

AMNESTY INTERNATIONAL PRESS RELEASE

25 July 2001

AI Index ACT 40/028/2001 - News Service Nr. 124

Racism and the Administration of Justice Media Briefing

The experiences of millions of people worldwide testify to a simple fact -- racism undermines all human rights. Justice systems all too often perpetuate racism by mirroring the prejudices of their society. Ahead of the 2001 third UN World Conference against Racism (WCAR), to be held in Durban, South Africa, Amnesty International is urging governments to ensure that the administration of justice in their particular countries is free from prejudice, discrimination and racial bias.

*The following briefing summarizes Amnesty International's report, *Racism and the Administration of Justice*, and the organization's concerns regarding the current disputes among states within the context of the WCAR.*

What is racism?

Racism is a blatant attack on the very notion of basic human rights -- that human rights belong to all people, equally. It infects, to varying degrees and in various forms, every country in the world.

The prohibition of racial discrimination constitutes a general principle of international law, included in all fundamental human rights standards. The UN International Convention on the Elimination of all forms of Racial Discrimination (CERD), adopted in 1965 and ratified by 157 countries, outlines substantive rights and a series of steps for the elimination of racial discrimination in all its forms.

Amnesty International's work against racial discrimination is based on the definition set out in Article 1 of the CERD:

"In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

The world is familiar with some of the worst violations of human rights based on racism, such as Apartheid, the Holocaust of the Jews during World War II and the genocide against the Tutsi in Rwanda in 1994. Yet less publicized abuses take place in the daily operations of governments as well as in civil society.

How is Amnesty International involved in the work against racism?

Amnesty International opposes racism through its work to promote the observance of the Universal Declaration of Human Rights around the world. It also works worldwide on cases of grave violations of the right to be free from racial discrimination.

Specifically, Amnesty International opposes racism by working for the release of prisoners of conscience imprisoned by reason of race, colour, national, ethnic or social origin; and through its work on cases where racism is a factor in human rights abuses including torture, ill-treatment, the death penalty, "disappearances", unfair trials of political prisoners, unlawful killings, excessive use of force, forcible exile, mass expulsions and house destruction. Amnesty International intervenes in cases where racial discrimination prevents redress for victims and perpetuates impunity for perpetrators of human rights violations, or hinders the right of those fleeing persecution to seek asylum.

In this report, which is not intended to be a global or comprehensive survey of racism, Amnesty International highlights particular countries and cases of relevance to the question of the administration of justice, focusing on law enforcement by security forces, the operations of the judicial system, and abuses in the context of asylum determination procedures.

Global racial discrimination

Racism often reflects deep-rooted historical patterns of oppression against groups singled out because of their race, colour, descent or ethnic or national origin. These patterns exist within particular societies, or may transcend national boundaries so that some groups, such as people of African, Roma or Kurdish descent, face discrimination in the different countries in which they reside.

Racial discrimination on the basis of colour persists in many parts of the world and affects every aspect of life.

*In the **United States of America**, extensive studies have shown that racial discrimination is a major feature of the administration of justice across the country. Reports have found, for example, that blacks and whites are the victims of murder in almost equal numbers, yet more than 80 per cent of prisoners executed between 1977 and 2001 were convicted for the murder of a white person; black men are admitted to prison at more than eight times the rate of white men; and black men are incarcerated for drug offences at a rate 13.4 times higher than white men. The rate of imprisonment of black women is eight times higher than for white women; for Hispanic women the rate is four times higher.*

Racism in the administration of justice has been documented in much of Europe. In general terms, racial minorities are more likely than white people to be detained on suspicion of offences such as drug dealing or theft. They also figure disproportionately in cases of excessive use of force by police and deaths in custody. Allegations of racist abuses by police are rarely investigated effectively, and few authorities adequately monitor complaints of racist treatment by police or others administering justice.

In the **United Kingdom**, police have been found negligent in their response to racist attack. Last year CERD's Committee expressed serious concern that "racist attacks and harassment are continuing and ethnic minorities are feeling increasingly vulnerable". The Committee was also concerned about the finding by a UK judicial inquiry in 1999 of institutional racism within the Metropolitan police force. Progress has been slow in rooting out racial prejudice within police forces and other public institutions.

South Africa, which will host the WCAR, is still struggling with the legacies of apartheid, a system of legally-enforced racial discrimination which had been declared a crime against humanity under international law. The South African government, parliament and civil society organizations have been involved in law reform, training and other wide-ranging initiatives aimed at transforming public institutions and raising public awareness after more than four decades of apartheid rule. However, the struggle to transform institutions steeped in discriminatory practices is likely to be a long one. This was illustrated in November 2000 when state television broadcast a secretly-made police video which showed white police officers encouraging police dogs to attack three captive black men.

In Asia millions of people suffer discrimination because of their descent or caste. Often the discrimination results in extreme poverty and marginalization for such groups, leading to further discrimination on the basis of economic status.

In India, despite the abolition by law of "untouchability", Dalits continue to be discriminated against on the basis of their descent. They are marginalized, particularly in rural areas. Among the violations persistently reported are torture (including rape), arbitrary arrests and extrajudicial executions.

Dalits also often suffer violence in the community. Abuses against Dalits frequently go unpunished, with local police frequently refusing to record complaints by Dalits. Much evidence points towards a connivance between powerful caste groups and the police in violent attacks against Dalits.

An estimated 300 million indigenous peoples worldwide face impoverishment and cultural marginalization as well as widespread discrimination and other human rights abuses. Around the world, states deliberately ignore abuses committed by their agents and others against indigenous communities. Disputes with landowners and national and multinational companies exploiting natural resources on indigenous territories have led to many serious human rights abuses, often carried out with the complicity or acquiescence of the state.

Discrimination against Guatemala's indigenous peoples, an estimated 70 per cent of the population, was a major factor behind the wholesale rapes and massacres carried out during Guatemala's long "dirty war" in the late 1970s and early 1980s. Even though a formal peace was declared in 1996, discrimination continues to exclude Guatemala's indigenous peoples from most aspects of national life. For example, they

are not customarily represented in their native languages in criminal trials where they are defendants, nor in proceedings in which they attempt to testify against alleged perpetrators of gross abuses.

In **Australia**, the administration of justice remains heavily weighted against Aborigines. Aboriginal people are up to 22 times more likely than other Australians to be imprisoned. Aborigines are vastly over-represented in both the juvenile and criminal justice system and are more likely to die in custody than non-Aboriginal people.

Racial discrimination against **Roma** occurs widely in Europe because Roma are perceived as an "inferior" ethnic group, a perception based in some countries on the lifestyle or relative poverty of Romani communities. The discrimination is most widespread in Central and Eastern European countries where Roma form sizeable minorities. In many of these states, subtle forms of discrimination have turned into open racial hatred and violence.

In the **Czech Republic**, Roma are particularly vulnerable to violent racist attacks, particularly by gangs of "skinheads". Police often fail to intervene to protect Roma or to investigate allegations of such violence seriously. There have also been allegations of police collusion with "skinheads" and racist organizations.

And all over the world, the vulnerability of **women** to human rights abuses is heightened when they belong to ethnic or racial minorities suffering discrimination. In situations ranging from police interrogations to civil wars, the rape and sexual abuse of women is deliberately used to systematically intimidate and traumatize women, families and whole communities.

In **Indonesia**, during widespread violence against ethnic Chinese in May 1998, many ethnic Chinese women were reportedly gang raped, allegedly with the help of the military. In the recent conflicts in **former Yugoslavia** and in African states such as the **Democratic Republic of the Congo**, mass rape of women from the "enemy" population has been a favoured weapon of war.

Some of the most virulent forms of racism in justice systems appear in societies torn apart by **ethnic or nationalist conflicts**, with the conflict forming the background and sometimes the official justification for discriminatory treatment by the police and security forces against people from the "enemy" camp. As a result, racism pollutes all aspects of society, including the justice system.

In **Europe and the Middle East**, **Kurds** have been singled out for violations of their human rights because of their identity.

In **Iraq** waves of repression by the authorities have torn Kurdish communities apart and devastated millions of lives. In the 1980s, hundreds of thousands of Kurds "disappeared" after arrest by Iraqi security forces, most never to be seen again. Since mid-1997, thousands of Kurds and a number of other non-Arabs living in the oil-rich Kirkuk region, have been expelled to Kurdish provinces in the north (now controlled by Kurdish organizations) because of their ethnic origin. Their empty properties have been given by the authorities to pro-government Arabs brought in from other regions of Iraq.

The estimated 13 million Kurds in **Turkey** face widespread, although not open, discrimination on the basis of their ethnic identity both in law and in the administration of justice. The Turkish military and police have carried out extrajudicial executions, "disappearances", mass arbitrary arrests and the wholesale use of torture. Thousands of

Kurds have also been imprisoned for political offences, many after grossly unfair trials. The majority of the victims have been Kurdish civilians. Most of these gross human rights violations still await proper investigations.

In Sudan, in the context of a racially divisive civil war, government-allied militias mainly from the North have engaged in a form of slavery mostly targeted at people of the South. The victims are predominantly Dinka people from Bahr-el-Ghazal, and the people from the Nuba mountains and Ingessana hills. Thousands of people have been enslaved. Women and girls have been raped, and some boys forcibly recruited as child soldiers. Some s have allegedly had their names changed into Arab names and forced to convert to Islam. The Sudanese government has denied the existence of slavery and claims it has no control over what it calls "traditional tribal abductions". However in 1999 the government set up a Committee for the Eradication of the Abduction of Women and Children which has helped to reunite a few hundred people who were held in slavery with their families.

In Myanmar, in the ongoing conflict with armed ethnic groups, the army has targeted ethnic minority civilians for gross human rights violations. Ethnic minorities have also been forcibly relocated and forced to work as porters or on heavy construction projects and they are often ill-treated, deprived of food and tortured. Many thousands have fled abroad to escape these violations.

In Israel, prejudice against Palestinian citizens of Israel is widespread in the criminal justice system, both in the courts and in law enforcement methods. During demonstrations and riots in northern Israel last year, Israeli security forces used firearms and killed 13 Palestinian citizens. It took weeks of protests for a Judicial Commission of Inquiry into the killings to be set up. A border policewoman was later quoted as saying, "we handle Jewish riots differently. When such a

demonstration takes place, it is obvious from the start that we do not bring our guns along."

In the Israeli Occupied Territories, different laws apply to Jewish settlers and Palestinian residents. Palestinians are governed by more than 3,000 military orders, allowing for trials by military courts which are often unfair. Since 1967 thousands of Palestinian homes in the Occupied Territories have also been demolished ostensibly because they were built without a permit, but Israeli officials have discriminated against Palestinians when granting permissions and enforcing planning prohibitions.

Through neglect, discrimination and repression, ethnic Uighurs, Tibetans and members of other ethnic minorities in China have seen their cultural, social, economic and religious rights eroded and their political rights curbed. The government has responded to ethnic unrest and opposition with harsh repression, including arbitrary arrests, summary trials and in some cases executions. Torture is endemic throughout China, but male Uighur political prisoners have reportedly been subjected to forms of sexual torture not reported elsewhere in China.

Around the world, asylum-seekers, refugees and migrants are facing xenophobic environments, sometimes directly encouraged by the authorities or political parties and almost always reflected in the administration of justice.

In Europe, politicians in several countries have helped to stir up xenophobia through racist and anti-immigrant rhetoric, or indirectly through policies that seek to restrict immigration and asylum application. In countries such as Austria, Belgium and Switzerland, foreign nationals have died during deportation as a result of the use of dangerous methods of restraint by police such as gagging. Ethnic

minorities have also been disproportionately victim of police brutality in countries such as **France**.

In **Japan**, migrant workers who have overstayed their visas or asylum-seekers held in detention centres have been beaten and humiliated.

In **Saudi Arabia**, a secret and arbitrary criminal justice system confronts everyone who comes into contact with the law, but foreign workers from developing countries have much less chance of escaping gross abuses than Saudi Arabian nationals. Of 889 executions recorded by Amnesty International between 1990 and 2000, over half of the victims were migrant workers.

Some 5,000 Iraqis remain held in a desert camp in northern Saudi Arabia since the end of the Gulf War with Iraq in 1991. From the outset, the Saudi Arabian authorities referred to them as "guests", refusing to consider them as refugees. Most of the original 33,000 men, women and children have been resettled by the United Nations.

Today in **South Africa**, asylum-seekers and refugees from other African countries are sometimes the targets of racially-motivated or xenophobic violence from members of the public and law enforcement officials.

Amnesty International's recommendations

The Amnesty International report calls on governments to adopt national strategies and plans of action to combat all forms of racism and to include specific measures relating to the administration of justice, including:

- *Becoming party to the International Convention on the Elimination of All Forms of Racial Discrimination without making limiting reservations;*
- *Ensuring that members of state agencies reflect the diversity of their societies, receive effective training and are disciplined or prosecuted whenever they commit racist abuses;*
- *Providing protection against racist attacks by preventing and responding to all forms of racist attacks, and bringing those responsible to justice;*
- *Ensuring that asylum-seekers and detainees are informed of their rights and receive effective legal and language assistance;*
- *Ensuring that the conduct of trials and the imposition of sentences do not discriminate on grounds relating to racism. Countries where the death penalty is still imposed should investigate any disproportionate impact of such penalty on racial groups and declare a moratorium on executions pending such investigations;*
- *Initiating or supporting campaigns to mobilize public opinion against racism.*

Amnesty International's concerns regarding the WCAR

The last session of the Preparatory Committee of the WCAR will take place in Geneva between 30 July and 10 August (the WCAR itself is due to take place in Durban between 31 August and 7 September, with an NGO Forum scheduled between 28 and 31 August).

The preparations for the WCAR are currently marred primarily by disputes over the issue of reparations for slavery and colonialism and issues relating to Israel, Zionism and the use of the term "Holocaust".

Because of such disputes countries may decide to downgrade the level of their participation in the WCAR or not attend, and there is a fear that the conference may fail to reach agreement on a common platform. If at all that happens the world will have missed a unique opportunity to make a difference in the fight against racism, letting down the victims of discrimination in a spectacular way.

Amnesty International believes that all individuals who have been victims of gross human rights violations must obtain reparation and that the perpetrators must be brought to justice. States cannot avoid responsibility for such violations because they were committed by past governments. Amnesty International also believes that recognizing historical wrongs is essential, both as acknowledgement of past injustice and in order to avoid repetition in the future. However, where individual victims and perpetrators cannot be identified, the most effective and enduring form of reparation is to eliminate contemporary manifestations of discrimination, including those that may be a legacy of the trans-Atlantic slave trade and colonialism.

Amnesty International hopes that an agreement can be reached by the WCAR on inter-state initiatives aimed at dealing with the legacy of the past, including proposals relating to development aid, cancelling debts and reviewing terms of trade. If not, Amnesty International would urge states to agree a mechanism for addressing these issues outside the framework of the Conference, so as to ensure that the WCAR gives proper attention to developing forward-looking plans for eradicating contemporary forms of racism.

Amnesty International holds states to be accountable for human rights violations under international human rights standards, and does not attempt to define or take position on systems of government or ideologies such as Zionism. In this respect, Amnesty International believes

that it would be more productive if the WCAR were to address any discriminatory state practice – such as discrimination in Israel and the Occupied Territories against Palestinians – by recalling the international obligations of states rather than addressing any particular ideology.

There is also a dispute over the use of the term "Holocaust". Amnesty International notes that each genocide has had specific aspects and survivors refer to their experience with terms that are particularly meaningful to them and that may then enter into general usage. "Holocaust", for instance, is widely understood to mean the racist genocide of the Jews during World War II. The controversy over this issue is insensitive to the feelings of survivors. All genocides are equally reprehensible. The WCAR must ensure that the crime of genocide is not trivialized and that all victims are recognized.

Amnesty International appeals to all governments to focus constructively on the challenge of building a world free from all forms of racial discrimination, and ensure that the WCAR contributes effectively to this goal.

Read the report [Racism and the Administration of Justice](http://web.amnesty.org/ai.nsf/recent/ACT400202001?OpenDocument):
<http://web.amnesty.org/ai.nsf/recent/ACT400202001?OpenDocument>

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