

**HUMAN RIGHTS
CONCERNS IN SOUTH
AFRICA:
MEMORANDUM SENT TO
THE SOUTH AFRICAN
GOVERNMENT
AUGUST 2009**

**AMNESTY
INTERNATIONAL**



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19 August 2009

Dear President

Please find hereby enclosed a Memorandum from Amnesty International highlighting a range of human rights concerns in South Africa which require your urgent attention. Amnesty International recognizes that your Government faces many serious and urgent challenges, among them the need to address high levels of unemployment, poverty and violent crime, and severe constraints in the effective delivery of health care to the majority of the population. However we wish here to raise some human rights concerns and make recommendations which, if implemented, we believe will contribute to the prevention of human rights abuses and improve access to justice for victims of these abuses.

Amnesty International urges your Government, in the course of seeking solutions to the challenges which South Africa is facing currently, to fulfil the country's human rights obligations by:

- (1) promoting and protecting the rights of women, who are disproportionately affected by poverty, unemployment and the epidemic of HIV infection, as well as continuing to experience gender-based violence and other forms of discrimination;
- (2) promoting and protecting the rights of refugees and others affected by or at risk of xenophobic violence;
- (3) preventing and redressing torture and other human rights violations, which are occurring in the context of the 'war against crime'; and
- (4) ensuring that all necessary steps are taken to protect and promote the transparency, independence and effectiveness of both the appointment processes and functioning of the judiciary and other bodies essential for the protection of human rights guaranteed under South Africa's Constitution and through regional and international human rights treaties to which South Africa is a party.

Finally, Amnesty International urges your government to continue to play a leading role in resolving issues of armed conflict and political instability on the African continent and to ensure that the respect, protection and promotion of human rights as well as the fight against impunity are at the centre of South Africa's foreign policy considerations. I would particularly like to draw your attention to the human rights situation in Sudan, Somalia, the Democratic Republic of Congo, Zimbabwe and Swaziland and to the recommendations made with regard to each of these countries in the attached document.

Thank you for your consideration of the concerns and recommendations contained in the Memorandum. I would welcome receiving any comments you may have on the issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Irene Khan', written in a cursive style.

For Irene Khan
Secretary General

Encl.

INTRODUCTION

Amnesty International recognizes that the South African government which was sworn in following the elections in April this year is faced with many serious and urgent challenges. These include the need to address social and economic problems such as high levels of unemployment and poverty which still have a racial as well as gendered character, the large-scale epidemics of HIV and TB infection, combined with severe staffing shortages in the public health sector, and high levels of violence against women and other forms of violent crime. As a human rights organization, Amnesty International bases its work on the premise that “[a]ll human rights are universal, indivisible and interdependent and interrelated.”¹ The Constitution of the Republic of South Africa² is globally known and respected for having entrenched both civil and political rights and economic, social and cultural rights. In this memorandum Amnesty International wishes to raise with the government a number of concerns affecting the enjoyment of some of these rights, which South Africa is obliged to uphold under both international human rights and refugee law, as well as under domestic law. The organization also wishes to draw the government’s attention to the human rights situation in a number of countries elsewhere in Africa and appeals for the respect, protection and promotion of human rights to be placed at the centre of South Africa’s multilateral and bilateral foreign policy.

Since the democratic transition in 1994 South Africa has committed itself to uphold the rights protected under many of the key international and regional human rights treaties. Amnesty International accordingly appeals to the government to strengthen further its commitments by taking all necessary steps to ratify:

- the International Covenant on Economic, Social and Cultural Rights, as well as the Optional Protocol to that Covenant,³
- the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- the International Convention for the Protection of All Persons from Enforced Disappearance.

In addition with respect to strengthening the mechanisms for the protection of human rights in South Africa, Amnesty International is aware that there are a number of important judicial appointments to be made this year, as well as appointments to other, ‘Chapter Nine’, bodies such as the South African Human Rights Commission and the Office of the Public Protector. As a further indication of the government’s commitment to respect, protect and fulfil human rights and the right to have access to legal and other remedies, Amnesty International urges the government to ensure that all necessary steps are taken to protect and promote the transparency, independence and effectiveness of the appointment processes, as well as the independent and effective functioning of these bodies.

1. OVERCOMING BARRIERS TO WOMEN'S RIGHT TO HEALTH IN THE CONTEXT OF THE DUAL EPIDEMICS OF HIV INFECTION AND VIOLENCE AGAINST WOMEN

Amnesty International notes and welcomes the decision by the new government under President Zuma to recognize the particular needs of women and residents of rural areas through the creation of two new ministries.⁴ In a report published in 2008, Amnesty International documented the impact of poverty, high levels of gender-based violence and other forms of discrimination on rural women's access to prevention, treatment and care for HIV and AIDS.⁵ The national strategic plan on HIV and AIDS (the NSP), which was adopted in 2007, stated that women were disproportionately infected and affected by HIV and AIDS.⁶ That this continues to be the case is evident in the South African Human Sciences Research Council's (HSRC's) national HIV prevalence survey published in June 2009.⁷ The results show sustained high levels of HIV infection among young women, with 15 to 19-year-olds having a prevalence rate of over six percent, more than twice the rate for males of the same age, and rising to over 32 percent among 25 to 29 year-old women. The study also identified African women of 20 to 34 years of age as "the most-at-risk" population group in South Africa.⁸

President Zuma, in his State of the Nation Address on 3 June 2009, called on South Africans to work together to achieve a reduction in "the rate of new HIV infections by 50% by the year 2011", a key priority for the NSP.⁹ In this context Amnesty International is appealing to the government as a matter of urgency to give priority to addressing the underlying causes of the persistently high HIV prevalence rates among women. The NSP recognized that the majority of women in South Africa were still affected by the legacy of apartheid-era discrimination on the basis of class, race and gender. Biological factors, economic exclusion, gender stereotypes, cultural practices which have a discriminatory effect and sexual and gender-based violence continue to contribute to women's vulnerability to HIV infection.¹⁰

The number of reported rapes of women and girls remain a matter of widespread public concern. Many of these crimes are also not reported due to pressure on the victims from perpetrators and the impact of social stigma, as the then Minister of Safety and Security, Charles Nqaqula, told parliament in June 2008.¹¹ The South African Medical Research Council, in its recently published results of a survey on rape prevalence, found that more than two-fifths of the men interviewed had been physically violent to an intimate partner and a quarter of the men admitted to having committed at least one rape.¹² The devastating health consequences for women from sexual violence have been well-documented by the World Health Organization and South African-based research and support organizations.

The NSP noted that the consequences of women's disempowerment are manifested particularly in personal relationships, creating "a context for men to have multiple concurrent partners and fuel their reluctance to use condoms".¹³ South African research and advocacy organizations, as well as Amnesty International's report in 2008, have documented the difficulties which women still face in being able to achieve their constitutional right to "bodily and psychological integrity" and human dignity. Amnesty International calls on the government to show strong political leadership to ensure that key rights protected under the Constitution, including the right to equality, women's sexual and reproductive rights and their right "to be free from all forms of violence from either public or private sources", are

respected, protected and fulfilled. These are legal obligations also under international and regional human rights treaties to which South Africa is party.

Amnesty International appeals to the government to vigorously promote and support those programmes which have been identified under the NSP as critical to reducing women's vulnerability to HIV infection. These include the acceleration of programmes to empower women, to educate people on women's rights, to address gender-based violence, and mobilize society to promote gender and sexual equality.¹⁴

Poverty is also a critical factor affecting people's right to health and their access to health services, as recognized in the NSP. The new government has signalled its intention to give high priority to implementing poverty reduction strategies, particularly in rural areas. Amnesty International's report found that rural women's lack of access to the formal economy or other secure and independent sources of income created a barrier to their access to health services and undermined their right to enjoy the highest attainable standard of health. The situation was mitigated to some extent by the state assistance given to them or their families in the form of child support or short-term disability grants. However the women whom Amnesty International interviewed still faced severe challenges in being able to reach regularly or even at all facilities offering comprehensive HIV clinical services and comprehensive post-sexual assault health and medico-legal services. These difficulties were due primarily to the lack of affordable and reliable transport. They also struggled to have access to adequate food daily, which is essential for coping with the side-effects of anti-retroviral medication.

Women's economic marginalisation appears to be persisting. The HSRC study, for instance, found that in 2008 over 43 percent of women and 30 percent of men were living below R500 per month,¹⁵ while, amongst the employed, more than 21 percent of women and 17 percent of men were living below this amount.¹⁶ The recent report of the South African Human Rights Commission on access to health services, particularly at the hospital level, highlighted the negative impact of high transport costs (relative to income) for poor rural communities and for women in particular.¹⁷

As stressed by the UN Committee on Economic, Social and Cultural Rights, "non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment" of these rights.¹⁸ Accordingly Amnesty International appeals to the government of President Zuma:

- To intensify efforts to address women's wider social and economic inequalities which act as barriers to effective prevention, treatment and care for HIV and AIDS and prevent the realization of their right to health;
- To denounce sexual and gender-based violence against women as a gross violation of their human rights and ensure that HIV prevention programs promote respect for women's rights and seek to change patterns of male sexual risk taking, condom refusal and violent or other abusive behaviour towards women;
- To strengthen the capacity of the police and prosecution services to enable them to combat impunity for sexual and gender-based violence, provide timely, effective and gender-sensitive services to complainants and

- work, in co-operation with municipal authorities and community organizations, to improve women's physical safety; and
- Address the barrier of transport costs for rural women and others living with HIV, which prevents the realization of their right to health, as part of the government's identified strategic priorities "to build economic and social infrastructure" and "ensure a comprehensive rural development strategy".

Finally, Amnesty International urges the government to ensure that the South African National AIDS Council (SANAC) and its Secretariat can fulfil its critical role of guiding and supporting the implementation of the NSP, both nationally and at provincial levels, by government and civil society. In particular, the envisaged "central coordinating body" of the NSP, the Monitoring and Evaluation Unit at the SANAC Secretariat, should be established as a matter of urgency.¹⁹

2. PROMOTING AND PROTECTING THE RIGHTS OF REFUGEES AND OTHERS AFFECTED BY OR AT RISK OF XENOPHOBIC VIOLENCE

Amnesty International welcomes President Zuma's public statement on 23 July condemning the acts of violence against non-nationals during service delivery protests, which had occurred earlier that week in Siyathemba in Mpumalanga province, by stating that "there can be no justification for violence, looting and destruction of property or attacks on foreign nationals residing in our country". The organization also welcomes the President's decision to meet with the refugees and asylum-seekers whose homes and shops had been attacked and looted in the July protests, during his visit to Siyathemba on 4 August. With these positive developments in mind, Amnesty International appeals to the government to ensure that effective and systematic measures are implemented to prevent a repetition of the large-scale violence against refugees and migrants which erupted in May 2008. These measures are needed because of the evidence of continuing risks to the rights to life and physical integrity of refugees and others in need of international protection, rights which South Africa is obliged to uphold under both international and regional human rights and refugee law. Amnesty International representatives, visiting South Africa in March and July 2009, have learnt of further incidents occurring this year of targeted violence or threats against non-nationals and their property, including in or near Cape Town, Durban, Mamelodi and different towns and villages in Limpopo province, as well as in Siyathemba.

The violence in May 2008 left more than 60 people dead, over 600 injured, tens of thousands of people displaced from their homes and their properties also looted. In the more recent incidents against refugees and migrants or their property, police officials have sometimes quickly denied that these incidents were prompted by xenophobic sentiments. These pre-emptive denials can prejudice investigations, as well as contribute to a climate of impunity and lack of access to justice for the victims of these crimes.

The findings of the South African parliamentary task team and South African civil society organizations, including Forced Migration Studies Programme at the University of the Witwatersrand with the International Organization of Migration, into the causes of the May

2008 violence have highlighted some contributing factors. These include competition over jobs, housing and social services within poor communities; the impact of corruption of local level officials on people's access to housing and services; direct incitement by or complicity of local leaders in the violence; and the lack of effective political leadership at all levels to combat institutionalised xenophobic attitudes and practices.²⁰

The African Commission on Human and Peoples' Rights, at its 43rd Ordinary Session in May 2008, passed a Resolution on the Situation of Migrants in South Africa which called on the government to investigate and prosecute those responsible for the attacks that month and undertake other protective measures.²¹ Amnesty International is concerned that no public, full and impartial inquiry was ever instituted by government and that police investigations have resulted in few convictions. National government statements, including in South Africa's progress report under the African Peer Review Mechanism (APRM) in January 2009 in Addis Ababa, have downplayed the significance of last year's violent displacements of non-nationals and the risks of further violence.

In September 2008 Amnesty International had called on the then government of South Africa, among other things:

- to promote public education programs on the country's human rights obligations towards refugees and migrants;
- to encourage the use of incident monitoring systems at police station level and the development of inclusive 'community safety plans'; and
- to strengthen the organizational capacity of the police to respond to any resurgence of large-scale violence, as well as their ability to investigate aggravated crimes of violence against refugees and migrants and their property and to combat impunity for these crimes.²²

Amnesty International urges the government of President Zuma to consider and act on these recommendations which could contribute to the prevention of further large-scale violence against refugees and migrants. These measures could also contribute to the building of "cohesive, caring and sustainable communities", as described by President Zuma to Parliament during his State of the Nation address and on the occasion of the Budget Vote of the Presidency in June.

Despite these continuing concerns, Amnesty International would like to welcome the South African government's decision to suspend deportations of Zimbabweans, introduce a 90-day visa-free entry for Zimbabwean nationals and an associated right to work, and a proposal to implement a system of longer-term permits for Zimbabweans already in South Africa, under Section 31 (2)(b) of the Immigration Act. Amnesty International understands that these special dispensation permits, when implemented, will be valid for 12 months and will allow the permit holders the right to work and access to basic education and health care, without prejudice to their right to seek asylum. These several measures recognize the grave state of the health and education systems and the formal employment sector in Zimbabwe, conditions which are still driving flight from Zimbabwe. They may also relieve some of the pressures on the over-burdened asylum system in South Africa. However, the most vulnerable amongst Zimbabweans in South Africa may require additional assistance, such as access to

shelter. Amnesty International is calling upon the international community to support South Africa in meeting their needs, particularly in view of the challenges posed for government in fulfilling the socio-economic needs of its own citizens.

Finally, Amnesty International urges the government to ensure an end to violations of the principle of *non-refoulement*. The continuing practice by officials of the Department of Home Affairs of deporting individuals in need of international protection, including recognized refugees and asylum-seekers, places those individuals at further risk of persecution and other grave human rights violations. The practice is contrary to South Africa's obligations under domestic, regional and international refugee and human rights law.

3. PREVENTING TORTURE IN THE CONTEXT OF THE 'WAR AGAINST CRIME'

South Africa has made commitments under international and regional human rights treaties, as well as having obligations under its own Constitution, to respect the absolute prohibition against torture under international law and protect the right to "freedom and security of the person... not to be tortured in any way; or treated or punished in a cruel, inhuman or degrading way (s.12(d) and (e) of the Constitution). These legal obligations require the state to prohibit and prevent torture and other forms of ill-treatment, and to investigate and bring to justice perpetrators of these human rights violations. Amnesty International is concerned that notwithstanding these commitments and obligations, incidents of torture and other forms of ill-treatment continue to occur. Further steps need to be taken to prevent these violations and to combat impunity for acts of torture.

During the past two years of reported incidents, corroborated cases have involved the use of electric shock and suffocation torture and prolonged assaults with batons, fists and booted feet. In some cases police interrogators and prison warders attempted to conceal evidence relating to the cause of death amongst detainees. The Judicial Inspectorate of Prisons received over 1,000 complaints of assaults against prisoners by Correctional Services officials [prison warders] during the 2007/2008 reporting period. The police oversight body, the Independent Complaints Directorate (ICD), reported to Parliament in 2008 that it was investigating 20 reports of torture and 739 complaints of assault with intent to cause grievous bodily harm (GBH). Some of these cases of assault GBH would fall within the definition of torture under the UN Convention against Torture, in that they involved the intentional infliction of severe pain or suffering by or with the consent of public officials, for the purposes of obtaining information or a confession.

Amnesty International recognizes that there is widespread concern in South Africa over the high levels of violent crime and the continuing high number of police officers being killed while on duty. We recognize that the government has a duty under Section 12 of the Constitution to protect the right of "everyone" to freedom and security of the person, including, to be "free from all forms of violence from either public or private sources".

At the same time Amnesty International urges the government, in any measures taken to combat crime more effectively, including by continuing the review of the criminal justice system begun under the previous government, to ensure that these measures are undertaken

within a framework of South Africa's human rights obligations, including with respect to the right for all persons not to be subjected to torture or to be subjected to extrajudicial executions. The ICD, in its report to Parliament in June 2009, noted a 15 percent increase overall in deaths in custody and as a result of police action in the most recent reporting year (2008/2009). The province of KwaZulu-Natal, for example, showed a 47 percent increase, from 175 (2007/2008) to 258 deaths (2008/2009).²³

All members of law enforcement agencies, including from the provincial organized crime units of the SAPS, should respect at all times the absolute prohibition against torture under international law. Adherence to the international, as well as constitutional legal norms would, in Amnesty International's view, enhance, not undermine, the fight against crime. Compliance with these norms should be regarded as an integral part of 'intelligence-led' crime investigations which is being publicly promoted by the Minister of Police, Mr Nathi Mthethwa. Failure to respect these norms can only undermine an effective criminal justice response to crime. In April 2008, for instance, the Supreme Court of Appeal in *Mthembu v the State* overturned the convictions and sentences for theft against the appellant, on the grounds that they were based on evidence extracted under torture from an accomplice witness.

Amnesty International also urges the government to demonstrate its commitment to eradicate torture by undertaking several key steps this year, including implementing a crucial recommendation made by the UN Committee against Torture. In 2006, following its hearings on South Africa's compliance with its treaty obligations under the UN Convention against Torture, the Committee recommended that the "State party should adopt appropriate legislation implementing the principle of absolute prohibition of torture, prohibiting the use of any statement obtained under torture and establishing that orders from a superior may not be invoked as a justification of torture". It further recommended that legislation to create a specific offence of torture under criminal law should contain a definition fully consistent with Article 1 of the UN Convention against Torture and "appropriate penalties that take into account the grave nature of the offence [of torture]".

A similar call for the criminalization of torture is made in The 'Robben Island Guidelines',²⁴ which were developed in a South African-hosted workshop organized by the African Commission on Human and Peoples' Rights and the Association for the Prevention of Torture. The African Commission adopted the Guidelines in a Resolution at its 32nd ordinary session in October 2002.

Amnesty International remains concerned that the third draft of the Combating of Torture Bill, released by the Department of Justice and Constitutional Development for public comment in 2008, still contains serious weaknesses. The human rights organization calls on the South African government to ensure that a revised Bill that is consistent with all of South Africa's obligations under the UN Convention against Torture, including providing for universal criminal jurisdiction over all acts of torture, guaranteeing the right of all victims of torture to obtain reparations and establishing effective extradition and mutual legal assistance provisions in national law and in agreements with other states, with human rights safeguards, is submitted to Parliament this year for public hearings and urgent enactment.

A further important step towards eradicating torture would be South Africa's ratification of the Optional Protocol to the UN Convention against Torture (OPCAT). South Africa's representatives in Geneva played a vital role in developing this human rights instrument, whose main purpose is to establish a system of regular and unrestricted visits to places of detention by independent international and national bodies. Furthermore, South Africa's open, active support for the adoption of the OPCAT by the UN General Assembly in 2002 was instrumental in securing support from the majority of African States for this crucial treaty. Civil society organizations and the South African Human Rights Commission have called for ratification of the OPCAT and have been engaging representatives of government departments for the past several years in an effort to develop appropriate domestic inspection mechanisms. Amnesty International appeals to the government to take all the necessary steps required for ratification of the OPCAT.

4. SOUTH AFRICA'S FOREIGN POLICY AND HUMAN RIGHTS PROTECTION

In the area of foreign policy, South Africa has taken a leading role in resolving issues of armed conflict and political instability on the African continent, including during its tenure as a member of the United Nations Security Council. South Africa not only mediated in a number of conflict situations, but has provided military personnel as well as equipment to peacekeeping missions and has contributed significantly in the shaping of the architecture of African institutions to make them more robust and be able to respond to various issues that need attention. As a member of the Southern Africa Development Community (SADC) and later as the chair of SADC, South Africa has played a leading role in facilitating a political agreement in Zimbabwe.

South Africa also played a decisive role in the adoption of the Rome Statute of the International Criminal Court (Rome Statute). It was the first state in Africa to enact legislation under its complementarity and cooperation obligations under that treaty, which includes universal jurisdiction over genocide, crimes against humanity and war crimes in international and non-international armed conflict.

Amnesty International urges South Africa to continue to play this critical role and to ensure that the respect, protection and promotion of human rights, as well as the fight against impunity, are at the centre of its foreign policy considerations. With this in view, Amnesty International would like to draw the attention of the South African government to the following country situations:

SUDAN

Amnesty International acknowledges the role that South Africa has been playing in resolving the numerous human rights problems in Sudan. The organisation welcomes the statement on 30 July 2009 by Director General Ayanda Ntsaluba in which he said that "If today President Omar al-Bashir landed [in South Africa] in terms of the provision [of the Rome Statute] he would have to be arrested." It is also notable that South Africa is one of the key troop-contributing countries, first to the African Union Mission in Sudan (AMIS) and now to the United Nations/African Union Mission in Darfur (UNAMID). Regrettably, the conflict and human rights situation in Sudan, and especially in Darfur, continues to be a scourge on the

continent.

The dire human rights situation in Darfur and other areas of Sudan was compounded, in March 2009, by a decision taken by the Sudanese government to expel 13 international aid agencies and close down three local aid agencies. This decision was taken after the International Criminal Court (ICC) issued a warrant of arrest against President Omar al-Bashir on charges of war crimes and crimes against humanity. The combined efforts of UN agencies, other NGOs and the Sudanese government filled the humanitarian aid gap that had been created and disaster was averted.

Journalists, people working for human rights and aid organizations, students, human rights defenders, and actual and suspected political opposition supporters continue being persecuted, harassed and intimidated in Sudan. Many human rights defenders continue to leave the country in fear for their lives.

In May 2008, the Justice and Equality movement, a Darfur-based armed opposition group attacked the capital Khartoum. Following the attack, the National Intelligence and Security Services (NISS) arrested more than one thousand individuals of Darfuri origin, hundreds of whom remain unaccounted for. Special courts called counter-terrorism courts were established following the attack and, to date, 103 alleged JEM members have been sentenced to death. The trials were unfair and some of the people were allegedly tortured into confessing.

Amnesty International calls upon South Africa to urge the government of Sudan to:

- Cooperate with the ICC and enforce the warrants of arrests issued by the ICC against President Omar al-Bashir, Ali Kushayb and Ahmad Harun;
- Protect, and not attack, civilians in Darfur;
- Allow unrestricted access for humanitarian organizations in Darfur and all parts of Sudan, and ensure that people living in camps for the internally displaced have access to adequate food, water and health services;
- Stop immediately the persecution of human rights defenders, journalists, political opposition activists, and staff of humanitarian organizations and allow them to freely exercise their rights to freedom of expression, association and peaceful assembly;
- Disclose the whereabouts of all individuals arrested or captured in the aftermath of the JEM attack on Khartoum, many of whom were subjected to enforced disappearance; allow them access to medical and legal aid as well as to their families; and either charge them with recognizable criminal offences or ensure their immediate release;
- Repeal the death sentences imposed on the alleged JEM members following unfair trials and investigate the allegations of ill treatment and torture; and
- Ensure that the alleged JEM members against whom there is evidence that they committed recognizable criminal offences have fair trials before an impartial court or tribunal within a reasonable time; these trials must exclude confessions obtained under torture and the application of the death penalty.

Amnesty International also urges the South African government to:

- Call on the international community, including the UN and the AU member states to fully resource UNAMID so that it is able to implement effectively its mandate of protecting civilians in Darfur;
- Call upon members of the UN Security Council not to make a request pursuant to Article 16 of the Rome Statute to the International Criminal Court to defer prosecutions for crimes against humanity and war crimes committed in Darfur, Sudan; and
- Urge all state parties to the Rome Statute to fulfil, as South Africa pledged to do on the eve of President Zuma's inauguration, their obligations to cooperate fully with the International Criminal Court.

SOMALIA

Despite an October 2008 peace agreement, the appointment of former opposition leader Sheikh Sharif Sheikh Ahmed as President of the Transitional Federal Government (TFG) in January 2009, as well as the withdrawal of Ethiopian troops from Somalia, there have continued to occur unlawful killings, armed conflict leading to the displacement of civilians and restrictions placed on humanitarian access in the first half of 2009.

The armed conflict in Somalia has been characterised by indiscriminate as well as direct attacks on civilians by all parties to the conflict, amounting to war crimes, and possibly crimes against humanity. Widespread insecurity has caused the displacement of hundreds of thousands of civilians, both within Somalia and to neighbouring countries. It has also resulted in a dramatic worsening of the overall humanitarian situation, with more than three million Somalis now dependent on humanitarian assistance for survival—almost half of the estimated total population. Access for humanitarian agencies to the most vulnerable civilians has been disrupted by the armed conflict and general insecurity, as well as by a pattern of targeted killings of humanitarian workers. Somali journalists and civil society activists, including human rights defenders, women's rights advocates and peace activists, have also been harassed, threatened and targeted in unlawful killings. Many have been forced to flee the country seeking safety. This situation has not only severely limited the flow of humanitarian aid to a desperate population, but has effectively silenced most reporting on human rights abuses and the suffering caused to civilians.

Amnesty International therefore calls on the South African government to work towards ensuring the protection of civilians and respect for human rights in Somalia by:

- Pressing all parties to the conflict in Somalia, including the TFG, to immediately end unlawful killings, including indiscriminate attacks on civilians, and other human rights abuses, and to bring those responsible for human rights abuses to justice;
- Supporting an increase in the international capacity to effectively monitor and publicly report on human rights abuses, and supporting the establishment of an independent, impartial, full and public Commission of Inquiry, or similar mechanism, which could investigate violations of international human rights and humanitarian law, recommend future measures to bring to justice those responsible, to establish the truth and to provide full reparations to victims;
- Taking more determined action to enforce the UN arms embargo on Somalia (in place since 1992) and helping ensure it is fully respected by all states, including the requirement to apply for exemptions for security equipment for the Somali

armed forces, and supporting further UN Security Council action to establish targeted sanctions for individuals who have violated the arms embargo;

- Helping ensure that any security sector assistance provided by various states to armed forces in Somalia does not contribute to further violations of human rights and humanitarian law, and that anyone reasonably suspected of committing human rights abuses, or having command responsibility over those committing human rights abuses, does not benefit from international assistance, and is suspended from duty pending credible investigation and, if there is sufficient admissible evidence, is brought to justice;
- Helping ensure that the African Union Mission in Somalia (AMISOM) respects international human rights and humanitarian law standards, and that any human rights abuses allegedly committed by AMISOM personnel are investigated, with a view to bringing those responsible to justice;
- Ensuring that when any person suspected of committing crimes against humanity or war crimes in Somalia enters South Africa that the police will immediately open a criminal investigation under the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 and, if there is sufficient evidence, that the case will be referred to the Director of Public Prosecutions for the purpose of prosecution.

DEMOCRATIC REPUBLIC OF CONGO

Amnesty International's immediate concern is for the protection of civilians in the two Kivu provinces of the Democratic Republic of Congo (DRC). The United Nations (UN OCHA) has voiced concern that the South Kivu "Kimia II" military operation will lead to the further displacement of thousands of people in South Kivu. This is in addition to the already more than one million people displaced in North Kivu. Despite authorization from the UN Security Council, in November 2008, to increase the capacity of the UN peacekeeping force, MONUC, through an additional 3,000 uniformed personnel, airlift and intelligence capabilities, these are still not in place. These additional resources would strengthen MONUC's capacity to fulfil its mandate, including with regard to the protection of civilians.

Impunity for crimes against humanity, war crimes and other human rights violations is still rampant in the national Congolese army (FARDC). The failure by the authorities in the DRC to investigate and prosecute the large number of suspected war criminals and perpetrators of other serious human rights violations is undermining the national and international effort to reform the security forces and build a professional army and police service. The DRC government has refused to arrest Bosco Ntanganda and surrender him to the International Criminal Court. Reports that he may play a command role in Kimia II are deeply troubling. Amnesty International has noted the public assurances given by UN spokespeople that MONUC will not participate in any military operation in which Bosco Ntanganda will be involved, but there remains a concern that the international community, including MONUC, and the DRC government are not doing enough to ensure that suspected perpetrators of serious human rights violations are removed from any military or policing role and brought to justice.

Human rights defenders including journalists and trade unionists continue to be victims of death threats, arbitrary arrest, ill-treatment and torture and murder, in many cases by state

security personnel. The perpetrators are rarely identified and prosecuted.

Amnesty International urges the South African government to:

- Work towards ensuring that MONUC has the resources it needs to fulfil its mandate to protect civilians;
- Call upon the government of the DRC to ensure that Bosco Ntanganda will not play a command role in Kimia II and to arrest and surrender him to the International Criminal Court;
- Call upon MONUC, which has a mandate to arrest persons named in International Criminal Court arrest warrants, and has been asked to do so by the government of the DRC, to take effective steps to do so;
- Urge the government of the DRC to protect human rights defenders in their work and to bring to account perpetrators of death threats, arbitrary arrests, ill-treatment and torture of human rights defenders;
- Ensure that when any person suspected of committing crimes against humanity or war crimes in the DRC enters South Africa, that the police will immediately open a criminal investigation under the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 and, if there is sufficient evidence, that the case will be referred to the Director of Public Prosecutions for the purpose of prosecution.

ZIMBABWE

Amnesty International is concerned that the situation in Zimbabwe remains fragile despite the creation of an inclusive government in February 2009. While the levels of violence have gone down compared to 2008, harassment and intimidation of human rights and political activists, journalists and lawyers continued during the first half of 2009. Officers from the Law and Order section of the Zimbabwe Republic Police and the Attorney General's office continue to order human rights violations, including abuse of due process, and to persecute perceived political opponents, including human rights and political activists, media workers and lawyers.

The Secretary General of Amnesty International, Ms Irene Khan, when in Zimbabwe from 13 to 18 June 2009, established that no progress had been made to reform the army and the police, whose members were implicated in human rights violations that took place in 2008, or to address Zimbabwe's long history of impunity in order to avoid recurrence.

Amnesty International is urging the South African government, as an influential member of SADC, the outgoing Chairperson of SADC and as one of the guarantors of the Global Political Agreement (GPA) signed by ZANU-PF and the two formations of the MDC in September 2008, to ensure that:

- SADC, as a guarantor of the GPA, closely monitors its implementation and speaks out against on-going human rights violations and politically motivated trials of human rights and political activists, including Jestina Mukoko (the director of the Zimbabwe Peace Project, a human rights monitoring and documentation organization and a victim of enforced disappearance and torture in December 2008);

- SADC and the African Union also investigate all allegations of human rights violations by the security forces and the office of the Attorney General, with a view to ensuring that those responsible for such violations are brought to justice in Zimbabwe.

In addition, the organization is urging South Africa to ensure that when any person suspected of committing crimes against humanity or war crimes in Zimbabwe enters South Africa that the police will immediately open a criminal investigation under the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 and, if there is sufficient evidence, that the case will be referred to the Director of Public Prosecutions for the purpose of prosecution.

SWAZILAND

In January 2009 Amnesty International, together with the Human Rights Institute of the International Bar Association, issued a report expressing grave concerns that certain provisions in the Suppression of Terrorism Act of 2008 threatened human rights, breached Swaziland's obligations under international and regional human rights law, and have already led to violations of the rights of freedom of expression, association and peaceful assembly. These violations include arbitrary arrests and prosecutions brought under provisions of this law, and under other security legislation, which violate the principle of legal certainty and jeopardize the right to fair trial. Testimonies received by Amnesty International during a visit to Swaziland in March 2009 confirmed the intimidating and repressive effects of this law on political activists calling for democratic reform and human rights defenders campaigning to address the country's dire humanitarian situation.

Amnesty International urges the South African government to use its influence to encourage the government of Swaziland to uphold the rights of freedom of expression, association and assembly and to support the aspirations of the wide range of civil society organizations involved in the launch of the Manzini Declaration in July 2009

1 The Vienna Declaration and Programme of Action, A/Conf.157/23 (12 July 1993), at article 5.

2 Act 108 of 1996.

3 When it opens for signature on 24 September 2009.

4 The Ministry of Women, Youth, Children and People with Disability; the Ministry of Rural Development and Land Affairs.

5 'I am at the lowest end of all' – Rural women living with HIV face human rights abuses in South Africa (AI Index: AFR 53/001/2008). The report's interview evidence was mainly derived from the provinces of KwaZulu-Natal and Mpumalanga which continue to have the highest provincial HIV prevalence rates in South Africa. Available

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- at: <http://www.amnesty.org/en/library/info/AFR53/001/2008/en>
- 6 HIV & AIDS and STI Strategic Plan for South Africa 2007 - 2011, pp.7, 28, 35, 55. Available at: <http://www.doh.gov.za/docs/hiv/aids-progressrep.html>
- 7 Shisana O, Rehle T, Simbayi LC, Zuma K, Jooste S, Pillay-van Wyk V, Mbelle N, Van Zyl J, Parker W, Zungu NP, Pezi S & the SABSSM III Implementation Team, South African National HIV Prevalence, Incidence, Behaviour and Communication Survey, 2008, Cape Town: HSRC press, presented to the Minister of Health, Dr Aaron Motaalehi, 9 June 2009. Available at: <http://www.hsrbpress.ac.za/product.php?productid=2264&cat=0&page=1&featured>
- 8 Ibid, pp.4, 30-31, 36.
- 9 State of the Nation Address by His Excellency JG Zuma, President of the Republic of South Africa, Joint Sitting of Parliament, Cape Town. Available at: <http://www.info.gov.za/speeches/2009/09060310551001.htm>
- 10 NSP, pp.3-32, 34-35.
- 11 The police statistics for period April to December 2007 report 36,190 incidents of rape, but not including incidents of indecent assault, offences which could fall within the definition of rape under the new sexual offences legislation which came into force in December 2007. Available at: http://www.saps.gov.za/statistics/reports/crimestats/2008/crime_stats.htm
- Statistics for 2008/2009 did not appear to be available on the site when checked in August 2009.
- 12 Rachel Jewkes, Yandisa Sikweyiya, Robert Morrell, Kristin Dunkle, Understanding Men's Health and Use of Violence: Interface of Rape and HIV in South Africa. Medical Research Council, June 2009. Available at: http://www.mrc.ac.za/gender/violence_hiv.pdf
- 13 NSP, p.32 and pp. 31, 34, 35.
- 14 NSP, pp. 10, 14-15.
- 15 Approximately USD 62 per month.
- 16 Shisana O et al, ibid, p.87.
- 17 Public Inquiry: Access to Health Care Services, 2009, pp.41-42. Available at: http://sahrc.org.za/sahrc_cms/downloads/Health%20Report%20Final%202009%20Part1.pdf and http://sahrc.org.za/sahrc_cms/downloads/Health%20Report%20Final%202009%20Part2.pdf
- 18 UN Committee on Economic, Social and Cultural Rights, General Comment No.20, Non-discrimination in Economic, Social and Cultural Rights (art.2, para.2), E/C.12/GC/20, 25 May 2009, para.2.
- 19 South African National AIDS Council Procedural Guidelines, Clause 11.6.1 to 11.6.5. Available at: <http://www.sanac.org.za/SANAC%20procedural%20guidelines%2027%20May%202008.pdf>
- 20 Jean Pierre Misago, with Lauren Landau and Tamlyn Monson, Towards Tolerance, Law and Dignity: Addressing Violence Against Foreign Nationals in South Africa, IOM Regional Office for Southern Africa, February 2009. Available at: <http://www.migration.org.za/report/towards-tolerance-law-and-dignity-addressing-violence-against-foreign-nationals-south-africa> ; and Protecting Refugees, Asylum Seekers and Immigrants in South Africa, Consortium for Refugees and Migrants in South Africa. Available at: <http://www.cormsa.org.za/wp-content/uploads/Resources/CoRMSA%20Report%202009%20-%20Protecting%20Refugees,%20Asylum%20Seekers%20and%20Immigrants%20in%20South%20Africa.pdf>
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- 22 'Talk for us please' Limited options facing individuals displaced by xenophobic violence (AI Index: AFR 53/12/2008). Available at: <http://www.amnesty.org/en/library/info/AFR53/012/2008/en>
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- 24 Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines). Available at: <http://www1.umn.edu/humanrts/instree/RobbenIslandGuidelines.pdf>

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