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AMNESTY INTERNATIONAL

WRITTEN STATEMENTS

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INTRODUCTION

Amnesty International submitted the following written statements to the fourteenth session of the UN Human Rights Council, which will take place in Geneva from 31 May to 18 June 2010.

ITEM 3: PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS¹

PREVENTABLE MATERNAL MORTALITY AND MORBIDITY AND HUMAN RIGHTS

Amnesty International welcomes the Human Rights Council's increased focus on the issue of preventable maternal mortality and morbidity, which is a central human rights issue affecting not only women and girls, but also men and children all around the world.

Worldwide, more than half a million women die each year from complications related to pregnancy and childbirth. Most of these deaths could have been prevented had higher priority been given to respecting women's human rights, including their right to health, which comprises adequate healthcare during pregnancy and childbirth. The vast majority of women who die are in developing countries; however, discrimination in access to good quality healthcare leads to women dying from complications of pregnancy and childbirth in developed countries as well. Although a recent study contains some welcome news about progress toward Millennium Development Goal (MDG) 5, this goal remains the most off-track of the MDGs.

When women and girls die in pregnancy or childbirth because the government fails to take the measures necessary to address the preventable causes of maternal death, the government violates their right to life. Preventable maternal deaths and injuries also reflect violations of the rights to the highest attainable standard of physical and mental health, equality and non-discrimination and freedom from torture and cruel, inhuman or degrading treatment. They are also closely linked to and exacerbated by denial of sexual and reproductive rights, and by sexual and other forms of gender-based violence.

In this statement Amnesty International shares its findings on maternal mortality and human rights in Burkina Faso and the United States of America.

Burkina Faso¹

Every year, more than 2,000 women die in Burkina Faso from complications of pregnancy and childbirth. During the last decade the authorities in Burkina Faso, with the help of the donor community, have devoted effort and resources to reducing maternal mortality. In 2006, the government adopted a subsidy policy based on the principle that 80 per cent of the cost of deliveries and emergency obstetric and neonatal care would be met by the government. Efforts have also been made to increase the number of trained medical personnel, including midwives and nurses, and to enhance their skills. To encourage more women to give birth in health facilities, rather than at home, the role of traditional birth attendants has changed from them assisting women in deliveries to promoting medically assisted delivery and helping women gain access to those services. Primary health care centres have been built throughout the country. The government has also adopted a national strategy for family planning. However, these policies suffer from serious shortcomings in their implementation, and maternal health services are still not available and accessible to all the women who need them.

Many women die because they need blood, but none is available. Others die from obstructed labour, infections or hypertension because they are unable to reach a health facility capable of treating them, or because they arrive too late. Many lose their lives because their relatives cannot pay the fees being asked by medical personnel. Many do not have access to health facilities because of geographical, financial or cultural barriers.

There are many reasons for this: gender discrimination which undermines women's right to decide whether and when to have children; lack of information on sexual and reproductive health and rights; social and economic barriers, notably the cost of medical treatment; and poor quality of treatment due to shortages of medical supplies and qualified personnel.

Although Burkina Faso is one of the poorest countries in the world, this does not justify the government's failure to take steps to the maximum of its resources to realize the right to health, including sexual and reproductive health, for all its population.

Amnesty International urges the government of Burkina Faso to:

- Allocate adequate resources to maternal and reproductive health care, prioritizing the poorest regions with highest mortality ratios;
- Systematically reduce economic, physical and cultural barriers that prevent poor rural women from access to life-saving reproductive and maternal health care;

¹ Burkina Faso: Giving Life, Risking Death: Maternal Mortality, available at: <http://www.amnesty.org/en/library/info/afr60/001/2009/en>

- Provide accessible information to women about their sexual and reproductive rights and their right to health;
- Ensure meaningful participation of women in government decisions about reproductive and maternal health care;
- Ensure adequate monitoring of government policy to reduce maternal mortality to promote effective planning and accountability.

Amnesty International is also urging donors to support efforts of the Burkina Faso authorities to achieve these goals.

United States of America²

In the United States of America, more than two women die every day from complications of pregnancy and childbirth. Approximately half of these deaths could be prevented if maternal health care were available, accessible and of good quality for all women without discrimination.

Maternal mortality ratios have more than doubled from 6.6 deaths per 100,000 live births in 1987 to 13.3 deaths per 100,000 live births in 2006. African-American women are nearly four times more likely to die of pregnancy-related complications than white women. This disparity has not improved in more than 20 years.

Discrimination profoundly affects women's health. Women of colour are less likely to be in good health when they become pregnant, because they are less likely to have access to adequate health care services. For instance, Native American and Alaska Native women are 3.6 times, African-American women 2.6 times and Latina women 2.5 times more likely than white women to receive no or late pre-natal care. They are more likely to die in pregnancy and childbirth and more likely to experience discriminatory and inappropriate treatment and poorer quality of care. Women on low incomes face considerable obstacles in obtaining maternal health care, particularly in rural and inner-city areas.

The shortage of health care professionals is also a serious obstacle to timely and adequate health care for some women. Women interviewed by Amnesty International also cited lack of transport to clinics, inflexible appointment hours, difficulty in taking time off work, lack of child care, and the absence of interpreters and information in languages other than English as major barriers.

A significant factor contributing to the failure to improve maternal health is the lack of comprehensive data collection and analysis. Reporting of pregnancy-related deaths as a distinct category is mandatory in only six states.

The US government has a responsibility to ensure equal access to quality health care services for all, without discrimination. Amnesty International urges the US

² USA: Deadly delivery: The maternal health care crisis, available at:
<http://www.amnesty.org/en/library/info/AMR51/019/2010/en>

government to:

- Ensure that all women have equal access to timely and quality maternal health care services, including family planning services, and that no one is denied access to health care services by policies or practices that have the purpose or effect of discriminating on grounds such as gender, race, ethnicity, age, Indigenous status, immigration status or ability to pay;
- Task the U.S. Department of Health and Human Services' Office of Civil Rights, with undertaking investigations into laws, policies and practices that may hamper equal access to quality maternal health care services;
- Ensure through State governments that pregnant women have temporary access to Medicaid while their application for coverage is pending (presumptive eligibility) and that Medicaid provides timely access to prenatal care. In cases where a woman receives prenatal care before eligibility is confirmed, states should ensure that Medicaid reimburses retroactively for services provided.
- Ensure at federal, state and local government levels that an adequate number of health service facilities and health professionals, including nurses, midwives and physicians, are available in all areas. Particular emphasis should be given to medically under-served areas, including by expanding community health care center programs, such as the Federally Qualified Health Center program.
- Ratify the Convention on the Elimination of All Forms of Discrimination against Women.

General Recommendations

All governments are parties to international and regional human rights treaties that require them to respect, protect and fulfil women's human rights. Their efforts to address maternal mortality must be grounded in a framework of gender equality and non-discrimination, which is not just a legal requirement, but has been demonstrated to be an essential practical requirement for any successful initiative to reduce maternal mortality and morbidity.

Amnesty International calls on the Human Rights Council to:

- Identify and agree specific policy and practical measures to strengthen the implementation and monitoring of human rights obligations and commitments by States to address maternal mortality and morbidity.
- Encourage UN Agencies, programs and funds that are undertaking initiatives and activities in relation to maternal mortality and morbidity to include such policy and practical measures in their program planning and delivery.
- Invite UN Agencies, programs and funds that are undertaking initiatives and activities in relation to maternal mortality and morbidity to systematically contribute information on maternal mortality and related human rights concerns for consideration in the Universal Periodic Review (UPR) and by relevant treaty bodies.

- Encourage States to address the issue of maternal mortality and morbidity in the UPR including by focusing on issues around the right to health, discrimination and equality, and sexual and reproductive rights in specific country reviews.
- Encourage States to include in their national reports under the UPR and in their reports to the relevant treaty bodies information on action taken to eliminate preventable maternal mortality and morbidity.
- Submit the OHCHR Report on Preventable Maternal Mortality and Morbidity and Human Rights, as well as the outcome of the inter-active dialogue at its 14th session, to the September 2010 UNGA high-level meeting reviewing the progress made towards achieving the Millennium Development Goals and to the WHO for consideration at the 64th World Health Assembly.

HUMAN RIGHTS OF MIGRANTS: ENSURING ACCESS TO HEALTH ON AN EQUAL BASIS

Amnesty International welcomes the report of the Special Rapporteur on the human rights of migrants, and its particular focus on the enjoyment of the rights to health and adequate housing by migrants. By highlighting positive state practice, the report shows that there are solutions to some of the challenges encountered by migrants in enjoying these rights.

Against the background of the universality and indivisibility of human rights, the enjoyment of economic, social and cultural rights of migrants is an area of great concern to the organization, in particular the violations that occur in states where these rights are constantly denied, or where migrants face legal or practical obstacles to their enjoyment.

We are encouraged by the Special Rapporteur's recommendations to states to continue their efforts to respect, protect and promote the fundamental rights to health and adequate housing on an equal basis.

Access to Economic, Social and Cultural Rights for Migrants

All migrants, regardless of their status, are entitled to the protection of international human rights law and standards. While the fundamental principle of non-discrimination permits certain distinctions to be made between nationals and non-nationals, these distinctions must serve a legitimate objective and must not be disproportionate. Most importantly, such distinctions must not inhibit any individual, either directly or indirectly, from enjoying his or her human rights.

The Committee on the Elimination of Racial Discrimination has underlined that the obligations of states require among other things the "Remov[al of] obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens,

notably in the areas of education, housing, employment and health."³

International human rights law recognizes that all migrants, regardless of their status, have the right to health,⁴ education,⁵ adequate housing,⁶ adequate food and water,⁷ work and rights at work.⁸ The interdependence and indivisibility of human rights means that the denial of a specific right to migrants can often lead to or accompany other violations of their rights. Forced eviction from housing may expose a migrant to exploitation and abuse on the streets or to arbitrary detention. Further, the denial of a migrant's rights at work, such as to regulated hours of work and to weekly rest, is often accompanied by severe restrictions on his or her right to liberty and security of the person.

Right to health

Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR) recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." This includes immediate obligations including the duty to ensure non-discrimination in the realization of the right to health. According to the Committee on Economic Social and Cultural Rights "States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services."⁹ The Committee has recognized that non-discrimination extends to everyone residing in a state's territory "including non-nationals, irrespective of their legal status".¹⁰

Despite clear obligations, migrants in many countries continue to face barriers to accessing health care. In some countries, health care institutions are required by law to report the identity of any irregular migrant to the authorities, restricting migrants' access to health care. Laws and policies frequently prevent migrants from accessing health care, based solely on immigration status, denying them even a minimum level of public health protection.¹¹ The CESCR in General Comment 14

³ UN Committee on the Elimination of Racial Discrimination, General Recommendation 30, Discrimination against non-citizens, UN Doc. CERD/C/64/Misc.11/rev.3, 2004.

⁴ ICESCR Article 12; CERD Article 5(e)(iv); CEDAW Articles 12 and 14(b); CRC Articles 24 and 25; Migrant Workers' Convention Article 28

⁵ ICESCR Articles 13 and 14; CRC Articles 28 and 29; ICERD Article 5(e)(v); Migrant Workers' Convention Article 30)

⁶ ICESCR Article 11; CEDAW Article 14(2); CRC Articles 16(1) and 27(3); ICERD Article 5(e)(iii)

⁷ ICESCR Article 11; CRC Article 24(2)(c); CEDAW Article 14(2)

⁸ ICESCR Articles 6 to 8; ICERD Article 5(e)(i); CEDAW Articles 11 and 14; Migrant Workers' Convention Articles 25 and 26.

⁹ Ibid. para 34.

¹⁰ CESCR, General Comment No. 13 on the right to education, para 34.

noted that States have an obligation to respect the right to health “by refraining from denying or limiting equal access - on economic, physical and cultural grounds - for all persons, including... asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”¹²

The right to health requires that “health facilities, goods and services be affordable for all.”¹³ Immigration status often impedes access to healthcare services. Migrant workers often suffer on account of inability to obtain health insurance and they resist seeking medical treatment because of associated costs, inability to miss work, inability to find childcare and problems of transportation.¹⁴ In some countries migrant workers have to pay up to twice as much as the residents for health care services.¹⁵ Payment for health-care services according to the Committee, as well as services related to the underlying determinants of health, “must be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all.”¹⁶

Migrants are often unable to access healthcare services because of systematic marginalization by certain dominant groups.¹⁷ In some countries for instance, domestic migrant workers are excluded from labour law protection in violation of their right to freedom from discrimination.¹⁸

Migrant women are particularly at risk of discrimination, exploitation and abuse because of their status as women, as migrants and often as workers in often female-dominated sectors -- for example, as domestic workers or in the textile or sex industries.¹⁹ They can often face further gender-based barriers to human rights. This vulnerability is exacerbated by the lack of access to maternal and child health services in particular, which can have a long-term public and social cost. In some countries for instance, women domestic workers are denied protection available to women under labour laws and therefore do not enjoy protection in relation to their gender-specific needs.²⁰ Lack of access to maternal and child health services can

¹¹ For example, the Convention on Migrants Workers 1990 and the Rural Workers’ Organizations Convention 1975, expressly recognise health rights of irregular migrants.

¹² CESCR, general comment 14, para 28-29.

¹³ *Ibid.*, para 12(b).

¹⁴ WHO, *International Migration, Health and Human Rights*, 2003, p.25.

¹⁵ Amnesty International, *Trapped: The exploitation of migrant workers in Malaysia*, ASA 28/002/2010, 2010; and Amnesty International, *Disposable Labour, Rights of Migrant Workers in South Korea*, 2009, AI Index: ASA 25/001/2009.

¹⁶ *Ibid.*

¹⁷ WHO, *International Migration, Health and Human Rights*, 2003, p.26.

¹⁸ Amnesty International, *Trapped: The exploitation of migrant workers in Malaysia*, ASA 28/002/2010, 2010; and Amnesty International, *Exploitation and Abuse: the plight of women domestic workers*, ASA 21/001/2007, 2007.

¹⁹ ILO, *South-East Asia and the Pacific Multidisciplinary Advisory Team, OnLine Gender Learning and Information Module*.

also perpetuate poor health among migrant communities, which in certain circumstances can put a greater strain on health systems in host societies.²¹

In their search for solutions, states must ensure that they respect international human rights standards, in particular in the design and delivery of social services, including health care. It is vital that individual migrants and migrants' associations and groups are involved in the development of appropriate strategies and actions to promote their right to health. An important way to ensure this is to consult widely amongst migrants and to work in partnership with migrant groups and communities to formulate and implement strategies to protect their right to health.

Conclusion

International human rights treaties, such as the ICESCR and the Migrant Worker's Convention, and the relevant UN treaty bodies recognize that there should be no discrimination against migrants, including irregular migrants in the enjoyment of the right to the highest attainable standard of health. Any distinction between citizens and non-citizens must be reasonable and proportionate to a legitimate aim, otherwise it is unlawful discrimination. Migrants are often the victims of abusive and discriminatory practices in relation to the right to health.

States should adopt a human rights approach to migration. Protection of fundamental rights must be afforded to all, regardless of immigration status. States must ensure enjoyment of economic, social and cultural rights, such as housing, health, or education, for migrants, regardless of their status, by removing obstacles to their enjoyment.

AI encourages the UN Special Rapporteur to call for wide recognition of economic, social and cultural rights of migrants, in particular the rights to health and housing, regardless of their legal status, and to demand greater accountability at the international, regional and national levels with respect to migrant rights through his ongoing work and his country visits. We hope that in his ongoing work, the Special Rapporteur will continue to highlight and promote positive state practice, as well as challenges faced by migrants in accessing their economic, social and cultural rights, including housing and health.

²⁰ Amnesty International, *Exploitation and Abuse: the plight of women domestic workers*, ASA 21/001/2007, 2007.

²¹ IOM, *Vulnerability of migrant women exacerbated by inaccessibility to maternal and child health services*, press release 2009.

AN URGENT NEED FOR A VICTIM-CENTRED MONITORING MECHANISM TO THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME (UNTOC) TO COMBAT HUMAN TRAFFICKING

Amnesty International, the Global Alliance against Traffic in Women (GAATW) and Franciscans International welcome the report of the Special Rapporteur on trafficking in persons, especially women and children, in particular her timely focus on coordination and cooperation mechanisms to address trafficking. Furthermore, we welcome the planned Panel on Trafficking, enabling interaction between States and trafficked persons, particularly *“with a view to reinforcing the centrality of their human rights and needs, and taking into account their recommendations when devising actions to combat human trafficking”* (Decision 13/117).

We urge governments, in addressing these two items, to recognise the importance of coordination and cooperation mechanisms, as well as the involvement of trafficked persons themselves, in anti-trafficking responses. There is now no greater need for coordination and cooperation of anti-trafficking responses, involving trafficked persons, than in the implementation of the United Nations Convention against Transnational Organised Crime and the protocols thereto (UNTOC), including the Human Trafficking Protocol, as despite the millions of dollars spent and countless efforts made, trafficking in persons shows no sign of abating, and gross human rights violations continue.

Urgent need for a monitoring mechanism to UNTOC

As we mark the 10th anniversary of UNTOC, all States Parties have identified a need for a mechanism to monitor and review its implementation, concerned that there are *“persisting gaps in the implementation of the Convention and its Protocols”* (Decision 4/1, UNTOC 4th Conference of States Parties). In this regard, the *Open-ended Intergovernmental Meeting of Experts on Possible Mechanisms to Review Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols thereto*, to the UNTOC Conference of Parties, met in Vienna, 30 September 2009 and 25-26 January 2010, and will now report to the 5th Conference of Parties to UNTOC, 18-22 October 2010. We urge States to support the implementation of a monitoring mechanism, recognising its importance in coordinating and consolidating huge international efforts on trafficking. Anti-trafficking stakeholders see a desperate need to assess and address gaps in trafficking responses if progress is to be made in *“efforts to prevent trafficking and to protect the rights of trafficked persons”* (OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, Recommended Principle no. 3).

Trafficked persons are central to effective and coordinated anti-trafficking responses

States Parties to UNTOC acknowledge:

“a victim-centred approach combined with a multidisciplinary model, would ensure cooperation among relevant government agencies and non-governmental organizations, as key elements in ensuring an effective

strategy to protect and assist victims of trafficking” (UN Convention Against Transnational Organised Crime, 2008, 4th Conference of States Parties. Vienna, Austria, 8-17 October 2008. UNODC: Vienna).

Likewise governments noted, in previous Human Rights Council decisions on the problem of trafficking in persons (in particular 8/12 of 18 June 2008 and 11/3 of 17 June 2009 and most recently 13/117 of 15 April 2010) , the importance of cooperation with “*each other and with relevant intergovernmental and non-governmental organizations to ensure the effective countering of trafficking in persons*” (Decision 8/12).

The importance of cooperation in the four ‘P’s of anti-trafficking work: Prosecution, Prevention, Protection and Partnership

Prosecution

In early 2009, a young Thai woman named Note²² was trafficked to the United Kingdom (UK) to work in indoor-based sex work. Note worked for four months without pay until she was removed during a police raid, after which she stayed in a shelter and cooperated with police investigations.

After Note had been repatriated to Thailand, the UK police contacted the Thai anti-trafficking NGO, Foundation for Women, and asked them to assist Note return to the UK to participate in a court hearing on her case. Foundation for Women prepared Note for her emotional and physical journey back to the UK and helped her to converse with the UK police, understand the legal processes facing her, and joined her at the court hearing. The defendant changed her plea to guilty once she became aware that Note would testify against her.

Foundation for Women has also tried to help her to access trafficked persons' compensation funds in the UK and Thailand but Note is yet to receive such compensation.

Prevention

The Chinese authorities, the International Labour Organisation and the All China Women’s Federation, a mass organisation working on women’s rights in China, collaborate on the Project to Prevent Trafficking in Girls and Young Women for Labour Exploitation in China (the CP-TING project) to prevent trafficking in women for labour exploitation within China.

Working in both sending and receiving provinces the CP-TING project partners assist provincial governments to create improved labour migration frameworks. These include, in sending provinces, better access to job placement services, training to improve skills for self-employment, and safe migration programmes. In receiving provinces, labour rights for migrant workers have been improved, including the implementation of standards for contracts, easier access to social services for

²² not her real name

migrant women and better working conditions.

The project has resulted in the Chinese government preparing a National Plan of Action on trafficking addressing prevention, education and safe migration with input from partners in the CP-TING project.

Protection

Ms Lakech Demise²³ travelled from Ethiopia to Germany in 2004 to work in a restaurant, where she was subsequently subjected to exploitative labour conditions. Ms Demise was forced to cook and clean for up to 19 hours a day and received a total of just \$US500 for the entire of her 18 months work. During this time, she was not free to move, her passport was confiscated, and her health deteriorated. Finally she escaped and was directed to the Berlin based NGO, Ban Ying, for assistance.

Ban Ying works with law enforcement officials on human trafficking through a 'cooperation contract' (common in many German States), which ensures that interdisciplinary approaches to trafficking in persons are institutionalized; the police are responsible for criminal investigations and NGOs, the needs of the trafficked person. At the time Ms Demise sought help from Ban Ying (December 2005), the terms of the cooperation contract only included trafficking for sexual exploitation. However, Ban Ying and police working on the case applied the cooperation contract to Ms Demise's case, despite no sexual exploitation having taken place.

This cooperation permitted: the dedicated law enforcement unit on trafficking to commence investigations; a temporary residence permit and employment rights to be granted to Ms Demise; and a place in a shelter for trafficked women to be made available. Ms. Demise subsequently testified in court against her traffickers and received compensation. This case served as a best practice example, leading to the expansion of the cooperation contract to all forms of trafficking in persons from 2008.

Partnership

The Federation of Women Lawyers (FIDA) Kenya, the Association of Media Women in Kenya and Women in Law East Africa founded the Kenyan Anti-Trafficking Network in 2005. Since then, the Network has grown to around 36 members incorporating other civil society organizations as well as government ministries, international organizations and embassies.

The purpose of the Network is to prevent and combat trafficking in persons and to assist trafficked persons by coordinating anti-trafficking efforts. A key focus of the Network has been the development of Kenya's legal and policy framework to address trafficking, including drafting the Trafficking in Persons Bill for Kenya and a related National Plan of Action. After multi-stakeholder discussions on the Bill, the Kenyan Parliament passed a motion to introduce a version of the Network's

²³ not her real name

draft legislation in February 2009; this Bill is now in its final committee stages.

Recommendations

Through cooperation between civil society and governments worldwide, trafficked persons are being placed at the centre of anti-trafficking efforts to great effect: trafficking is being prevented and identified; trafficked persons are accessing protections, assistance and remedies for the exploitation they have faced; and traffickers are being prosecuted for their crimes.

We call on the Human Rights Council to:

Urge all States to:

- Support efforts to establish a monitoring mechanism to UNTOC, ensuring that trafficked persons are central to any monitoring mechanism developed to the Human Trafficking Protocol; and
- Support the inclusion of the following features in any monitoring mechanism established:
 1. An Independent Expert Monitoring Body comprised of non-governmental experts, selected for their knowledge of the areas covered by UNTOC and to ensure geographical spread;
 2. Consultation with victims of crimes covered by UNTOC: Current and former victims, their service providers and advocates have valuable knowledge about UNTOC's implementation and impact, making them essential contributors to any monitoring process;
 3. Thematic review including a wide range of data sources - data must be collected both on the extent to which states are implementing UNTOC and how effectively implementation is meeting the overall aims of the Convention;
 4. A comprehensive and transparent reporting and follow-up mechanism must be developed;
 5. Assured funding.

Urge States and civil society organisations to:

- Continue to collaborate and coordinate in anti-trafficking efforts;
- Ensure that the human rights of trafficked persons' are at the centre of all anti-trafficking efforts.

REACTION TO THE REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH ON HIS VISIT TO POLAND

Amnesty International welcomes the fact that a particular focus of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health during his visit to Poland in May 2009 was the realisation of the sexual and reproductive health rights of women and girls. On the occasion of the presentation of the report of his visit to the Human Rights Council, the organization would like to highlight some of its own concerns in this respect.²⁴

At the time of his visit to Poland, the Special Rapporteur voiced concern that women's access to certain reproductive health services, including contraception, pre-natal testing and abortion, is seriously impeded. He further highlighted the fact that women encounter serious difficulties in accessing abortion services even in circumstances where it is permitted by law. He reiterated that abortions when legal must be both safe and accessible to eligible girls and women.

Amnesty International shares the concerns voiced by the Special Rapporteur at the time of his visit. In particular, the organization has expressed concerns about the law, its implementation and policy in Poland, which restrict the enjoyment by women and girls of their right to the highest attainable standard of physical and mental health, without discrimination, in particular their sexual and reproductive health rights.

In Amnesty International's view, barriers to access to reproductive health care for women and girls; the criminalization of individuals for carrying out or assisting in carrying out safe abortions; and the lack of an effective remedy to challenge decisions by health professionals that affect the rights of women and girls to access to reproductive health services in accordance with Polish law and policy have all impeded the enjoyment by women of their rights to the highest attainable standard of health without discrimination, as well as their dignity, and their rights to life, to freedom from torture and other ill-treatment, and to private life.

The situation is such that:

- Women and girls eligible for and seeking access to information about abortion and abortion services are having difficulty obtaining such information and access to such services safely within the health system.
- Pregnant women and girls risk pain, suffering and loss of life as a direct result of the deliberate denial of medically indicated treatment.

²⁴ UN document A/HRC/14/20/Add.3

- Medical service providers and health institutions are not being held accountable for arbitrary denial of access to lawful health services and the consequences of that denial on the health and lives of women and girls.
- Women and girls are compelled to seek services for the termination of pregnancy outside the health sector, placing their health and lives at risk. The very low government figures for lawful abortion have been identified as a “warning signal” that “illegal abortions are taking place in high numbers”, with increased risks for the woman undergoing the intervention and carrying the stigma of breaching the law.²⁵
- Women and girls who are denied access to health services for termination of pregnancy due to their inability to obtain necessary certification are also at risk of being denied access to an effective remedy by the designated medical review mechanism.

The criminalization of abortion performed outside the existing law predisposes some health professionals against finding women eligible for access to reproductive health services otherwise allowable by law. It impedes eligible women’s access to abortion information and services, but also women’s access to health care during pregnancy.

Health professionals are not being held accountable when they fail to fulfil their legal obligations to provide pregnant girls and women with information on their health status and available treatment options, to explain their own refusal to provide certain health services as a result of conscientious objection to their patients, to effectively refer patients to a non-objecting provider and to provide abortion and other health services in situations where this constitutes emergency medical care.

Polish legislation does not ensure the availability of effective remedies for women to challenge the denial of access to abortion services and to indicated health care during pregnancy in a timely manner.

In sum, Amnesty International considers that the authorities are failing to ensure effective implementation of existing national legislation affecting women’s rights to sexual and reproductive health. It also considers that laws and policies regulating women’s access to reproductive health care violate Poland’s international obligations, including under the International Covenant on Economic Social and Cultural Rights.

When reviewing Poland’s implementation of the International Covenant on Economic, Social and Cultural Rights in November 2009, the UN Committee on Economic, Social and Cultural Rights expressed concern that Poland “does not

²⁵ Memorandum to the Polish Government, Assessment of the progress made in implementing the 2002 recommendations of the Council of Europe Commissioner for Human Rights, available at: <https://wcd.coe.int/ViewDoc.jsp?id=1155005&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, (Council of Europe Commissioner for Human Rights Memorandum), para 98.

guarantee basic services in the area of sexual and reproductive health and that it does not ensure the provision of contraception and family planning services in the public health system".²⁶ It further noted with regret that Poland has not taken sufficient measures to implement the Committee's previous recommendations with regard to sexual and reproductive health services.²⁷

Amnesty International believes these findings illustrate that there is a continuing lack of appreciation by the Polish authorities that their obligation to respect, protect and fulfil the rights enshrined in the Covenant and other international human rights treaties includes the obligation to ensure that women and girls can access, without discrimination, the highest attainable standard of health, including by accessing reproductive and sexual health services and information.

Amnesty International urges the government of Poland:

- to act swiftly to implement the recommendations contained in the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as the recommendations of the UN Committee on Economic, Social and Cultural Rights, and to report back to the Human Rights Council on the measures taken;
- to repeal all laws that criminalize medical practitioners for providing safe abortion services;
- to monitor the implementation of the Patients Rights and the Ombudsperson for Patients' Rights Act (and, if necessary, revise the Act) to make sure it provides effective and accessible remedies for women who are seeking to review doctors' decisions for denying access to abortion services;²⁸ and
- to raise patient awareness about the existing mechanism for challenging health professionals' decisions under the Patients Rights and the Ombudsperson for Patients' Rights Act.

²⁶ Concluding observations of the Committee on Economic, Social and Cultural Rights - Poland, UN Doc E/C.12/POL/CO/5, 20 November 2009, para 27.

²⁷ E/C.12/POL/CO/5 and E/C.12/1/Add.82

²⁸ The European Court of Human Rights noted that the review mechanism should be timely; independent; allow the woman to be heard in person and for her views to be considered during the review procedure; that written grounds for decisions made should be issued. *Tysi c v. Poland*, (judgment of the European Court of Human Rights), 20 March 2007, paras 117-118.

ITEM 4: HUMAN RIGHTS SITUATIONS REQUIRING THE COUNCIL'S ATTENTION

IRAN: LIFT THE SHROUD OF SECRECY; ENGAGE WITH INTERNATIONAL HUMAN RIGHTS BODIES

A year after the most serious human rights violations Iran has witnessed in 20 years, the Iranian authorities continue to shroud the country's human rights situation in secrecy by avoiding repeated requests made by UN human rights experts and NGO to visit Iran in order to make independent assessments of the situation.

The aftermath of the June 2009 election witnessed disturbing displays of excessive use of force to disperse peaceful demonstrations. Mass "show trials" followed sweeping and arbitrary arrests of thousands of protesters and individuals critical of the Iranian government. Some were later sentenced to death; others received prolonged prison terms.

Between June 2009 and the end of the year, the authorities acknowledged over 40 deaths; Amnesty International believes the true number of people killed unlawfully to be much higher.

The government gave a grossly distorted account of the situation when addressing the UN Human Rights Council in February 2010, during the examination of the human rights situation in Iran under the Universal Periodic Review.

It ignored global disquiet expressed concerning the unrest in 2009, including by the UN General Assembly, symbolized by a video circulated worldwide of a young woman who was shot dead during a largely peaceful protest in Tehran and concern over repressive measures.

The government held itself above scrutiny as it rejected recommendations by many Human Rights Council members to implement international human rights standards, describing them as politically motivated, while at the same time ensuring that any voices of dissent in Iran were smothered, ensuring no return to the demonstrations of mid-2009.

The Human Rights Council must not allow the government of Iran to pretend to cooperate with the Council's procedures while in reality and in spite of a standing invitation to the Special Procedures, Iran shows no sign of receiving any of the seven Special Procedures that have requested to visit the country. It has not received a visit from a Special Procedure since 2005.

Amnesty International calls on members of the Human Rights Council to take measures aimed at ensuring that the Special Procedures of the Council are able to fulfil their mandates and to gather first-hand information about human rights violations in Iran.

Recent developments in Iran again make the requested visits more urgent than ever.

Promotion and protection of the right to freedom of opinion and expression

Independent scrutiny of the measures put in place by the Iranian government to curb the rights to freedom of assembly and expression in print or via the electronic media is urgently needed. In the aftermath of the 2009 election, new laws and stricter practices were implemented that served to tighten freedom of expression, especially on the internet.

For example, In May 2010, the Head of the Judiciary talked of measures to prevent private SMS messages from creating sedition in society, suggesting that all private communications may be subject to scrutiny, without specifying criteria for investigation.

Students taking part in demonstrations or perceived as critical of the authorities may be expelled from universities, and academics who have expressed views considered unacceptable by the government face removal from their jobs, creating a climate in which scholarship is under attack.

A human rights lawyer who publicly criticized the execution of a juvenile offender in foreign news media is serving a one year prison sentence.

Torture and other cruel, inhuman or degrading treatment or punishment

Amnesty International has documented the systematic use of incommunicado detention which heightens the risk of torture or other ill-treatment. Detainees are subjected to torture or other ill-treatment to extract “confessions”. Methods reported include beatings, rape, death threats, and prolonged solitary confinement.

Publicly-aired “confessions” made by detainees deprived of access to a lawyer or their family for weeks or months are far too common.

Most recently, Farzad Kamangar, a teacher and Kurdish rights activist was executed on 9 May 2010. His conviction followed repeated acts of torture. In a 2008 letter he described how, when being interrogated in Tehran, he was asked of his origins. He wrote, “...[A]s soon as I said ‘Kurd’, they flogged me all over my body with a hose-like whip.” He added that his hands and feet were tied to a bed and his feet, thighs and back were whipped and that he was electrocuted.

Extrajudicial, summary and arbitrary executions

The expertise of the Special Rapporteur on extrajudicial, summary and arbitrary executions is urgently needed to assess the circumstances that resulted in at least 40 killings according to official figures which took place in the course of demonstrations in the latter half of 2009 and to determine, independently, whether the security forces had any role in the killings, as many Iranians believe.

Evidence arising from the dozens of unmarked graves in cemeteries across Iran and reports that the authorities had shown photo albums containing images of scores of corpses in makeshift morgues to the families of those who had gone missing both suggest that the true number of killings exceed official estimates.

The legal proceedings that led to the executions in January and May 2010 of seven political prisoners, including four Kurds, two of whom were connected to the election unrest demand independent scrutiny.

Individuals continue to be sentenced to death for vaguely worded charge such as “*moharebeh*” (enmity against God). The authorities seem to use to death penalty as a means to threaten and intimidate demonstrators.

Freedom of religion and belief; minority issues

Religious and ethnic minorities face discrimination in law and in practice. In the aftermath of the election, they have faced renewed repression as the Iranian authorities have sought scapegoats for the unrest.

Baha’is, targeted in the past, have come in for renewed repression. Around 13 Baha’is were arrested in January in connection with the Ashoura demonstrations, and two of them continue to be held. A further eight were arrested on the anniversary of Iran’s revolution, on 10 February but have been released.

High numbers of Baha’is across the country continue to face persecution in connection with their faith, such as nine reportedly sentenced to prison terms in Mashhad in early May. Meanwhile Baha’i community leaders, detained since 2008, remain in detention pending the conclusion of flawed proceedings before the Revolutionary Court.

The arrest of Ajlal Qavami, the spokesperson of Human Rights Organization of Kurdistan on 13 May 2010, reminds the world that Iran’s ethnic minorities, some of whom did not take an active role in the post-election protests in 2009, continue to face repression through arrests of their leaders, bans on their gatherings and – as in the case of the Azerbaijani minority - refusal to allow the use of their language.

Enforced and Involuntary Disappearance

Arrests and detention by Iranian security forces are often arbitrary and are conducted in circumstances which amount to enforced disappearances. Between June and end of 2009, some 5000 people were arrested.

Families are typically not informed of the arrests or whereabouts of their relative in a timely manner. In the latter part of 2009, some were not told for months of the fate of their relatives. Amnesty International received complaints from family members forced to travel between Evin Prison and the Tehran court offices and to pour over the lists of those detained or scheduled for arraignment in order to find their loved ones.

The systemic failure to inform family members or legal representatives was at the core of the situation in the Kahrizak detention facility in mid-2009 which led to

several deaths in custody. When the detention of individuals is not acknowledged and detainees do not have access to the outside world, this can give rise to abuses. The Iranian authorities opened an investigation into the Kahrizak deaths, but it remained opaque and did not provide families with even the promise of truth, justice or reparation.

In the absence of effective safeguards for detainees, reports that the Kahrizak facility has re-opened under the name Soroush 111, calls into question whether it ever closed. Independent scrutiny of such practices of unacknowledged and incommunicado detention is urgently needed.

Amnesty International urges the Human Rights Council to ensure that Iran's commitment to international human rights mechanisms includes specific arrangements for visits to Iran in the near future and that state bodies extend full cooperation to visiting UN mechanisms.

SRI LANKA: THE HUMAN RIGHTS COUNCIL MUST CALL FOR THE ESTABLISHMENT OF AN INDEPENDENT INTERNATIONAL INVESTIGATION INTO ALLEGATIONS OF WAR CRIMES AND HUMAN RIGHT VIOLATIONS

Amnesty International urges the Human Rights Council to call for an independent international investigation into allegations of war crimes and human right violations committed in the final stages of the armed conflict between the Sri Lankan armed forces and the Liberation Tigers of Tamil Eelam (LTTE). This is an essential step to ensuring accountability in Sri Lanka and justice for victims and their families. This appeal coincides with a global action by the organisation to focus worldwide attention on the continuing impunity in Sri Lanka.

In May 2009, compelling evidence that war crimes were committed by both sides in the final phase of Sri Lanka's armed conflict led Amnesty International to call for an independent investigation. We asked members of this Council to raise human rights concerns in the context of a Special Session of Sri Lanka, and to support calls for an international inquiry. The Human Rights Council rightly condemned LTTE attacks on the civilian population and its practice of using civilians as human shields. However, the Council failed to acknowledge and act on credible reports that Sri Lankan forces killed thousands of civilians when they fired artillery into areas they knew were densely populated with displaced civilians, that Sri Lankan artillery hit hospitals and killed patients and medical workers, and that more than a quarter of a million displaced persons were detained by the Sri Lankan army to military-run camps, violating their rights to liberty and freedom of movement.

The Council failed to call for an investigation into allegations of abuse of international human rights and humanitarian law. It did however endorse a joint communiqué of 23 May issued at the conclusion of the visit to Sri Lanka of Secretary-General Ban Ki-Moon in which the Secretary-General "underlined the importance of an accountability process for addressing violations of international humanitarian and human rights law," and President Rajapaksa promised that the Sri Lankan Government would "take measures to address those grievances." President Rajapaksa reiterated Sri Lanka's "strongest commitment to the promotion and protection of human rights, in keeping with international human rights standards and Sri Lanka's

international obligations.”

One year has passed and little has been done to give effect to those commitments. Having endorsed the joint communiqué, it is high time that the Human Rights Council remedied the failure of President Rajapaksa to address accountability for violations or demonstrate a commitment to the promotion and protection of human rights. Amnesty International recalls that last March in the Human Rights Council, the High Commissioner for Human Rights called again for “a full reckoning of the grave violations committed by all sides during the war.”²⁹ The Council should support the High Commissioner’s calls for an independent international inquiry and encourage the UN Secretary-General to use his inherent authority to establish such an international investigation into the numerous credible allegations of war crimes and human right violations committed in the final stages of the armed conflict.

A National Inquiry is not Satisfactory

Sri Lanka has a very poor record where combating impunity is concerned. It has not delivered on commitments it made during Sri Lanka’s Universal Periodic Review in June 2008, including its promises to take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law.

It is clear that Sri Lanka’s token efforts to address allegations of abuse are aimed at diverting international scrutiny rather than securing truth and justice or guaranteeing reparations for survivors. Sri Lanka’s strategically timed announcements of new *ad hoc* mechanisms should be viewed with scepticism, given its flawed justice system, long history of impunity and many ineffectual investigations (documented at length in our 2009 report, *Twenty Years of Make Believe: Sri Lanka’s Commissions of Inquiry*)³⁰

National Commissions of Inquiry Have Simply not Worked as Mechanisms of Justice in Sri Lanka

Official actions send a very different message about the Sri Lankan government’s willingness to respect and protect rights, tolerate criticism, and pursue justice for wrongdoing by its forces. Sri Lanka has jailed local critics, and lashed out at or ejected international journalists, diplomats and aid workers who questioned its military’s treatment of civilians. The antipathy expressed by Sri Lankan officials for human rights concerns of the international community and the country’s domestic critics supports our

²⁹ Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in a report released in January has also called for an independent international inquiry after expert analysis of a video purported to show extrajudicial executions was deemed authentic. Alston concluded that previous investigations carried out by the Sri Lankan authorities on the video had not been impartial.

³⁰ Amnesty International, *Twenty Years of Make Believe; Sri Lanka’s Commissions of Inquiry*, ASA 37/005/2009. June 2009

conviction that President Rajapaksa is not serious when he promises to meet international obligations. We believe that the prospects for real national progress on accountability for past abuse domestically are very slim indeed. Action must therefore take place internationally.

Violations of Human Rights and International Humanitarian Law

Sri Lankan government forces and their armed political affiliates have violated human rights with impunity for decades, engaging in extrajudicial killings, enforced disappearances and torturing people suspected of links to the LTTE. The LTTE also abused civilians, launching suicide attacks directed at civilian objects like buses and railway stations, assassinating politicians and critics, and forcibly recruiting children as fighters. Violations peaked in the final months of war, when displaced civilians were trapped between the warring parties. The LTTE used civilians as human shields against the approaching army, and shot civilians who tried to escape; as its forces were depleted, the LTTE intensified conscription of child soldiers. The Sri Lankan government declared a “No Fire Zone,” and directed civilians to relocate. But army artillery hit these areas, which the Sri Lankan army and political leadership knew were densely populated by civilians. Hospitals were shelled, killing and injuring patients and staff. Many thousands of civilians were killed.

Eyewitness accounts of the last months of war paint a grim picture of deprivation of food, water and medical care; fear, injury and loss of life experienced by civilians trapped in the fighting.

Nearly 300,000 survivors were detained for months in military-run displacement camps. Sri Lankan authorities obstructed international humanitarian and human rights protection work in an effort to contain a perceived security threat from LTTE members suspected of operating within the displaced population. Restrictions on displaced people’s liberty and freedom of movement and humanitarian access were eventually loosened, but some 80,000 people remain in the camps, dependent on humanitarian assistance. More than 10,000 suspected LTTE members are still arbitrarily detained in what the state refers to as “rehabilitation camps.” They have not been charged with offences or produced in court, and the ICRC has not had access to them since July 2009.

Consequences of Inaction by the International Community

The international community’s failure to take timely action in 2009 endangered hundreds of thousands of civilian lives in Sri Lanka. Continued inaction threatens future generations and institutions that are critical to protection of rights in Sri Lanka and internationally. Sri Lanka’s failure to ratify the Rome Statute of the International Criminal Court means the Court cannot act without a referral from the UN Security Council. And far from referring the situation to the Court, the UN has not even established an effective system to document the extent of violations. It has never revealed what it knew about the final days of conflict or acknowledged the scale of the abuse that took place.

Impunity in Sri Lanka, where violations were on a massive scale and yet the UN failed to act, sets dangerous precedents. It sends a message to Sri Lankans that the UN was irrelevant and could re-enforce trends of impunity globally. Failure to address impunity in Sri Lanka could cement a situation where states that have not ratified the Rome Statute would feel that they are beyond the reach of international justice and that crimes committed in the name of “combating terrorism” can simply be ignored.

The end of the armed conflict in Sri Lanka should have been an opportunity for Sri Lanka turn a page on impunity. It is crucial that the Human Rights Council and concerned governments support genuine international efforts to encourage the Sri Lankan government to better protect the rights of all Sri Lankans and ensure that violations that became so commonplace in the past are not repeated.

Recommendations

Amnesty International urges the Human Rights Council to call on the UN Secretary-General to establish an independent international investigation leading to recommendations for accountability of all sides for violations of international human rights and humanitarian law that occurred during the final stages of the armed conflict.

The Council should also call on Sri Lanka to take the following measures to protect human rights:

- Stop harassment, intimidation and attacks against human rights defenders, journalists and other peaceful critics exposing past or present abuses
- Fully implement recommendations made in successive reports by Philip Alston, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, aimed at ending human rights violations and bringing perpetrators to justice, including by investigation of evidence of possible war crimes.
- Ensure the independence of key justice institutions in Sri Lanka necessary to protect human rights and combat impunity; initiate reforms to bring domestic institutions into line with international standards, including by establishing an effective witness protection scheme.
- Fully protect and respect the rights of internally displaced persons, in accordance with the UN Guiding Principles on Internal Displacement; and
- Release all persons held in “rehabilitation camps” unless they are charged with internationally recognizable crimes and brought before an independent court.

SUDAN: END HUMAN RIGHTS VIOLATIONS BY THE NATIONAL INTELLIGENCE AND SECURITY SERVICES

The human rights situation in Sudan remains dire.

While armed inter-ethnic clashes continue to escalate in southern Sudan, the conflict in Darfur intensified again in March 2010 with clashes in the Jebel Marra area of West Darfur, leading to thousands of new displacements.

In April 2010, general elections were held in Sudan. Many human rights violations were reported prior to and during the elections. As the 2011 referendum on the independence of southern Sudan approaches, efforts to protect the space for freedom of expression, association and peaceful assembly are much needed.

Amnesty International calls on the Human Rights Council to remain seized of the situation in Sudan and to renew the mandate of the Independent Expert on the situation of human rights in Sudan.

Amnesty International calls on the Independent Expert to follow up on the 2007 recommendations of the Experts Group on the human rights situation in Darfur, particularly those addressing accountability and justice.

Powers and Immunities of the National Intelligence and Security Services

In 2010, a new National Security Act came into force. The 2010 National Security Act maintains the wide ranging powers of arrest, detention, search and seizure that were provided to members of the National Intelligence and Security Services (NISS) under the 1999 National Security Forces Act. The 2010 Act also provides NISS agents with immunity for acts carried out as part of their work. Under the new Act, NISS agents can detain people for a period of up to four and a half months without judicial oversight.

Specific Human Rights Violations by the Niss

Amnesty International is concerned that these powers have been used to intimidate, arbitrarily arrest, detain, and torture or otherwise ill-treat people in Sudan, often on the basis of their ethnicity. The NISS have used these powers to specifically target human rights defenders, journalists and political dissidents thereby largely restricting freedom of expression, association and assembly in Sudan.

The NISS continues to detain people arbitrarily and hold them incommunicado, often in unofficial places of detention, particularly in Khartoum and Darfur.

Arbitrary Arrests, Incommunicado Detention, Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment

Between 2008 and 2010, Amnesty International documented many cases of torture and other forms of ill-treatment in NISS detention.

After the International Criminal Court issued an arrest warrant against President Al Bashir for war crimes and crimes against humanity in March 2009, the government expelled 13 international organizations and closed down three national humanitarian and human rights NGOs. NISS agents raided the offices of several Sudanese NGOs, confiscating their files and equipment. Staff of national and international NGOs were harassed, arbitrarily arrested and detained. A large number of human rights defenders fled the country to escape the government's reprisals.

Amnesty International has also collected testimonies of women and children who alleged they were tortured or suffered other forms of cruel, inhuman or degrading treatment at the hands of the NISS.

Enforced Disappearances and Extra-Judicial Executions

According to the June 2009 report of the Special Rapporteur on the situation of human rights in Sudan to the Human Rights Council³¹, around 200 persons remained unaccounted for as a result of the large scale arrests that were carried out by the NISS, mainly in Khartoum, following an attack by the Justice and Equality Movement (JEM) on Khartoum in May 2008.³² The government has still not acknowledged the detentions or clarified the status or whereabouts of these persons. Amnesty International considers them to be possible victims of enforced disappearance.

In April 2010, the government announced it had buried 108 alleged JEM fighters who were reportedly killed during the attack on Khartoum. The government reported that DNA tests had been carried out before the deceased were buried.

Mohamed Moussa Abdallah Bahr El Din

On 10 February 2010, Mohamed Moussa Abdallah Bahr el Din, a student of the University of Khartoum, was arrested by NISS agents outside the university. He was found dead the next day and carrying traces of torture, including cuts and bruises. According to the information available to Amnesty International, no independent investigation has so far been carried out into the circumstances surrounding his death.

³¹ A/HRC/11/14

³² On 10 May 2008, the JEM, one of the Darfur-based armed opposition groups, attacked Omdurman, one of the three cities that form greater Khartoum. The attack was stopped within a matter of hours by the Sudanese forces, primarily the police and the NISS. In the days that followed the attack more than 1000 individuals, most of them civilians from Darfur, were arrested by the NISS.

Unfair Trials and Resort to the Death Penalty

Between July 2008 and January 2010 special counter-terrorism courts sentenced 106 men to death, eight of whom were allegedly under 18 at the time of the alleged offence. The defendants were convicted following unfair trials relating to their alleged participation in the JEM attack on Khartoum in 2008. The special courts were set up in the aftermath of the attack in application of the 2001 Counter-Terrorism Act. The “confessions” of most defendants were allegedly extracted under torture during their pre-trial detention with the NISS and were accepted by the courts as the main evidence towards their conviction. Many defendants only had access to a lawyer once their trial had begun.

Following an agreement between the JEM and the government, 50 of those sentenced to death were unconditionally released in February 2010. Fifty-five remain in prison, awaiting the result of their appeals.

Ahmed Suleiman Sulman

Ahmed Suleiman Sulman was one of the 106 defendants who were sentenced to death by the special counter-terrorism courts over their alleged participation in the JEM attack in May 2008. Ahmed was sentenced to death in August 2008. Information received by Amnesty International suggests that Ahmed had been ill for some time and was not given access to a specialised doctor, despite requests by his lawyer. He was transported to a police hospital two days prior to his death on 21 October 2009 from tuberculosis.

Between April 2009 and January 2010, Amnesty International documented 15 executions following unfair trials. The 15 men, convicted in two different murder cases, had all been allegedly tortured under NISS pre-trial detention. Their “confessions”, reportedly extracted under torture, were used as evidence towards their conviction.

Freedom of Expression, Assembly and Association

Until September 2009, NISS agents subjected newspapers to a daily pre-print censorship. A new press law, passed in June 2009, maintained restrictions on journalists, such as fines against journalists and publications for alleged press offences. On 27 September 2009, President Al Bashir lifted the pre-print censorship imposed 18 months earlier, and called on editors to adhere to a journalistic “ethical code” where they would practice a self-imposed censorship. NISS agents have used their powers to intimidate and arrest journalists, including foreign correspondents.

Freedom of expression, association and peaceful assembly remains unduly restricted, including in the run-up to and during the elections. NISS agents suppressed peaceful political protests on 7 and 14 December 2009, using excessive force to arrest and disperse protestors. On 7 December, over 200 people, including human rights activists and political opponents, were arbitrarily arrested and detained as they gathered in front of the parliament building.

Recommendations

Amnesty International calls on the Human Rights Council to:

- Call on the Government of Sudan to close all unofficial places of detention and stop the practice of arbitrary arrest and incommunicado detention;
- Demand that the Government of Sudan issue clear instructions to NISS agents not to resort to torture or other forms of cruel, inhuman or degrading treatment or punishment, and informing them that perpetrators of these human rights violations will be brought to justice;
- Urge the Government of Sudan to reform the 2010 National Security Act by removing the NISS powers of search, seizure, and arrest and detention without judicial review and ensuring that the NISS respects human rights while carrying out its functions of information gathering, analysis and advice to relevant authorities as spelled out in the Comprehensive Peace Agreement.
- Call on the Government of Sudan to report to the Council on steps taken to address impunity of NISS agents for human rights violations they commit in the course of their work, by providing detailed information on complaints filed in connection with such acts, the number of NISS agents prosecuted and convicted, and reparations disbursed to victims;
- Call on the Government of Sudan to accept outstanding mission requests by Special Procedures, in particular the Working Group on Enforced or Involuntary Disappearances;
- Demand that the Government of Sudan immediately stop the harassment of human rights defenders and allow them the peaceful exercise of their activities;
- Renew the mandate of the Independent Expert for at least three years or until a subsequent explicit decision of the Council to terminate it;
- Closely monitor and regularly review the implementation by the Government of Sudan of the recommendations of the Experts Group to the Government for the implementation of Human Rights Council resolution 4/8;³³
- Request the government of Sudan to inform and update the Council on progress towards implementation at each future Council's session;

Request the Independent Expert to bring to Council's attention for consideration at its immediately following session any information about significantly increased numbers or severity of human rights violations.

³³ Annex I of A/HRC/5/6.

1 Full title: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

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