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Oral Statements to the 41st Ordinary Session of the African Commission on Human and Peoples' Rights

Agenda Item 4: Human Rights Situation in Africa

Zimbabwe

The human rights situation in Zimbabwe continues to deteriorate with no indication that the government is taking any measures to bring to an end the human rights violations. Amnesty International has observed a drastic increase in organised violence and torture by the Zimbabwean police and supporters of the ZANU PF party since September 2006. State security agents are increasingly targeting political opposition activists, human rights defenders, media workers, lawyers and trade unionists. Hundreds of activists have been arrested after engaging in peaceful protest in 2006 alone. Police, in particular officers from the Law and Order Section in the Zimbabwe Republic Police (ZRP), have repeatedly denied lawyers' access to detained activists. Detainees are repeatedly denied access to food, water and medical care.

Harassment of lawyers

Amnesty International has received numerous reports of harassment of lawyers by police officers from the Law and Order Section of the ZRP at Harare Central police station. For example, on 4 May 2006 prominent human rights lawyers Alec Muchadehama and Andrew Makoni were arrested outside the High Court and were detained at Harare Central police station. Mr Muchadehama and Mr Makoni are lawyers representing activists from the main opposition party the Movement for Democratic Change, who were arrested on allegations of attacking police stations and other government installations with petrol bombs. Police refused to comply with two High Court orders – the first order issued on 4 May directing police to allow access to lawyers, family members, food and medical treatment; and the second issued on 5 May that declared the arrest and detention of the lawyers to be unlawful and ordered for their immediate release. Lawyers representing Mr Muchadehama and Mr. Makoni were threatened with physical assault by police. Mr. Makoni and Mr. Muchadehama were later charged with defeating or obstructing the course of justice through a falsehood during the course of a bail application for Amos Musekiwa an MDC activist remanded in custody allegedly for petrol-bombing the ruling ZANU PF offices in Mbare, a suburb in Harare. The lawyers were released on bail on 7 May after appearing before a magistrate.

Violations of the rights to freedom of association and assembly

Zimbabwe has failed to respect and protect the right to freedom of association and assembly in violations of its obligations under the African Charter on Human and Peoples' Rights. The Public Order and Security Act (POSA) and other repressive legislation are being used to deny

organisations critical of government policies permission to hold meetings and engage in peaceful protest or otherwise unduly limit the rights to freedom of association and assembly in Zimbabwe. The POSA has been applied selectively to allow the ruling party and its supporters unrestricted enjoyment of the rights to freely assemble and associate while severely restricting activities of government critics and the political opposition. Organisations that have been repeatedly affected include the Zimbabwe Congress of Trade Unions and affiliated unions, the National Constitutional Assembly, Women of Zimbabwe Arise and the main opposition political party the Movement for Democratic Change (MDC).

Increase in organised violence and torture

There has been an increase in organised violence and torture particularly targeted at organisations and activists that have continued to resist attempts by the government to limit freedom of association and assembly. The government has repeatedly failed to investigate reported abuses by the police and other security agents thereby allowing a culture of impunity to thrive. Amnesty International is deeply concerned about the increase in reported abductions of, especially, MDC activists and journalists.

Failure to implement recommendations from the African Commission

These broad human rights problems in Zimbabwe have been well documented, including by the African Commission on Human and Peoples' Rights' report of its 2002 fact-finding mission to Zimbabwe. Key recommendations contained in the African Commission's report and its resolution adopted at the 38 Ordinary Session in November 2005, including the amendment or repeal of repressive laws, such as the Public Order and Security Act and the Private Voluntary Organisations Act, have not been implemented by the government of Zimbabwe.

Amnesty International welcomes the fact that the government has filed its periodic report to the African Commission and will present it at the current ordinary session. The African Commission has received also various reports from NGOs, including Amnesty International, highlighting the main concerns relating to the implementation of the African Charter by the government.

Amnesty International trusts that the information contained in these reports will assist the African Commission in its consideration of the periodic report of Zimbabwe and will inform the constructive dialogue between the Commission and the Zimbabwean delegation.

We also encourage the African Commission to ensure, in line with its current practices, that the outcome of such dialogue, including the Commission's conclusions and recommendations on the Zimbabwe periodic report, will be made public promptly after the end of the current session and disseminate widely.

Agenda Item 5: Cooperation and Relationship with National Human Rights Institutions and NGOs

Amnesty International wishes to acknowledge several improvements concerning the availability of reports and information related to the African Commission on Human and Peoples' Rights (African Commission) and its mechanisms.

Amnesty International welcomes the development of the African Commission's website. As an interface for the African Commission's activities which is accessible worldwide, the website constitutes a key tool for the promotion of the African Commission's work and a useful means for NGOs across the world to follow, promote and benefit from its work. The recent development of separate web pages relating to each of the special mechanisms of the African Commission, the timely publication of the resolutions adopted at the past session and of press releases issued by the special mechanisms as well as the posting of details of upcoming country visits by the Commissioners all constitute vital sources of information for NGOs wishing to engage with the work of the African Commission.

The current availability of information regarding when and where the Commissioners are scheduled to undertake promotional or fact-finding country visits allows for NGOs to publicise their missions and provide useful information or contact details ahead of the mission. However, the findings from fact-finding missions need to be made available shortly after the mission has taken place to allow for all stakeholders to benefit from their findings and publicise them both nationally and internationally.

Another key development in the working methods of the African Commission is the public availability, upon request, of concluding observations to the consideration of states' parties reports. Amnesty International was grateful to receive the concluding observations to the consideration of some state parties' reports. For the concluding observations to be a useful tool to assess the governments' compliance with the provisions of the African Charter and implementation of the recommendations of the Commission, it is crucial that they are publicised as widely as possible. This could be improved further if concluding observations were available publicly on the website, shortly after the consideration of the reports, and annexed to the activity report of the Commission to the African Union, as is the case for the United Nations treaty monitoring bodies. The ready availability of concluding observations to all NGOs and their public diffusion is a key means for these recommendations to acquire greater visibility and can be used by NGOs in their campaigning work. Working with Governments, NGOs can act as catalysts to promote legislative or policy reforms recommended by the African Commission.

Despite these important improvements, Amnesty International remains concerned by the lack of human and financial resources allocated by the African Union to the African Commission and to its secretariat. To this regards, Amnesty International welcomes the resolution on the establishment of a voluntary contribution fund for the African human rights system adopted at its 40th session in Banjul. Such fund could, if established in an efficient and transparent

manner, address the chronic lack of resources faced by the human rights mechanisms in Africa. Amnesty International encourages the African Commission to work closely with the relevant organs of the African Union and in open consultation with civil society, towards the establishment of such a fund. Amnesty International encourages the African Commission to look at the experiences of other voluntary funds, including the UN Voluntary Fund for Victims of Torture and the ICC trust fund for victims.

In conclusion, Amnesty International welcomes the African Commission's crucial work on developing its website and making information relating to its work more readily available. Amnesty International encourages the African Commission to up-hold this work by:

- Continuing to develop and include information on the pages relating to its special mechanisms;
- Making its concluding observations publicly available on the website and the activity reports;
- Overseeing the putting in place of the necessary modalities and structures for the operationalization of a voluntary contribution fund for the African human rights system in an open and transparent manner.

Agenda Item 8(c): Presentation of the Report of the Special Rapporteur on the Rights of Women in Africa and the status of ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Amnesty International welcomes the report of the Special Rapporteur on the Rights of Women in Africa and would like to thank her to the important work she is carrying out and encourage her to continue to do so.

In recent years, Amnesty International has increased its research and campaign around the issue of violence and discrimination against women. I would like to take this opportunity to highlight some recent findings pertinent to African countries.

Burundi

Rape of women and girls at home and in the community is widespread in Burundi. Rape is committed by both state and non-state actors. The Burundian authorities are failing to exercise due diligence to prevent, investigate and punish such violence and the perpetrators escape prosecution and punishment by the state. This failure has engendered a climate where rape victims are less willing or able to pursue criminal proceedings through the police and the judiciary. The level of successful prosecutions is therefore very low.

A generalized fear and reticence amongst women to speak out perpetuates the concealment of rape and sexual violence at community level. Women are frequently too scared of reprisal attacks to report rape or sexual violence to the authorities. Victims who were subjected to sexual violence by armed opposition groups or government forces during the conflict, very rarely recounted their ordeal to anyone out of fear.

Women are subjected to gender discrimination and rape victims are stigmatized by their community. The victim's family, friends and community regularly ostracize the victim, leaving her alone and destitute. Customary law on marriage, inheritance and succession provides no equal access to property for women and reinforces men's economic dominance over women.

Côte d'Ivoire

In Côte d'Ivoire, hundreds, possibly thousands, of women and girls have been victims of widespread and, at times, systematic rape and sexual assault committed by all parties to the conflict since September 2002. The scale of rape and sexual violence has been largely underestimated. Many women have been gang raped or have been abducted and reduced to sexual slavery by fighters. Rape has often been accompanied by the beating or torture (including torture of a sexual nature) of the victim. Rape has been committed in public and in front of family members, including children. Some women have been raped next to the corpses of family members.

Women's rights have also been violated in the aftermath of rape, adding to their trauma and suffering. Most women suffering injuries or illnesses caused by rape – some of them life-threatening – have been unable to access the medical care they need. Stigmatized by rape, some women have been abandoned by their partners or families, and condemned, often along with dependent children, to extreme poverty. Owing to continuing insecurity, women often live in fear of further attacks or reprisals if they speak out against the perpetrators.

To Amnesty International's knowledge, virtually none of the perpetrators of these acts of sexual violence has been held accountable. This impunity has fuelled and continues to fuel rapes and sexual assaults.

Unless an organized and comprehensive programme is developed to respond to their various needs, victims of sexual violence will continue to suffer and die needlessly and many more women will remain at risk of such violence. All parties and international actors must acknowledge the gravity of the situation and take effective action to respect and protect the human rights of these forgotten victims.

Nigeria

In Nigeria violence against women remains widespread and persistent. Gender-based violence, committed both by state and non-state actors, includes violence against women in the family, rape, female genital mutilation and forced and early marriage. The discriminatory attitudes and practices of law enforcement officials, judges and society as a whole, as well as a very limited legal aid scheme, prevent women from accessing justice in cases of rape. Different

legislation, including the Criminal Code, the Penal Code and the *Sharia* based criminal codes, applicable in different states of the country, discriminate against women and girls.

Despite attempts by the government and a few states to pass a bill against domestic violence, the federal government and state administrations have failed to provide a framework for women seeking protection from family violence. The police and the criminal justice system provide scant protection and often dismiss domestic violence as a family matter, failing to investigate or press charges.

Sierra Leone

Women in rural Sierra Leone have few protections from discrimination and other human rights violations and abuses. They face formal and official discrimination under the law, in customs and in rulings in matters of personal status, marriage and inheritance. Although there is a system within the formal sector through the Local Courts which officially adjudicates on these matters, Chiefs often perform these judicial functions illegally. Amnesty International has found that not only do Chiefs act outside their jurisdiction, at times they collude with men in the community to forcibly evict women and children from their homes or subject them to arbitrary detention and other forms of gender based violence.

The problem for women in rural Sierra Leone stems from both the law itself which is inherently discriminatory as well as the fact that those administering the law do so in a discriminatory manner.

Sierra Leonean customary law forms part of the common law, but is largely unwritten and based on deep rooted social practices that coexist with the formal legal system. Customary law, recognized and relevant to 85% of the local population, is based on traditional beliefs and attitudes and administered predominantly by men. Traditional practices dominate and tend to deprive women of their human rights or silence them when their human rights are not respected.

Beginning in 2003 efforts through legal reform began to try to address the discrimination in the law. Today despite significant advocacy efforts three bills, which if adopted would be the first step in addressing discrimination against women, are in the Ministry of Justice's office. These bills include: the Registration of Customary Marriage and Divorce bill, Intestate Succession bill, and the Domestic Violence bill,

On 25 November 2005, the Protocol to the African Charter on the Rights to Women in Africa entered into force. Amnesty International welcomed the entry into force of the Protocol as an important step in the efforts to ensure the promotion and respect of the human rights of women in Africa.

The Protocol is designed to help in addressing the above highlighted situations and other similar situations across Africa. The Protocol fills a major gap in the regional human rights system by providing a comprehensive framework for the promotion and protection of women's human rights. The Protocol recognizes and guarantees a wide range of women's civil and political rights as well as economic, social and cultural rights.

According to the most recent information available (22 January 2007), only 20 of the 53 African Union member states have ratified the Protocol. It is of some relevance to note that only Nigeria, of the countries highlighted above, have ratified the Protocol.

The African Commission, and its Special Rapporteur on the Rights of Women in Africa, have played a crucial role to ensure the entry into force of this Protocol and its implementation at national level.

Amnesty International calls on the African Commission to continue its efforts and in particular to:

- Urge all African states that have ratified the Protocol to implement it by reviewing all national laws, policies, practices and procedures to ensure that they meet the obligations set out in the Protocol, including by incorporating the rights enshrined in the Protocol into their domestic legislation and take all other necessary measures to implement the instrument in good faith.
- Urge all African states that have not yet done so to ratify the Protocol without further delay and without reservations.
- Continue to raise awareness of the Protocol and its provisions among civil society, NGOs, and individuals in Africa.

Amnesty International also encourages the Special Rapporteur on the Rights of Women in Africa to request the governments of Burundi, Côte d'Ivoire, Nigeria and Sierra Leone to carry out a fact finding visits in these countries.

Agenda Item 8 (d): Presentation of the Report of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa

Amnesty International welcomes the report of the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons (IDPs) in Africa and would like to thank him for the important work he is carrying out and encourage him to continue to do so.

I would like to take this opportunity to highlight some recent findings of my organization pertinent to the mandate of the Special Rapporteur.

Darfur and eastern Chad

More than 200,000 people have died in the four-year conflict in Darfur, Sudan, and more than 2.5 million have been displaced from their homes. In 2007, the human rights and humanitarian crisis has further deteriorated. Murder, rape, pillage and mass forced displacement continue to be used as weapons of war by Janjawid militias. Sudanese armed

forces and armed opposition groups have also been responsible for grave violations of human rights and international humanitarian law.

The presence, since 2004, of AMIS soldiers in Darfur has provided some protection to civilians in Darfur. However, it has failed to stop the mass killings, rapes and forcible displacement of civilians in Darfur. AMIS efforts continue to be hampered by limited logistical and financial support.

Recently, AMIS has experienced a sharp increase in attacks on its personnel; a dangerous trend which is undermining and weakening its capacity to effectively protect civilians. The worst attack to date was on 1 April 2007, when five AMIS soldiers guarding a water point in Um Baru were killed by unknown armed assailants.

The conflict in Darfur has spread beyond Sudan's borders. Civilians in eastern Chad are now also being attacked by Sudanese Janjawid militias and their local Chadian allies, who plunder and kill with impunity. More than 140,000 internally displaced Chadian civilians are sheltering in settlements in eastern Chad as well as 230,000 refugees from Sudan.

Amnesty International found on two fact finding missions in eastern Chad in May and in November/December 2006 that targeted ethnic groups have been dispersed by repeated cross-border attacks since 2005. Attacks on Chadian civilians have increased as relations between Chad and Sudan worsen, armed Chadian opposition groups become more active, and Darfuri armed opposition groups increase their presence in Chad.

The African Commission and the Special Rapporteur have followed closely the situation in Darfur, and has, in various occasions, condemned the widespread violations of human rights and international humanitarian law by all parties to the conflict in Darfur.

Amnesty International would like to encourage the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa to keep the situation of the displaced and refugees in Darfur and eastern Chad under review and to consider carrying out a fact-finding mission in the region.

Kenya and Somalia

The conflict in Mogadishu between Somalia's Transitional Federal Government (TFG) and its opponents has led to the deaths of over 1,000 people since late-February. This includes some 250 killed in late April, who were mostly civilians killed by TFG and allied Ethiopian troops; the wounding of about four times that number; and the flight of a third of a million people from Mogadishu--a third of its population.

In addition, the conflict has severely exacerbated the humanitarian crisis, which has been compounded by reported obstruction by TFG officials of humanitarian assistance.

Reflecting on these developments, the United Nations Security Council condemned, in a presidential statement published on 30 April, the indiscriminate shelling of heavily populated areas of Mogadishu and the humanitarian impact of the fighting.

Amnesty International called on the TFG to fulfil its responsibility to protect the security of its citizens in line with the Transitional Federal Charter, and for the Ethiopian government, which provides its military support, to commit to the protection of international human rights. All parties in the conflict, including armed groups, are accountable for breaches of their obligations under international humanitarian law.

Amnesty International also called on the TFG to immediately lift all unreasonable restrictions on humanitarian operations, and facilitate the movement of humanitarian supplies and personnel and ensure their safety.

Faced with such grave human rights and humanitarian crisis in Somalia, Amnesty International has expressed its deep concern at the decision of the Kenyan government to close the Kenya/Somalia border.

The Government of Kenya announced the closure of the border on 3 January 2007 following the resurgence of armed conflict between the Ethiopia-backed TFG of Somalia and the Council of Somali Islamic Courts (COSIC) fighters in the beginning of December 2006. The Kenyan government justified the decision to close the border on the basis of security concerns, as it said it was concerned that fleeing COSIC fighters and possibly also Al-Qaeda operatives collaborating with them might enter Kenya and endanger Kenya's national security.

Amnesty International conducted a research mission to Kenya in March 2007. The organisation found that hundreds of asylum-seekers were forcibly returned to Somalia after the border closure. Thousands of asylum-seekers were unable to cross into Kenya, and are highly vulnerable to human rights abuses by parties to the Somali conflict. Others have managed to cross into Kenya after facing additional grave risks of human rights abuse, and subsequently face difficulties in accessing humanitarian assistance in the refugee camps. The border closure has also restricted humanitarian access to internally displaced persons (IDPs) on the Somali side of the border.

The Kenyan government's decision to close its border with Somalia violates its own Refugee Act of 2006, the UN Refugee Convention, the OAU Refugee Convention and other international human rights law treaties to which Kenya is party, and has contributed to increased abuses of the human rights of those fleeing Somalia.

Amnesty International encourages the African Commission to adopt a resolution calling:

- All parties in the conflict, including the TFG, Ethiopia and armed groups, to abide by applicable norms of human rights and international humanitarian law;
- On the TFG to immediately lift all unreasonable restrictions on humanitarian operations, and facilitate the movement of humanitarian supplies and personnel and ensure their safety;
- On the Kenyan government to re-open its border to asylum seekers from Somalia and allow humanitarian assistance across the border to displaced persons in Somalia on a regular, predictable and safe basis.

Amnesty International would like to encourage the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa to keep the situation of the displaced and refugees in Somalia and Kenya under review and to consider carrying out a fact-finding mission in the region.

Agenda Item 8 (k): Report of the Working Group on the Death Penalty

Amnesty International opposes the death penalty in all cases. Amnesty International considers that the death penalty violates the right to life and the prohibition of torture, cruel, inhuman or degrading punishment and treatment – universally recognized human rights that are also enshrined in the African Charter on Human and Peoples' Rights (African Charter).

The trend towards abolition of the death penalty is clear. Two-thirds of the countries in the world have now abolished the death penalty in law or practice. Vast swathes of the world are now execution-free. In 1977, just 16 countries had abolished the death penalty. Today, that figure stands at 99. A further 29 countries can be considered to have “abolished in practice” having not carried out an execution for at least 10 years. 129 of the world's 190 countries are now death penalty free¹.

African states have also taken important steps towards the abolition of the death penalty. According to Amnesty International's information, of the 53 African Union member states, 13 countries no longer have the death penalty. Angola, Cape Verde, Cote d'Ivoire, Djibouti, Guinea-Bissau, Liberia, Mauritius, Mozambique, Namibia, Sao Tome and Principe, Seychelles, Senegal and South Africa have abolished the death penalty completely. A further 17 countries are abolitionist in practice. 23 countries retain and use the death penalty. In 2006, six African countries are known to have carried out executions: Botswana, Egypt, Equatorial Guinea, Sudan, Somalia and Uganda.

Amnesty international welcomes the steady progress towards abolition of the death penalty in countries in Africa. In Benin the newly appointed Minister of Justice Mr. Nestor Dako when invited to the 3rd World Congress Against the Death Penalty held in Paris in February 2007, declared that: « *The government [of Benin] is in favor of measures toward the abolition of the death penalty (...). The government is considering establishing a commission of experts (composed of lawyers, judges, etc...) to refine the issue and propose a draft on death penalty (...) in view of the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.* »

¹ Figures for 2006

In Ghana according to the media, the Minister of Interior, Mr. Albert Kandapaah, announced in March 2007, the commutation of 36 death sentences to life imprisonment.

In Nigeria in February 2007, the Presidential Commission on the Reform of the Administration of Justice in a meeting aimed at reviewing the status of several categories of inmates in Nigerian prisons, including prison inmates who have spent over 10 years on death row gave a few recommendations: commutation to life imprisonment for prison inmates who have been between 10-15 years on death row, release of prisoners who have spent over 15 years on death row and prison inmates who were convicted by a tribunal and have no right of appeal and have spent more than 10 years on death row should be released.

In Sierra Leone President Kabbah announced on 11 December 2006, when the Commissioners of the National Human Rights Commission were inaugurated, that the death penalty would not be used during his time in office.

In Togo in November 2006, an Amnesty International delegation met with Prime Minister Yawovi Agboyibo who on the question of the death penalty, explained his personal stand in favor of abolition and, while he did not commit abolishing it, recognized that he had "a golden opportunity" to do so. "I'm convinced we can abolish. I'm still haunted by the memory of a client I defended who was later executed", he added.

In Burundi, proposals for the new revised Penal Code excluded the death penalty as punishment. The new code is pending promulgation.

Currently legislation abolishing the death penalty in Rwanda is being examined by parliament. In Malawi this April the High Court declared unconstitutional the mandatory death penalty.

But in other countries the situation remains dire. Sudan continues to carry out executions, reportedly after unfair trials in 2006. In 2006 alone at least 65 people were executed. Even this year Amnesty International has received reports of the sentencing to death by stoning of two women for committing adultery in what appears to be an unfair trial. Egypt continues to sentence people to death after unfair judicial processes that fall far short of international standards, including the right to appeal to a higher court.² In September 2006, three men were sentenced to death following an unfair trial before an Emergency court in connection with the bomb attacks in the Red sea cities of Taba and Nuweiba in 2004. The court confirmed the sentences on 30 November 2006 after the verdict was approval by the Mufti (supreme religious authority).

In December 2006, the African Commission on Human and Peoples' Rights requested the government of Egypt to stay the execution of the three men, pending a consideration of a complaint submitted to it. The three men continue to be held in Tora Prison.

² Period end of year 2006 and 2007

Amnesty International believes that the establishment of the Working Group on the Death Penalty presents the African Commission on Human and People's Rights the opportunity to make a significant contribution to the eradication of judicial state killings in Africa. The organization welcomes the appointment by the African Commission of the six expert members of the Working Group and looks forward to collaborating with the Working Group at its first meeting.

The organization believes that the Working Group could build upon the work already carried out by the African Commission – in particular the resolution adopted at its 26th Ordinary Session in November 1999, in Kigali, Rwanda, requesting states parties to the African Charter to consider abolishing the death penalty - and encourage it to further develop recommendations to African states aimed at the abolition of the death penalty.

In doing so, the Working Group on the Death Penalty in Africa should consider publicly condemning the death penalty as a violation of fundamental human rights, including those guaranteed under the African Charter, and urging all states parties to the African Charter that still maintain the death penalty to:

- abolish the death penalty completely and, in the meantime, establish a moratorium on executions;
- ensure that persons accused of crimes which carry the death penalty are afforded all safeguards and due process guarantees set out in the African Charter and international standards and have the right to seek pardon or commutation of sentence;
- not impose the death penalty to people who were below 18 years of age at the time the crime was committed; exclude the death penalty for pregnant women and mothers with dependent infants and person suffering from any mental or intellectual disabilities;
- not impose the death penalty for any but the most serious crimes.

Amnesty International also encourages the Working Group to call on States parties to the African Charter that no longer apply the death penalty, but maintain it in their legislation, to abolish it and to urge all States that have not yet done so to ratify the International Covenant on Civil and Political Rights and/or its Second Optional Protocol aiming at the abolition of the death penalty.