

Human Rights Council, Fourth session

Building capacity to protect human rights

1. Introduction

The Human Rights Council was tasked in General Assembly resolution 60/251, adopted on 15 March 2006, with carrying out a review of the mandates and mechanisms inherited from its predecessor, the Commission on Human Rights, and with developing the modalities of a new mechanism, the Universal Periodic Review. Both these tasks are to be completed within the Council's first year. At its first session in June 2006, the Council established two Working Groups to carry out this work.¹

The fourth session of the Council will hear progress reports from both Working Groups and provide an opportunity for further informal consultation. It is essential that the Council decides to ensure that the work on building its institutions is brought to completion within the first transitional year, i.e. by June 2007.

Member states must be acutely mindful of their individual and collective responsibility to create an effective human rights body capable of promoting and protecting human rights in a way that protects rights holders and provides relief to persons that suffer violations of their human rights. The Council must learn the lessons of the past, build on the achievements of the Commission and equip itself with tools and mechanisms that will enable it to contribute to enhancing the enjoyment of all human rights of all people in all countries. Now is the time to give effect to the objectives set out in resolution 60/251 to build an effective Human Rights Council capable of taking timely and effective action to protect human rights. In section 2 below Amnesty International sets out its key recommendations in regard to the review of the Special Procedures and the development of the Universal Periodic Review mechanism.

The process of building the institutions of the Council – important as it is -- has created a very long hiatus in its attention to the promotion and protection of human rights in specific situations. As the Council reaches the deadline for completing its work on its institutions, members must keep uppermost in their minds the purpose of these efforts: the mandates, mechanisms and working methods of the Council are means to a higher end, i.e.

¹ In decision 1/103, the Council decided to establish an intersessional open-ended intergovernmental working group to develop the modalities of the universal periodic review mechanism, and in decision 1/104, to establish an open-ended intergovernmental working group to formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures.

they must serve to assist the Council in carrying out its mandate to protect human rights. The Council must now give effect to that mandate.

Amnesty International takes the occasion of the fourth session to bring a number of situations of grave human rights violations to the attention of Council members and to urge the Council to devote its full attention to these situations as soon as it is fully operational.

In section 3 below, Amnesty International describes a representative sample of situations of grave violations of human rights:

- The **secret detention and ill-treatment of detainees in Guantánamo Bay and elsewhere** is a human rights disgrace and the failure of the US government and of the international community to address this situation corrodes the foundations of the international framework of human rights protection. It is critical to the credibility of the Council that it addresses this human rights crisis with courage and principle and without further delay.
- Although the human rights situation in **Somalia** remains very grave, the establishment of the Transitional Federal Government, after 16 years of state collapse, provides an important opportunity for the UN's human rights program to offer assistance to the government towards greater respect for human rights in the country.
- In January this year, the Security Council rejected a proposed resolution on the situation in **Myanmar** which would have called on the government to end violations of human rights and humanitarian law, allow freedom of expression and association and unconditionally release of all political prisoners. However, they acknowledged that the human rights situation in Myanmar should be addressed; Amnesty International considers that the long-standing human rights concerns in Myanmar should be addressed in the Human Rights Council at the earliest opportunity.
- The human rights situation in **Sri Lanka** continues to deteriorate despite efforts by the government to address a number of incidents including through the newly established Commission of Inquiry and International Independent Group of Eminent Persons. The Human Rights Council should assist Sri Lanka in addressing the culture of impunity for human rights violations and in putting in place practical measures to ensure effective protection of human rights.
- Press reports suggest that consideration of **Uzbekistan** under the 1503 procedure may be discontinued. Given continuing serious violations of human rights in Uzbekistan it is essential that the Council continues to be seized of this situation.
- **Iraq** remains caught in a downward spiral of gross human rights abuses four year after the rule of Saddam Hussain ended. At a minimum, the Council must acknowledge this human rights tragedy and begin to consider how to address it.

Amnesty International urges the Human Rights Council to complete the institution building process and address these and other situations of grave human rights violations without further delay.

In section 4 Amnesty International provides a number of key recommendations for action by the Council as it considers follow up to its previous decisions, in particular in relation to the human rights situations in Darfur and in Israel/Occupied Palestinian Territories.

2. The Council's institution-building

Review of the Special Procedures

General Assembly resolution 60/251, establishing the Human Rights Council, decided in operative paragraph 6 that “the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures” and that it should “complete this review within one year after holding its first session”. The Special Procedures -- the Human Rights Council's special rapporteurs and representatives, independent experts and working groups -- are among the most innovative, flexible and responsive tools created by the UN to promote and protect human rights.

A strong system of independent and expert Special Procedures is essential to an effective Human Rights Council; failure to preserve such a system will put the Council's credibility at risk. In the course of this review, several states are proposing measures that would seriously weaken the Special Procedures by limiting their independence and dictating their working methods. Amnesty International believes that if such proposals succeed, the Special Procedures and the Council itself will be severely compromised. Amnesty International is further concerned that discussion in the Working Group mandated to review the Special Procedures has been characterized by rigid positions and, at this point some three months before the review has to be completed, a large number of issues still need to be resolved.

Amnesty International takes this opportunity to restate its key recommendations to ensure that the review results in a coherent, coordinated and effective system of Special Procedures in the belief that these mechanisms are at the core of the UN's human rights machinery and play a critical and often unique role in protecting and promoting human rights.

- 1. The process of appointing mandate holders must preserve the independence, and expertise of the Special Procedures.** The appointment process must be made more transparent at all stages to ensure that mandates are filled by individuals who are both independent and expert. Ways must be found to expand the pool of candidates and to redress the current gender imbalance. Amnesty International does not believe that elections of mandate-holders will ensure independence or expertise of mandate-holders.

2. **The Special Procedures must continue to be able to establish and develop their own working methods.** Over the years, best practice among the Special Procedures has been distilled into the 1999 *Manual of the United Nations Human Rights Special Procedures*. The Manual is currently undergoing review and comments have been invited from government, civil society organizations, and other stakeholders. However, with the adoption of resolution 2/1, the Council has mandated the Working Group to draft a code of conduct and to make recommendations on the *Manual*. Amnesty International calls on member states to ensure that the Working Group does not dictate working methods and limit the independence of mandate-holders.
3. **The review must establish measures to ensure that governments cooperate with the Special Procedures.** Some governments consistently fail to cooperate with the Special Procedures including by failing to facilitate visits by the Special Procedures, to respond to the communications from the Special Procedures, including urgent appeals, and to provide information about the implementation of their recommendations. The effectiveness of the Special Procedures system relies upon cooperation by member states and General Assembly resolution 60/251 specifically stipulates that members of the Council “shall cooperate fully with the Council”.
4. **The work of the Special Procedures must be fully integrated in the work of the Human Rights Council.** The Special Procedures are among the most innovative, responsive and flexible tools created by the former Commission on Human Rights. It is therefore essential that the Council, in taking forward the legacy of the Commission, ensures a central role in its work for the Special Procedures, including by acting on their reports and recommendations, by encouraging states to implement their recommendations, and by establishing effective mechanisms for monitoring the implementation of such recommendations.

Together with 16 other NGOs² Amnesty International has launched a global petition in support of the Special Procedures calling on member states to maintain a strengthened system of Special Procedures able to monitor and respond rapidly to allegations of violations throughout the world, effectively and without interference.³ The petition has already attracted signatures from individuals and organizations from more than 60 countries from every region in the world. Signatories include human rights lawyers, faith groups, national human rights commissions, human rights defenders and individuals who have been victims of violations.

² Action Canada for Population and Development, the African Centre for Democracy and Human Rights Studies, the Association for the Prevention of Torture, the Centre on Housing Rights and Evictions (COHRE), the Democracy Coalition Project, Forum Asia, Franciscans International, Global Justice Brasil, Human Rights First, Human Rights Watch, the International Commission of Jurists, the International Federation of Action by Christians for the Abolition of Torture, the International Federation for Human Rights (FIDH), the International Service for Human Rights Penal Reform International and the World Organization against Torture (OMCT).

³ The petition can be downloaded at: <http://www.actforspecialprocedures.org>

Development of the Universal Periodic Review

General Assembly resolution 60/251 also determined that the Council should “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation of the universal periodic review mechanism within one year after the holding of its first session”.⁴

A Universal Periodic Review (UPR) mechanism that is effective and transparent and treats all states on an equal basis will be a key tool for the Council to address human rights situations in an impartial and non-selective manner and to engage in constructive international dialogue and cooperation with states to enhance their fulfilment of human rights obligations and commitments. As such it has the potential to address some of the short-comings of the Council’s predecessor, the Commission on Human Rights, by reviewing the situation of human rights in all UN member states in a way that is consistent and transparent and applies equally to all states. It is important to note, however, that the UPR would be only one such tool and that the Council should also have other ways and means of promoting and protecting human rights in individual countries.

At its fourth session the Council will receive a progress report from the facilitator of the Working Group mandated to develop the modalities of the UPR. Amnesty International takes this opportunity to restate some of its key recommendations with regard to some of the fundamental principles underlying the UPR mechanism.⁵

1. **The UPR mechanism should be one among several tools and processes through which the Council may address human rights situations in individual countries.** Although the UPR will be an important and innovative tool, the Council must also have at its disposal other ways and means of addressing human rights situations in individual countries. The resolution establishing the Council stipulates its clear mandate to consider the situation of human rights in specific countries, including to promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner; to address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon; and to contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond

⁴ General Assembly resolution 60/251, OP5 (e), 24 February 2006

⁵ For a fuller explanation of Amnesty International’s recommendations for the UPR, please see: *UN Human Rights Council: Guiding principles for the development of the Universal Periodic Review mechanism* (IOR 40/031/2006) and *An effective Universal Periodic Review mechanism, Amnesty International’s proposal* (IOR 40/033/2006).

promptly to human rights emergencies. It is essential that the Council be adequately equipped to address all kinds of country-specific situations, including emerging human rights crises, promptly and effectively as and when such situations arise.

2. **The UPR mechanism should be transparent in all its phases and aspects.** Full transparency should apply to the information that is used as the basis for the review, the review process, the interactive dialogue, the outcome of the review, and the implementation of recommendations and decisions arising from the review, and other follow-up. Full transparency and predictability of the review process is necessary to facilitate effective preparation of the review and the interactive dialogue.
3. **The review frequency should be three years for all UN member states – Council member and observer states alike.** Resolution 60/251 stipulates that members of the Council should be “reviewed [...] during their term of membership”. Since the length of a term of Council membership is three years, the periodicity of the review must fit within this three year cycle in order to ensure that members are reviewed during their term of membership. The resolution further stipulates that that the review must be undertaken “in a manner which ensures [...] equal treatment with respect to all states”. Since members of the Council must be reviewed during their three year term, the same review cycle must also apply to states that are not members of the Council in order to ensure equality of treatment of all states. Moreover, three year intervals would be an effective review cycle: it is long enough to allow action by the state reviewed on the recommendations arising from the review; and short enough to ensure regular monitoring of the human rights situation in a particular country.
4. **The UPR mechanism must be more than an interactive dialogue with the country under review.** The UPR mechanism should be a continuous process with a number of distinct, but related phases: preparation, review including interactive dialogue with the country under review, outcome of the review as decided by the Council, and follow up to the recommendations and decisions arising from the review. Each review should form part of a cycle that leads to ongoing improvement in a state’s fulfilment of its human rights obligations and commitments and in which subsequent reviews build on the outcome of the preceding review. Each country review must lead to a concrete, action-oriented outcome aimed at enhancing protection of human rights in the country concerned. In situations where a state is unable or unwilling to cooperate with the UPR, the mechanism must be creative and robust enough to respond effectively to such situations.
5. **Independent human rights expertise must inform the UPR process.** A productive outcome of the UPR is directly dependent on its effective preparation and follow-up. Amnesty International considers the participation by independent human rights experts at relevant stages of the review process key to an effective review. As part of the preparation of the interactive dialogue with a country, independent human rights experts should analyze and synthesize the available information pertaining to the human rights situation in the country. Reports and recommendations by the UN human rights treaty bodies and Special Procedures may run to hundreds of pages and

it is therefore essential to the effectiveness of the review that it be focused on the key human rights issues in a given country. Participation by independent experts would also help ensure objectivity and consistency in the review process and reduce the risks of politically motivated and selective use of information. Independent experts should also assist in compiling the specific questions to be addressed by the state under review in order to facilitate a substantive and well-informed interactive dialogue. Independent experts should also have a role in defining the appropriate outcome of the interactive dialogue including measures to be undertaken by the state under review to enhance the fulfilment of its human rights obligations and commitments.

6. **Information from the Special Procedures must continue to form part of the “objective and reliable information”⁶ which is to form the basis for the UPR.** The resolution establishing the Council stipulates that the UPR should be based on “objective and reliable information”, and in consultations in the Working Group so far it is widely agreed that information from the Special Procedures should be one of the sources of this information. It is therefore of key importance to the UPR that the system of Special Procedures emerges from the current review as a strong and independent system of human rights experts who are able to undertake missions and to raise relevant cases directly with the government in question, and that their reports, analysis and recommendations be a source of information for the UPR.

3. Situations of human rights violations which require the Council’s urgent attention and action

United States -- unlawful detentions and ill-treatment in Guantánamo Bay and elsewhere

More than 350 men of some 30 nationalities remain in indefinite military detention at the United States Naval Base in Guantánamo Bay, Cuba. Some have been held in the Guantánamo detention camp since January 2002. None has had the lawfulness of his detention reviewed by a court. None has been brought to trial. Amnesty International considers all of them to be arbitrarily detained, in violation of international law.

Under the US government’s global “war” paradigm, under which international humanitarian law is only selectively applied and international human rights law disregarded, those detained as loosely-defined “unlawful enemy combatants” are held indefinitely in military detention for intelligence-gathering purposes and to prevent them returning to the global “battlefield”. Access to lawyers is perceived as detrimental to the interrogation process, and access to the courts as intruding on military operations. In the absence of basic human rights safeguards, interrogation techniques and detention conditions violating the prohibition

⁶ General Assembly resolution 60/251, OP 5 (e)

on torture and other cruel, inhuman or degrading treatment have been authorized and used in Guantánamo and elsewhere.

The first detainees were flown from Afghanistan to Guantánamo in January 2002 – hooded, shackled and tied down like cargo. They were the first of more than 750 people of some 45 nationalities taken to the base in this way, among them children as young as 13. They included people who were simply in the wrong place at the wrong time.

The most recent arrivals at Guantánamo were 14 detainees transferred there in September 2006 from secret CIA custody. Prior to their transfer, they had been held incommunicado in undisclosed locations for up to four and a half years and subjected to “alternative” interrogation techniques. Six months after their transfer to Guantánamo, for the stated purpose of trial by military commission, they are still being denied access to lawyers on the grounds that they may be in possession of information about the CIA program – including interrogation techniques, location of facilities, and conditions of detention – classified as “top secret”. The effect, if not the purpose, of this classification is to conceal human rights violations, including possible government crimes such as torture and enforced disappearance.

On 17 October 2006, President Bush signed into law the Military Commissions Act which codifies in US law a substandard and discriminatory system of justice for those held in Guantánamo Bay, Afghanistan and elsewhere. The Act strips the US courts of the jurisdiction to hear *habeas corpus* appeals from foreign nationals held as “unlawful enemy combatants”. It further entrenches impunity for violations committed by US forces by narrowing the scope of the USA’s War Crimes Act. Finally, it provides for trials of “alien unlawful enemy combatants” by military commissions, tribunals with the power to admit coerced evidence and to hand down death sentences. Amnesty International fears that the military commissions will lack the independence and impartiality to conduct the necessary searching inquiries into government misconduct in the “war on terror”. As such, the commissions would be a forum in which human rights violations are whitewashed and trials unfair.

At every stage of the detainees’ ordeal, their dignity, humanity and fundamental rights have been denied. Many have been subjected to torture or other ill-treatment, whether in Afghanistan or elsewhere prior to their transfer to Guantánamo, or during their transfer, or as part of the interrogation process in the base, or through the harshness of the Guantánamo regime – isolating, indefinite and punitive. By association, their families have suffered too. More than 40 suicide attempts in Guantánamo have been reported; three detainees died in June 2006 after apparent suicides. Over 200 detainees have participated in hunger strikes to protest against their conditions of detention and their long-term detention without trial. Hunger strikers were reportedly placed in isolation cells, strapped into restraint chairs, subjected to painful force feeding methods and deprived of “comfort items” such as blankets and books.

Three days after the first transfers to Guantánamo, Amnesty International urged the USA to respect the detainees' fundamental human rights.⁷ Since then, the organization has issued numerous documents and appeals in its continuing campaign to expose and end the human rights violations associated with Guantánamo, and to close down the detention facility once and for all.

However, the Guantánamo detention camp is only the tip of the iceberg; it is the most visible part of a global web of indefinite and secret detention, renditions and resort to torture or other cruel, inhuman or degrading treatment. Governments have a duty to protect the safety of the public, but they must do so within a framework of protecting the human rights of all. They should take all reasonable and lawful steps to prevent acts of terror and bring to justice those responsible for committing or planning such acts.

Amnesty International has called repeatedly on the US government to end its secret detention program immediately and permanently, to bring its detention and interrogation laws, policies and practices fully into compliance with international law and standards, to establish a full and independent commission of inquiry into all aspects of its "war on terror" detention policies and practices, and to provide reparation to victims of human rights violations.

Amnesty International urges the Human Rights Council to address the situation of unlawful detentions and ill-treatment in Guantánamo Bay and elsewhere without further delay.

Somalia – emerging from years of state collapse

After 16 years of state collapse, the political, security and human rights situation in Somalia has changed radically in the last year. There is now an opportunity for the Transitional Federal Government (TFG), a coalition of clan-based faction-leaders which was created from the 2002-2004 peace talks, to establish itself with the assistance of the African Union mission to Somalia (AMISOM). The airport and seaport have been reopened and humanitarian access promised to international organizations. However, the peace that had been restored to Mogadishu by the Council of Islamic Courts (SOSIC) remains fragile and insecurity is growing in Mogadishu once again.

The human rights situation in the country is dire and could deteriorate further should the TFG fail to establish itself. Years of state collapse have left a large segment of the population in a dire situation with regard to health and nutrition and in need of humanitarian assistance. The absence of an effective government had left Mogadishu in the hands of warlords who have ruled through violence, and the country lacks effective law enforcement mechanisms. Furthermore, thousands of Somalis have been internally displaced or live in refugee camps in neighbouring countries. In 2006 alone, some 36,000 Somalis are estimated

⁷ See *USA: AI calls on the USA to end legal limbo of Guantanamo prisoners*, AI Index: AMR 51/009/2002.

to have crossed into Kenya, adding to the already very large Somali population living in refugee camps in that country. The government of Kenya closed its border on 2 January 2007, which has impeded the delivery of humanitarian aid to the internally displaced across the border and prevented further asylum-seekers from entering the country.

Amnesty International also has serious concerns about reports of killings of civilians, who are either caught in clashes between insurgents and Ethiopian troops or TFG forces or indiscriminately targeted. On 2 February, shelling in Mogadishu hit a camp for the internally displaced in the city, killing at least seven people, including three children, and wounding a further 12 people. Such incidents occur on a near daily basis and are likely to get worse if fighting escalates between factions in Mogadishu.

Journalists and human rights defenders continue to be targeted. Journalists face harassment, arrests and threats from both the TFG and the Union of Islamic Courts. In 2006, over 30 journalists were arrested and detained in Somalia and the offices of the National Union of Journalists (NUSOJ) were raided. On 16 February 2007, Ali Mohamed Omar, a radio presenter for Radio Warsan, was gunned down in Mogadishu.

Amnesty International is also concerned at the disappearance of several detainees who were returned from Kenya to Mogadishu in January and February 2007, as well as the lack of information on the whereabouts of prisoners detained during the conflict by the TFG and Ethiopian forces. After being detained in Kenya without charge or trial, at least 90 people were returned to Somalia in January and February this year and their whereabouts remain unknown. Amnesty International is seriously concerned that some may have been unlawfully transferred into Ethiopian custody and held in secret detention centres there.

In this context of serious human rights violations, Amnesty International is concerned that AMISOM, and any future UN peacekeeping mission, must include human rights provisions in its mandate to ensure the protection of civilians, particularly vulnerable groups such as women, children, internally displaced persons, minorities and civil society activists. In the longer term, it is very important for human rights to feature prominently in reconstruction efforts, particularly to rebuild the justice system and to ensure protection of human rights defenders.

The Independent Expert on the situation of human rights in Somalia has produced valuable insights on developments in the country and it is important that this mandate be preserved when it comes up for renewal in due course.

Amnesty International urges the Human Rights Council to address the situation of human rights in Somalia without further delay.

Myanmar – systematic violations of human rights persist

Grave violations of human rights and international humanitarian law by the state continue to be reported in Myanmar. These violations have been accompanied by an apparent failure by the authorities to investigate and prosecute suspected perpetrators. Reported violations include extrajudicial executions and torture, including rape, and have taken place in several contexts such as counter-insurgency operations in ethnic minority areas. Forced relocation by the military of civilian populations continues, including in eastern Myanmar, where military action by the authorities against the Karen National Union (KNU) has escalated over the last year. Hundreds of thousands of ethnic minority civilians have been displaced during decades of conflict between the authorities and armed opposition groups. Civilians, including prisoners, have been forced to carry out portering for the military; Amnesty International considers this to be the most arduous form of forced labour. Some have been beaten and shot dead as punishment for not being able to perform their duties. Forced recruitment of children as soldiers for the Myanmar army is reported to be continuing. Civilians, including children, have also been forced to carry out unpaid labour by the army including on building and other infrastructural projects.

Amnesty International is deeply concerned by the abuse of the justice system to arbitrarily detain and imprison individuals on the basis of their conscientiously held beliefs or peaceful exercise of basic human rights. Amnesty International believes that more than 1,160 political prisoners are detained. The organization considers many of them to be prisoners of conscience. They include many sick and elderly individuals whose health is further jeopardized by very poor prison conditions, including lack of adequate diet and medical care. Senior opposition leaders from the National League for Democracy (NLD) and political representatives of ethnic minorities are among them. Some of them are serving sentences of up to 106 years' imprisonment or are being held without charge beyond the expiry of their prison sentences. The NLD's General Secretary Daw Aung San Suu Kyi and U Tin Oo have been detained without charge since a violent attack on them and other NLD members on 30 May 2003.

The Myanmar authorities have persistently failed to end gross violations of human rights, including by failing to investigate such violations and bring the perpetrators to justice. The weight of evidence suggests that some of these violations constitute crimes against humanity. The State Peace and Development Council (SPDC) continues to refuse to cooperate with the Human Rights Council's mechanisms. The Special Rapporteur on the situation of human rights in Myanmar has been denied access to the country since November 2003. The Representative of the Secretary-General on internally displaced persons and the Special Rapporteur on the right to food have both requested visits, but without result. The International Committee of the Red Cross is denied access to prisons. No significant improvement in the human rights situation resulted from two visits carried out in 2006 by the UN Under-Secretary-General for Political Affairs. The then Special Representative of the UN Secretary-General was denied access to Myanmar since March 2004.

Despite being denied access to the country, the Special Rapporteur on the situation of human rights in Myanmar has provided valuable analysis of the human rights situation in the country and made recommendations to improve respect for human rights. It is important that the Council agree measures to ensure these recommendations are acted upon and that this mandate be preserved when it comes up for renewal in due course.

In January this year the Security Council rejected a proposed resolution on the situation in Myanmar which would have called on the government to end violations of human rights and humanitarian law, allow freedom of expression and association and unconditionally release all political prisoners. Several of the Security Council members who rejected the draft are also members of the Human Rights Council. However, they acknowledged that the human rights problems in Myanmar should be addressed; Amnesty International considers that the long-standing human rights concerns in Myanmar should be addressed in the Human Rights Council at the earliest opportunity.

Amnesty International urges the Human Rights Council to address the situation of human rights in Myanmar without further delay.

Sri Lanka – a continuing human rights crisis

The human rights situation has significantly deteriorated in Sri Lanka since August 2006 with an increase in violence between government troops and the Liberation Tigers of Tamil Eelam (LTTE). There is an urgent need for sustained protection for civilians. Civilians have been targeted and large numbers are caught up in the fighting.

More than 250,000 civilians have been displaced by recent violence and are experiencing food shortages, loss of livelihood and insecurity.⁸ The government as well as the LTTE have severely restricted access to conflict areas under their control, leaving many newly displaced people and large numbers of other affected populations without adequate international protection and humanitarian assistance. According to the *Consortium of Humanitarian Agencies*, more than 2,000 relief workers have left the Northern and Eastern provinces due to the killings and frequent abductions.

Over two decades of conflict in Sri Lanka have claimed the lives of more than 70,000 people, the majority of them civilians. Amnesty International has documented hundreds of cases of arbitrary arrest and detention, torture, enforced disappearances and extrajudicial executions by members of the security forces, often working together with armed groups. Members of the LTTE have been responsible for abductions, both targeted and indiscriminate attacks against civilians and civilian objects, including through the use of suicide bombers, and the widespread recruitment of child soldiers.

⁸ Hostilities in Sri Lanka escalated in April 2006 after four years of relative peace following a 2002 ceasefire.

Political killings and enforced disappearances are re-emerging in large numbers. *Home for Human Rights*, a Sri Lankan human rights group, claims that more than 1,000 people, mostly civilians and students, were extrajudicially killed in 2006.⁹ Amnesty International is receiving increasing numbers of reports of enforced disappearances and abductions by the government and armed groups. The former Minister for Foreign Affairs, Mr. Mangala Samaraweera recently stated that according to local and international human rights organisations “a person is abducted (in Sri Lanka) every five hours. Kidnappings, abductions and killings have become common incidents. No matter who does it, as a government we are responsible for it”.¹⁰

In September 2006, a Commission of Inquiry (CoI) and International Independent Group of Eminent Persons (IIGEP) were established by the government. While Amnesty International welcomes steps to address impunity the CoI and IIGEP mandate is limited to 15 cases (with the possibility of new additions) and therefore does not look at all human rights violations, particularly the most recent incidents. That the CoI is only to be advised by the IIGEP remains a matter of concern, as does the fact that the CoI is only obligated to report to the Sri Lankan President and is not formally part of the country’s justice system.¹¹ Further, existing mechanisms such as the national Human Rights Commission do not presently have the capacity to deal with large-scale human rights violations and there is no witness protection programme in the country. Sri Lanka has 5,749 outstanding cases being reviewed by the UN Working Group on Enforced or Involuntary Disappearances, several hundred of which have been reported since 2006.

The breakdown in the rule of law in Sri Lanka demonstrates the need for an international human rights monitoring presence. The Sri Lankan authorities have yet to ensure that effective investigations and prosecutions are conducted into the extrajudicial killing of five students in Trincomalee on 2 February 2006; the execution-style killing of the 17 *Action Contre la Faim* workers in Muttur in August 2006 as well as the killing and mutilation of ten Muslims in Pottuvil on 18 September 2006. Official investigations into these incidents have failed to identify suspected perpetrators, resulting in no one being held accountable for these killings. In his report to the Human Rights Council on 19 September 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions stated:

*"National accountability mechanisms are important but insufficient for achieving the necessary accountability. The criminal justice system police investigations, prosecutions, and trials have utterly failed to provide accountability. Indeed, it is an enduring scandal that convictions of government officials for killing Tamils are virtually non-existent."*¹²

⁹ Home for Human Rights, Colombo. Open letter to Phillip Alston 08/09/2006.

¹⁰ *Sunday Leader*, January 28, 2007

¹¹ See “Establishing a Commission of Inquiry into serious violations of human rights law and international humanitarian law in Sri Lanka: Amnesty International’s recommendations” (ASA 37/031/2006).

¹² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Sri Lanka, 28 November – 6 December 2005 (E/CN.4/2006/53/Add.5)

Amnesty International is extremely concerned about a crackdown on press freedom in Sri Lanka. Six media personnel were murdered in 2006. The disappearance of journalist Subramaniam Ramachandran on 15 February is an example of acts of violence and intimidation against journalists and human rights activists taking place in areas controlled by the Sri Lankan government. It is no longer only Tamil media who are targeted.¹³ Amnesty International has also received reports of many other journalists being harassed and receiving death threats. The Emergency (Prevention of Terrorism and Specified Terrorist Activities) Regulations enacted on 6 December 2006 are being used to target and intimidate trade unionists and journalists.

Amnesty International welcomes the commitment by the government of Sri Lanka to continue to brief the Council in a comprehensive manner.¹⁴

Amnesty International urges the Human Rights Council to address the situation of human rights in Sri Lanka without further delay.

Uzbekistan – serious human rights violations continue

Amnesty International continues to have concerns in relation to the aftermath of the events in May 2005 in Andizhan during which security forces allegedly killed hundreds of unarmed civilians, including women and children, when they fired indiscriminately and without warning on a crowd of mostly unarmed demonstrators. Hundreds of demonstrators were detained and reportedly ill-treated, and witnesses were intimidated. Journalists and human rights defenders were harassed, beaten and detained. There were dozens of trials of multiple defendants in Tashkent and Tashkent Region in 2006. At least 257 people were sentenced to long prison terms for their alleged involvement in the Andizhan events, the vast majority after closed or secret trials. To date, the authorities in Uzbekistan have rejected calls from many inter-governmental bodies and international human rights mechanisms for an independent, international investigation into the circumstances surrounding the Andizhan events.

The Uzbekistani authorities continue to seek the extradition, in the name of national security and the “war on terror”, of members or suspected members of banned Islamic parties or movements, such as Hizb-ut-Tahrir and Akramia, whom they accuse of participation in the Andizhan events, from neighbouring countries as well as the Russian Federation and Ukraine. Most of those forcibly returned to Uzbekistan are held in incommunicado detention, thus increasing their risk of torture or ill-treatment. Some have been sentenced to long terms of imprisonment after unfair trials. Amnesty International is concerned that the governments of

¹³ The detention on 26 February 2007 of Dushyantha Basnayake, Director of Sinhala newspaper Mawbima, by officials from the Terrorist Investigation Division (TID) is a worrying trend. Another journalist from the same newspaper, Munusamy Parameshawary, has been held without charge by the TID since November 2006.

¹⁴ Statement by delegation of Sri Lanka following the update by the High Commissioner for Human Rights to the Council on 29 November 2006.

Russia, Ukraine, Kazakstan and Kyrgyzstan are cooperating with Uzbekistan in disregard of their obligations under international human rights and refugee law not to return anyone to a country or territory where they would be at risk of serious human rights violations, including torture.

Pressure on international media and non-governmental organizations (NGOs) has increased. In February 2006, Freedom House was ordered to close its operations in Uzbekistan by a court in Tashkent, apparently because the organization had allowed unregistered local human rights NGOs free access to computers and the internet. On 27 April a court in Tashkent ordered the closure of the office of the American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI), citing numerous alleged infringements of Uzbekistani legislation, such as providing legal services to unregistered NGOs. Other mostly US-based or US-funded international humanitarian or development aid organizations or charities have also had their accreditation withdrawn and been forced to close their operations in Uzbekistan.

Human rights defenders also face increasing harassment, ill-treatment and detention by the authorities. Prominent human rights defender, Saidzhakhon Zainabidinov, who is the chairperson of the independent human rights group Appelliatsia (Appeal), based in the city of Andizhan, was sentenced to seven years in prison by a court in Tashkent on 5 January 2006. He was charged with several counts, including "slander" and "spreading information with the aim of causing panic". Amnesty International considers him to be a prisoner of conscience and calls for his immediate and unconditional release.

Despite a presidential decree in 2005 promising the abolition of the death penalty by 2008, the authorities have refused to introduce a moratorium on executions and insist that no death sentences have been passed in the last couple of years. However, NGOs have reported that at least eight death sentences were passed. According to reports, at least 25 people are currently on death row in Tashkent, of whom 20 are reportedly suffering from tuberculosis. On 1 March 2006, Aleksei Buriachek died from tuberculosis while on death row. Amnesty International is concerned for the health of other prisoners on death row and has called for appropriate medical treatment and improved prison conditions.

Press reports indicate that consideration of Uzbekistan under the 1503 procedure may be discontinued. Amnesty International considers this to be premature given continuing serious violations of human rights in Uzbekistan and the refusal of the government to receive a visit from the Independent Expert on the situation of human rights in Uzbekistan.

Amnesty International urges the Human Rights Council to continue to be seized of the situation of human rights in Uzbekistan.

Iraq – a human rights tragedy

Four years after the US-led invasion which ended the rule of Saddam Hussain, Iraq remains caught in a downward spiral of gross human rights abuses. Despite the US government's decision in January 2007 to send an extra 21,500 troops to Iraq the security situation remains very precarious. Indiscriminate bomb and suicide attacks continue to cause heavy casualties among the civilian population, particularly in Baghdad. According to the UN Assistance Mission for Iraq (UNAMI) more than 34,000 people were killed in the violence during 2006. Currently, some 90,000 US and Iraqi troops are deployed in the capital, but it is too early to assess whether this will improve security or lead to increased human rights abuses.

The high level of violence in Iraq has caused two million Iraqis to flee the country and seek refuge in neighbouring countries, mostly in Syria and Jordan, while another 1.7 million people have been internally displaced inside Iraq, according to recent UNHCR estimates. This humanitarian crisis is continuing to worsen as an estimated 50,000 people reportedly seek to flee the country each month. UNHCR has called for urgent support from the international community.

Human rights abuses are being committed by a variety of perpetrators, with responsibility in individual cases often difficult to distinguish. Indiscriminate killings continue to be committed by armed groups opposed to the Iraqi government and the presence of foreign troops in the country. There has also been rising sectarian violence involving Sunni insurgents, Shi'a militias such as the *Mahdi Army*, and death squads allegedly linked to political groups; and human rights violations by Iraqi security forces and the Multinational Force (MNF) assisting them continue to be reported. Shi'a dominated government security forces and pro-government militias are reported to be responsible for arbitrary arrests, "disappearances" and systematic torture, particularly in prisons and detention centres controlled by the Ministry of Interior. Reported torture methods include severe beatings, electric shocks to various parts of the body, suspension from the ceiling and sexual assaults. In some cases the Iraqi government has promised to investigate allegations of torture of detainees, but to date the authorities have failed to make public the results of any investigation. Members of non-Muslim minority groups, including Christians and Mandeans, as well as Palestinian and Syrian refugees in Iraq, have been targeted for killing and many have been forced to flee abroad. Many professionals, including academics, journalists, doctors, and lawyers have also been targeted. Women continue to face kidnapping and rape, intimidation by religious extremists, particularly those who do not follow a strict dress code, and "honour crimes" by male family members: since 2003 there has been a reported rise in the incidence of such "honour killings". Some 14,500 detainees continue to be held without charge or trial by the MNF, mostly in Camp Bucca, near Basra, and Camp Cropper, near Baghdad, after the closure in September 2006 of Abu Ghraib prison. A number of US and UK soldiers have been charged in connection with serious human rights violations against Iraqi civilians such as the killing of 24 people in the town of Haditha, north of Baghdad, in November 2005.

There has been an accelerating rise in the use of the death penalty since it was reinstated in 2004: at least 65 people, including two women, were executed in 2006, including former president Saddam Hussain, and 170 others are on death row. Two of Saddam Hussain's co-accused are among at least 16 people reported to have been executed so far in 2007. The trial of Saddam Hussain and his co-accused before the Supreme Iraqi Criminal Tribunal (SICT) was viewed as unfair by international observers, including Amnesty International, and did not meet international standards for fair trial.

The three Kurdish-controlled provinces of Northern Iraq have been less affected by violence and human rights abuses than other parts of the country. However, in these areas too the authorities have been responsible for arbitrary arrests, detention without charge or trial, the use of excessive force against demonstrators, curbs on freedom of expression and executions, and there is a continuing pattern of "honour" killings.

Amnesty International urges the Human Rights Council to address the situation of human rights in Iraq without further delay.

4. Follow up to previous decisions by the Human Rights Council

Report of the High-Level Mission on the situation of human rights in Darfur

Amnesty International welcomes the report of the High-Level Mission mandated by the Fourth Special Session of the Council on 13 December 2006 "to assess the human rights situation in Darfur and the needs of the Sudan in this regard" and "to report to the Council at its fourth session".¹⁵ Its findings confirm those of Amnesty International's research, and those of other organizations, including the UN, that civilians in Darfur continue to be murdered, raped, forcibly displaced and suffer other serious human rights violations by the government of Sudan, the Janjawid militia and other armed groups.

According to current information reaching Amnesty International, the human rights catastrophe in Darfur persists and has spread into eastern Chad. Contrary to assertions of the Sudanese government, attacks on civilians by the Janjawid militia are ongoing.

Although armed groups opposed to the Sudanese government have also committed serious violations of human rights and international humanitarian law, the government of Sudan bears the primary responsibility for protecting civilians in Darfur. Amnesty International is deeply concerned that not only has the government persistently failed to fulfil its responsibility, but it is continuing to support Janjawid militias which, together with Sudanese government forces, bear the largest responsibility for grave violations of human rights and international humanitarian law in Darfur and eastern Chad.

¹⁵ Decision S-4/101, Situation of human rights in Darfur, adopted without a vote on 13 December 2006.

Amnesty International believes that the report of the High-Level Mission provides the Council with a considered and authoritative assessment of the current human rights situation in Darfur and with sound recommendations for the protection of the civilian population. These recommendations are addressed not only to the government of Sudan and the armed groups, but also to the Security Council which must increase its efforts towards the deployment of a United Nations/African Union hybrid peacekeeping force.

Amnesty International is deeply dismayed by the efforts of the government of Sudan and its allies to discredit the report of the High-Level Mission and to prevent the Council from considering it. This is particularly disturbing in light of the refusal of the government of Sudan to cooperate with the Council by failing to issue the visas necessary for the full High-Level Mission to carry out its work inside Sudan. This refusal blatantly ignores the Council's decision to establish the High-Level Mission, which was adopted by consensus following intense consultations that involved representatives of the government of Sudan.

The refusal of the government of Sudan to cooperate with the High-Level Mission marks the fourth time since the creation of the Council less than a year ago that a government has refused to cooperate with a mechanism established by the Council. Israel refused to cooperate with the fact-finding mission established by the Council at its first special session, the Commission of Inquiry on Lebanon established at the second special session, and the high-level fact-finding mission established at the third special session. Amnesty International is deeply concerned that this negative trend is undermining the authority of the Council. If not addressed, this will harm the ability of the Council to take effective action to promote and protect human rights in accordance with its mandate.

Amnesty International urges the Council to make a substantial contribution at this session to the protection of civilians in Darfur including by:

- acknowledging the extremely serious human rights and humanitarian situation in Darfur and eastern Chad, and recognizing the Sudanese government's failure to provide protection to civilians in Darfur;
- condemning the violations of human rights and international humanitarian law and holding the Sudanese government, the Janjawid militia and other armed groups accountable;
- transmitting the report of the High-Level Mission to the Security Council and urging it to consider the recommendation addressed to it in the report;
- calling on the government of Sudan to implement, in full and without delay, the recommendations made to it by the High-Level Mission, as well as Special Procedures, the High Commissioner for Human Rights, the UN Secretary-General, the International Commission of Inquiry, and those included in the resolutions adopted by the Human Rights Council, the former Commission on Human Rights and the Security Council; and

- finding effective means to address non-cooperation by governments with the Council, including reporting publicly to the General Assembly those countries that fail to cooperate with the mechanisms of the Council or otherwise comply with its decisions.

The situation of human rights in Israel/Occupied Palestinian Territories

At its first special session on 5-6 July 2006, the Council decided “to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967”.¹⁶ Despite intervention by the President of the Council, the consent of the government of Israel was not obtained and the Special Rapporteur was not able to undertake the mission as mandated by the Council. However, the Special Rapporteur was able to compile a report on the situation in Gaza based on secondary sources and information obtained during a previous visit to the Occupied Territories. This report has been submitted for consideration by the Council at the current session.¹⁷

The second special session on 11 August decided to dispatch a high-level Commission of Inquiry to investigate killings of civilians by Israel in Lebanon, to examine the types of weapons used, and to assess the impact of attacks on human life and property.¹⁸ The report of the Commission of Inquiry was submitted to the third session of the Council in November-December 2006.¹⁹

The third special session, convened on 15 November 2006 to consider “the gross human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory”, also decided to dispatch a high-level fact-finding mission to Beit Hanoun.²⁰ However, on 11 December the head of the fact-finding mission, Archbishop Desmond Tutu, announced that the mission had been frustrated by the failure of Israel to grant the necessary visas. The mission was therefore unable to fulfil its mandate and to present a report to the Council.

The refusal of the government of Israel to cooperate on the above occasions undermines the authority of the Council. Amnesty International is deeply concerned that if not addressed, this will harm the ability of the Council to take effective action to promote and protect human rights in accordance with its mandate.

¹⁶ S-1/Res.1 Human rights situation in the Occupied Palestinian Territory, adopted by a recorded vote of 29 to 11, with 5 abstentions on 6 July 2006.

¹⁷ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 January 2007 (A/HRC/4/17).

¹⁸ S-2/1, The grave situation of human rights in Lebanon caused by Israeli military operations, adopted by a recorded vote of 27 to 11, with 8 abstentions, on 11 August 2006.

¹⁹ Report of the Commission of Inquiry on Lebanon (A/HRC/3/2).

²⁰ Resolution S-3/1, Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun, adopted a roll call vote of 32 to 8, with 6 abstentions, on 15 November 2006.

Amnesty International is concerned that the human rights and humanitarian situation in the Occupied Palestinian Territories has deteriorated further in the past year. Israel has legitimate security considerations, but the measures taken by the government are disproportionate and discriminatory in the suffering they cause to the lives of Palestinians.

More than 650 Palestinians - half of them unarmed civilians, including some 120 children - were killed by Israeli forces in 2006. Most of these killings took place in Gaza in the months after the capture by a Palestinian armed group of an Israeli soldier in June 2006. In the same period, attacks by Palestinian armed groups resulted in killings of 27 Israelis, including 21 civilians.

The building of the fence/wall is part of a series of measures in the occupied West Bank – including checkpoints;²¹ a network of restricted roads; closures and permits – which impose unacceptable limits on the freedom of movement of Palestinians, violating a range of economic, social and cultural rights including access to land, health, and education. The fence/wall cuts off thousands of Palestinians from their agricultural land in order to ensure that Israeli settlements, illegal under international law, have space to expand. Palestinian agricultural property and homes continue to be demolished in villages along its path. House demolitions are also continuing in other areas, including occupied East Jerusalem, through a discriminatory use of planning laws.

Confiscation of Palestinian tax funds by Israel and the cut in international aid has caused widening poverty, especially in the Gaza Strip. Foreign spouses of Palestinians have been denied residence permits in the Occupied Palestinian Territories for up to six years.

The 10,000 Palestinians at present detained by Israel include some 700 administrative detainees held without charge or trial.

Increasingly widespread inter-factional armed confrontations between security forces and armed groups loyal to President Abbas' Fatah party and those loyal to Hamas and other factions have left scores of Palestinians dead and wounded including those caught in the cross fire.

In follow up to previous decisions, Amnesty International calls on the Council and its members to:

- put aside political posturing and recommend concrete measure aimed at bringing to an end human rights abuses by both sides, recognizing that the large-scale, frequent and far-reaching human rights violations committed by Israeli forces - however grave - cannot justify the human rights abuses committed by armed Palestinian groups.

²¹ In January OCHA counted 82 permanent manned checkpoints, 455 temporary ('flying') checkpoints and more than 446 unmanned road blocks – trenches, earth mounds, concrete blocks, etc.

- call on both Israel and the Palestinian armed groups to put an immediate end to all unlawful killings; call on Israel to lift the regime of arbitrary closures and blockades *within* the Occupied Palestinian Territories, halt the construction and expansion of Israeli settlements and of the fence/wall *inside* the West Bank, including East Jerusalem; call on Israel to put an end to the demolition of Palestinian homes in the OPT; and put an end to the administrative detention of hundreds of Palestinians without charge or trial.
- engage in more open and transparent exchanges of views aimed at identifying practical measures that could improve the overall situation of human rights in the Occupied Palestinian Territories. In doing so it must address the legitimate concerns of all interested parties and seek the widest possible support in the Council for such measures.
- find effective means to address non-cooperation by governments with the Council, including reporting publicly to the General Assembly those countries that fail to cooperate with the mechanisms of the Council or otherwise comply with its decisions.