a framework of protection for all human rights. The Universal Declaration of Human Rights was initiated by states in response to the widespread and serious abuses that some governments perpetrated on their own citizens during the Second World War. Human rights standards constitute the bare minimum of standards necessary to protect the safety and integrity of individuals from abuse of power - human rights standards are not simply legal niceties. Amnesty International's work includes researching and publicizing the effects on individuals when those internationally-agreed rules and standards are broken – and holding states accountable to those standards.

International human rights standards oblige states to protect the public - abuses by both state and non-state actors must be prevented, investigated and punished. The

[1]These are but a few of the many examples of countries where security legislation has been used to facilitate serious violations of human rights. For further information about security legislation in various countries see Amnesty International's website <http://www.amnesty.org> .

rights enshrined in human rights treaties, such as the right to life and not to be subjected to torture, are another way of describing the idea of security that people expect their governments to ensure.

The challenge to states, therefore, is not to promote security at the expense of human rights, but rather to ensure that all people enjoy respect for the full range of rights.[2]

The protection of human rights has been falsely described as being in opposition to effective action against "terrorism". Some people have argued that the threat of "terrorism" can justify limiting or suspending human rights. Even the prohibition of torture, one of the most basic human rights principles and a rule of international law which binds every state and every individual, has been called into question.[3]

[2] Human rights experts share Amnesty International's opinion on this. For example, on 29 November 2001, in an unprecedented move, the heads of three leading inter-governmental human rights bodies – Mary Robinson, the United Nations High Commissioner for Human Rights, Walter Schwimmer, Secretary-General of the Council of Europe, and Ambassador Gérard Stoudmann, Director of the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights – jointly cautioned governments that measures to eradicate terrorism must not lead to excessive curbs on human rights and fundamental freedoms. In a joint statement, they said "While we recognize that the threat of terrorism requires specific measures, we call on all governments to refrain from any excessive steps which would violate fundamental freedoms and undermine legitimate dissent. In pursuing the objective of eradicating terrorism, it is essential that States strictly adhere to their international obligations to uphold human rights and fundamental freedoms."

On 10 December, a number of UN Independent Experts publicized their concerns as follows: "We express our deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that may infringe upon the enjoyment for all of human rights and fundamental freedoms. We deplore human rights violations and measures that have particularly targeted groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. Concerned authorities have already been requested to take appropriate actions to guarantee the respect for human rights and fundamental freedoms in a number of individual cases drawn to the attention of relevant independent experts. We shall continue to monitor the situation closely."

[3]For example, "Time to think about torture" *Newsweek* magazine, 5 November 2001, "Is There a Torturous Road to Justice?"Alan M. Dershowitz, *LA Times*, 8 November 2001, "Media Stoke Debate on Torture as U.S. Option", Jim Rutenberg, *International Herald Tribune*, 6 November 2001, "Should we use torture to stop terrorism?", Steve Chapman, *Chicago Tribune*, 1 November 2001.

States can work together to address the threats that were brought into sharp focus by the events of 11 September 2001, but only by upholding agreed and shared basic standards of human rights in their law enforcement and judicial procedures. Concerns in Europe regarding the extradition of suspects to the USA, because of the possibility that the death penalty would be imposed, showed that failure to abide by international standards can inhibit international cooperation in law enforcement.[4]

Egypt: detention without trial for years under emergency legislation
In Egypt, thousands of suspected members or sympathizers of banned Islamist groups arrested under emergency legislation, including possible prisoners of conscience, continue to be administratively detained without charge or trial. Some have been held for more than 10 years. Detainees are held in prisons where conditions often amount to cruel, inhuman or degrading treatment. Scores of Islamist activists in administrative detention reportedly suffer from diseases caused or exacerbated by the lack of hygiene and medical care, overcrowding and poor food. Thousands are denied visits by lawyers and family members.

Since the events of 11 September 2001, the Egyptian authorities have clamped down on public gatherings and demonstrations. They have detained several people suspected of having links with armed Islamist groups, including people who had been forcibly deported to Egypt. An increasing number of civilians have been sent for trial by military courts.

It is particularly important to ensure that the administration of justice is fair. Without the safeguards of the rule of law, including mechanisms to ensure accountability, action taken against criminal suspects may lead to serious violations of human rights, such as secret detention, detention without charge or trial, torture, "disappearance", and unfair trials.

[4]European Parliament Resolution of 13 December 2001 "EU judicial cooperation with the United States in combating terrorism" (B5-0813/2001) while encouraging a number of methods of mutual assistance also "[R]eiterates its request for a complete abolition of the death penalty in the USA and reminds Member States that they are bound not only on the basis of their individual ratification of Protocol 6 of the ECHR but also as members of the Union, in accordance with Article 6 of the Treaty; a general EU-USA agreement cannot therefore be reached; extradition cannot take place if the defendant could be sentenced to death;.." See also "Europe urged to end hostility to US death penalty", *The Guardian*, 13 December 2001.

Many of the measures currently being introduced are ostensibly to deal with emergency situations. Some explicitly or implicitly involve derogating from (limiting or suspending) human rights guarantees. Amnesty International is particularly concerned that in some states, the courts can no longer effectively monitor the actions of the government because they have had their jurisdiction ousted through limitations on judicial review and even on such basic human rights protection as *habeas corpus*.[5] The risk to human rights in the current circumstances is heightened because there is no international mechanism specifically responsible for monitoring emergency legislation and practices.

China: fight against "terrorism" used to justify repression

The Chinese government intensified its crackdown on Uighur opponents of Chinese rule in the Xinjiang Uighur Autonomous Region (XUAR), claiming that their opponents were linked with international "terrorism".[6] The government called for international support in its crackdown on domestic "terrorism" after launching a new campaign to suppress "terrorist and separatist" activity in the XUAR. Local officials made it clear that "ethnic separatists" were a major target of the campaign.

The Chinese authorities do not distinguish between "terrorism" and "separatism", although separatism covers a broad range of activities, most of which amount to no more than peaceful opposition or dissent. They also consider preaching or teaching Islam outside government controls to be subversive. It appears that the Chinese authorities are trying to use the 11 September events to justify their harsh repression of Muslim ethnic groups in the XUAR.

Accusing such groups of being "separatists", "terrorists" or "religious extremists" obscures the widespread violation of human rights in the region. Thousands of Uighurs have been detained, imprisoned and tortured since the mid-1990s, several hundred have been executed and growing restrictions have been placed on the Islamic clergy and the practice of Islam in the region.

[5]A legal procedure that allows anyone deprived of their liberty by arrest or detention (or anyone on their behalf) to take proceedings before a court, in order that the court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful.

[6] From AI Index ASA 17/032/2001, News Service 181, 11 October 2001.

The definitions of "terrorism" in security legislation are excessively vague and broad in many countries. This can lead to the criminalization of peaceful activities that amount to the exercise of rights that are protected by international standards. Such legislation may infringe the right to freedom of expression and freedom of association, as well as breaching standards of clarity and certainty in criminal law.

Security legislation also often jeopardizes the rights of those suspected of security offences. In many cases they infringe human rights guaranteed by international law, in particular:

- the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, under any circumstances;
- the right to liberty;
- the rights of all detainees - whether detained on criminal charges, because of risks to national security, or on an immigration matter - to access to the outside world, and to safeguards to ensure that their detention is legal;
- the rights of those held on criminal charges to be able to prepare a defence and to have a fair trial;
- the right to seek asylum, and not to be *refouled* (forcibly returned) to a country where the individual would be at risk of serious human rights violations.

2. Human rights standards

Human rights standards must govern how states treat all people in all circumstances. Some standards explicitly take account of exceptional circumstances, so that not all standards apply in the same manner at all times, but they set tightly circumscribed limits on how far human rights guarantees may be suspended.

2a. The narrow boundaries for limiting human rights

Some human rights treaties accept that on some occasions, emergencies which "threaten the life of the nation"[7] may justify limiting or suspending some human rights guarantees, but only to the extent strictly required by the situation. The limitation may only be for the duration of the emergency, while the state of emergency is officially declared. The limitation of guarantees should not conflict with other obligations under international law, and should not be discriminatory. This limitation is given the technical term "derogation".

[7] Article 4(1) of the ICCPR.

Even under the treaties which permit derogation, a core group of rights must apply fully at all times: they are "non-derogable". For example, the International Covenant on Civil and Political Rights (ICCPR) states explicitly[8] that certain rights cannot be suspended under a state of emergency. These are: the right to life, the right not to be subjected to torture and other cruel, inhuman and degrading treatment, the right not to be enslaved, the prohibition of retroactive criminal legislation, the right to recognition under the law and the right to freedom of thought, conscience and religion.[9] Other rights are non-derogable because they are customary rules of international law (a rule accepted as binding on all states) or peremptory rules of international law (a general principle of law which cannot under any circumstances be limited). Such non-derogable rights include the obligation to treat detainees with humanity, and certain elements of the right to a fair trial, particularly the prohibition on arbitrary deprivation of liberty and the presumption of innocence.[10]

Derogation cannot contradict a state's other obligations under international law, especially Articles 55 and 56 of the UN Charter which recognize the promotion and protection of human rights as a key aim of the UN. Derogation should also be in accordance with the principles of international humanitarian law (the rules of war).

[8]Article 4(2) of the ICCPR

[9]In the European Convention on Human Rights, the rights which are recognized explicitly as non-derogable are set out in Article 2 (the right to life); Article 3 (the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment); Article 4(1) (the right not to held in slavery or servitude) and Article 7 (the principle of legality). In the American Convention on Human Rights, the list of non-derogable rights is longer: "Article 3 (Right to Juridical Personality); Article 4 (Right to Life); Article 5 (Right to Humane Treatment); Article 6 (Freedom from Slavery); Article 9 (Freedom from *Ex Post Facto* Laws); Article 12 (Freedom of Conscience and Religion); Article 17 (Rights of the Family); Article 18 (Right to a Name); Article 19 (Rights of the Child); Article 20 (Right to a Nationality); and Article 23 (Right to Participate in Government)." The African Charter on Human and Peoples' Rights does not include any derogation provision, implying therefore that no derogation from any right is permissible.

[10]The Human Rights Committee, General Comment on Article 4 of the ICCPR, UN Doc. CCPR/C/21/Rev. 1/Add. 11 (24 July 2001), paragraph 11. The Human Rights Committee is the body of independent experts which monitors states parties' implementation of the International Covenant on Civil and Political Rights.

If a state wishes to derogate from some of its obligations under a treaty, the measures proposed must be *necessary* and *proportionate*. The limits on specified human rights guarantees must be necessary; they must be "strictly required by the exigencies of the situation".[11] Any measure taken to restrict a human rights guarantee during an emergency must also be proportionate. The principle of proportionality means that measures must not be excessive in comparison with the threat, and must correspond with a genuine threat, or existing practice which leads to criminal acts, rather than a perceived threat, or generalized fear.[12]

Zambia: emergency powers lead to human rights abuse
In Zambia, the Emergency Powers Act gives the president and security forces broad and ill-defined powers. In effect, it allows for indefinite detention without trial under a Presidential Detention Order. Frederick Mwanza, a freelance journalist and opposition party member was arrested in November 1997 by a group of police, intelligence and army officers. He was questioned and assaulted by a security officer and held for five days during which time he was not able to inform anyone about his detention or whereabouts. Frederick Mwanza challenged the grounds for his detention provided in his detention order, and they were subsequently withdrawn and amended. Four people named as witnesses against him denied knowing him and said police had tortured them in order to implicate him in a coup attempt. Frederick Mwanza was released without charge after more than three months' detention.

Measures that restrict human rights guarantees must be applied only while there is a genuine threat "to the life of the nation" and can only be applied to certain human rights. Non-derogable rights must remain in force and must be respected in full. The state must inform the international community, particularly the UN Secretary-General and other UN and regional bodies who monitor the implementation of human rights treaties, about the emergency and the measures taken. This is to ensure that the measures can be scrutinized, that other states can challenge them as appropriate, and to ensure that they are only applied when they are necessary.

[11] *Ibid*., paragraph 4.

[12] *Ibid*., paragraph 6. In the same General Comment, the Human Rights Committee stated that, when considering measures taken to derogate from specified human rights standards, states have "a duty to conduct a careful analysis... based on an objective assessment of the situation" (paragraph 6).

2b. The principle of non-discrimination

The principle of non-discrimination on grounds such as race, colour, ethnic origin, sex, language, religion or social origin is a bedrock of international law: the principle is repeated, with some slight variations in the lists of grounds, in every human rights treaty. Article 4(1) of the ICCPR states that a derogation from human rights provisions based solely on discrimination on the grounds of race, colour, sex, language, religion or social origin would be unlawful.[13] The right to be recognized as a person before the law[14] is also important in this context, and this right is also considered to be non-derogable.[15]

Some states have introduced legislation which discriminates in arbitrary and unjustifiable ways against non-nationals, and denies them basic human rights protection. For example, US legislation allows non-nationals to be tried by military commissions which do not respect the most basic principles of fair trial.[16] States are required to ensure the human rights of *anyone* under their jurisdiction or control, regardless of their nationality.[17]

[13]Article 27 of the American Convention on Human Rights also states that measures of derogation should not be "inconsistent with other obligations under international law and do not involve discrimination on the grounds of race, colour, sex, language, religion or social origin."

[14]Article 16 of the ICCPR.

[15]Article 27 of the American Convention on Human Rights states that Article 3 (the Right to Juridical Personality) is non-derogable.

[16]See the section on **Unfair trials** in this document for further details.

[17]See for example Article 2(1) of the ICCPR - "Each state party...undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

3. Torture and cruel, inhuman or degrading treatment

Malaysia: detention under security law facilitates use of torture
For more than 20 years Amnesty International recorded consistent accounts of torture and ill-treatment of people detained under Malaysia's Internal Security Act (ISA) which permits indefinite "preventive" detention without trial of any person suspected of posing a threat to national security. During an initial 60-day "investigation" period ISA detainees can be held incommunicado, denied access to lawyers, relatives or independent doctors.

In September 1998, as political tensions between Prime Minister Mahathir Mohamad and former Deputy Prime Minister Anwar Ibrahim intensified, Dr Munawar Anees, an academic and a speechwriter for Anwar Ibrahim, was arrested under the ISA. He reported how, during prolonged periods of interrogation, he was blindfolded, stripped naked, punched, subjected to humiliating verbal abuse, forced to simulate homosexual acts and threatened with indefinite ISA detention until he "confessed" to having had a sexual relationship with Anwar Ibrahim. Three weeks later Anwar Ibrahim was arrested on charges of sodomy, but informed he was detained incommunicado under the ISA. After nine days he was brought to court showing visible signs of ill-treatment, including a swollen eye and a bruised arm, and complained that shortly after his arrest, whilst handcuffed and blindfolded in his cell, an unidentified officer "beat him severely, causing serious injuries".[18] In 1999 Malaysia's then most senior police officer, Inspector-General of Police Abdul Rahim Noor, was charged and later found guilty of the assault.

In April 2001, 10 political activists, mostly senior members of the opposition party *Keadilan* (led by Wan Azizah, wife of Anwar Ibrahim), were arrested under the ISA and accused of planning to overthrow the government by "militant" means, including violent demonstrations. No evidence to support these allegations were made public and in June, six of the detainees were given two-year detention orders. The detainees reported that during interrogation they were subjected to intense psychological pressure, at times amounting to torture. Forced to depend on their interrogators as their only source of human contact, they were threatened with indefinite detention and induced to fear for the safety of their families. In a separate series of ISA arrests from June 2001, at least 20 people were detained and accused of links with a Muslim

[18] See *Malaysia: Human rights undermined: Restrictive laws in a parliamentary democracy* (AI Index: ASA 28/06/99).

"extremist" group allegedly planning to set up an Islamic state through violence. Thirteen were given two-year detention orders.

Following the 11 September 2001 attacks in the USA, Malaysian leaders justified the use of the ISA as a preventive measure against suspected "terrorists" and "extremist groups", and announced that the government might amend the ISA and other legislation to better confront "terrorism". Amnesty International reiterated its call for the ISA to be repealed or amended so that those suspected of threatening national security have the opportunity to defend themselves in a court of law in proceedings that meet international standards of fairness, and are not subjected to torture or ill-treatment.[19]

Torture and other forms of ill-treatment are forbidden under international law under all circumstances and without any exception.[20] Adequate safeguards to prevent torture and ill-treatment must be in place, such as proper judicial supervision of detention, and access to doctors and lawyers.

There is a particular risk of torture in times of fear and insecurity. Law enforcement agents may consider it "necessary" to secure confessions or information. States generally deny that they approve the use of coercion as a means of interrogation. However, they often condone it by failing to establish effective safeguards against torture and ill-treatment such as prohibiting incommunicado detention, requiring judicial supervision of all detainees and ensuring prompt, effective, independent and impartial investigation of complaints.

[19]See News Service 187, 24 October 2001 (AI Index ASA 28/031/2001).

[20]Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture); Article 7 of the ICCPR; Article 5 of the African Charter of Human and Peoples' Rights; Article 5(2) of the American Convention on Human Rights; Article 3 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms.

The UN Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture) and other human rights treaties prohibit the use of evidence obtained using torture or ill-treatment against an accused person in court.[21] Importantly, the Convention against Torture specifies explicitly that there can be no excuse or justification ever for the use of torture. [22]

Israel: torture justified by the "ticking bomb" defence
Israel has justified the use of what it described as interrogation techniques involving "moderate physical pressure" against Palestinian detainees by reference to the "ticking bomb" scenario. This postulates that physical or psychological pressure would be justified to save a roomful of people threatened by a "ticking bomb" whose whereabouts was known to the suspect. Israel's interrogation techniques (which were used against hundreds of people many of whom were later released without charge) include sleep deprivation, prolonged squatting on haunches, playing of loud music, forcing people to sit in a strained position on a specially adapted chair, and shaking.

The Committee against Torture held a special session in 1997 to consider these methods of interrogation and ruled that they constituted torture.[23] The Israeli Supreme Court eventually ruled on 6 September 1999 that the methods of interrogation were unlawful. However, the Court did not "negate the possibility that the 'necessity' defence be available" to interrogators as an *ex post facto* defence.[24]

Amnesty International believes that this element of justification is contrary to Article 2(2) of the Convention against Torture which states: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture."

[21]Article 15 of the Convention against Torture.

[22]Article 2(2) of the Convention against Torture.

[23]UN Document a/52/44 para. 253-260, 9 May 1997.

[24]*Public Committee against Torture in Israel v the State of Israel* (HCJ 5100/94) 6 September 1999.

4. Human rights in the administration of justice

In the context of the criminal justice system, human rights law applies to everyone, no matter what they are alleged to have done, or what has been proved against them in a court.[25] Where criminal legislation and criminal justice procedures are amended to ensure security from criminal acts, such measures must be in accordance with international human rights law and standards.

4a. Vague and broad definitions of terrorism

While the word "terrorism" is used frequently and its practice is generally opposed, there is no universally accepted definition of the word in general use or in treaties and laws designed to combat it. Frequently, the word indicates the user's attitude to a certain crime. States and commentators describe as "terrorist" acts or political motivations that they oppose, while rejecting the use of the term when it relates to activities or causes they support. This is commonly put as "one person's terrorist is another person's freedom fighter".

Zimbabwe: journalists labelled as "terrorists" because of their work
In November 2001, the Zimbabwe state-controlled newspaper *The Herald* printed an article that described six foreign correspondents as "assisting terrorists", naming reporters for British newspapers *The Guardian, The Daily Telegraph, The Times* of London, as well as the United States-based *Associated Press* and South African newspaper *Business Day*. A South Africa-based human rights campaigner, Richard Carver, was also identified as a supporter of "terrorism" after he published an article critical of the government's human rights record.

The article quoted an anonymous government official as saying: "We would like them [the journalists] to know that we agree with President Bush that anyone who in any way finances, harbours or defends terrorists is himself a terrorist. We, too, will not make any difference between terrorists and their friends and supporters." The Zimbabwean government had earlier in the year described *The Guardian, The Daily Telegraph* and the BBC as arms of the British intelligence service, expelled three foreign correspondents, banned most non-resident foreign journalists from entering the country, and blocked CNN from airing on state-controlled television.

[25] See Amnesty International's *Fair Trials Manual* (AI Index: POL 30/02/98) for a guide to the relevant human rights law and standards applicable to the administration of criminal justice.

In mid-November 2001, Zimbabwe's President Robert Mugabe spoke at the state funeral of a war veteran who had been killed under mysterious circumstances while he was awaiting trial on charges of kidnapping and "disappearing" an opposition campaign worker in 2000. President Mugabe accused the opposition of killing the war veteran as part of "...an orchestrated, much wider and carefully-planned terrorist plot by internal and external enemy forces, with plenty of funding from some commercial farmers and organizations, organizations within the region, organizations or internationals like the Westminster Foundation which, as we have established beyond doubt, gets its dirty money for dirty tricks from the British Labour Party, the Conservative Party, and the Liberal Party and that is, of course, also from the government of Tony Blair."

In labelling them as "terrorists", President Mugabe appeared to condone violent attacks on the opposition by supporters of his ruling party. In the course of that same month, local human rights monitoring groups in Zimbabwe documented six political killings and 115 cases of torture, almost all of them members of the opposition political party. By the end of 2001, the government announced it was reintroducing a Public Order Security Bill to punish acts of "insurgency, banditry, sabotage, terrorism, treason and subversion" with life imprisonment or the death penalty.

In a recent report, the UN Special Rapporteur on terrorism noted that the issue of "terrorism" has been "approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day."[26] The Special Rapporteur also points out that "the term terrorism is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgement and is used selectively."[27]

[26]UN Document E/CN.4/Sub.2/2001.31 paragraph 24. The Special Rapporteur is undertaking a study on "terrorism" for the UN Sub-Commission on the Protection and Promotion of Human Rights.

[27]UN Document E/CN.4/Sub.2/2001.31 paragraph 25.

There are a number of UN conventions prohibiting specific acts, such as hijacking or bombing, which specify in detail various crimes which are commonly understood as "terrorist" crimes.[28] However, recent attempts to finalize the UN Convention on "terrorism" stalled, *inter alia*, because of disagreements about the definition.

Due in part to the difficulties in reaching an agreed definition of the term, the Rome Statute for the International Criminal Court (the Rome Statute) does not refer explicitly to "terrorism" when defining the court's jurisdiction. However, the court's jurisdiction does include all crimes that satisfy the definitions of war crimes, crimes against humanity, or genocide. The drafters decided that the issue of how to define "terrorism" should be a matter for subsequent review.

State laws and proposed laws on "terrorism" vary considerably in the range of acts that they proscribe and the clarity with which the acts are defined. A principle of international law which cannot be made subject to derogation is that there should be no prosecutions for acts which have not been already clearly defined as criminal offences or which were not contrary to generally recognized principles of law. Some of the laws and draft legislation examined by Amnesty International give rise to concern that

- the lack of precision creates uncertainty about what conduct is prohibited;
- they may criminalize peaceful activities and infringe unduly upon other rights such as freedom of expression and association.

For example, in South Africa, Section 12 of the draft Anti-Terrorism Bill refers to the protection of property of internationally protected persons. Under this provision, "any person who wilfully, with intent to intimidate, coerce, threaten or harass, enters or introduces any part of himself or herself or any object within that portion of any building or premises...; or refuses to depart...commits an offence punishable by up to five years' imprisonment." Such a vague definition could encompass the criminalization of peaceful activities, such as non-violent demonstrators attempting to deliver a petition to an embassy.[29]

[28]For example, International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

[29]See "Preserving the gains for human rights in the "war against crime": Memorandum to the South African Government and South African Law Commission on the draft Anti-Terrorism Bill, 2000" (AI Index: AFR 53/04/00, November 2000).

In the UK, the Anti-Terrorism, Crime and Security Bill drafted by the government provided that a person could be detained without trial on the order of the Home Secretary, a senior government minister, if the person had "links with a person who is a member of or belongs to an international terrorist group". The Bill did not define what having "links" with a person who is a member of a "terrorist group" was intended to cover. Following representations, the government agreed to the inclusion of a definition that clarifies and restricts the provision.[30]

4b. Freedom of association under attack

Security legislation sometimes makes it a criminal offence to be a member of a "terrorist group" even if the individual does not commit any other illegal act. Frequently the term "terrorist group" is not defined in the legislation, or may be defined in terms which are very vague and could be interpreted as referring to peaceful political, religious or ethnic organizations. It is very important that new legislation does not criminalize activities that amount to peaceful exercise of rights such as the rights to freedom of expression, conscience or association.

4c. Rights of detainees

International human rights law recognizes that those held in detention for any reason require special protection due to the vulnerable position they are in: they are entirely in the power of the state.

Under normal conditions, people are usually detained within the ordinary criminal justice system because they are accused of having committed a crime. When states are responding to security threats, people are sometimes detained, not because of something they are alleged to have done, but because they have been assessed to pose a threat to the security of the state or its populations. The next two sections outline Amnesty International's concerns regarding the rights of those in detention. The standards for their protection under international law are the same for all detainees, and are outlined in part **4c(ii) Rights of those suspected of crimes under security legislation**, but Amnesty International has particular concerns about the use of administrative detention which are outlined separately in part **4c(i) Administrative detention: detention outside the criminal justice system**.

[30]The definition provided by section 21(4) of the Anti-terrorism, Crime and Security Act 2001 provides that "a person has links with an international terrorist group only if he supports or assists it."

4c(i) Administrative detention: detention outside the criminal justice system

"Administrative" or "preventive" detention refers to measures under which people suspected of posing a threat to public order or state security are detained by order of state authorities which do not intend to prosecute the detainees with criminal offences. Such detention measures have been used by governments in every region of the world during periods of international and domestic armed conflict. Some governments use such measures in times of civil unrest, or even during peace.[31] Some detention measures have often applied specifically to citizens of ethnic, national or religious backgrounds related to the conflict or who are considered to oppose the government.

As described above, Malaysia's Internal Security Act (ISA) allows the police to detain without a warrant any person deemed a threat to the national security or economic life of Malaysia for up to 60 days for investigation. The Minister of Home Affairs can then extend the period of detention for up to two years, without reference to the courts, by issuing a detention order which is renewable indefinitely. Since the 1960s, the ISA has been used to suppress peaceful political, academic and social activities. It has been used to detain scores of prisoners of conscience, including prominent politicians, trade unionists, teachers, religious activists and community workers. It has also been used as a threat against the legitimate activities of non-governmental organizations.

Other countries have implemented detention measures specifically for non-nationals. Following the attacks of 11 September, the USA and the UK legislated to permit the indefinite detention of "suspected terrorists" whom they are unable to deport.

[31]For example, see details of France's use of "*assignation à résidence*" (administrative detention) used against some political refugees, *Amnesty International Report 1999*, page 165.

Governments' justification for such detention schemes is that the normal safeguards are too stringent to permit successful prosecutions leading to imprisonment for criminal offences. As the UK Home Secretary has stated, the authorities cannot secure the imprisonment of "suspected terrorists" by prosecuting them for crimes because of "the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required."[32]

Commonly, administrative detention systems also lack other safeguards that are integral to the criminal justice system. Such systems differ from country to country but many have the following in common. The decision that a person is a "suspected terrorist" who is to be detained is frequently made by an executive official in a secret process. An accused person is likely to be unaware that the process is even occurring and cannot defend him or herself. The evidence will probably include material inadmissible in a criminal prosecution (for example, evidence which is hearsay, rather than something that the witness has heard or seen directly) and the decision made on a lower standard of proof. Although an appeal to a judicial body is permitted, the process frequently still involves secret evidence and anonymous witnesses, thereby denying people facing extremely serious allegations and consequences the right to defend themselves effectively. In the UK, the Special Immigration Appeals Commission (SIAC) is designated to review decisions regarding administrative detention; Amnesty International has expressed serious concerns about the fairness of this procedure.[33]

Administrative detention systems are, in effect, informal or shadow criminal justice systems. People certified by government officials as threats to national security may be detained for years, as if they had been convicted of recognizable criminal offences and sentenced.

Amnesty International believes that states should not detain anyone unless they are charged with recognizably criminal offences promptly and tried within a reasonable period; or action is being taken to extradite or deport them within a reasonable period. The rules of evidence and standard of proof in the criminal justice system have been prescribed in order to minimize the risk of innocent individuals being convicted and punished. It is unacceptable for governments to circumvent these

[32]The Home Secretary made this statement in his notification of the derogation to the Secretary General of the Council of Europe, 11 November 2001.

[33]For further details about the Special Immigration Appeals Commission, see below in **Immigration controls fail to respect the right to seek asylum**.

safeguards and Amnesty International believes that it is a violation of fundamental human rights for states to detain people whom they do not intend to prosecute or deport.

Administrative detention is not explicitly prohibited by international human rights standards when strictly required during times of national emergency, but even at such times human rights standards applicable to people in detention apply.[34] Amnesty International believes that the rights that must be respected if states resort to administrative detention include: the fact and location of detention must not be secret; their family must be notified and allowed access; a detained person must be notified of the reasons for their detention and of their rights, in a language that they understand; a detained person must be entitled to challenge the lawfulness of detention: they must be brought before a judicial authority periodically to determine the necessity for and lawfulness of detention; and foreign nationals must be given all reasonable facilities to communicate with and receive visits from representatives of their government or an appropriate international organization.

4c(ii) Rights of those suspected of crimes under security legislation

Security legislation being adopted in many countries undermines the human rights of detainees, denying them safeguards which, under international human rights law, should be upheld in all situations. The prohibition of arbitrary detention is generally held to be a fundamental principle of international law. Effective judicial supervision of all detainees is an important safeguard against arbitrary detention. However, security legislation frequently allows long delays before bringing a suspect before a court to rule on the legality of detention, or denies a suspect the opportunity to challenge detention.

Denial of access to a court

In some domestic security legislation detainees can be denied access to a court for far longer than human rights guarantees allow. For example

- in Turkey, detainees must be brought before a judge within four days "excluding the time it takes to send them to the court nearest to the place of

[34] The obligation not to detain arbitrarily and to allow effective judicial supervision have explicitly been ruled to apply to "preventive detention" by the Human Rights Committee (the expert body which monitors the ICCPR). General Comment 8, 30 July 1982.

detention" but the period can be extended in the region under a state of emergency for up to ten days;
- under the Internal Security Act in Malaysia, detainees can be denied access to a court for weeks, months, or indefinitely.

Anyone deprived of their liberty has the right to be brought promptly before a judge or other judicial officer, so that their rights can be protected.[35] The purposes of such a review are to assess whether sufficient legal reason exists for the arrest; to assess whether detention before trial is necessary; to safeguard the well-being of the detainee; and to prevent violations of the detainees' other human rights. Detainees should be brought promptly before a court. The European Court of Human Rights has ruled that, even under a state of emergency, four days and six hours was not sufficiently prompt.[36]

Everyone deprived of their liberty has the right to challenge the lawfulness of their detention before a court,[37] and to have the detention reviewed on a regular basis.[38] The right to challenge the lawfulness of detention (through expeditious court procedures such as *habeas corpus* or *amparo*) is important because it is linked to the presumption of innocence and protection against other abuses, such as torture and "disappearances". Those who are detained without a proper legal justification should be able to rectify their situation quickly.

[35]Principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Every deprivation of liberty by the state should be subject to judicial supervision to safeguard the well-being and interests of the detainee - for this reason, everyone should be brought before a court, even if they accept that they are detained lawfully. The right to be brought before a court is different from the right to challenge the legality of detention because the practical exercise of the right to be brought before a court should be automatic and apply to everyone, whereas the right to challenge the legality of detention is open to all in principle, but in practice, only those who hold that their detention is illegal will exercise the right.

[36]*Brogan et al v UK* Series A 145-b, 29 November 1988.

[37]Article 9(4) of the ICCPR, Principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Article 7(6) of the American Convention, Article 5(4) of the European Convention on Human Rights; see Article 7(1)(a) of the African Charter on Human and Peoples' Rights.

[38] Principles 32 and 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Malaysia: rendering habeas corpus *ineffective*
In Malaysia, a series of progressively restrictive legislative amendments, paralleled by judicial rulings interpreting these laws, have rendered the writ of *habeas corpus* essentially meaningless in relation to detainees held under the Internal Security Act (ISA). Malaysian judicial rulings and case law have established the principle that once the Interior Minister has decided that it is necessary to detain a person, and has issued a valid detention order, the courts will not question the basis for detention.

In May 2001, a High Court considering the *habeas corpus* petition of two ISA detainees issued a rare ruling upholding the right of the detainees to be produced in court. This ruling was reversed by the Federal Court, but the High Court then ordered the release of the two on the grounds that detention was unlawful and done in bad faith in that they were detained for purposes other than those stated by the authorities. A similar *habeas corpus* petition on behalf of five other ISA detainees had been rejected by another High Court in April 2001. The detainees appealed to the Federal Court, filing affidavits that their interrogations by police had been unconnected to the publicly stated reasons for their arrests. The appeal is continuing.

Amnesty International considers that when challenging the legality of detention, a suspect and his or her legal representative should have access to the evidence on which the state relies to justify detention, in order to be able to mount an effective challenge.

The risks of incommunicado detention

Turkey: torture in incommunicado detention
In Diyarbakir at least 16 people were arrested in early February 2001, including 28-year-old Abdulselam Bayram. He was held incommunicado for seven days. He stated that he was blindfolded, subjected to electric shocks, heavily beaten, hung by the arms, and sprayed with pressurized water. He also reported food deprivation. As a result of the torture he reported a severe pain in his chest. In addition, due to the hanging, his arms became numb. Lawyers said that his body and hands were shaking, and he seemed exhausted.

Incommunicado detention (detention without access to the outside world – particularly friends, family, lawyers and doctors) facilitates torture, ill-treatment and "disappearances". Prolonged incommunicado detention can itself be a form of cruel, inhuman or degrading treatment[39]and the Special Rapporteur on torture has recently called for incommunicado detention to be made illegal.[40] Amnesty International has received reports of domestic security legislation which allows suspects to be held in incommunicado detention for days or even weeks.

In Malaysia, for example, the Internal Security Act allows up to 60 days' incommunicado detention.

In Spain, incommunicado detention for up to five days can be used in cases of persons "suspected of having committed a crime in the course of involvement with or membership of an armed band, or as individual 'terrorists' or 'rebels'."[41]

In Turkey, people detained on suspicion of crimes which fall within the jurisdiction of State Security Courts may be held in incommunicado detention for up to four days. Amnesty Inernational's research indicates that torture in Turkey is widespread and systematic, and "mainly occurs in the first days of police or gendarmerie custody, when detainees are held without any contact with the outside world."[42]

Denial of access to a lawyer

[39]See Human Rights Committee General Comment 20 on Article 7 of the ICCPR, (forty-fourth Session, 1992), paragraph 6.

[40]Paragraph 39(f) of the Report to the General Assembly, UN Document A/56/156, of 3 July 2001.

[41]"Spain: A briefing on human rights concerns in relation to the Basque peace process" June 1999 (AI Index: EUR 41/01/99).

[42]*Turkey: An end to torture and impunity is overdue!* (AI Index: EUR 44/072/2001), 3.

International human rights standards require that people who are detained should be able to consult with a lawyer promptly[43] in order to protect their rights and to assist in their defence,[44] and that they should be able to communicate with the lawyer in confidence.[45]

Both these standards - prompt access to lawyers and confidential communications - have been infringed by security measures. For example:

- as indicated above, in Malaysia the Internal Security Act allows up to 60 days' incommunicado detention;
- in Turkey, people suspected of offences under the jurisdiction of the State Security Courts only have a legal right to see a lawyer from the fifth day in detention but this is often denied in practice. When they are permitted to see a lawyer, police are often present during the consultation and the length of time permitted for the consultation is very restricted. Even children suspected of security offences, including those under 15 years of age, are denied the right to see a lawyer. They are also excluded from all protective mechanisms set out in Law No. 2253 on juvenile justice: access to lawyers in detention, appointment of lawyers, interrogation solely by a prosecutor, trial before a Juvenile Court;
- the UK Terrorism Act 2000 allows for a consultation between lawyer and detainee to be held "in the sight and hearing" of a police officer, if a senior police officer has reasonable grounds to believe that such consultation would lead to interference with the investigation;[46]

[43]The Human Rights Committee, in their General Comment 20 on Article 14 of 10 April 1992, stressed that "all persons arrested must have immediate access to counsel." Principle 7 of the Basic Principles on the Role of Lawyers states that access to lawyers must be granted "promptly" - less than 48 hours from the time of arrest or detention.

[44]The UN Special Rapporteur on torture has recommended that access to a lawyer be granted within 24 hours of arrest (E/CN.4/1995/34 para 926). According to Principle 7 of the Basic Principles on the Role of Lawyers, all persons arrested or detained should have access to a lawyer not later than 48 hours from the time of arrest or detention

[45]Principles 22 and 8 of the Basic Principles on the Role of Lawyers, Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that "interviews between the prisoner and his legal advisor may be within sight but not within hearing of a police or institution official.@

[46]Schedule 8, Part I, section 9 of the Terrorism Act 2000.

- on 9 November 2001, the US Attorney General approved an executive order to allow the government to monitor conversations and intercept postal communications between lawyers and clients. The American Civil Liberties Union called this "a terrifying precedent".[47]

Presumption of innocence infringed

Everyone has the right to be presumed innocent, and treated as innocent, until and unless they are convicted in proceedings which meet the minimum prescribed requirements of fairness. The Human Rights Committee has identified this as one of the non-derogable aspects of the right to a fair trial.[48]

Amnesty International is very concerned about several practices which inhibit full enjoyment of the presumption of innocence which are outlined in this report: criminalization of membership of certain organizations, and long-term detention equivalent to a punishment following conviction being imposed on people on the basis of "suspicion".

Furthermore, security legislation often leads to the erosion of the right not to be forced to incriminate oneself. In some cases, detainees have been convicted and imprisoned for exercising their right to silence, even when they were acquitted of all other crimes.[49] The right of an accused person to remain silent is expressly recognized in the Rome Statute for the worst possible crimes – genocide, crimes against humanity and war crimes.[50]

[47] *Washington Post*, 9 November 2001.

[48] General Comment on Article 4 of the ICCPR, UN Document CCPR/C/21/Rev/Add.11, 24 July 2001, paragraph 11.

[49] *Heany and McGuiness v Ireland*, European Court of Human Rights, Application No. 34720/97; 21 December 2000.

[50] Article 55(2)(b).

In its commentary on the Indian Prevention of Terrorism Ordinance 2001, Amnesty International expressed concern that decisions regarding bail presumed the guilt or innocence of the accused. The Prevention of Terrorism Ordinance 2001 provides that no person accused of an offence should be released on bail if the public prosecutor opposes bail, unless "the court is satisfied that there are grounds for believing that the accused is not guilty of committing such offence".[51] This clearly jeopardizes the right to be presumed innocent, as the granting or denial of bail becomes dependent on a *prima facie* assessment of guilt or innocence by the court. Failure by the court to provide bail might therefore be considered as an assumption by the court that the accused is guilty.[52]

Unfair trials

Some states have responded to "terrorism" or threats to their security by legislating that such crimes should be tried in special courts which have fewer guarantees to ensure a fair trial than ordinary civilian courts. Others permit courts to use special evidentiary procedures when hearing cases in which is it considered that national security may be at risk if ordinary procedures are followed. Often the two types of measures are combined. As the Human Rights Committee has noted in relation to special or extraordinary courts, "quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice."[53]

Both types of measure have the potential to violate the international standards designed to ensure that trials are conducted fairly. The most notable example that has occurred since the attacks in the USA on 11 September is the Order signed by President George W. Bush on 13 November 2001 that will allow "military commissions" to try non-US citizens suspected of involvement in "international terrorism".[54]

[51] Section 48(6) and (7).

[52] *India: Briefing on the Prevention of Terrorism Ordinance*, (AI Index 20/049/2001).

[53] General Comment 13 on Article 14 of the ICCPR, 13 April 1994, para 4.

[54] See "USA: Presidential order on military tribunals threatens fundamental principles of justice" (AI Index: AMR 51/165/2001, 15 November 2001).

The Order is discriminatory: foreign nationals may be prosecuted under a lower standard of justice than US nationals. Also, the Order gives the executive the power to decide which individuals will be prosecuted by military commissions and to determine the rules as to what evidence may be admitted and the standard of proof. Under the Order, there is no possibility of appeal to a court: rather, convictions and sentences can be reviewed by the executive.

The Order creates a parallel system which violates fundamental principles of justice. These principles apply in any circumstances, including in times of war. For example, the 1949 Geneva Conventions, ratified by the USA in 1955, require that prisoners of war, who are normally nationals of another state, must be tried in courts which guarantee fundamental rights of fairness, including the right of appeal. The Order creates the risk that people may be executed after a trial conducted by a court whose decision cannot be appealed but only reviewed by the executive who selected the individuals for prosecution in the first place.

In some countries, such as Peru and Colombia, security legislation has allowed for secret trials and "faceless judges",[55] in violation of the right to be tried in public: the ability of the general public, journalists and human rights defenders to scrutinize proceedings is important to ensure the fairness of the procedure.[56]

Security legislation sometimes provides different systems for prosecuting people charged with "terrorist" offences: for example, they may have different rules for admissibility of evidence than the ordinary criminal courts.

For example, under the Essential (Security Cases) Regulations (ESCAR) in Malaysia, cases are heard by a single High Court Judge, sitting alone. Witnesses may give evidence anonymously, depriving the accused of information necessary to challenge their reliability. Hearsay, secondary evidence and self-incriminating statements are all admissible as evidence.[57]

UK: miscarriages of justice in special courts with reduced safeguards

[55]Concluding Observations on Peru, CCPR/C/79/Add.72, paragraph 11. 18 November 1996. In Peru, "faceless judges" were in place between May 1992 and October 1997.

[56]See *Fair Trials Manual*, chapter 14.

[57]Amnesty International, *Malaysia: Human rights undermined: Restrictive laws in a parliamentary democracy* (AI Index: ASA 28/06/99).

Three people were held for nearly four years without having been convicted of any crime in Northern Ireland because they were implicated in crimes by "supergrasses" (participants in crimes who informed against their alleged accomplices). They were then convicted on the basis of the uncorroborated testimony of a "supergrass", and spent a further year in prison before their successful appeal and release in 1986. Under the Northern Ireland (Emergency Provisions) Act, they were tried in "Diplock courts", special courts sitting without a jury and which admitted confession evidence according to a lower standard than in normal criminal courts. Ten "supergrass" trials took place in Northern Ireland between 1983 and 1985. Sixty-five of more than 200 defendants were convicted on the uncorroborated testimony of "supergrasses". The Court of Appeal quashed all but one of these convictions. Amnesty International repeatedly expressed concern about judicial inadequacies in these trials.

5. Punishments which violate human rights

5a. The death penalty

Amnesty International opposes the death penalty in all cases as it violates the right to life and is the ultimate cruel, inhuman and degrading punishment. International human rights standards encourage the abolition of the death penalty.[58] International human rights bodies have also encouraged the abolition of the death penalty. For example, the UN Commission on Human Rights called on all states which maintain the death penalty to "progressively restrict the number of offences for which the death penalty may be imposed; to establish a moratorium on executions, with a view to completely abolishing the death penalty."[59]

In the context of the current increase in the use of security legislation, Amnesty International is concerned that new crimes punishable by the death penalty are being introduced, so that states are expanding the number of crimes punishable by the death penalty, instead of progressively restricting it. For example, in the Indian Prevention of Terrorism Ordinance 2001, the death penalty may be applied to any "terrorist" act

[58]See for example, Article 6(6) of the ICCPR, Articles 4(2) and 4(3) of the American Convention on Human Rights.

[59]E/CN.4/RES/2000/65, April 2000; E/CN.4/RES/2001/68, April 2001.

which causes death (with or without an intent to cause serious injury or death), whereas before, it was only a penalty for the crime of murder.[60]

Amnesty International is also concerned that the death penalty will be imposed following new unfair trial procedures. The organization notes with concern that the US military commissions, which breach many fair trial safeguards, are empowered to impose the death penalty.

5b. Conditions of imprisonment

Sometimes people imprisoned under security legislation are kept in conditions which amount to cruel, inhuman or degrading treatment or punishment. Often their conditions are much harsher than those in which persons convicted of other serious crimes are held. Similarly, high security prisons sometimes use very restrictive practices, such as confinement for long periods in small cells, solitary confinement, or sensory deprivation.

For example, isolation in prisons has been a subject of intense debate in Turkey for more than a year. Prisoners have usually been housed in large dormitories that hold 60 and sometimes more prisoners, but the Turkish authorities have built new wings to existing prisons and "F-Type prisons" in which dormitories are replaced by smaller cells. Thousands of inmates of "F-Type" prisons have been kept in prolonged solitary confinement or in small group isolation which could amount to cruel, inhuman or degrading treatment in itself and can facilitate torture and ill-treatment.

[60]See *India: Briefing on the Prevention of Terrorism Ordinance*, (AI Index ASA 20/049/2001).

Article 16 of the Anti-Terror Law - which laid down a draconian regime of intense isolation, but was rarely implemented before the opening of the "F-Type" prisons - was amended in early May 2001 to allow prisoners to participate in communal activities such as sport and education, and to receive unobstructed visits. Although a welcome and overdue step, the wording of the law suggests that these rights will be provided at the discretion of the prison authorities. The use of communal areas is granted only within the "framework of rehabilitation and education programs". When an *ad hoc* delegation of the European Parliament visited two "F-Type" prisons in early June, they found that the common areas were not yet ready for use. They concluded that "isolation was almost total and therefore excessive, provocative and a form of unnecessary oppression, which can be a form of psychological torture".[61]

[61]See *Turkey: An end to torture and impunity is overdue!*, (AI Index: EUR 44/072/2001).

6. Failure to protect rights across borders

6a. Extradition procedures fail to include human rights guarantees

Amnesty International recognizes that extradition is a key element in international law enforcement cooperation, which provides a safeguard against impunity for criminal acts which are abuses of human rights. However, the organization is concerned that, in their efforts to facilitate and expedite extradition procedures, states will weaken or fail to put in place human rights guarantees for accused people. Extradition procedures must respect international fair trial standards and must not lead to extradition of suspects to a jurisdiction where they would be subjected to an unfair trial, the death penalty, or treatment or punishments which constitute torture or which are cruel, inhuman or degrading.

International human rights standards for fair trials are basic standards of international law. These include pre-trial rights, such as access to a lawyer and adequate time and resources to prepare a defence, an independent and impartial court, and a public hearing. All states should ensure not only that these human rights guarantees are effective in their own criminal justice system, but also that they do not extradite suspects to other jurisdictions where these rights would not be respected.[62]

Procedures for extradition should contain a proper system of review of facts of the case to ensure that individuals are being sought in order to bring prosecutions for recognizable criminal offences and are not being sought on political or discriminatory grounds. This should be part of the wider assessment by a court of whether a suspect would face human rights violations on being returned to the requesting state. Amnesty International calls on states to ensure that courts are empowered to assess the risks of human rights abuses that the accused might face on extradition, and to refuse extradition where human rights are at risk.

[62] The European Court of Human Rights has held that a state which extradited a person to a country where they suffered torture and ill-treatment would be responsible for the human rights violation under international human rights law. See the case of *Soering v UK*, Series A, No 161 (1989) and *Chahal v UK* (Application number 22414/93) Judgement of 15 November 1996.

Amnesty International has expressed concern that new procedures meant to facilitate extradition, in fact undermine human rights protection. For example, in September 2001, the European Union (EU) Commission proposed a Council Framework Decision on the European arrest warrant and the surrender procedures between member states.[63] Amnesty International expressed concern that the proposal was not in accord with the Charter of Fundamental Rights of the EU, which states that "no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."[64] Furthermore, the European Convention on the Suppression of Terrorism provides that states are not obliged to extradite if an extradition request "has been made for the purpose of prosecuting or punishing a person on account of his race, religion , nationality or political opinion, or ...that person's position may be prejudiced for any of these reasons."[65] The Explanatory Report on this Convention suggests that a person's position would be prejudiced if, for example, they would be "deprived of the rights of defence as they are guaranteed by the European Convention on Human Rights."[66] At the time of writing, EU member states had reached agreement on new arrest and surrender procedures but the details had not been published, so Amnesty International did not know whether these standards had been incorporated into the final text.

In cases where extradition would lead to violations of human rights, states should accept the duty to submit the cases to its appropriate authorities for the purpose of prosecution, or should extradite suspects to another country where they could be prosecuted under procedures which respect international human rights law.

6b. Immigration controls fail to respect the right to seek asylum

The right to seek and enjoy asylum must be respected. Some states are amending their immigration legislation to allow non-citizens to be deported without having their claims for protection assessed in fair and satisfactory procedures. This will lead

[63]COM (2001) 522 final.

[64]Article 19.2.

[65]Article 5.

[66]Council of Europe, *European Convention on the Suppression of Terrorism - Explanatory Report*, par 50.

to serious risks of *refoulement* - a breach of the obligation not to return anyone to a country where they may suffer serious human rights abuses such as torture.

Some states have also limited or are proposing to limit the right even to apply for asylum. They intend to deny this right to those who are suspected of being "terrorists". People will be excluded from a country before any assessment has been made of their claim, purely on the basis of suspicions that they are involved in "terrorism".[67] No-one should be prevented from lodging an asylum application. All asylum claims should be assessed fairly on an individual basis and according to facts and evidence, not suspicions. Evidence regarding an asylum-seeker's claim held by the government should be made available to the asylum-seeker and his or her lawyer, so that unfounded allegations can be challenged.

One example of particular concern to Amnesty International lies in the procedures of the Special Immigration Appeals Commission which reviews whether people are "suspected international terrorists" and as a consequence subject to detention, deportation or exclusion from refugee status. The Commission may receive secret evidence and does not have to inform the applicant or their lawyer of the reasons for its decisions. The Commission may hold proceedings without the applicant or their lawyer being present. In such a case an advocate to represent the interests of the person concerned is chosen, but the advocate may not provide information about the case to the applicant without the Commission's permission. However, a summary of the submissions and evidence must be provided. Amnesty International believes that the person concerned should be entitled to see and challenge all the evidence used to determine whether they are a "national security risk" or a "suspected international terrorist".

An asylum-seeker's claim for protection should be determined first, before considering whether there are grounds for exclusion.[68] If there is evidence that an asylum-seeker may have been involved in specific types of serious criminal activity[69], under international law such a person should be excluded from being granted refugee status.

[67]See the draft UN Convention on Terrorism (Article 7) and the UK Anti-terrorism, Crime and Security Act 2001.

[68]Summary Conclusions - Exclusion from Refugee Status. Lisbon Expert Roundtable 3-4 May 2001. EC/GC/2Trade/1 (part of the Global Coalition on International Protection.)

[69]Article 1F of the 1951 Convention relating to the Status of Refugees.

No-one should be forcibly removed without having had their individual need for protection assessed. While a decision to exclude a person removes them from the protection of the UN 1951 Convention relating to the Status of Refugees, it does not follow that a state can remove the individual as a consequence. Even if an asylum-seeker is to be excluded from protection as a refugee, they should never under any circumstances be returned to a country where they would be subjected to torture. (See for example Article 3 of the Convention against Torture, the jurisprudence of the European Court on Human Rights[70] and General Comment 20 of the Human Rights Committee on Article 7, the prohibition of torture in the ICCPR.) States should themselves prosecute asylum seekers who are suspected of having committed serious crimes or extradite them to a country able to guarantee a fair trial where they would not be at risk of torture, ill-treatment or the death penalty, rather than return them to a country where they would face serious human rights abuses.

As a general rule, asylum-seekers should not be detained, unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is necessary, on grounds prescribed by international law.[71] Each asylum-seeker who is detained should be brought promptly before a judicial or similar authority to determine whether his or her detention is lawful and in accordance with international standards.

Two Egyptian asylum seekers, Ahmed Hussein Mustafa Kamil Agiza and Muhammad Muhammad Suleiman Ibrahim El-Zari, were forcibly returned from Sweden to Egypt on 18 December after their asylum claims were rejected in an unfair procedure.

The Swedish government recognised both men as having a well-founded fear of persecution but excluded them from protection on the basis of alleged connections to organizations which had been responsible for acts of "terrorism". The men denied being members of armed Islamist opposition groups but the Swedish authorities

[70] See for example, *Soering v UK*, Series A, No 161 (1989), *Chahal v UK* (Application number 22414/93) Judgement of 15 November 1996.

[71] Executive Committee Conclusion 44 of 1986. UNHCR's Executive Committee conclusions are relevant to the interpretation of refugee law standards and constitute expressions of opinion which are broadly representative of the views of the international community.

made the decision to deny their asylum applications on the basis of secret evidence provided by the Swedish Security Police which was not disclosed in full to the men and their legal counsel.

The Swedish government held that the men would not be at risk of serious human rights violations in Egypt on the basis of written guarantees from the Egyptian authorities. However Amnesty International was concerned that the guarantees were an insufficient safeguard and the organization's fears appear well founded: at the time of writing, January 2002, more than three weeks after the men were forcibly returned, their location is unknown and they have not had access to family or lawyers.

Amnesty International believes that the men are at serious risk of torture. Both have said that they have been tortured while detained in Egypt in the past. Suspected members of armed Islamist opposition groups are frequently tortured by officers at branches of the State Security Intelligence. The methods most commonly reported are electric shocks, beatings, suspension by the wrists or ankles, burning with cigarettes, and various forms of psychological torture, including death threats and threats of rape or sexual abuse of the detainee or their female relatives. Despite hundreds of complaints of torture reported by lawyers and local human rights groups to the Public Prosecutor's Office, no impartial investigations are known to have been conducted. As well, trials of alleged members of armed Islamist groups are conducted by military or (Emergency) Supreme State Security courts and are grossly unfair.

7. Impunity for abuses?

States have an obligation to respect and ensure human rights. When they fail to do this, they must take steps to make good the situation; they must provide an effective remedy.

Such remedies should include reparations for abuses of human rights, even those which take place during a state of emergency, such as arbitrary detention, house destruction and unfair trials. The appropriate remedy varies according to the abuse suffered by each individual. In the case of unfair trial, remedies could include a retrial which is fair; in the case of unlawful detention, it could include immediate release and compensation; in cases of torture and ill-treatment, it could include public apology, guarantee of non-repetition, investigation and prosecution of the suspected perpetrators, compensation and rehabilitation.

The right to a remedy for human rights violations applies in all circumstances. The Human Rights Committee notes that even if a state of emergency requires "adjustments to the practical functioning of their procedures governing judicial or other remedies, the state party must comply with the fundamental obligation to provide a remedy that is effective."[72]

Ensuring the right to a remedy is an important component of securing the rule of law. States must abide by their obligations under international laws, and must ensure accountability of their agents and their procedures when these have facilitated abuses of human rights.

Amnesty International recently expressed concern that the Indian Prevention of Terrorism Ordinance 2001 provides for immunity from legal proceedings and criminal prosecutions for government officials who were acting "in good faith" to implement the provisions of the Ordinance.[73] It also refers to immunity for "any serving member or retired member of the Armed Forces or other paramilitary forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism." This extremely broad provision amounts in Amnesty International's view to a blanket immunity for human rights violations by the security forces.[74]

8. Conclusions and recommendations

The international crisis following the events of 11 September 2001 undoubtedly has broad ramifications for human rights work. Amnesty International notes the assessment of the UN High Commissioner on Human Rights that in this context there should be three guiding principles for the world community: the need to eliminate discrimination and build a just and tolerant world; the cooperation by all states against "terrorism" without infringing human rights; and a strengthened commitment to the rule of law.[75]

[72]General Comment on Article 4 of the ICCPR. UN Doc CC{R/C/21/Rev.1/Add.11 (24 July 2001) para. 14.

[73] Section 56.

[74] *India: Briefing on the Prevention of Terrorism Ordinance*, (AI Index: ASA 20/049/2001).

[75] Report of the UN High Commissioner on Human Rights to the UN General Assembly, UN Doc. A/56/36, 28 September 2001, paragraph 134.

This report shows that many states are failing to abide by the international rule of law - specifically international obligations to protect human rights - in their efforts to address security threats. Draconian provisions have had the effect of undermining, and in some cases, destroying, the rights of all.

Amnesty International concurs with the High Commissioner's conclusion: "True respect for human life must go hand in hand with securing justice. The best tribute we can pay to the victims of terrorism and their grieving families is to ensure that justice, not revenge, is served."[76]

Recommendations

Amnesty International calls on all states to bear the following principles in mind and to incorporate them into any action taken to address "terrorism".

Definition of "terrorism"

States legislating to proscribe conduct relating to "terrorism" should ensure that the laws

- clearly define the conduct that is proscribed; and
- do not unduly or inadvertently restrict rights such as freedom of association, expression and peaceful assembly.

Detention

States should not legislate to permit detention unless:

- people are charged promptly with recognizable criminal offences and tried within a reasonable period in proceedings that comply fully with international fair trial standards; or
- action is being taken to deport within a reasonable period to another country where they would not risk being subjected to an unfair trial, the death penalty, torture or other cruel, inhuman or degrading treatment or punishment, or other

[76] *Ibid*.

serious human rights abuses by state or non-state actors. There must be a realistic possibility of deportation being effected.

Safeguards

If states legislate to permit the detention of people suspected of being "terrorists" without intending to prosecute them, and without being able to deport or extradite them, the systems of detention should be subject to human rights standards including:

- the fact and location of detention must not be secret;
- a detained person must be notified of the reasons for their detention and of their rights, in a language that they understand;
- incommunicado detention must be prohibited: a detained person must without delay be given access to and assistance of a lawyer, assigned free of charge if necessary;
- a detained person must have the right to confidential communication with their lawyer;
- a detained person must be brought before a judicial authority to determine necessity for and lawfulness of detention, and this must be subject to periodic review;
- a detained person must be entitled to challenge the lawfulness of detention;
- a detained person's family must be notified and be permitted to have access;
- foreign nationals must be given all reasonable facilities to communicate with and receive visits from representatives of their government or an appropriate international organization;
- a detained person must have the right to be examined by a doctor and, when necessary, to receive medical treatment;
- the conditions of detention must comply with all international standards, for example as set out in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

- a detained person must have an enforceable and effective right to redress and reparation if unlawfully detained;
- people who are detained without charge should not be detained with people convicted of criminal offences.

Fair trial rights

All criminal and administrative proceedings should be conducted in accordance with internationally recognized fair trial rights.

Secret evidence and anonymous witnesses should not be used in criminal trials, proceedings to determine refugee status, or proceedings to determine whether a person should be detained on the grounds that they are a threat to national security.

Extradition

Extradition laws should not permit the extradition of a person to a jurisdiction where they would be subjected to an unfair trial, the imposition of the death penalty, torture or other cruel, inhuman or degrading treatment or punishment, or other serious human rights abuses.

Determination of applications for asylum

The determination to exclude an individual from refugee status should be made only after full consideration of the claim in a fair procedure.

The procedures for determining asylum applications should comply with all safeguards provided in human rights and refugee law, notably the rights to be informed that exclusion is under consideration, to be informed of the evidence and to appeal against a decision to exclude.

Monitoring

Human rights mechanisms should given specific responsibility for monitoring emergency legislation and measures, including their implementation in practice, to ensure that they conform with international human rights standards. Where no appropriate mechanisms exist, they should be established.