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2000 UN COMMISSION ON HUMAN RIGHTS - DEFENDING THE DEFENDERS

I INTRODUCTION

The United Nations (UN) Commission on Human Rights (the Commission) has a wide range of thematic and country issues on the agenda of its first session in the new millennium. Human rights defenders are at the forefront of the fight to protect human rights. They play a crucial role not only to protect civil, cultural, economic, political or social rights in their own country, but also to provide the Commission and its special procedures with indispensable, first hand information about human rights observance on the ground. However, since the Declaration on Human Rights Defenders¹ (the Declaration) was adopted by the General Assembly in December 1998, human rights defenders have received none of the additional protection which they require in order to protect the human rights of others, as the Declaration envisages. On the contrary, they have continued to be the targets of threats, intimidation and human rights violations all over the world, even for providing the Commission with information that is essential for its work.

When non-governmental organizations (NGOs) pressed the Commission last year to appoint a Special Rapporteur for human rights defenders, they were told the time was not ripe and that the Commission had other priorities, notably the review of its special procedures. It is now high time for the Commission to act and for member states of the Commission to demonstrate that they take seriously the commitments which they undertook when they adopted the Declaration. The urgent need to appoint a Special Rapporteur for human rights defenders can no longer be held hostage to a review process that may take years to complete.

During its last session, the Commission spent a great deal of time considering the proposals, observations and detailed recommendations made by its Bureau to strengthen its system of country and thematic rapporteurs, experts and working groups, called its 'special procedures'. To take these forward, the Commission established an inter-sessional open-ended Working Group to enhance the effectiveness of the mechanisms of the Commission. The Commission will now consider the progress made by the Working Group. Three meetings were scheduled for the group in September and December 1999 and February 2000. Amnesty International is deeply concerned, however, that -- as of writing, December 1999 -- the Working Group has not made substantial or speedy progress on this important issue, as the Chair of the Commission had envisaged at the conclusion of the last session of the Commission.²

¹The full title is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms.

²For more information on Amnesty International's position regarding the Bureau's review of the Special Procedures, please see the document entitled: "1999 UN Commission on Human Rights Making Human Rights work: time to strengthen the special procedures" (AI Index: IOR 41/01/99)

Amnesty International wishes to underline the importance of the review as a timely means to strengthen the UNs' system of special procedures to protect and promote human rights, a need which the 1993 World Conference on Human Rights meeting in Vienna clearly identified. The review should not be subverted as a means to weaken the system of special rapporteurs, experts and working groups who have made a major contribution in impartially investigating, analysing and addressing specific thematic and country situations on a global basis. Their work fills important gaps that previously existed in the UNs' human rights protection system and requires the Commission's active support.

While there are many important issues at stake, we focus here on two of them: the need to maintain the two existing working groups dealing with thematic issues and the question of resources and support for the human rights program. Whereas the Working Group on Arbitrary Detention will be retained in its present form, different views have been expressed as to whether the Working Group on Enforced or Involuntary Disappearances should be replaced with a Special Rapporteur. Amnesty International is convinced that the Working Group on Arbitrary Detention should be retained in its present form because of its quasi-judicial character: under its unique mandate it assesses individual cases against international standards. The Working Group on Enforced or Involuntary Disappearances has a unique mandate among the special procedures which requires it to monitor compliance with one specific human rights instrument (the Declaration on the Protection of All Persons from Enforced Disappearance). As such, it should also be retained in its present form. However, there is an urgent need to rejuvenate its current membership to make it a more effective body.

Finally, the issue of resources and support for the special procedures requires the urgent and sustained attention of the Commission. The financial situation to support basic activities of the special procedures from stable resources from the regular budget has dramatically worsened in recent years, even though there has been a vast increase in demands on the Office of the High Commissioner for Human Rights (OHCHR) in that period to support, for example, newly created mechanisms.³ In fact there are indications that some rapporteurs may not even have the resources to carry out visits to countries that require their immediate attention. There has been a considerable increase in voluntary contributions to the human rights program. However, the UN's regular budget contribution, which provides stable resources for the human rights program, has in fact effectively been reduced by just under one million US dollars since the Vienna Declaration and Program of Action was adopted in 1993. This happened notwithstanding the fact that the Vienna Declaration had specifically called on the UN to substantially increase resources for the human rights program from its regular budget.

³To illustrate the sharp increase in demands occurring in recent years: the number of country and thematic special procedures created by the Commission and requiring professional support from OHCHR has risen by 38% between 1995 and 1998 (from 26 to 36).

Acting on the latest authoritative information provided by the OHCHR on resource requirements, member states should commit themselves to provide adequate support and resources for the UN's human rights program. They should ensure that they translate the commitments undertaken at the Commission into reality when voting the funds in the Fifth Committee of the General Assembly.⁴ In order to ensure that adequate resources are provided on the basis of a solid needs assessment encompassing the entire human rights program, and to prevent funding on an *ad hoc* basis to support individual programs that happen to be favoured by specific states, the Commission should ensure that additional resources are provided from the regular budget. In no circumstance should the essential activities of the OHCHR that have been carried out until now -- for example visits by the special rapporteurs and working groups -- be funded by extra-budgetary funds, since this would compromise the independence of the UN to determine its own human rights program and priorities.

Each year Amnesty International highlights the situation in specific countries for the Commission's special attention because of the gravity and persistent or widespread pattern of human rights violations that prevail there. Amnesty International urges the Commission this year to give priority attention to five country situations: **China, the Federal Republic of Yugoslavia / Kosovo, Mexico, Saudi Arabia and Sierra Leone.** They include two situations -- Kosovo and Sierra Leone -- that are beginning to emerge from traumatic conflicts and which, through the UN presence already on the ground, require the sustained attention of the international community.

II COUNTRY CONCERNS

CHINA

There was a serious deterioration of the human rights situation in China during the past year, marked by wide-ranging suppression of peaceful dissent. Arbitrary detention, torture and ill-treatment of criminal suspects and prisoners and the extensive use of the death penalty including for non-violent offences were common throughout the country. While in 1997 and 1998 China signed two key international human rights treaties,⁵ the new crackdown on dissent in 1999 showed the gap between the government's assurances about its commitment to international human rights standards and the reality of its domestic policies; the Chinese government's actions once again highlighted its contempt for international standards on human rights despite the proliferation

⁴The General Assembly has six Main Committees, of which the Fifth Committee deals with Administrative and Budgetary matters.

⁵ *The International Covenant on Economic, Social and Cultural Rights in 1997 and the International Covenant on Civil and Political Rights in 1998.*

of human rights dialogue between China and other countries. This was also evident in the implementation of Chinese law, where government interference and entrenched practices in the law enforcement and justice system contributed to violations of Chinese law and human rights.

At previous Commission sessions, the Chinese government opposed action on China's human rights record, arguing that dialogue alone will produce positive results and pointing to several bilateral initiatives underway. Amnesty International has never been opposed to human rights dialogue with China and has for many years pursued any opportunity to raise its concerns with the Chinese authorities as it does with governments worldwide. But Amnesty International also believes that dialogue is a means to an end - concrete improvements in human rights - and is corrupted when it becomes an end in itself. Dialogue relies for its very effectiveness on accompanying public pressure, both bilaterally and through the appropriate UN mechanisms, including the Commission.

Torture and ill-treatment are commonplace in China. Criminal suspects are often beaten, kicked, hung by the arms, shackled in painful positions, deprived of food and sleep and given electric shocks. Those serving sentences in prisons or labour camps are frequently subjected to torture or ill-treatment by guards or other inmates acting on the instructions of officials. While torture is prohibited by Chinese law, many police, prison and labour camp officials show contempt for the human rights of detainees and the law. Few perpetrators are punished and superior officers, prosecutors, judges and other officials often cover up cases of torture and ignore complaints made by victims.

In the most serious crackdown since 1989 the Chinese authorities in 1999 arbitrarily detained a broad range of people who peacefully exercised their rights to freedom of expression, association or religion. Members of the China Democratic Party were sentenced to long prison terms or sent without charge or trial to forced labour camps. People pursuing concerns such as labour rights and the fight against corruption - an objective proclaimed by the government to be a national priority - were also arbitrarily detained. Others arbitrarily detained included members of ethnic and Christian groups, as well as followers of the Falun Gong, a spiritual movement banned by the government in July 1999. Thousands, possibly tens of thousands, of its followers were arbitrarily detained.

By November, over a hundred of them had been formally charged, accused of “spreading superstitious beliefs”, organising peaceful gatherings, or printing or selling books about the Falun Gong, now described as “illegal publications”. The trials of those charged started in November. Hundreds of others were sent to forced labour camps without being charged or tried.

More people are executed each year in China than in the rest of the world put together. In 1998 Amnesty International recorded 2,700 death sentences and 1,769 confirmed executions; it believes these figures to be far below the real number. The death penalty is used extensively sometimes to instil fear into the population, particularly during crackdowns on crime. It is positive that the death penalty is no longer a punishment for persons below 18 years of age. However, the law still permits execution for more than 60 crimes, including many non-violent offences such as fraud, forgery and drug related offences. Death sentences are imposed following trial proceedings which can only be described as summary. Appeals are rarely successful. Miscarriages of justice are commonplace in China. They include cases of people sentenced to death for crimes they did not commit, who were forced to “confess” under torture. Some of these cases are discovered before the victims are executed, but others are not.

Gross human rights violations continue in the Xinjiang and Tibet autonomous regions, where nationalist opponents and suspected sympathisers of the opposition continue to be the target of harsh repression. Political suspects are routinely denied their legal rights. They are held for months without charge, denied access to lawyers, tortured and summarily tried in secret, while families are denied information about their whereabouts and legal status. In the Xinjiang Uighur Autonomous Region (XUAR) thousands of Uighur political prisoners are imprisoned. Many political prisoners accused of subversion or terrorism have been executed after summary trials and there are reports of arbitrary killings by the security forces. Torture of political suspects is routine

and many Uighurs are arbitrarily detained merely on account of their suspected nationalist sympathies or for engaging in peaceful religious activities. In Tibet hundreds of Tibetan political prisoners remain imprisoned. Many of them are monks and nuns jailed for peacefully expressing their views. Many are subjected to torture, ill-treatment and harsh conditions of detention.

Amnesty International calls on the Commission to:

- adopt a resolution expressing its concern at the widespread human rights violations which continue in China;
- urge the Chinese government to stop executions and take immediate steps to stop human rights violations in the Xinjiang and Tibet autonomous regions and establish a commission of enquiry into allegations of systematic torture of detainees and other human rights abuses in these regions;
- urge the Chinese government to release immediately and unconditionally all prisoners of conscience and amend or repeal all provisions in legislation which allow for the detention or imprisonment of people who peacefully exercise fundamental human rights;
- urge the Chinese government to prohibit all acts which constitute torture, cruel, inhuman or degrading treatment or punishment, in conformity with its obligations as a state party to the (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and to stop and prevent torture by granting detainees prompt and regular access to relatives, lawyers and doctors of their choice and by introducing other effective preventive measures, such as safeguards during interrogation;

- *urge the Chinese government to invite the Commission's thematic mechanisms to visit the country and in particular the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and to cooperate fully with the Special Rapporteur on torture in preparing and carrying out his forthcoming visit to China;*
- *urge the Chinese government to allow independent domestic organizations and relevant international organizations to carry out on site monitoring of the human rights situation in China;*
- *urge the Chinese government to ratify the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, without reservations.*

FEDERAL REPUBLIC OF YUGOSLAVIA / KOSOVO

The human rights situation in Kosovo continues to be critical despite the UN Mission in Kosovo (UNMIK)'s determination to raise an international administration from the ground and the efforts of KFOR, the North Atlantic Treaty Organization (NATO) forces in Kosovo, to provide military protection, in accordance with the mandate set in Security Council resolution 1244 of June 1999.

Many thousands of Kosovo Albanians were the prime targets of widespread and appalling violations of human rights and international humanitarian law committed, virtually with total impunity, by Serb police, paramilitary and Federal Republic of Yugoslavia (FRY) military forces in the months before and notably during NATO's military intervention from 24 March to 10 June 1999. In that period NATO conducted a widespread bombing campaign in the course of which many civilians were killed, some in incidents whose justification was highly questionable under international humanitarian law. Serb and FRY forces selected many Kosovo Albanians for extrajudicial executions, among them were Bajram Kelmendi, a prominent Kosovo lawyer and Fermi Agani, a well known politician. Torture and ill-treatment were widespread and women were victims of rape and other forms of sexual abuse. Numerous Kosovo Albanians were beaten, forcibly and systematically expelled from their homes and country and deprived of their identity documents by police and paramilitary forces to become refugees in neighbouring countries in a planned mass deportation. Their numbers rose to at least three-quarters of a million by June.

With the suspension of NATO's military intervention in the second week of June, Kosovo was placed under an interim UN administration. FRY and Serb forces withdrew from Kosovo days later; thus allowing Serb perpetrators of grave crimes under international law to leave Kosovo and enjoy impunity in Serbia. At this point Serbs, Roma, and other minority populations became chief targets of

persistent human rights abuses in Kosovo, despite the efforts of KFOR and UNMIK to protect them. They have been indiscriminately killed, abducted, attacked and threatened by armed Kosovo Albanian groups, including members of the not yet fully demilitarised former Kosovo Liberation Army (KLA), their supporters and other ethnic Albanians bent on collective revenge. As a result, many Serbs left Kosovo and Serbs now number less than five percent of the population, but constitute 35 percent of the victims of the 379 murders which KFOR reported had been committed with virtual impunity in Kosovo between June and November 1999. Even moderate Kosovo Albanians who are perceived as not supporting the KLA have been subjected to threats, attacks and intimidation. A climate of violence and fear, profound mutual hostility and impunity prevails.

The judiciary, newly appointed by UNMIK, no longer reflects Kosovo's ethnic diversity as all Serbian judges appointed have subsequently resigned. There are also serious fears that at least some members of the newly established judiciary are under severe political pressure by Albanian groups or individuals and may thus be restricted in their ability to act with the independence and impartiality which is essential for fairly dispensing justice. These fears are most acute for Serbs awaiting trial in Kosovo on war crimes charges.

Thousands of ethnic Albanians have "disappeared". Most were taken into custody by Serb forces during or before the NATO bombing campaign. Hundreds of Serbs and Roma also remain unaccounted for after alleged abduction by armed Albanians groups or individuals in the months before NATO's intervention. In November the FRY government acknowledged that 1,874 ethnic Albanians, transferred from Kosovo prisons at the end of the war, were held in Serb prisons, but more may be held in unacknowledged detention. Although the UN has established a mechanism to trace all detainees from Kosovo by establishing a Commission on Prisoners and Detainees, the FRY government, which should have vital information, is not represented on it. Uncertainty about the fate or whereabouts of the "disappeared" and missing will also continue as long as the dead buried in Kosovo have not been identified. By November 2,108 bodies had been exhumed by the International Criminal Tribunal for the former Yugoslavia (ICTY) from mass and other graves, but this constitutes only one sixth of the over ten thousand bodies which were reported to the ICTY as being buried in such graves.

The UN administration installed at short notice in June has an unprecedented, broad and complex mandate encompassing all legislative and executive powers, and the administration of the judiciary. Its task is particularly difficult because existing institutions were destroyed and the local Kosovo Albanian population were excluded from serving in the local government for over a decade. The international community has failed to assist the UN speedily and effectively in its crucial task to provide the judicial machinery and the police with the necessary support and resources. Without these, human rights observance cannot be secured and effective protection to particularly vulnerable members of minority communities cannot be provided.

The lack of resources and political will is unacceptable. Initially there were no budgetary provisions to pay the newly appointed judges and prosecutors and although the UN is addressing this problem, resources for qualified legal staff and translators are still lacking. Only 1,747 civilian police had been provided by the international community by the end of October of the 6,000 police requested by the Special Representative of the Secretary-General. UNMIK, for its part, has not established effective and independent human rights monitoring procedures of the judicial institutions it has created. UNMIK and KFOR lack a uniform system by which complaints against their own personnel can be dealt with in a transparent and impartial manner.

The military conflict has had a negative impact on human rights throughout the FRY, including in Serbia. Scores of peaceful anti-government demonstrators were severely beaten by police between September and November in Belgrade and elsewhere. Activists behind the protests and journalists who criticized the government were sentenced to prison terms of up to one year for exercising their right to freedom of expression. A number of political detainees, including Serb opposition activists and ethnic Albanians transferred to Serbian prisons by FRY forces from Kosovo at the end of the war, have been tortured or ill-treated in detention. Those facing charges for political activities face unfair trials primarily because of curbs on their right to free and prompt access to their lawyers but also because in some cases statements extracted under torture have been accepted in court.

Thousands of Yugoslav men of military age fled the FRY reportedly because they refused to participate in the Kosovo military conflict on grounds of their conscience. When they return they may face trial before military courts and lengthy terms of imprisonment together with thousands of other possible conscientious objectors to military service who remained in the FRY. Throughout the conflict leaders of NATO member states repeatedly called on serving Yugoslav army personnel to disobey their leadership. NATO aircraft dropped numerous leaflets on FRY territory encouraging army personnel to consider desertion. Yet these same NATO countries now disregard the plight of the thousands who heeded NATO's calls and have failed to provide conscientious objectors with long-term security in the countries to which they have fled. They have become the "forgotten resisters". In Resolution 1998/77 the Commission has itself called on states to grant asylum to those conscientious objectors who refuse military service when there is no provision or no adequate provision for conscientious objection to military service. The latter is the case in the FRY, because there is no adequate alternative service of a genuine civilian character.

Amnesty International calls on the Commission to express concern about human rights violations in the FRY and the critical situation in Kosovo and to:

- urge the FRY authorities to:
 - provide full and accurate information to the UN about all those who "disappeared" during the military conflict and to actively participate in all mechanisms established to clarify their fate or whereabouts by the UN and international humanitarian organizations as the Commission insisted upon in Resolution 1999/18 (paragraphs 21 and 51);
 - ensure that the perpetrators of violations of human rights and international humanitarian law committed during the Kosovo conflict are brought to justice in accordance with international standards and extend full cooperation to the ICTY for that purpose;
 - ensure that all political prisoners, including those charged with offences related to the conflict, are given a fair trial in accordance with international standards, including by granting them prompt, regular and confidential access to lawyers and to permit international observers to attend their trials;
 - release all prisoners of conscience including those imprisoned for exercising their right to freedom of expression or for conscientious objection to military service;
- urge the leaders of the Kosovo Albanian community to use their influence to:
 - stop all human rights abuses against Serbs, Roma and other minorities and cooperate fully with the UN authorities in bringing the perpetrators to justice;
 - halt attempts to threaten or influence the newly established judiciary;

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- ensure full cooperation with the UN and other international organizations in clarifying the fate and whereabouts of the “disappeared” and persons allegedly abducted by the former KLA or other Kosovo Albanian forces, in accordance with Commission Resolution 1999/18 (paragraph 51) ;
 - ensure that no persons are held in unauthorized detention;
 - request UNMIK to:
 - ensure that there is an independent mechanism to scrutinize and report on the performance of the newly established judiciary. Pending the establishment of long-term review mechanisms within Kosovo itself, this task could be undertaken by an appropriate monitoring body within UNMIK, provided it is separated from the body playing a key role in judicial appointments,⁶ or by the OHCHR, provided it is granted sufficient resources;
 - establish a high level mechanism to clarify, in cooperation with the ICTY, the fate or whereabouts of the many thousands who have “disappeared” or have been abducted by armed groups;
 - establish a transparent, effective and impartial mechanism by which individuals can complain about abuses committed by KFOR, UNMIK civilian police, and those acting under their authority;
 - request the Special Rapporteur of the Commission on the situation of human rights in the FRY (Serbia and Montenegro), the Republic of Croatia and Bosnia and Herzegovina to:
 - pay special attention to ensuring the release of prisoners of conscience including possible conscientious objectors to military service, to monitoring and reporting on the degree to which political prisoners receive a fair trial in accordance with international standards and to assess the degree to which recommendations made to that effect in previous reports by the then Special Rapporteur (notably E/CN.4/1998/9) have been implemented by the FRY authorities;
 - review current legislation regarding conscientious objection to military service and to make recommendations to the authorities to ensure that alternatives to military service of a genuinely civilian character are created in FRY law, as the Commission recommended;
 - monitor, especially as long as the above transparent and impartial complaints mechanisms have not been established by KFOR and UNMIK civilian police, complaints of abuses committed by these forces and those acting under their authority, as well as their effective follow-up;
 - request the Working Group on Arbitrary Detention to:
 - reopen its consideration of Opinion 15/1998, provisionally filed for “lack of pertinent information or clarifications” , take into account the detailed observations made by the then UN Special Rapporteur in her report (E/CN.4/1998/9) about the trial of 18 Kosovo Albanians, establish whether their right to fair trial was respected and adopt a revised opinion with regard to the alleged arbitrariness of their detention;
 - urge the international community to promptly provide:
 - UNMIK with additional civilian police and expertise to bring the UN force up to strength and enable it and KFOR to provide effective protection to threatened minorities;

⁶ The Rule of Law Division in UNMIK’s Institution Building component.

- UNMIK with increased financial, technical and human resources to fund, train and support an independent, impartial and multi-ethnic judiciary and judicial personnel and to facilitate the completion of its current legislative reform process to meet international standards and thus help to end impunity;
- UNMIK with additional resources for the systematic identification of exhumed bodies to clarify what happened to the thousands who have “disappeared” and have been abducted by armed groups in Kosovo;
- the OHCHR with enhanced resources to carry out its functions including monitoring of judicial processes in Kosovo;
- effective and durable protection to conscientious objectors who fled the FRY and thus to meet their international obligations, including by facilitating resettlement in third countries, notably in NATO member states that carry a specific responsibility.

MEXICO

Mexico continues to be a country with a very serious human rights situation, one that could turn into a crisis if the authorities and relevant sectors of civil society fail to resolve the conflicts which beset the country.

The presence of armed opposition groups and of the security forces, including the army, especially in the southern states of Chiapas and Guerrero; the mushrooming of so-called “paramilitary groups” or “civilian armed groups” in Chiapas, some of which are reported to have links to police and the ruling *Partido Revolucionario Institucional* (PRI) at the local level; and the unfolding of inter- and intra-community conflicts rooted in religious, political and economic differences, have served to heighten tensions and in some instances have resulted in killings. The climate of fear experienced by peasants and indigenous people in Chiapas has also led to their displacement into internal refugee camps.

A marked increase in the deployment of army troops and the setting up of scores of military bases in Chiapas state over the past six years have given rise to a fear amongst sectors of civil society and the political opposition that the Mexican authorities could seek a military, rather than a political, solution to the conflict with the armed opposition group *Ejército Zapatista de Liberación Nacional* (EZLN). In the event of such an outcome indigenous people in Chiapas could face a human rights crisis that could have a serious, negative impact on human rights throughout the country.

Impunity surrounding persistent human rights violations by members of the security forces and so-called “paramilitary groups” reportedly acting with their support, including arbitrary detentions, torture, “disappearances” and extrajudicial executions, acts as a catalyst for renewed abuses. The victims include peasants and indigenous people in rural areas and the poor in urban centres, members and sympathizers of opposition political parties and of the PRI, suspected members of armed opposition groups, human rights defenders and other NGO activists.

Mexico’s Political Constitution provides that no person shall be detained without a judicial order, except where the suspect is detained in *flagrante delicto*. However the term ‘detained in *flagrante delicto*’, commonly understood to mean detained when committing a crime or very soon after, has been extended to a period of up to 96 hours in relation to “organized crimes” such as drug-trafficking. This change in the law has doubled the period in law before a detainee must be brought before a judge.

Amnesty International has received hundreds of reports of persons detained by members of Mexico's security forces under these provisions. The organization believes these provisions facilitate the use of torture.

Over the years Amnesty International has interviewed scores of people in Mexico who said they had been tortured in the hours and days following their detention in attempts to force statements or confessions from them or by way of punishment. In 1996 the (UN) Committee against Torture concluded that the practice of torture in Mexico is "systematic". Torture methods include electric shocks, semi-asphyxiation with plastic bags or by submersion in water, mock executions, beatings, rape and sexual abuse, and the forcing of carbonated water up detainees' noses (a method known as "tehuacanazo").

Many of the unresolved "disappearances" reported to Amnesty International during the 1990s took place in the context of counter-insurgency and anti-narcotics operations. By the end of November 1999 no provision existed in Mexican law which outlaws the crime of enforced disappearance. A bill defining enforced disappearance as a crime against humanity and proposing that it be incorporated into Mexican federal law was elaborated by the Government's National Commission for Human Rights and submitted to the National Congress in 1997. However, the bill has yet to be debated and approved. In the four-year period from 1994 to 1997 Amnesty International received reports of at least 70 "disappearances" in Mexico. In 1998 and 1999 the number of "disappearances" reported to the organization declined significantly. Although this decline is a positive development, many of the "disappearances" from past years, including hundreds of cases reported during the 1970's and early 1980's, remain unresolved.

Over the past years Amnesty International has received compelling evidence about extrajudicial executions in Mexico. The Aguas Blancas massacre in the state of Guerrero in June 1995, in which 15 peasants lost their lives, is a clear case in point. More recent high-profile killings include 45 men, women and children in Acteal, Chiapas state, in December 1997; 11 persons in El Charco, Guerrero state, in June 1998; and eight persons in El Bosque, Chiapas, in June 1998.

Amnesty International believes that many of the cases of torture, "disappearance" or extrajudicial execution, could have been avoided if the victim had been detained on the basis of a judicial order and brought promptly before a judge.

One of the central structural problems underlying persistent cycles of human rights abuses is that Mexico's federal and state judicial systems lack independence. Where those responsible of human rights violations are alleged to be members of the armed forces, the cases are invariably heard under the jurisdiction of the military justice system. Allegations of human rights violations by members of the police forces and non-military officials fall under the jurisdiction of the ordinary judicial system, which is widely regarded as ineffective.

Amnesty International has repeatedly documented Mexico's failure to put into practice judicial, administrative reforms and other measures which would ensure an effective remedy for those persons whose human rights have been violated. The government has yet to implement practical measures which will guarantee the independence of the judiciary and ensure that those responsible for human rights violations are brought to justice. In the absence of such measures a climate of

institutionalized impunity prevails in Mexico, especially in cases in which high ranking officials are implicated.

One crucial step towards bringing impunity to an end would be to ensure that those implicated, no matter their position or status within the wider society, are brought before a system of justice which is, both in principle and practice, independent and effective. If the administration of justice is to be improved, then resolving the problems which beset it will need to be given the highest priority -- a priority that will require a sustained combination of political will, resources and innovative practical reforms.

Amnesty International has received numerous complaints regarding acts of intimidation directed at Mexican human rights NGOs and their staff, including death threats and surveillance of their activities. For example, the non-governmental human rights organization *Centro de Derechos Humanos "Miguel Agustín Pro Juárez"* (Prodh) and its lawyer Digna Ochoa, based in Mexico City, have been the target of sustained death threats between early September and late October 1999. The persistence and gravity of the threats led the Inter-American Court on Human Rights to issue a resolution last November requesting Mexico to take all necessary measures to protect the safety of Prodh staff and bring those responsible to justice. The case is one of many where human rights NGOs have been targeted for investigating and reporting cases of human rights violations.

Amnesty International is also concerned about the short-term detention and expulsion from Mexico of foreign human rights defenders working for Mexican and international human rights NGOs. In 1998 the authorities introduced stringent new administrative criteria putting obstacles in the path of foreign NGOs seeking to monitor human rights in Mexico before being granted a visa to enter Mexico. Both the expulsions and the administrative criteria seriously limit the possibility of victims testifying about the abuses they have suffered.

Amnesty International calls on the Commission

- to adopt a resolution expressing concern about human rights violations in Mexico;
- urge the Mexican government to implement the recommendations made in recent years by the (UN) Human Rights Committee, the (UN) Committee against Torture, the (UN) Committee on the Elimination or Discrimination against Women, the (UN) Committee on the Elimination of Racial Discrimination, and by the Special Rapporteur on torture following his visit to Mexico;
- urge the Mexican government to extend an invitation to the Special Rapporteur on the independence of judges and lawyers, the Working Group on Arbitrary Detention, and the Working Group on Enforced or Involuntary Disappearances for on-site visits;
- urge the Mexican government to ensure that perpetrators of human rights violations, no matter their position or status within the wider society, are brought before a system of justice which is, both in principle and practice, independent and effective.

SAUDI ARABIA

Saudi Arabia's record of gross and systematic human rights violations is rarely scrutinised. In Saudi Arabia there are no political parties, no elections, no independent legislature, no trade unions, no Bar Association, no independent judiciary and no human rights non-governmental organizations and anyone who dares to question this system is harshly punished. Because the state operates 'behind closed doors', people are detained indefinitely on political grounds or sentenced after grossly unfair trials, torture and ill-treatment are endemic, executions and floggings and amputations are carried out with total disregard for even the most elementary fair trial standards.

Saudi Arabia's criminal justice system facilitates police brutality and torture and ill-treatment in custody. Torture techniques include *falaqa* (beatings on the soles of the feet), use of electric shock devices, cigarette burns and extraction of nails. In many cases criminal suspects are tortured or ill-treated from the moment of arrest because of the reliance of the criminal justice system on confessions obtained by the police to secure convictions. The detainee is invariably held incommunicado and has no prompt access to a lawyer or any judicial authority that could act as a safeguard against ill-treatment.

Floggings and amputations are used extensively in Saudi Arabia as punishments stipulated by law. Flogging has been used for offences which are alcohol related, 'fornication' and suspicion of homosexual behaviour. Judges may also use it in addition to other punishments such as imprisonment. Amputation is used for theft and highway robbery. Amputations are a form of torture and flogging amounts to torture or cruel, inhuman or degrading treatment. Both violate provisions of the Convention against Torture to which Saudi Arabia acceded in 1997. The Special Rapporteur on torture also "takes the view that corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, *inter alia*, in the Universal Declaration of Human Rights and the Convention against Torture (E/CN.4/1997/7) .

Saudi Arabia has one of the highest rates of executions in the world in both absolute numbers and per capita. No-one but the Saudi Arabian government knows how many people are currently under sentence of death or have been executed. Amnesty International recorded over 1,160 executions in Saudi Arabia between 1980 and 1999, but the true figure is probably much higher. In Saudi Arabia the death penalty is imposed after secret trials, which fail to respect even the most basic internationally recognized fair trial guarantees. Moreover, a disproportionate number of those executed are foreign workers from Africa, Asia and the Middle East. Saudi Arabia acceded to the Vienna Convention on Consular Relations in 1988 but foreign nationals are not usually informed of their right to contact their respective consulates.

Saudi Arabia imposes the death penalty for a wide range of offences, including drug dealing, rape and murder. It is also imposed for renouncing one's faith ("apostasy"), Christian proselytizing, having sexual relations outside marriage (adultery) and sodomy. The UN's Economic and Social Council (ECOSOC) 1984/50 resolution on 'Safeguards guaranteeing protection of the rights of those facing the death penalty' states that "capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences". Furthermore, the Commission called on states to "Progressively restrict the number of offences for which the death penalty may be imposed" and "To establish a moratorium on execution, with a view to completely abolishing the death penalty" (Resolutions 1998/8 and 1999/61).

Customary international law prohibits the imposition or use of the death penalty on persons below 18 years at the time the offence was committed. Saudi Arabia's report to the (UN) Committee on the Rights of the Child states: "It is noteworthy that Islamic based regulations applicable in Saudi Arabia never impose capital punishment for offences committed by persons below the age of puberty".

There is no definition of the age of puberty which means that the imposition of the death penalty on a child, over the age of puberty but still under 18, is possible. The Saudi Arabian government has ignored requests from Amnesty International for clarification on the minimum age for imposition of the death penalty. However, press reports indicate that the death penalty is imposed on children.

The human rights of women are systematically violated in Saudi Arabia. Their testimony in court counts as only half that of a man; they are subject to beatings or detention if they do not conform to the strict dress code, their freedom of movement is severely restricted by a requirement that they be accompanied by a close male relative or receive written permission from them for travel and they are forbidden from driving. To walk or travel unaccompanied or to be in company of a man who is not a husband or close male relative puts them at risk of arrest on suspicion of a "moral" offence.

Saudi Arabia permits no criticism of the state. Individuals who express opinions or associate with others in ways which challenge the status quo risk retaliatory action by the government and its agents which often results in violations of fundamental human rights. The risks emanate from the vagueness of the laws and unfettered powers of the arresting authorities. This is compounded by a pattern of harassment by the security forces of members and suspected sympathizers of 'illegal' political groups and religious minorities.

The widespread practice of arbitrary detention is made possible by four factors: wide powers of arrest, vague laws, numerous arresting authorities acting without judicial accountability and denial of the basic rights of detainees. Anyone who is not in a position of power or influence risks being detained arbitrarily and, in particular, suspected political opponents, members of religious minorities, migrant workers and women who contravene the strict moral or dress codes.

Over many years Amnesty International has documented patterns of systematic human rights violations. The organization has persistently asked the government for clarification regarding reports of human rights violations, individual cases, statistics and legislative provisions and has repeatedly invited the government to engage in a constructive dialogue and to comment on its reports and recommendations. Amnesty International has yet to receive a satisfactory response to these requests; queries about individual cases received virtually no response at all.

Governments are reluctant to confront Saudi Arabia about its appalling human rights record. Saudi Arabia is a major political and economic power and has strong strategic and political relations with governments at the regional and international level. Saudi Arabia also provides substantial employment opportunities for foreign workers, particularly from Africa, Asia and the Middle East. It is the workers from these regions which include Egyptians, Filipinos, Indians, Indonesians, Pakistanis, Somalis, Sri Lankans and Yemeni as well as Palestinians, who do not have trade unions, money, influence or even consular assistance, who are most vulnerable to grave violations of their human rights.

The Commission has considered the human rights situation in Saudi Arabia under the confidential '1503 procedure' for some years. Despite the fact that this confidential scrutiny has not

produced any significant improvement in the overall human rights situation and in spite of the gravity of the human rights situation, the Commission has failed to transfer Saudi Arabia to its public procedure.

Saudi Arabia has acceded to the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination -- albeit with a sweeping reservation to both treaties that the provisions do not contradict with Islamic law -- and to the Convention against Torture, although welcome steps in the right direction, fall far short of measures required to redress a dire human situation which requires the full implementation of international standards. *The human rights situation in Saudi Arabia is so serious that the Commission must address the violations through its public procedures and debate.*

Amnesty International calls on the Commission to:

- *adopt a resolution condemning gross and systematic human rights violations in Saudi Arabia;*
- *urge the government to immediately suspend executions pending complete abolition of the death penalty and to comply with its obligations under the Convention against Torture by abolishing floggings and amputations immediately;*
- *urge the government to ensure that trials are in accordance with international standards of fairness;*
- *urge the government to ensure that persons arrested are not subject to incommunicado detention and that there is a prompt and impartial investigation of any allegations of torture;*
- *request the government to invite the Special Rapporteur on the independence of judges and lawyers to visit Saudi Arabia in 2000 and report to the 2001 session of the Commission;*

- *request the government to sign and ratify without limiting reservations the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, to withdraw its sweeping reservations to the Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination and to incorporate the obligations in these treaties into national law;*
- *urge the government to abolish discriminatory laws and practices in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, to which Saudi Arabia has acceded, and other international human rights standards which together prohibit all forms of discrimination. The government should bring its laws and practices into line with these international standards and take immediate steps to abolish all discriminatory laws and practices against women and against members of the Shi'a community and all minorities and vulnerable groups;*
- *urge the government to permit human rights non-governmental organizations to visit the country to investigate the human rights situation.*

SIERRA LEONE

The July 1999 Lomé peace agreement between the government of Sierra Leone and the armed opposition Revolutionary United Front (RUF) provided an opportunity to end and prevent further widespread and gross human rights abuses, including war crimes and crimes against humanity, committed during the eight-year internal armed conflict. These abuses were extremely grave and included deliberate and arbitrary killings, mutilation including severing of limbs, rape and abduction.

However, key provisions of the Lomé agreement have not yet been implemented and the political, security and humanitarian situation in Sierra Leone remains precarious. Although former

rebel leaders now occupy government posts, fighting has continued between combatants of the RUF and the Armed Forces Revolutionary Council (AFRC), which joined forces with the RUF after the 1997 military coup. In late November 1999 fighting also occurred between rebel forces and West African troops deployed to maintain security. Parts of the north and east of the country remain inaccessible and the civilian population remains deprived of humanitarian assistance. More than half of the population of some four million has become either internally displaced or has sought refuge in neighbouring countries. Human rights abuses by former rebel combatants continue especially in the north. They continue to deliberately and arbitrarily kill, torture, rape and abduct civilians.

The peace agreement specified that all prisoners of war and non-combatants, which include large numbers of women and children, held captive by rebel forces should be released. However, comparatively small numbers of civilians have been freed. More than 2,000 children, the majority girls, remained missing following the incursion by rebel forces into Freetown in January 1999; most are believed to be still held by the rebel forces. Women and girls abducted by rebel forces have been systematically raped or subjected to other forms of sexual abuse and many have been forced into sexual slavery. The scale of sexual abuse of women and girls in Sierra Leone is particularly grave and requires specific attention.

On 22 October 1999 the UN Security Council adopted Resolution 1270 authorizing the deployment of an international peace-keeping force of 6,000 troops of the UN Mission in Sierra Leone (UNAMSIL) for an initial period of six months to help implement the peace agreement, in particular monitoring adherence to the cease-fire and the disarmament and demobilization of former combatants. The UN peace-keeping force includes troops from states that are members of the Economic Community of West African States (ECOWAS). A reduced force of the ECOWAS Cease-fire Monitoring Group (ECOMOG) will remain to maintain security. By end November 1999 only some 4,000 of an estimated 45,000 former combatants had been demobilized, among them only a few child combatants, who the UN estimated to number more than 5,000, although the real number of child soldiers is likely to be much higher.

The UN Secretary-General, the Special Representative of the UN Secretary-General for Children and Armed Conflict (who has proposed an "Agenda for Action for the Children of Sierra Leone") and the High Commissioner for Human Rights have all highlighted that children have been among the principal victims of the internal armed conflict. In June the government committed itself, in a Human Rights Manifesto for Sierra Leone agreed with the High Commissioner for Human Rights, to fulfil its obligations under the Convention on the Rights of the Child. This commitment is in addition to raising the age of voluntary military recruitment to 18 years.

In a provision of great concern to Amnesty International, the peace agreement grants total amnesty for all acts undertaken by combatants in the pursuit of the conflict. In providing an amnesty to the perpetrators of human rights abuses, the agreement undermines the most fundamental international human rights principles. It also disregards Resolution 1999/1 which the Commission adopted at its last session by consensus, reminding all factions and forces in Sierra Leone that: "all countries are under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and to bring such persons, regardless of their nationality, before their own courts".

The UN Secretary-General instructed his Special Representative for Sierra Leone to sign the peace agreement with the explicit provision that: "the United Nations interprets that the amnesty...

shall not apply to international crimes of genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law". In a subsequent report to the Security Council the UN Secretary-General acknowledged that the amnesty provisions were difficult to reconcile with the goal of ending impunity. He suggested that the Security Council consider steps to address this question, including by establishing an international commission of inquiry to investigate violations and abuses of human rights and humanitarian law committed by all parties since 1991, as the UN High Commissioner for Human Rights had earlier recommended after the peace agreement was signed. However, the Security Council has neither supported nor endorsed this recommendation.

Progress has, however, been made towards the establishment of the Truth and Reconciliation Commission provided in the agreement. This commission can examine human rights abuses during the conflict, but it cannot alone establish full accountability for these abuses, in view of the immunity granted in the peace agreement. The UN High Commissioner for Human Rights has requested a study on the relationship between the Truth and Reconciliation Commission and an international commission of inquiry but no recommendations had been made by December 1999.

There should be a determined government policy to bring to justice those responsible for human rights abuses, including those committed after the peace agreement, which are not covered by the amnesty. The long-term protection of human rights depends too on an effective legal system that is independent, impartial and accessible. However, the judicial system was virtually destroyed during the conflict. Its reconstruction should be a priority for the international community, including international financial institutions such as the World Bank.

The human rights section of UNOMSIL⁷ has played a crucial role in monitoring human rights abuses and in promoting respect for and protection of human rights. It has made important contributions to the implementation of human rights provisions of the peace agreement, including helping to establish the Truth and Reconciliation Commission and the National Human Rights Commission and obtaining the release of prisoners and captured civilians. It has also provided human rights training for police and UN military observers and providing support for the Sierra Leone human rights movement. Its continuing presence during the period of post-conflict reconstruction remains essential. It should benefit from full political support, adequate personnel and funding.

The peace process in Sierra Leone is at a fragile and critical point. The human rights provisions of the peace agreement, including the establishment of a National Human Rights Commission and of the Human Rights Manifesto provide an important blueprint for action. The Commission should ensure that the unique opportunities offered by the agreement to provide long-term protection and respect of human rights receive full political, technical and financial support and that the question of impunity is effectively addressed.

Amnesty International calls on the Commission to:

- call on former rebel leaders, including those now participating in government, to instruct their former combatants to end all human rights abuses and to adhere to international human rights and humanitarian law, including by releasing all captured non-combatants who remain held, as provided in the peace agreement;

⁷On 22 October 1999 this became the human rights section of UNAMSIL.

- ensure that the gross human rights abuses, including war crimes and crimes against humanity, which occurred during the internal armed conflict, are fully investigated in order to bring those responsible to justice, including by explicitly supporting the early establishment of an international commission of inquiry as recommended by the High Commissioner for Human Rights and endorsed by the UN Secretary-General in his report to the Security Council;⁸
- remind governments that, in keeping with its Resolution 1999/1 of 6 April 1999, and notwithstanding the amnesty subsequently provided in the July 1999 peace agreement, all states are obliged to investigate and prosecute, or extradite for prosecution, those alleged to have committed or to have ordered grave breaches of international humanitarian law or other crimes in Sierra Leone subject to international jurisdiction;
- insist that those human rights abuses which have occurred since the signing of the peace agreement, which are not covered by the amnesty provided by that agreement, are fully investigated by the appropriate authorities in order to identify those responsible and bring them to justice;
- call on the government to invite the Special Rapporteur on violence against women to visit Sierra Leone;
- encourage continuing attention, commitment and resources, including by the Special Representative of the Secretary-General for Children and Armed Conflict and by UNICEF, to the specific needs of children affected by the conflict in Sierra Leone, including through support for the disarmament and demobilization of former child combatants and programs for reintegration into their families and communities and physical and psychological rehabilitation;
- ensure that the UN peace-keeping force and remaining ECOMOG forces conform at all times to international human rights and humanitarian law and that they fulfil their obligation to protect civilians in imminent danger as specified in Security Council Resolution 1270;
- call on the OHCHR to give priority to technical assistance and advisory services to Sierra Leone, to help ensure the implementation of the human rights provisions of the peace agreement and the Human Rights Manifesto for Sierra Leone;
- ensure that the human rights section of UNAMSIL is accorded its full complement of staff, as authorized by UN Security Council Resolution 1260 of 20 August 1999, and that it is provided with the necessary political and practical support in order to carry out its work effectively on a long-term basis in all parts of the country;
- encourage the World Bank to place the respect and protection of human rights at the centre of its program for post-conflict reconstruction, including the re-establishment of an effective legal and judicial system;

⁸ S/1999/836, paragraph 47.

- remind governments that UN Security Council Resolution 1171 (1998) of 5 June 1998 remains in force and that they are obliged to ensure that their territories are not used to provide military assistance, including arms, ammunition and personnel, to non-governmental forces in Sierra Leone.

III THEMATIC ISSUES

A SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

After the adoption by the General Assembly in December 1998 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Rights and Fundamental Freedoms (the Declaration), Amnesty International, with many international and national human rights non-governmental organisations, urged the Commission to establish a post of Special Rapporteur on Human Rights Defenders.

However, the Commission ignored these calls and instead of demonstrating its determination to effectively protect those who defend and promote human rights, it merely called on the Secretary-General to “consider appropriate ways for the effective promotion and implementation of the Declaration”.

Amnesty International’s monitoring of the situation of human rights defenders worldwide has clearly demonstrated that intimidation, reprisals, attacks and even extrajudicial killings of human rights defenders have continued unabated since the adoption of the Declaration. The adoption of new specific standards is only the beginning of a process to halt and prevent such human rights violations. Their continued occurrence dramatically testifies to the urgent need to create a concrete mechanism to monitor, document and intervene on behalf of human rights defenders suffering these violations and also, more generally, to monitor implementation of the Declaration.

The General Assembly of the Organization of American States adopted a resolution on Human Rights Defenders during its last session in June 1999 in Guatemala. The Sub-Commission on the Promotion and Protection of Human Rights has recognized the specific vulnerability of human rights defenders to state policies of harassment and reprisals. Since 1998⁹, it has adopted resolutions which, in a welcome move, call on the High Commissioner for Human Rights to inquire about the security of a few named human rights defenders.

The Commission on Human Rights included in its traditional resolution on “Human rights and thematic procedures” in 1996, 1997 and 1998¹⁰ the “suggest[ion] that the special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures (...) consider how these mechanisms can make available information on the particular situation of [human rights defenders] and how their protection can be enhanced”. However, the effect of the Commission’s “suggestion” has been very limited. Because of the weak language used, few thematic procedures felt

⁹ See resolutions 1998/3 of 20 August 1998 and 1999/3 of 20 August 1999

¹⁰ See resolutions 1996/46, 1997/37 and 1998/74

compelled to comply. Moreover, the Commission did not make a similar call on country rapporteurs. At its last session, the Commission decided against adopting a resolution on the issue altogether. These factors combined demonstrate the apparent unwillingness of the Commission to effectively and concretely tackle the problem of violations of human rights defenders' rights.

Even if the Commission's special procedures were able to address the issue of human rights defenders systematically, their actions would still not be sufficient considering the gravity of the problem, as they themselves recognized. Special procedures have "committed themselves to cooperate among themselves on this issue" but acknowledged that "the nature of the problem was not one that could be covered satisfactorily by them alone in the discharge of their specific mandates."¹¹

Furthermore, the mention of specific cases in the consecutive reports of the Secretary-General, submitted in accordance with the traditional resolution of the Commission on this subject, do not effectively prevent or stop the human rights violation of individuals cooperating with UN human rights bodies. Once the case of an individual has been mentioned in a report of the Secretary-General, it does not reappear in subsequent reports, and is forgotten.

The effective protection of these human rights defenders requires a long-term sustained effort, with adequate capacity for follow-up. Reiterating its call already made in 1999,

Amnesty International urges the Commission to:

- appoint during this session a Special Rapporteur on Human Rights Defenders with the mandate to monitor, document and intervene on behalf of human rights defenders subjected to human rights violations, to devise an effective strategy to better protect human rights defenders and to study ways to monitor the implementation of the Declaration.

THE DEATH PENALTY

In 1999, for the third consecutive year, the Commission adopted a resolution on the question of the death penalty. The resolution adopted in 1999 was sponsored by 72 countries, 7 more than in 1998 and was adopted by 30 votes in favour, 4 more than the previous year. These figures testify to an increased international support for a worldwide moratorium on executions, with a view to completely abolishing it. The resolution stressed important new aspects in relation to the death penalty that had not been covered in 1998, including the obligation to ensure that "the notion of 'most serious crimes' does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent financial crimes or for the non-violent religious practice or expression of conscience". Resolution 1999/61 also called on states not to enter any new reservations under article 6 of the International Covenant on Civil and Political Rights "which may be contrary to the object and purpose of the Covenant and to withdraw any such existing reservations". The resolution also noted the obligation not to execute and not to impose the death penalty on persons suffering from mental disorders or persons below 18 years at the time the crime was committed. The resolution also emphasized the right of states to refuse extradition when assurances have not been obtained that capital punishment will not be carried out and the importance of obligations under the Vienna Convention on Consular Relations.

¹¹ E/CN.4/2000/5 para 87 (p)

Since the adoption of resolution 1999/61 by the Commission in April, the Slovak Republic, Bulgaria and Cyprus ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, thus bringing the total number of countries that ratified this Protocol to 40. In May 1999, Nepal formally abolished the death penalty for all crimes. In June 1999, Russian President Boris Yeltsin commuted all 716 death sentences outstanding before the Presidential Clemency Commission.

Several countries, however, continued or undertook actions in 1999 that were contrary to the call of this and previous Commission resolutions on the death penalty. China has by far the highest number of executions of any country and continues to execute people for many non-violent crimes such as fraud. In Saudi Arabia, the rate of executions continued to rise and as of December 1999, 103 people had been executed since the beginning of the year. The United States of America continued to violate provisions of the International Covenant on Civil and Political Rights by imposing the death penalty and executing people for crimes committed when they were under the age of 18, as well as by executing over 90 prisoners convicted of crimes committed as adults. The Chechen Republic executed 11 people during the first half of 1999 on drug-related charges and Trinidad and Tobago carried out the first executions in five years when it hanged ten men. Ignoring the call of the Special Rapporteur on the situation of human rights in the Democratic Republic of Congo (DRC), the DRC sentenced hundreds of people to death and executed about 100 persons after trials by the Military Order Court.

Amnesty International calls on the Commission:

- to adopt a resolution on the question of the death penalty urging all states that have not yet abolished the death penalty, among others, to:
- suspend all executions and establish a moratorium with a view to completely abolishing the death penalty and in the meantime respect all existing standards to safeguard those facing the death penalty and to fully comply with international obligations, in particular those relating to consular notification in the Vienna Convention on Consular Relations;
- comply with international law forbidding the imposition of the death penalty on persons below 18 years of age at the time the crime was committed, and on the mentally impaired and amend their national legislation accordingly;
- fully comply with international obligations and standards regarding fair trials, the right of appeal, and the independence, impartiality and competence of the courts in death penalty cases;
- immediately withdraw any reservations to the International Covenant on Civil and Political Rights incompatible with the object and purpose of the Covenant, in particular reservations to article 6 which prohibits the sentencing to death of people under 18 at the time of committing the crime.

STANDARD SETTING

A. CHILD SOLDIERS

Amnesty International is committed to the highest standard of protection in international law for children at risk of participating in hostilities and recruitment into armed forces. Consequently, it is campaigning for 18 years to be set as the minimum age for participation in armed conflicts and recruitment into armed forces - "straight 18s". However, agreeing the minimum age for recruitment into armed forces and participation in hostilities in the draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts is proving difficult because of existing laws in a small number of states, one of which, the United States of America, has not even ratified the Convention on the Rights of the Child. Current recruitment and deployment laws and practices in those few states should not be permitted to become an obstacle to the protection of the world's children. As the UN High Commissioner for Human Rights stated in 1998 to the Working Group drafting the optional protocol on the involvement of children in armed conflicts, "national legislation should not be presented as an obstacle to the elaboration of more advanced international standards".¹²

Child soldiers are victims of a broad range of human rights violations: they are exposed to the likelihood of death and injury not only in combat, but also at other times, for example if they try to avoid recruitment, to escape, disobey orders, or are unable to keep up. Furthermore, they are exposed¹³ to torture and ill-treatment, sexual exploitation, health hazards, drug and alcohol abuse, separation from family, deprivation of education, and if captured, to summary execution, prolonged detention, torture, and charges for war crimes or treason. These are only a few examples, and their particular effects - physical and psychological - on children who are still progressing through the physical, mental, emotional and moral developmental stages to adulthood have to be borne in mind.¹⁴ In addition, the impact on these children of being the perpetrators themselves needs to be considered since they also kill, injure, torture, rape and commit violent acts against others (including other children), and come to understand the power given by possession of a weapon.

Over the last five years, states have changed their recruitment and deployment laws and practices in order to align them with the emerging international consensus on non-recruitment and non-participation of under-18s. These changes are welcome in themselves and are further evidence of the increased understanding and the trend towards better protection of children. Also welcome is the

¹² E/CN.4/1998/102, para. 38, of 23 March 1998.

¹³ Exposure to these conditions can violate several articles of the Convention on the Rights of the Child, including Article 19 which requires states parties to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

¹⁴ It is worth noting in this context that the Lusophone participants in the African Regional Conference to Stop the Use of Child Soldiers (Maputo, Mozambique, April 1999) were adamant that while 18 might be acceptable as the minimum age for recruitment it was too young for participation in combat for which the minimum age should be 21 years; and that the First Mini-Summit of African Children stated "the minimum age for joining the army has to be put at 21 years. This act should be voluntary" (Yaounde, July 1996).

increased political support, most recently from the OAU Summit,¹⁵ the Declaration by the Nordic Foreign Ministers,¹⁶ and by the UN Secretary-General in his Report to the Security Council on Protection of Civilians in Armed Conflict, where he not only drew attention to his policy in relation to the minimum age of UN Peacekeepers -- preferably 21 years but in no case less than 18 -- but also recommended that the Security Council "Urge Member States to support the proposal to raise the minimum age for recruitment and participation in hostilities to 18".¹⁷

Amnesty International calls on the Commission to:

- adopt 18 years as the minimum age for recruitment -- voluntary or compulsory -- into armed forces and participation in hostilities in the draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts;
- include in relevant country resolutions commitments made to the Special Representative of the Secretary-General for Children and Armed Conflict on the recruitment of children into armed forces and their participation in hostilities and request the Special Representative to report annually to the Commission on his work and on how commitments made to him concerning child soldiers are being implemented;
- request special rapporteurs and working groups, as appropriate, to cooperate with the Special Representative for Children and Armed Conflict on child soldier concerns within their respective mandates.

B. "DISAPPEARANCES"

The continuing widespread practice of "enforced disappearances" in many countries across the world, the seriousness of these human rights violations and the inability of existing mechanisms at the international level to combat this persistent practice, all point to the need to adopt an international convention to protect all persons from enforced disappearances without further delay.

Families of the "disappeared" and NGOs have been calling for the adoption of such a Convention since 1980. After the UN Declaration on the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Enforced Disappearance of Persons were adopted in 1992 and 1994 respectively, NGOs and other experts considered that the time was right to begin working for the adoption of a UN Convention.

The draft International Convention on the Protection of All Persons from Enforced Disappearance (draft Convention) lists enforced disappearance, its instigation, conspiracy to commit a crime of "disappearance" and the failure of the duty to prevent and punish "disappearances" as

¹⁵ *CM/Dec.482(LXX) Decision on the "African Conference on the Use of Children as Soldiers", endorsed by the OAU Assembly of Heads of State and Governments without Amendment, July 1999, Algiers.*

¹⁶ *Declaration by the Nordic Foreign Ministers against the use of child soldiers, Egilsstadir, 29 August 1999.*

¹⁷ *S/1999/957, para. 42, of 8 September 1999.*

international crimes subject to universal jurisdiction. The draft Convention also treats its systematic or widespread practice as a crime against humanity. At the same time, it establishes and develops state obligations to investigate, prevent, punish, and provide reparation and international cooperation. The draft Convention also seeks to establish safeguards against impunity as well as norms regarding chain of command responsibilities.

The draft Convention provides for the establishment of a Committee against Disappearances with wide ranging powers, including the authority to conduct on the spot investigations. It also establishes a flexible system for the presentation of reports depending on the seriousness of the situation in each country, as well as an individual communications procedure which would allow victims, their families and NGOs to present complaints. The Committee would have automatic competence to deal with all individual complaints once a state becomes party to the Convention. The draft also seeks to establish a system of 'international habeas corpus' permitting the Committee to intervene on a humanitarian basis. The draft does not allow any reservation to the substantive parts of the Convention or any which would result in obstructing the work of the Committee.

After a draft was prepared in the then Sub-Commission on Prevention of Discrimination and Protection of Minorities¹⁸ -- with the involvement of various experts including from NGOs -- the draft Convention was put before the Commission on Human Rights last year (Sub-Commission Resolution 1998/25). It is vital at this stage for an intersessional working group to be established, with a mandate to bring about the rapid adoption of the Convention by the Commission. Such a mechanism should ensure that the provisions in the present draft are preserved or even strengthened and that the active participation of NGOs in this process is guaranteed.

Although NGOs including Amnesty International urged the Commission to establish such a working group at its 1999 session, the Commission failed to do so, some members giving the excuse that the review of special procedures of the Commission should have priority. The Commission merely requested comments on the draft text from states, Inter Governmental Organizations (IGOs) and NGOs. Past practice and the working methods of the Commission itself suggest, however, that the creation of such a working group is a necessary precursor to the adoption of the Convention. In August 1999 the Sub-Commission urged the Commission to adopt the Convention as a matter of priority (Resolution 1999/24). Indeed, the creation of the working group should no longer be delayed.

Amnesty International urges the Commission to:

- establish at its 56th Session an Intersessional Working Group with the mandate to study and adopt, with the full and active participation of NGOs in the process and within the tightest possible time frame, a strong Convention on "enforced disappearance" which strengthens the current draft.

C. A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

¹⁸Following the decision of ECOSOC on 27 July 1999, the title of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has been changed to the Sub-Commission on the Promotion and Protection of Human Rights.

Since 1992, the Commission has worked on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in order to create a global inspection system of places of detention by a sub-committee. The Commission's working group met for the eighth time in October 1999 to continue discussions on the draft text. However, at the end of the working group, several issues remained unresolved. A proposal has been made to make the "prior consent" of the state concerned necessary in order for the sub-committee to carry out a visit. If included in the protocol, this would severely undermine the effectiveness of the mechanism for the prevention of torture and ill-treatment. It is therefore imperative that the notion of no prior consent to sub-committee visits be strictly maintained. Negotiations on this and several other articles form the basis of the working group's future work.

Amnesty International calls on the Commission to:

- give full support to the working group by adopting a resolution calling for the drafting to be continued so as to ensure that a strong optional protocol is adopted that provides for an effective inspection system in which ratification of the protocol serves as consent of the state concerned.

Annex:**SELECTIVE LIST OF OTHER AMNESTY INTERNATIONAL DOCUMENTS**

The following documents are available from Amnesty International section offices, the International Secretariat in London or the Amnesty International UN office in Geneva.

GENERAL

Amnesty International Report 1999
(AI Index: POL 10/01/99)

55th UN Commission on Human Rights (1999): Statements and press releases issued by Amnesty International
(AI Index: IOR 41/08/99)

CHINA

China: Ten years after Tiananmen
(AI Index: ASA 17/7/99)

Tibet: Summary of Concerns in Tibet
(AI Index: ASA 17/12/99)

China: No improvements in human rights: The imprisonment of dissidents in 1998
(AI Index: ASA 17/14/99)

China: Gross violations of human rights in the Xinjiang Uighur autonomous region
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- *free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language - who have not used or advocated violence;*
- *ensure fair and prompt trials for all political prisoners;*
- *abolish the death penalty, torture and other cruel, inhuman or degrading treatment of prisoners;*
- *end extrajudicial executions and "disappearances".*

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