SECURITY AND HUMAN RIGHTS

COUNTER-TERRORISM AND THE UNITED NATIONS

AMNESTY INTERNATIONAL

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

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“To reaffirm the United Nations system’s important role in strengthening the international legal architecture by promoting the rule of law, respect for human rights, and effective criminal justice systems, which constitute the fundamental basis of our common fight against terrorism”

United Nations Global Counter-Terrorism Strategy - Annex – IV-5

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EXECUTIVE SUMMARY

On 4 September 2008, the United Nations General Assembly (UNGA), sitting in plenary, will conduct its first review of the United Nations Global Counter-Terrorism Strategy ("the Global Strategy") which it adopted two years ago, on 8 September 2006. The Global Strategy is a path-breaking document as all States recognize in it, unequivocally, that human rights are the fundamental basis for the fight against terrorism. The September review meeting provides an excellent opportunity for the UNGA to take stock of the implementation of the strong human rights provisions in the Global Strategy and to take concrete steps for their implementation.

Regrettably, as this brief survey of global practices shows, there is a huge gap between governmental human rights rhetoric in the Global Strategy and the reality of human rights observance on the ground. Much more needs to be done to mainstream human rights throughout the UN system and States must demonstrate the political will to translate stated human rights commitments into action. **Amnesty International therefore calls on the General Assembly to mark the occasion of the 60th anniversary of the Universal Declaration of Human Rights to make implementation of the human rights provisions of the UN Global Counter-Terrorism Strategy a top priority for the coming year.**

In this brief, Amnesty International considers the impact of terrorism on human rights, examines UN work on counter-terrorism, notably of the Security Council, and conducts a brief review of the type of human rights violations committed in the pursuit of counter-terrorism measures, citing a range of country examples from every region of the world.

While counter-terrorism policies in numerous countries have led to human rights violations well before 2001, the "war on terror" launched by the United States of America (USA) in the wake of the 11 September 2001 attacks has had world-wide repercussions. It has undermined the rule of law and international standards and poses significant challenges to the protection of human rights worldwide in numerous countries of the world today.

Amnesty International's brief survey of countries all over the world shows that following the 11 September 2001 attacks on the USA, and attacks in other countries since, a wider range of counter-terrorism laws, policies and practices have eroded human rights protections as governments claim the security of some can only be achieved by violating the rights of others. The voices of human rights defenders, political opposition leaders, journalists, people from minority groups and others have been stifled.

Governments have rushed through problematic laws formulating new and often vaguely-defined

crimes, banning organizations and freezing their or individuals' assets without due process, undermining fair trial standards and suspending safeguards aimed at protecting human rights. Unfortunately, countries which have long claimed to be leaders in promoting human rights have now taken the lead in enacting draconian laws that have eroded human rights protection for everyone. Other states have used the climate of fear created by terrorism to enhance powers to suppress legitimate political dissent, to torture detainees, subject them to enforced disappearances, or hand them over to other states in violation of the principles of *non-refoulement* and undermining laws governing extradition. The international law of armed conflict has been distorted or misapplied in ways that undermine its legitimacy.

Within three weeks of the 11 September 2001 attack, the Security Council passed resolution 1373 and imposed obligations on all states, for an indefinite period, requiring that they take a range of far-reaching measures to prevent terrorism. Other Security Council resolutions followed. They raised serious human rights concerns because of their broad and vague provisions. The Security Council's push for the criminalization and suppression of terrorism world wide, its lack of emphasis on the need to ensure that human rights must be protected in the process, and the absence of a definition on terrorism in resolution 1373 are likely to have contributed to the passing, by a number of states, of broadly phrased anti-terrorist laws since 2001 which have harmed human rights protection and fall far short of states' obligations under international human rights law. Indeed, Amnesty International believes that the Security Council – especially its five Permanent Members - has demonstrated a deep reluctance to embrace human rights in its efforts to combat terrorism. The Security Council must shoulder some responsibility for the adverse consequences for human rights, identified in this briefing, perpetrated "in the name of security".

Amnesty International has persistently and unequivocally condemned acts of terrorism and other deliberate attacks on civilians, underlining that States have a duty to protect those under their jurisdiction from such attacks. The organization has called for prompt impartial investigations and for the perpetrators to be brought to justice in accordance with international standards. It continues to demand that all armed groups and individuals stop using violence against civilians and calls on their leaders to denounce human rights abuses including torture and other ill-treatment, hostage taking, indiscriminate attacks, or direct attacks on civilians. An Appendix to the report lists principles that should guide states' treatment of victims, submitted in advance of the Symposium on Supporting Victims of Terrorism hosted by the Secretary-General on 9 September 2008, which closely follows the UNGA review of the Global Strategy.

States have a specific responsibility to promote and protect human rights, including the right to life, and a duty to protect civilians from attacks by taking effective measures to prevent and deter attacks on civilians. However, as the High Commissioner for Human Rights and the UN Secretary-General have strongly emphasized, States must not violate their specific human rights obligations in the process.

This brief describes human rights violations that have occurred in many countries under four themes: broad definition of terrorism / incitement; undermining the absolute prohibition of torture and other ill-treatment; illegal detention and unlawful transfers and challenges to fair trial guarantees. Amnesty International acknowledges and welcomes the positive steps taken by some states to strengthen --

rather than weaken -- legal safeguards in the fight against terrorism. Amnesty International believes that countering terror with justice, by bringing cases before the ordinary criminal justice system, observing the requirements of due process, upholding fair trial standards and ensuring the independence of the judiciary, is the only effective response to terror.

RECOMMENDATIONS

The 60th anniversary of the Universal Declaration of Human Rights (UDHR) and the first review of the UN Global Counter-Terrorism Strategy provide an excellent occasion to review state practices and make human rights the fundamental basis for the UN's common fight against terrorism.

Recommendations to the General Assembly
Amnesty International recommends that the General Assembly takes the following steps:

- Mark the occasion of the 60th anniversary of the UDHR to make implementation of the human rights provisions of the UN Global Counter-Terrorism Strategy a top priority for the coming year;

- Request the Secretary-General to include in future reports on the implementation of the UN Global Counter-Terrorism Strategy, information on the difficulties States have encountered in implementing their obligations under Security Council resolutions 1373 and 1624 while also meeting their obligations under international human rights law;

- Request all Member States to review the counter-terrorism measures they have taken since the adoption of Security Council resolution 1373 in September 2001 in order to assess, with a view to ensuring compliance, whether they meet their obligations under international law, including international human rights, humanitarian and refugee law and to inform the Secretary-General of the steps they have taken;

- Emphasize, in future resolutions, the importance of mainstreaming human rights in its work on counter-terrorism throughout the United Nations system, including in the work of the Security Council, the Counter-Terrorism Committee, the Counter Terrorism Executive Directorate and the Counter-Terrorism Implementation Task Force , ensuring that human rights are also addressed in all its working groups because of their importance for all components of the Global Strategy;

- Commit to strengthen the resources for human rights in the UN's fight against terrorism, including by strengthening the resources of the Office of the High Commissioner for Human Rights and of the Working Group on Protecting Human Rights while Countering Terrorism, led by the Office of the High Commissioner for Human Rights;

- Urge all states to extend a standing invitation to the Special Rapporteurs of the Human Rights Council on the promotion and protection of human rights while countering terrorism, on extrajudicial, summary or arbitrary executions, and on torture and cruel, inhuman or degrading treatment or punishment, as well as the Working Groups on arbitrary detention and on Enforced or Involuntary Disappearances, and furthermore to invite CTED's Human Rights Officer or an expert from the Office of the High Commissioner for Human Rights to participate in any country visits conducted by the Counter-Terrorism Committee;

- Create effective means for NGOs to interact with the UNGA about the implementation of the UN Global Counter-Terrorism Strategy including its provisions on human rights recognized as the fundamental basis of the fight against terrorism.

Recommendations to the Security Council

The Security Council must use the opportunity of the review of the UN Global Counter-Terrorism Strategy to address the human rights deficit that has marked much of its counter-terrorism work, notwithstanding some recent attempts at improvement. It must act to ensure that human rights are mainstreamed in its work.

Amnesty International recommends that the Security Council takes the following steps:

- Adopt unambiguous, strong language in its forthcoming resolutions dealing with counter-terrorism that Member States must meet their human rights obligations in the measures which the Security Council requires them to take;

- Ensure that the work of the Counter-Terrorism Committee and the Counter Terrorism Executive Directorate strengthens and does not hinder the protection of human rights while countering terrorism, including by establishing a mechanism to monitor the implementation of the human rights provisions in Security Council resolutions, by involving human rights officers or experts in all field missions and promoting the development of human rights best practices in countering terrorism;

- Strengthen the Counter Terrorism Executive Directorate's human rights capacity by substantially reinforcing its human rights staff and providing human rights training to all its experts – to ensure that human rights are fully incorporated in the Counter Terrorism Executive Directorate's communications and that States receive better assistance to review their counter-terrorism strategies to meet their human rights obligations;

- Institute a Counter-Terrorism Committee process of regular and more in depth interaction with the UN's human rights experts, including the High Commissioner for Human Rights, the above UN Special Rapporteurs and Working Groups of the Human Rights Council and the relevant human rights treaty bodies such as the Human Rights Committee; and

- Create an independent review mechanism to examine de-listing requests of suspected terrorists

subjected to the Security Council's targeted sanctions regime, and provide direct access for those listed to fair hearings providing basic human rights guarantees.

1. INTRODUCTION

"I firmly believe that terrorism must be confronted in a manner that respects human rights law. Insisting on a human rights-based approach and a rule of law approach to countering terrorism is imperative... Over the long term, a commitment to uphold respect for human rights and the rule of law will be one of the keys to success in countering terrorism – not an impediment blocking our way"

Louise Arbour, former High Commissioner for Human Rights - 27 August 2004

On 4 September 2008, the United Nations General Assembly (UNGA), sitting in plenary, will conduct its first review of the United Nations Global Counter-Terrorism Strategy ("the Global Strategy") which it adopted two years ago, on 8 September 2006. The Global Strategy, based on a report by the Secretary-General,[1] reiterates the UNGA's strong condemnation of all forms of terrorism and the determination to strengthen the global response to terrorism.

The Global Strategy is a path-breaking document as all states recognize in it, unequivocally, that human rights are the fundamental basis for the fight against terrorism. The Global Strategy, which devotes one of its four pillars to human rights, provides an action plan that includes "Measures to ensure the respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism"[2]. The September review meeting provides an excellent opportunity for the UNGA to take stock of the implementation of the strong human rights provisions in the Global Strategy and to take concrete steps for their implementation.

This brief hopes to contribute to the discussion on strengthening implementation of the human rights provisions of the Global Strategy, which specifically "encourage[s] non-governmental organizations and civil society to engage, as appropriate, on how to enhance efforts to implement the Strategy".

Unfortunately, the opportunities for NGOs to engage with the UNGA to make such a contribution have been extremely limited.[3] Indeed, NGOs have no role in the 4 September open debate reviewing the Global Strategy. In publishing this briefing paper, Amnesty International calls on the UNGA to create effective means for NGO engagement in implementing the Global Strategy, including its human rights provisions.

In this brief, Amnesty International considers the impact of terrorism on human rights, examines UN work on counter-terrorism, and conducts a brief review of the type of human rights violations committed in the pursuit of counter-terrorism measures world-wide, citing country examples. It includes specific recommendations to UN Member States in the General Assembly as well as in the Security Council. As will be described below, the Security Council has imposed binding obligations on all Member States to take far-reaching counter-terrorism measures, while remaining deeply reluctant to embrace the importance of human rights in its efforts to combat terrorism.

2. HUMAN RIGHTS AND TERRORISM

Counter-terrorism policies in numerous countries have led to human rights violations well before 2001. However, the 'war on terror' launched by the USA in the wake of the 11 September 2001 attacks has had world-wide repercussions. It has undermined the rule of law and international standards and poses significant challenges to the protection of human rights worldwide in numerous countries of the world today.

States have a duty to protect all those under their jurisdiction. Individuals, groups and states have a duty to respect the human rights of others. Attacks by armed groups which are indiscriminate or which deliberately target civilians are grave human rights abuses and can also be crimes under international law. Such arracks can never be justified. Their perpetrators must be brought to justice, in fair proceedings that meet international human rights standards and without the imposition of the death penalty.

Amnesty International unequivocally condemns deliberate attacks on civilians and other human rights abuses by armed groups. The organization has persistently done so in numerous public statements and called for prompt impartial investigations and for the perpetrators to be brought to justice in accordance with international standards. As examples, Amnesty International has strongly condemned attacks in New York, Washington and Pennsylvania (USA) in September 2001, which amounted to crimes against humanity; in Bali, Indonesia in October 2002; in Casablanca, Morocco, in May 2003; in Madrid, Spain, in March 2004; in Saudi Arabia in June 2004, in Beslan, the Russian Federation, in September 2004; in London, the United Kingdom in July 2005; in Amman, Jordan, in November 2005; in Egypt in April 2006; in Mumbai, in India, in July 2006; in Afghanistan in April 2007, in Iraq in February and in Algeria in August 2008. The organization has on numerous occasions condemned such attacks in Afghanistan, Israel and the Occupied Territories, Iraq and Sri Lanka.

Amnesty International continues to demand that all armed groups and individuals stop using violence against civilians and calls on their leaders to denounce human rights abuses including torture and other ill-treatment, hostage taking, indiscriminate attacks, or direct attacks on civilians. In the particular context of situations of armed conflict as defined by international law, armed groups have specific obligations under international humanitarian law. Terrorist attacks can, in certain limited circumstances, amount to crimes under international law such as war crimes or crimes against humanity. Their perpetrators can be subject to prosecution nationally under universal jurisdiction or internationally before the International Criminal Court.

Our reports include details of the grave human rights abuses committed by such groups and some Amnesty International reports have focused specifically on abuses by these groups[4]. Victims of such abuses have rights to justice, truth and reparation, in accordance with international standards such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Basic

Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law. While States often focus on counter-terrorism policies, they must not neglect the needs and rights of victims.

States must move beyond mere rhetoric on "solidarity" with victims, and ensure in law and in practice the respect and protection of human rights of victims. The Secretary-General will host a Symposium on Supporting Victims of Terrorism on 9 September 2008. Building on guidelines and principles agreed by the United Nations and the Council of Europe, Amnesty International has identified the principles that should guide states' treatment of victims, attached in Annex I to this brief.

States have a specific responsibility to promote and protect human rights, including the right to life, and a duty to protect civilians from attacks by taking effective measures to prevent and deter attacks on civilians. But they must not violate their specific human rights obligations in the process. Former UN Secretary-General Kofi Annan said:

> *"It follows that we cannot achieve security by sacrificing human rights. To try and do so would hand the terrorists a victory beyond their dreams", later stressing that: "Human rights law makes ample provision for counter-terrorist action, even in the most exceptional circumstances. But compromising human rights cannot serve the struggle against terrorism. On the contrary, it facilitates achievement of the terrorist's objective -- by ceding to him the moral high ground, and provoking tension, hatred and mistrust of government among precisely those parts of the population where he is most likely to find recruits. Upholding human rights is not merely compatible with successful counter-terrorism strategy. It is an essential element."*[5]

Human rights are not an obstacle to security and peace; human rights are key to achieving them. Respect for human rights and the rule of law is vital for policies to halt and prevent terrorism. The Global Strategy identifies that linkage in the clearest possible terms by "recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing". In her last report on the protection of human rights and fundamental freedoms while countering terrorism, the High Commissioner for Human Rights underscored these views:

> *"It has now become clear that upholding human rights is not at odds with confronting terrorism; on the contrary, the moral vision of human rights coupled with the nature of legal obligations to uphold these rights foster deep respect for the dignity of each person. National counter-terrorism strategies and international cooperation must include measures to prevent the spread of terrorism, and must also include measures to prevent ethnic, national or religious discrimination, political exclusion, and socio-economic marginalization, as well as measures to address impunity for human rights violations."*[6]

Passing anti-terrorist laws is nothing new and long-standing experiences in, for example, Northern Ireland, Israel and Malaysia show that they invariably triggered violations of human rights. However, since 2001 there has been a backlash against human rights. Unfortunately, many states have failed to stand up for human rights in the face of this challenge. Other states have used the climate of fear created by terrorism to enhance powers to suppress legitimate political dissent, to torture detainees,

subject them to enforced disappearances, or hand them over to other states in violation of the principles of *non-refoulement* and undermining laws governing extradition. International law of armed conflict has been distorted or misapplied in ways that undermine its legitimacy. The perpetrators of these human rights violations are virtually never brought to justice, nor do the victims receive justice, truth or reparation.

The UN system – which includes the Security Council, the General Assembly, UN agencies and the UN Secretariat - also plays a key role both in coordinating and strengthening the fight against terrorism and reaffirming the need to uphold human rights and the rule of law. This is why the solemn commitments for human rights made by States in the Global Strategy are so important.

In a positive development, the Secretary-General established the **Counter-Terrorism Implementation Task Force (CTITF)** in July 2005. A wide range of UN departments, programmes and agencies are involved in the counter-terrorism efforts of the UN and the CTITF plays a key role in coordinating their efforts. The CTITF's work is coordinated through nine Working Groups. The Office of the High Commissioner for Human Rights leads the Working Group on protecting Human Rights while countering Terrorism. Other Working Groups deal with Addressing Radicalization and Extremism, Financing of Terrorism and Combating Terrorism through use of the Internet. All these issues have important human rights dimensions which must be addressed and integrated in the work of these groups. Much more needs to be done to mainstream human rights throughout the UN system and States must demonstrate the political will to translate stated human rights commitments into action.

Most prominent is the role of the Security Council, which reacted with vigour, after the 11 September 2001 attacks, obliging states to take wide-ranging measures to prevent terrorism. Unfortunately, the Security Council's record in ensuring that human rights are upheld in the process is poor.

3. THE ROLE OF THE UN

THE GENERAL ASSEMBLY

The UNGA has played a key role in the fight against terrorism. No less than thirteen international conventions have been drafted by the UN dealing with terrorism, including under UNGA auspices, although the UNGA, in its Sixth Committee, continues to struggle with the drafting of a comprehensive convention on international terrorism. The UNGA considers annual reports form the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism ("the Special Rapporteur on human rights and counter-terrorism") - a post which it helped create. The UNGA has adopted resolutions which insist that states must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.

The UN Human Rights Council, a subsidiary organ of the UNGA and successor to the Commission on Human Rights, is the UN's principal human rights body. It has addressed human rights and terrorism when considering the reports of the Special Rapporteur on human rights and counter-terrorism and when adopting its omnibus resolution on the protection of human rights and fundamental freedoms while countering terrorism. However, Council members and observer governments have failed to use the various opportunities offered by the Human Rights Council to raise human rights violations by particular governments under the pretext of counter-terrorism. The Human Rights Council should explore its full potential to address the effective protection of human rights in counter-terrorism, but the work of the Council is not further reviewed in this brief.

The adoption of the Global Strategy by the UNGA is particularly important for human rights because it asserts a key role for human rights in security measures. In doing so, the Global Strategy reinforces the important recognition by all Heads of State at the 2005 World Summit that "peace and security, development, and human rights are the pillars of the United Nations system and the foundations for collective security and well-being". They recognized that "development, peace and security and human rights are interlinked and mutually reinforcing". Human rights provisions are incorporated throughout the Global Strategy and Pillar IV of the Plan of Action of the Global Strategy places human rights and the rule of law at the heart of the UN's counter-terrorism efforts. Amnesty International also highlights these other important aspects of the Global Strategy's Plan of Action:

- The recognition that effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing;

- The need for states to develop and maintain effective rule of law-based criminal justice systems that can ensure, in accordance with obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of

terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms;

- The reaffirmation of the United Nations system's important role in strengthening the legal architecture by promoting the rule of law, respect for human rights, and effective criminal justice systems, which constitute the fundamental basis of our common fight against terrorism;

- And the need to support the strengthening of the operational capacity of the Office of the High Commissioner for Human Rights, with a particular emphasis on increasing field operations and presences.

These are excellent commitments. Regrettably, as the brief survey of global practices below shows, there is a huge gap between governmental human rights rhetoric in the Global Strategy and reality in people's lived experiences.

THE SECURITY COUNCIL, THE WORK OF ITS COUNTER-TERRORISM COMMITTEE AND HUMAN RIGHTS

The work of the Security Council to prevent and combat terrorism is of crucial importance to all UN Member States and human rights advocates because, unlike any other UN body, it can take decisions that are binding on all states: it has done so in a range of resolutions to combat terrorism.

THE BINDING REGIME ESTABLISHED UNDER RESOLUTION 1373

Within three weeks of the 11 September 2001 attack, the Security Council imposed obligations on all states, for an indefinite period, requiring that they take a range of far-reaching measures to prevent terrorism. Security Council resolution 1373 (2001), a US initiative, unanimously adopted under Chapter VII of the UN Charter with binding force, created a legal framework for international cooperation and prevention of terrorism. The resolution obliges states to prevent and suppress the financing of terrorism, to freeze terrorists' assets, to strengthen border controls and deny them safe haven. The resolution also established the Counter-Terrorism Committee (CTC), which consists of all members of the Security Council, to closely monitor its implementation.

The resolution does not define what terrorism is, the then UK Ambassador chairing the CTC explaining it was not the function of the Council to do so. Nevertheless, resolution 1373 obliges all states to ensure that anyone participating in preparation or perpetration or supporting terrorist acts is brought to justice, that terrorist acts are established as serious offences in domestic laws and that "the punishment duly reflects the seriousness of such terrorist acts". The Security Council did not specify that these intrusive measures must meet the standards of international law, including human rights law: the only reference to human rights in resolution 1373 is in one paragraph --OP 3(g) -- dealing with refugee claims and alleged terrorists.

Amnesty International issued a statement on the implementation of Security Council resolution 1373 on 1 October 2001, expressing concern "that the terms 'terrorists' and 'terrorist acts' in the resolution are open to widely differing interpretations and therefore may facilitate violations of human rights in States that are bound to implement the resolution". Indeed, the Security Council's push for these legal measures by states, its lack of emphasis on the need to ensure that human rights must be protected in the process, and the absence of a definition on terrorism in resolution 1373 are likely to have contributed to the passing, by a number of states, of broadly phrased anti-terrorist laws since 2001 which have harmed human rights protection and fall far short of states' obligations under international human rights law.[7]

Resolution 1566 (2004), also adopted under the binding provisions of Chapter VII of the UN Charter, was passed in the wake of the killing of hundreds of civilians including many children in Beslan, the Russian Federation. It also raises serious human rights concerns because of its broad and vague provisions. On 8 October 2004, the day of the resolution's adoption, Amnesty International expressed concern about the vagueness and potential for abuse of the resolution's call on states "to bring to justice or extradite any person who 'supports, ' facilitates' or who even 'attempts to participate in the…planning [or] preparation of…terrorist acts'. Amnesty International warned: "This language casts the net so wide that people, including human rights advocates or peaceful political activists can easily and unintentionally fall victim to the measures advocated in the resolution"[8].

Furthermore, a number of states may well have interpreted the Security Council's demand in resolution 1373 to raise the gravity of the punishment for terrorist acts as a call to change their laws to impose the death penalty. The brief survey below unfortunately shows that several countries have passed legislation to that effect since 2001.

DEEP SECURITY COUNCIL RELUCTANCE TO EMBRACE HUMAN RIGHTS IN ITS APPROACH TO COUNTER-TERRORISM

The Security Council now routinely underscores the importance of human rights and its opposition to grave violations of human rights and international humanitarian law as a key component of its work for maintaining peace and security in the countries and themes on its agenda. However, the Security Council and its powerful monitoring body, the Counter-Terrorism Committee (CTC), have shown a blind spot to human rights in their work against terrorism.

When Amnesty International expressed concern on 2 November 2001 that human rights expertise was not, apparently, being sought by the CTC, the then Chair of the CTC, Ambassador Greenstock of the UK, responded to Amnesty International in a letter of 15 November 2001 ruling out a role for human rights in the CTC's work: "I should stress that the obligation to implement resolution 1373 rests with States. Governments will need to form their own judgment on how this is best done in accordance with human rights standards. The CTC's role, as set out in the resolution which established it, is to monitor the action of States in this area [obligations set out in resolution 1373]; and we shall need to adhere closely to this mandate if the unity of the Committee is to be preserved."

Since then, the Security Council has made some progress on human rights language in resolutions dealing with counter-terrorism. Security Council resolution 1456 (2003) included for the first time, largely at the insistence of a non-permanent members of the Security Council, a call that "States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular human rights, refugee and humanitarian law". The resolution constitutes a breakthrough that also opened the way for more attention to human rights by the CTC, although the call was only made in a declaration presented as an Annex to a non-binding resolution. It also included the weak claw-back word that states "should" adopt measures in accordance with human rights law instead of "shall", compromise language reflecting key Council members' reluctance to fully embrace human rights in the fight against terrorism.

Resolution 1624 (2005) (also not adopted under the binding provisions of Chapter VII of the UN Charter) repeats the same human rights language in the preambular part, but uses strong, unambiguous language in the key, operative, part of the resolution. In Operative Paragraph 4 the Council stresses that certain new measures identified in the resolution – especially a call to prohibit by law incitement to commit a terrorist act – must comply with States' obligations under international law, including human rights law. In directing the CTC to include, in its dialogue with Member States, their efforts to implement resolution 1624, the Security Council in fact explicitly provided a human rights mandate to the CTC, as the UN Special Rapporteur on human rights and counter-terrorism has pointed out[9]. Subsequent resolutions dealing with terrorism (Security Council resolutions 1787 (2007) and 1805 (2008)) refer to human rights but go back to the weaker formulation used in resolution 1456. The Security Council must overcome its reluctance to recognize the central importance of human rights in its counter-terrorism work and must be unambiguous and clear and adopt the same firm human rights language as the UNGA did in adopting the Global Strategy, that is: states must ensure that any counter-terrorism measures taken comply with their obligations under international law, including human rights law.

SECURITY COUNCIL'S COUNTER-TERRORISM COMMITTEE, ITS EXECUTIVE DIRECTORATE AND HUMAN RIGHTS

The CTC, consisting of all Security Council members, has also shown reluctance to acknowledge the human rights dimensions of its work and to interact with the UN's human rights experts. Only in 2003 did the CTC for the first time include a paragraph on human rights in the numerous letters sent to governments about implementation of resolution 1373. Interactions with the human rights treaty bodies have been restricted to one exchange only, with the Human Rights Committee, in 2003. The UN Special Rapporteur on human rights and counter-terrorism has met with the CTC twice, in 2005 and 2006, and held meetings with some individual CTC members, but no other relevant Special Rapporteurs of the Human Rights Council or its predecessor have done so.

Given the CTC's wide range of activities that have a direct impact on human rights and its frequent interaction with all Member States to ensure implementation of resolution 1373, the need for the CTC to strengthen its interaction with the UN's human rights experts and expert bodies is clear. Although

previous High Commissioners for Human Rights were able to brief the CTC, it was not possible for the last High Commissioner to do so. Amnesty International hopes that the CTC will make a fresh start and invite the new High Commissioner to address the CTC, and that other UN human rights experts will follow, leading to regular interaction with them.

Since 2005, the CTC is supported in its work by the Counter Terrorism Executive Directorate (CTED). CTED analyzes reports that States are obliged to submit to the CTC, identifies issues for follow-up and increasingly carries out field visits. CTED now includes 19 experts on a range of technical issues covered by resolution 1373.

CTED's new Director has made a fresh start: he appears also to pay attention to human rights issues in CTED's structures. He told Member States in a briefing of 29 April 2008 that one working group has been set up to look specifically at human rights issues in the context of resolution 1373. Human rights are now reportedly a standard part of the "Preliminary Implementation Assessments" that have been drafted for each state by CTED and which form the basis for interaction with states. According to CTED's Director when briefing Member States on 29 April 2008: "In fact, it is now routine for us to take relevant human rights issues into account, across all aspects of our work." These are important steps which Amnesty International welcomes. However, more can and should be done by CTED to reflect these policies on human rights more prominently and provide greater transparency and precision as to how human rights are taken into account in its ongoing work.

Amnesty International also welcomes that, since July 2005, a human rights expert was added to the group of experts, following representations by some Member States and NGOs. The Senior Human Rights expert plays an important role, even though CTED's human rights mandate is not strongly expressed. The CTC Policy Guidance of 25 May 2006, states: "CTC and CTED, under direction of the Committee, *should* incorporate human rights into their communications strategy, as appropriate, noting the importance of States ensuring that in taking counter-terrorism measures they do so consistent with their obligations under international law, in particular human rights law, refugee law and humanitarian law…" Yet, despite the importance which the Security Council says states should attach to human rights in their counterterrorism strategies, there is only one human rights officer in CTED. Furthermore, the human rights expert has rarely been able to participate in field visits, which can make an effective contribution to helping states better carry out their human rights obligations in this complex area.

Amnesty International is also concerned about the lack of clarity on whether and how the CTC is taking up the specific human rights concerns that have arisen in the counter-terrorism measures taken by states worldwide. Indeed, Amnesty International does not know whether the CTC specifically asks states whether they encountered problems in meeting their human rights obligations when implementing Security Council resolutions. Amnesty International identifies a range of these problems in a number of countries from every region of the world in this brief. Some human rights concerns appear to be directly related to the pressure exerted by the Security Council to implement its binding counter-terrorism measures.

Of particular concern are reports that CTC policies have, on occasion, contributed to, rather than helped prevent human rights violations in the implementation of counter-terrorism policies. The UN Special

Rapporteur on human rights and counter-terrorism commented in one of his reports:

> *"Against this background, it is problematic that the CTC seems to be recommending that the potential range of investigative techniques ….should be maximized. … Unless the applicable human rights standards are referred to in this type of questioning, States may get the impression that they are requested to expand the investigative powers of their law enforcement authorities at any cost to human rights. In particular, it is a matter of concern to the Special Rapporteur that this line of questions has been addressed also to regimes whose law enforcement authorities are known to violate human rights. Law enforcement practices that violate human rights do not deserve to be legitimized by the Security Council. Belarus can serve as example of a case where the questions and comments by the CTC have been used in a subsequent report to legitimatize the country's practices in the field of crime investigation, despite past criticism voiced by human rights mechanisms".*[10]

This observation is another reason why human rights expertise – provided by CTED's human rights expert or the Office of the High Commissioner for Human Rights -- must be an integral element of CTED's work including through country visits if states are to be provided with the technical assistance they need to meet their human rights obligations in implementing these Security Council resolutions[11]. Human rights must also be made an integral part of the assistance provided to states by other CTED experts on the technical aspects of the implementation of resolution 1373. Given its global reach and detailed interactions with Member States, CTED's capacity to carry out the important human rights dimension of its work through one Senior Human Rights Officer alone is entirely insufficient and must be substantially enhanced.

ABSENCE OF DUE PROCESS GUARANTEES IN LISTING AND DE-LISTING OF SUSPECTED TERRORISTS UNDER SECURITY COUNCIL SANCTIONS REGIME

Another area of Security Council work where human rights and due process guarantees are most notably absent is in the Council's sanctions regime involving listing and de-listing of suspected terrorists. The *al-Qa'ida* and Taliban targeted sanctions regime was established under Security Council resolution 1267 (1999) and strengthened and extended under resolution 1390 (2002) and subsequent resolutions. It requires that all Member States take targeted measures against listed individuals and groups, such as assets freeze and travel bans. But concern is mounting in numerous countries that the procedures adopted by the Security Council in "listing" and "de-listing" of individuals and groups fail to meet required standards of fairness and transparency. UN Member States' support for the listing procedure appears to be diminishing. UN Member States, when adopting the Global Strategy, echoed the specific call already made by Heads of State in the 2005 World Summit to create "fair and clear procedures … for placing individuals and entities on sanctions lists and for removing them".

Unfortunately, the Security Council has so far not done so, although failings in the current system have become all the more apparent. To name a few: innocent persons are reported to have been wrongly placed on the sanctions list, and those listed are denied the most basic safeguards for fair hearing and review. At least 12 individuals continue to appear on the list although they are reported to have died. Some Member States have made specific proposals to address key concerns, although Amnesty

international believes that these proposals, although welcome, do not go far enough.[12] According to the UN's Analytical Support and Sanctions Monitoring team, twenty six past and present legal challenges are pending before courts in Europe and elsewhere challenging the *al-Qa'ida* and Taliban targeted sanctions regime. These challenges have notably been made on grounds of violation of fundamental human rights standards, including the right to be heard and the right to judicial review by an independent tribunal.

Amnesty International welcomes the initial, although very limited, steps taken by the Security Council to address some of these concerns in resolutions 1730 (2006), 1735(2006), and most recently resolution 1822 (2008). However, these Security Council resolutions adopted so far fail to provide the minimum guarantees of fairness that can be acceptable to the United Nations as an organization that is bound, under its Charter, to "act in conformity with the principles of justice and international law". Moreover, such guarantees are otherwise required of Member States that participate in and implement the listing decisions and consequent sanctions. Regrettably, none of the key resolutions adopted by the Council elaborating the targeted sanctions regime of suspected terrorists (resolutions 1267 (1999), 1390 (2002), 1730 (2006) or 1735 (2006)) mention the need to uphold human rights in implementing the targeted sanctions regime, except for the latest resolution, 1822 (2008), which begins to do so, but in weak terms.

Amnesty International believes that incorporating procedures and protections that fully meet human rights standards of fairness and transparency is not only necessary to protect the rights of those affected, but also to ensure the effectiveness of the Security Council's targeted sanctions regime. The organization has outlined its specific concerns about the lack of basic legal safeguards in three Open Letters, one dated 3 June 2008 addressed to the Security Council, one dated 19 June 2008 addressed to members of the UNGA, and the last, dated 8 July 2008, addressed to members of both the UNGA and the Security Council, outlining concerns and making specific recommendations.[13] The last letter is attached to this brief as Annex II.

CONCLUSION

This brief review demonstrates the reluctance which the Security Council has shown in addressing the human rights dimension of its work in the fight against terrorism, especially its five permanent members[14], and which may have contributed to human rights violations committed by States in taking counter-terrorism measures. Amnesty International shares the views of the former Secretary-General and of the UNGA, articulated in the Global Strategy, that human rights are an essential element of and not an obstacle to the UN's important work on counter-terrorism and hopes that the review of the UN's Global Strategy will provide the occasion for the Security Council to place human rights at the heart of its Global Strategy for countering terrorism. Specific recommendations to the Security Council to address the human rights deficit in this area of its work are set out in the Executive Summary.

4. HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF COUNTER-TERRORISM STRATEGIES

The following is a compilation of examples of laws, policies and practices by governments that violate recognized human rights norms. These include the absolute prohibition against torture and other ill-treatment, the right to be free from arbitrary and/or secret detention, the prohibition against enforced disappearances, the norms establishing due process and fair trial standards, including the prohibition against prolonged detention without charge and trial, and the principle of legality. Although this briefing paper separates these issues, they are inextricably linked. Individuals suffering any one of these violations almost inevitably experience many of the others. A person arrested pursuant to an over-broad law against terrorism, for example, may then be held in incommunicado detention, deprived of legal counsel, illegally transferred to another country, tortured, and brought before a court that fails to meet international standards. The individual may be tried and convicted on the basis of information gained through torture, denied access to evidence against him or her, and finally refused release even after completing a prison sentence. In short, undermining the rule of law on any one issue can undermine the rule of law and human rights norms across the board.

In countries around the world, anti-terrorism legislation characterised by exceptional and restrictive measures has often been introduced in response to legitimate security concerns. Amnesty International has been documenting instances in which governments have manipulated security concerns to justify human rights violations since the early 1970s. However, following the 11 September 2001 attacks on the USA, and attacks in other countries since, a wider range of counter-terrorism laws, policies and practices has eroded human rights protections as governments claim the security of some can only be achieved by violating the rights of others. Governments have rushed through problematic laws formulating new and often vaguely-defined crimes, banning organizations and freezing their assets without due process, undermining fair trial standards and suspending safeguards aimed at protecting human rights.

The voices of human rights defenders, political opposition leaders, journalists, people from minority groups and others have been stifled. Some countries have witnessed the introduction of sweeping powers to hold people without trial, often on the basis of secret evidence; some allow prolonged incommunicado detention and other practices which facilitate torture and other ill-treatment. Even the absolute prohibition of torture – once universally acknowledged, if not universally observed – is under threat. Governments have tried to defend abusive interrogation methods and inhumane conditions of detention, arguing that both are justifiable and necessary. At the same time, crucial safeguards such as

access to lawyers or regular and independent monitoring of detention centres have been suspended. States are increasingly turning to "diplomatic assurances" to circumvent their legal obligation of *non-refoulement,* and return individuals to countries where they face the risk of torture and other ill-treatment.

People suspected of supporting, planning or committing acts of terrorism, their family members, and others thought to have information about them have become victims of arbitrary detention and enforced disappearance. In the name of security, governments have taken measures that effectively deny or restrict access to asylum and speed up deportations without adequate procedural guarantees. Moreover, the independence of the judiciary and the rule of law have been seriously undermined by the creation of special or military courts to try suspected terrorists, bypassing the ordinary criminal justice system.

Unfortunately, countries that have long claimed to be leaders in promoting human rights have now taken the lead in enacting draconian laws that have eroded human rights protection for everyone. Other states have followed. The evidence suggests that the global security agenda of the "war on terror", marked by its disregard for international legal standards and the rule of law, has fuelled human rights abuses by governments and others all over the world. The Security Council, in pushing for the criminalization and suppression of terrorism worldwide without taking due care for the protection of human rights, must also take some responsibility for the adverse consequences.

The country specific examples that follow illustrate a selection of these adverse consequences, and reflect some of the observations made by the UN's human rights experts. They do not represent a comprehensive overview of the negative impact on human rights unleashed by the "war on terror".

Amnesty International acknowledges and welcomes the positive steps taken by some states to strengthen – rather than weaken - legal safeguards in the fight against terrorism. Amnesty International believes that countering terror with justice, through bringing cases before the ordinary criminal justice system, observing the requirements of due process, upholding fair trial standards and ensuring the independence of the judiciary, is the only effective response to terror. The organization emphasizes that human rights must be protected at all times, including in situations of emergency and armed conflict.[15]

BROAD DEFINITION OF TERRORISM

There is no internationally agreed definition of terrorism, and anti-terrorist legislation adopted in some countries contains crimes so broadly defined as to violate the principle of legality, which requires clarity and certainty in the definition of offences. In her most recent report on human rights and terrorism, the High Commissioner for Human Rights noted that:

> *"... many States have adopted national legislation with vague, unclear or overbroad definitions of terrorism. These ambiguous definitions have led to inappropriate restrictions on the legitimate exercise of fundamental liberties, such as association, expression and peaceful political and social opposition... Some States have included non-violent activities in their national definitions of terrorism. This has*

increased the risk and the practice that individuals are prosecuted for legitimate, non-violent exercise of rights enshrined in international law, or that criminal conduct that does not constitute 'terrorism' may be criminalized as such… There are several examples of hastily adopted counter-terrorism laws which introduced definitions that lacked in precision and appeared to contravene the principle of legality…

Particular care must be taken … in defining offences relating to the support that can be offered to terrorist organizations or offences purporting to prevent the financing of terrorist activities in order to ensure that various non violent conducts are not inadvertently criminalized by vague formulations of the offences in question…."[16]

The concerns expressed by the High Commissioner are highly relevant for the specific measures that the Security Council obliged or urged Member States to take in resolutions 1373, 1566 and 1624 (for example criminalization of terrorist acts including support for terrorism; the prevention of financing of terrorist acts; and incitement to terrorism). CTED's Executive Director noted in April 2008 that after six years of CTC operation, *"real progress has been made in the establishment of counter-terrorism measures in many counties…".* However, as illustrated below, much of this new legislation – some enacted as a direct result of Security Council pressure – raises serious human rights concerns.

The most recent example is Ghana, where an Anti-Terrorism Law was passed on 19 July 2008, the government reportedly explaining that the act was necessary "because all member states of the United Nations are obliged under the Security Council resolution to 'deny safe haven to those who finance, support or commit terrorist acts' ".[17] Critics believe that the new law may have a chilling effect on the rights to free expression and association.

In 2007, the Russian Federation amended a 2002 law on "extremist activity". These amendments broadened the definition of "extremism", criminalized public justification of terrorism and slander of government officials, and threatened to restrict and punish the activities of civil society organizations and other government critics.

The USA PATRIOT Act of 2001 contains a vaguely-worded definition of "material support" to proscribed entities by persons "engaged in terrorist activities". The Special Rapporteur on human rights and counter-terrorism noted that: "*This lack of precision is particularly problematic for communities, including Muslim ones, which are unable to determine whether the provisions of funds by them… will be treated as material support to a terrorist activity".* [18]

China was also quick to react to the events of 11 September 2001. By the end of the year, the Criminal Law of the People's Republic of China was amended to "punish terrorist crimes, ensure national security and the safety of people's lives and property, and uphold social order". Under Article 120 of the Criminal Code, punishments for those who "organise or lead a terrorist organisation" were made more severe, while a new offence of funding "terrorist organisations or individuals engaging in terrorist activities" was created. The new provisions of Article 120 could make it a criminal offence to be a member, leader or organiser of a "terrorist organisation", a term which is not defined in law and can easily be used to

suppress peaceful political opposition or religious groups. Chinese authorities have frequently used the "war on terror" as a pretext to justify policies of repression against the mainly Muslim Uighur community.

Jordan passed an anti-terrorism law in October 2001 that broadened the definition of terrorism, restricted freedom of expression, and widened the scope of the death penalty. In 2006 it passed the Prevention of Terrorism Act, which defines "terrorist activities" so widely that non-violent critics of the government or others exercising their right to freedom of expression can be detained under its provisions.

The broad definition of terrorism in the UK's Terrorism Act 2000 and legislation introduced after 11 September 2001 may open the way for politically motivated prosecutions of people for the legitimate exercise of their human rights. Amnesty International found that peaceful protestors have been stopped and searched under the wide-ranging powers granted to the police under anti-terrorism laws.[19] The Human Rights Committee recently noted "that the offence of 'encouragement of terrorism' has been defined in section 1 of the Terrorism Act 2006 in broad and vague terms... a person can commit the offence even when he or she did not intend members of the public to be directly or indirectly encouraged by his or her statement to commit acts of terrorism...". The UK was urged to amend these provisions to ensure that the application of the law "does not lead to a disproportionate interference with freedom of expression".[20]

In recently-amended legislation in Spain, open-ended definitions of terrorist crimes have likewise increased the possibility that measures such as incommunicado detention and aggravated penalties could be more broadly applied. The Special Rapporteur on human rights and counter-terrorism found that Articles 574, 576 and the amended article 577 of Spain's Penal Code constituted a "slippery slope", allowing for the "gradual broadening of the notion of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence against members of the general population".[21]

Denmark also widened its definition of terrorism and the scope of the offence of "aiding and abetting terrorist activities" in 2002, giving rise to concerns that the laws could be applied to those involved in non-violent activities.

The Human Rights Committee recommended in 2006 that Norway "should ensure that its legislation adopted in the context of the fight against terrorism (pursuant to Security Council resolution 1373 (2001)) is limited to crimes that deserve to attract the grave consequences associated with terrorism", as the Committee was concerned about the "potentially overbroad reach of the definition of terrorism in article 147b of the Penal Code".[22]

The Committee had earlier, in October 2005, criticized Canada for the wide definition of terrorism it had adopted in the December 2001 Anti-Terrorism Act, urging Canada to "adopt a more precise definition of terrorist offences, so as to ensure that individuals will not be targeted on political, religious or ideological grounds, in connection with measures of prevention, investigation or detention".[23]

The Committee observed that Ireland lacked a definition of terrorism and urged it to "introduce a

definition of 'terrorist acts' in its domestic legislation, limited to offences which can justifiably be equated with terrorism and its serious consequences".[24]

Counter-terrorism measures that violate international standards have also been developed on the basis of existing laws. In a recent report on counter-terrorism legislation in France, Human Rights Watch found that the broadly defined offence of "criminal association in relation to a terrorist undertaking", established as an offence under French law in 1996, "allows the authorities to intervene with the aim of preventing terrorism well before the commission of a crime. No specific terrorist act need be planned, much less executed, to give rise to the offense."[25] Suspects can be arrested and held on weak or circumstantial evidence, are given limited access to lawyers, and may be tried on the basis of evidence gained under torture or from secret intelligence sources, an approach that undermines international fair trial standards.

Amendments passed in Turkey in 2006 to the Law to Fight Terrorism did not modify the vague and broadly drawn definition of terrorism contained in existing law. Amnesty International has expressed concern that the amendments dramatically extended the spectrum of crimes punishable as terrorist offences, allowing many more individuals to be categorized as "terrorists" and subjected to trial in special courts employing harsher sanctions.[26] The Special Rapporteur on human rights and counter-terrorism noted that Turkish law appears to criminalize broadly defined terrorist aims, rather than actions, and that the legislation would support "prosecution for acts related to freedom of expression, association and assembly in relation to the notion of terrorism". He noted that journalists and publishers continue to be prosecuted under articles related to terrorism.[27]

In some countries, over-broad definitions of terrorism in legislation are linked with concerns about the death penalty. According to the wide-ranging definition incorporated in Algeria's Penal Code, terrorism includes not only threats to state security, but also damaging national or republican symbols; harming the environment, means of communication or means of transport; impeding the functioning of public institutions; and hindering free exercise of religion and public freedoms. The Human Rights Committee expressed concern over this particularly broad definition of terrorist and subversive acts, especially as some terrorism-related offences are punishable by death.[28] Morocco's Law 03-03, which also may violate the principle of legality, uses definitions open to widely differing interpretations and can be used against opposition activists and human rights defenders. On the basis of the law that describes "terrorism" as acts "related intentionally to an individual or collective act aiming to seriously harm public order by intimidation, terror, or violence", two people were sentenced to death.

Tunisia's Anti-Terrorism Law of 2003 criminalizes "acts of incitement to hatred or to racial or religious fanaticism, regardless of the means used", and acts seen as illegitimately "influencing state policy" and "disturbing public order". These terms are so broad that they can cover legitimate forms of peaceful expression, association and assembly, and may violate the principle of legality. Both the Special Rapporteur on human rights and counter-terrorism, and the Human Rights Committee in its March 2008 concluding observations, echoed concerns that the broad definitions could be used as a repressive measure to curtail legitimate dissent.[29]

Implementation of security legislation in India has led to human rights violations in several states. The

Armed Forces Special Powers Act of 1958 has been widely used in the Northeast region of India, and in Jammu and Kashmir. It violates international human rights standards by giving the security forces wide-ranging powers, including to shoot to kill. The Act has also facilitated grave human rights violations, including extrajudicial executions, enforced disappearance, rape and other torture, since the armed forces are provided with impunity under its provisions. A 2006 report by an official panel led by a retired judge acknowledged widespread abuses and recommended that the Act be repealed, but it remains in force. India did repeal the Prevention of Terrorism Act in 2004 after complaints of widespread abuse, but over a hundred people, all belonging to the Muslim minority, were held under the act in Gujarat and have yet to be brought before the ordinary courts. Considering past violations under broadly framed security legislation in the country, Amnesty International is concerned that demands to introduce new anti-terror legislation could result in laws and practices that breach India's human rights obligations.

Israel has claimed that measures that have systematically eroded the rights of Palestinians living under Israeli occupation are essential to prevent attacks on its civilian population. Amnesty International has documented in detail how, through a regime of checkpoints, permits, curfews, blockades and barriers, Palestinians have lost their right to movement "until terrorism stops", according to the government.[30] Land has been confiscated and thousands of homes allegedly "used for terrorism" have been demolished, while an "anti-terrorism fence" has been built on Palestinian land. The Human Rights Committee criticized the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although subject to judicial review, "appear to run counter to the principle of legality ... owing to the ambiguous wording...".[31] Moreover, the Special Rapporteur on human rights and counter-terrorism emphasized that "... not all acts of violence committed against an occupying power, particularly when violence is targeted at military forces of an occupying power, amount to acts of terrorism". He observed that the definition of an "act of terrorism" under Article 1 of the Prohibition on Terrorist Financing Law 2004 includes acts "creating danger to the health or security of the public" and "serious damage to property". Although emphasizing that they amounted to criminal conduct, he noted that "they should not be treated as terrorist acts".[32]

The Human Rights Committee has also been critical of laws in Chile, expressing concern that the definition of terrorism in the Counter-Terrorism Act No. 18.314 may be "excessively broad", and allows charges of terrorism to be brought in connection with protests for protection of land rights. The Committee called on Chile to adopt a narrower definition of terrorism.[33]

Australia's definition of "terrorist acts", the Special Rapporteur on human rights and counter-terrorism found, went beyond the parameters set in Security Council resolution 1566 because it includes activities which are not intended to cause death or serious bodily injury, as well as acts not defined in international conventions relating to terrorism.[34] He has consistently urged that definitions of terrorism "be restricted to the suppression and criminalization of acts of deadly or otherwise serious physical violence against civilians, i.e. members of the general population or segments of it, or the taking of hostages, coupled with the cumulative conditions identified by the Security Council in its Resolution 1566."[35]

The Special Rapporteur on human rights and counter-terrorism highlighted some positive aspects in the process leading up to the adoption of the Protection of Constitutional Democracy against Terrorist and

Related Activities Act (2005) in South Africa, especially that the country had engaged in thorough consultations leading it to take into account legitimate concerns expressed about the right to labour action and the risks involved in administrative detention. However, the Rapporteur remained concerned that the Act also included an overly broad list of crimes that may be treated as acts of terrorism. He was also critical of the failure of the authorities in South Africa to respect the principle of *non-refoulement* in suspected terrorism cases as well as in other immigration cases.[36]

UNDERMINING THE ABSOLUTE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT

As noted above, Amnesty International has persistently and unequivocally condemned acts of terrorism and other deliberate attacks on civilians, underlining that states have a duty to protect those under their jurisdiction from such attacks, and to bring the perpetrators to justice. However, Amnesty International reiterates that this duty must be exercised without the use of torture or other cruel, inhuman or degrading treatment. There are no circumstances – war or threat of war, emergency or threat of emergency – that can be used to justify violating this ban. Every human being has the right to be free from torture or other ill-treatment, whatever motivates it and whoever authorizes it. The use of torture is a threat to long-term security, not a shortcut to justice. Torture and other cruel, inhuman or degrading treatment, like slavery and genocide, are always wrong, and always prohibited under international law.

While Amnesty International has been documenting torture around the world for decades, the US-led "war on terror" has presented a new and acute threat to the international prohibition on torture and other ill-treatment. US interrogation and detention policies and practices in the "war on terror" have deliberately and systematically breached the absolute ban on torture and ill-treatment inscribed in international treaties. This cavalier attitude towards internationally-agreed principles is unlawful and is doing immense damage to the framework of human rights. It is sending a signal to governments everywhere that torture and other cruel, inhuman and degrading treatment are acceptable, and that the validity of the absolute prohibition itself can be challenged.

Indeed, the absolute ban on torture and other cruel, inhuman or degrading treatment has also been systematically flouted by governments around the world. States have inflicted unspeakable mental and physical suffering on detainees using methods long prohibited by international law. The use of torture and other ill-treatment creates a strong risk that people will "confess" to crimes, including terrorist acts, of which they are innocent. Because of such torture-induced confessions, the actual perpetrators may never be arrested and prosecuted. If a defendant alleges torture and ill-treatment and subsequently recants a confession made under these circumstances, the state is obliged to investigate the allegations of torture and ill-treatment and cannot, under international legal standards, use the evidence gained through such methods.[37]

Detainees held by the USA in Iraq, Afghanistan and Guantánamo have described the use of abusive interrogation techniques and inhumane conditions of detention, as documented in a range of Amnesty International reports.[38] Dozens of detainees have also been subjected to secret detention and enforced disappearance, both violations of the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment ("Convention against Torture"). The US administration has authorized and used interrogation methods, including stress positions, isolation, sensory deprivation and "waterboarding" (a form of water torture through simulated drowning), which violate the international prohibition on torture and other ill-treatment. US failure to fully investigate the complaints of torture and other ill-treatment arising from detentions in Guantánamo Bay, Iraq and Afghanistan, has been a cause for concern for the UN Human Rights Committee[39] and the UN Committee against Torture,[40] which urged the US government to ensure full investigations into acts of torture and ill-treatment and prosecute "all those responsible" for such acts, with punishments commensurate with the crime.

The government of the Russian Federation cites its "war on terror" in the North Caucasus as a pretext for human rights violations that include enforced disappearances, torture and other ill-treatment, arbitrary detention and incommunicado detention in unacknowledged as well as official places of detention. Detainees have been subjected to torture and other ill-treatment in order to force them to "confess" to crimes, including "terrorist" crimes.

Morocco has seen a sharp rise in reports of torture in the context of counter-terrorism measures since 2002, mainly of hundreds of alleged Islamists, many of them held in secret or unacknowledged detention. However, in a positive development, the government strengthened legal safeguards by defining torture as a criminal offence in Law No 43-04 and the new law defines torture in terms broadly consistent with Article 1 of the Convention against Torture. However, in most cases where complaints have been made involving allegations of torture, investigations have either not been opened, have been dismissed without adequate investigation, or have not resulted in perpetrators being prosecuted.

In some countries the torture of alleged terrorists has been a long-standing concern. In Egypt, where security police have carried out mass arrests in the wake of attacks by armed groups, detainees have been held in a combination of incommunicado and secret detention, often amounting to enforced disappearance. Some have died as a result of torture. In detention centres across the country, torture and other ill-treatment – including by electric shocks, beatings, suspension in painful positions, rape, and other forms of sexual violence – is systematic. Detainees held for their political beliefs or activities, especially alleged members of unauthorized Islamist groups, are at particular risk of such treatment. In many security or political cases, statements allegedly extracted under torture or other ill-treatment have been accepted as evidence by the court and have formed the basis for convictions, although the defendants in question have retracted such statements in the courtroom.[41]

Individuals arrested in connection with terrorism-related offences in Tunisia are usually tortured or otherwise ill-treated to extract "confessions" which are submitted as evidence at trial. Many defendants have retracted these statements, although the courts have continued to accept their contested statements as evidence. Indeed, Tunisian law does not expressly prohibit the use of evidence obtained under torture.

Algeria's Department for Information and Security specializes in interrogation of persons alleged to have knowledge of terrorist activities in Algeria and abroad, and practices systematic torture and use of secret detention. After torture, detainees are often forced to sign "confessions" to involvement with

armed groups or international terrorism. These practices continue despite the government's positive initiative in 2004 to enact legal provisions criminalizing torture. However, Amnesty International does not know of any prosecutions of the Department's officials for such crimes.

Jordan's security forces, especially the General Intelligence Department, which is responsible for detention and interrogation of political and security suspects, has tortured people held in prolonged incommunicado detention. The security forces' powers were enhanced under the 2006 Prevention of Terrorism Act. The State Security Court tries offenses under the Act and has convicted defendants on the basis of "confessions" extracted under torture. Some have been executed as a result.[42]

Israel's General Security Service (GSS) systematically uses torture to extract confessions from Palestinian detainees alleged to be involved in attacks on civilians and others. These detainees have been subjected to what their captors call "military interrogation" involving various forms of extreme position abuse combined with beatings. Human rights organizations and lawyers have submitted numerous detailed and well-documented affidavits of torture which are invariably dismissed by the GSS Ombudsman. The Ombudsman does not generally comment on or deny the torture described but merely states that the interrogation was based on "reliable information" and that the detainee was "allegedly involved in or assisted in carrying out serious terrorist activities".

Mauritanian law allows for anyone accused of "crimes and offences against the internal or external security of the state" to be held for 15 days in detention without charge. Those with alleged links to "terrorist" groups are usually accused of that offence. In May 2008 some 40 people were held incommunicado, in many cases longer than 15 days, after attacks allegedly launched by *al-Qa'ida* in the Islamic Maghreb. They were tortured or otherwise ill-treated. In Turkey, amendments to the 1991 Law to Fight Terrorism also increase the possibility of detaining suspects "incommunicado" for the first 24 hours of detention and severely restrict the right to immediate legal counsel. This may reverse Turkey's efforts to reduce torture and ill treatment in detention sites.[43]

NON-REFOULEMENT – A BACKWARD STEP

Amnesty International is concerned that many countries have breached their obligations of *non-refoulement* by sending people, especially those suspected of links with armed groups, to countries where they are known to face a serious risk of torture or other ill-treatment. Some states have relied on so-called "diplomatic assurances", which provide no real protection against such grave human rights violations and are inherently unreliable because they are sought from states already known to be violating their obligations under international law. Moreover, in seeking "diplomatic assurances", sending governments are admitting that torture is a wider problem in the receiving country. Under international law, all states are required to cooperate to bring such crimes under international law to an end.

The UK government, for instance, continues to return individuals to countries where they risk torture or other ill-treatment, on the basis of "diplomatic assurances". The Human Rights Committee was concerned that the UK government, until a recent European Court of Human Rights decision, had

defended the view that persons suspected of terrorism could in certain circumstances be returned to countries where there were insufficient safeguards to protect them from torture or other ill-treatment.[44]

Canada was warned by the Human Rights Committee that it could be in grave breach of Article 7 of the ICCPR because it allowed persons in exceptional circumstances to be deported to a country where they would be at risk of torture or other ill-treatment. "The State party should recognize the absolute prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from... No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where s/he runs the risk of being subjected to torture or cruel, inhuman or degrading treatment. The State party should clearly enact this principle into its law."[45]

Amnesty International has also raised concerns around the transfer of security detainees from the custody of Canadian forces in the International Security Assistance Force (ISAF) in Afghanistan, into the custody of Afghanistan's intelligence service.[46]

In May and June 2008, Denmark forcibly returned at least 10 Iraqi men to Baghdad, where they may be at risk of torture and other grave human rights violations. France continued to forcibly return detainees held in connection with terrorist offences to countries where they risk torture or ill-treatment, including to Algeria and Tunisia. In May 2007 the UN Committee against Torture found that France had violated the obligation of *non-refoulement* in Article 3 of the Convention against Torture.

Saudi Arabia failed to live up to its responsibilities with regard to *non-refoulement* after it became a state party to the Convention against Torture. The practice of returning people to a country where they risk torture or other ill-treatment has been exacerbated by its counter terrorism policies and practices and through bilateral secret security arrangements with various countries. In 2003, for example, over a dozen foreign nationals, most of them Yemenis, were handed over to their governments. The Saudi Arabian authorities said that the handover was part of bilateral security cooperation agreements to "fight terrorism". Forcible returns between Saudi Arabia and its neighbouring countries, usually carried out without regard for the rights of the individuals concerned, have become common.[47]

The Uzbekistan government continues to press for the extradition, in the name of national security and "the fight against terrorism", of members or suspected members of banned Islamic movements or Islamist parties, such as Hizb-ut-Tahrir, or people suspected of involvement in the May 2005 Andizhan events, from neighbouring countries as well as the Russian Federation. Most of those forcibly returned to Uzbekistan are held in incommunicado detention, increasing the risk of torture. In some cases, the Russian Federation has ignored decisions by the European Court of Human Rights to halt deportations of Uzbekistani asylum-seekers pending examinations of their applications by the court. Amnesty International has learned that in several cases the deported men were held in incommunicado detention and subjected to torture or other ill-treatment.

In recent years China has successfully used the rationale of the "war on terror" to put pressure on countries including Pakistan, Saudi Arabia and others in Central Asia and the Middle East, to return Chinese nationals to China. Uighurs have been the primary target of such international pressure by the

Chinese government, and even include some who had gained foreign citizenship. In 2006, Uzbekistan authorities detained Husein Dzhelil (also known as Huseyin Celil) an ethnic Uighur, and then returned him to China. Dzhelil, who had been recognized as a refugee and resettled to Canada in 2001 where he later received citizenship, was tried on 2 February 2007 in a Chinese court and sentenced to life imprisonment for "plotting to split the Motherland" and "joining a terrorist organization". Amnesty International believes that the charges against him were politically motivated and that his conviction was the result of an unfair trial, including being based on a confession that Husein Dzhelil claims was extracted through torture.

ILLEGAL DETENTION AND UNLAWFUL TRANSFERS

Under international legal standards, people can only be detained on grounds and procedures established by law. Anyone who is arrested or otherwise taken into custody has the right to be told the reasons for their detention; have access to legal counsel; have their family notified of their whereabouts; be held in a recognised place of detention; be treated humanely; not be transferred to the jurisdiction of another state without extradition or other due process, and not be transferred anywhere there is a risk that that they will be subjected to torture or other ill-treatment. Anyone who is detained must be charged with a recognizable crime and fairly tried without undue delay, or be released. In the context of the "war on terror" all of these human rights safeguards have been regularly and openly flouted.

US DETENTION POLICY: GUANTÁNAMO AND BEYOND

In late 2007, the Director of the Central Intelligence Agency (CIA) encapsulated US "war on terror" detention policy when he told an interviewer that when US forces gain overseas custody of an individual "who will do harm to America", they had three options: transfer to Guantánamo; "rendition" to a third country; or the CIA's secret detention program. All of these options stand in violation of international human rights standards.

The US detention centre at Guantánamo currently houses some 260 detainees. Since it first began receiving "war on terror" detainees in January 2002, it has held some 800 men and boys in indefinite military detention without charge or trial. Guantánamo has been at the heart of the USA's unlawful and coercive detention regime, and remains at the centre of legal challenges today. Despite US Supreme Court rulings against the government in 2004 and 2006, this executive detention regime – with the help of the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 – has thus far survived relatively intact, with detainees held in harsh, isolating and indefinite custody. Some 500 detainees have thus far been released or transferred out of Guantánamo by executive decision, rather than any judicial order.

In June 2008, the Supreme Court ruled that attempts by the US administration and Congress, through the 2006 Military Commissions Act, to strip detainees of their right to challenge the lawfulness of their detention (*habeas corpus*), were unconstitutional. The Court also rejected as inadequate the scheme set up to replace *habeas corpus*: judicial review of decisions of the Combatant Status Review Tribunals and military panels empowered to review each detainee's "enemy combatant" status.

Many of those now held in Guantánamo, as well as countless unnamed detainees in countries around the world, have been the victims of the practice of "rendition", in which people suspected of supporting, planning or committing acts of terror, and others thought to have information about them, have been unlawfully detained and transferred, outside of any judicial process, from one state to another. Renditions have usually been initiated by the USA, and carried out with the collaboration and complicity of other governments. In many cases, renditions have served to deliver suspects to the secret custody of states – including Egypt, Syria and Jordan – where torture and other ill treatment is widespread.

Amnesty International has documented the cases of 10 apparent victims of rendition who were tortured or otherwise ill-treated in Jordanian custody; others have ended up in Syria where they were likewise interrogated under torture.[48] Egypt's Prime Minister noted in 2005 that the USA had rendered some 60-70 detainees to Egypt. These included Usama Mostafa Hassan Nasr, better known as Abu Omar, who said that on arrival in Cairo in 2003 he was tortured for up to 12 hours a day over a period of seven months, and described to Amnesty International how he was hung upside down, "like slaughtered cattle", with his hands tied behind his back, and then subjected to electric shocks.[49]

The rendition network has also transferred people into US custody, where most ended up in Guantánamo or detention centres in Afghanistan, or in secret CIA facilities, sometimes after multiple transfers. Muhammad Saad Iqbal Madni, for instance, was arrested by Indonesian intelligence agents in January 2002, allegedly on the instructions of the CIA, who flew him from Jakarta to Egypt, where he "disappeared" and was rumoured to have died under interrogation. In fact, he had been secretly returned to Afghanistan via Pakistan in April 2002 and held there for 11 months before being sent to Guantánamo in March 2003. More than a year later, fellow detainees, who said he had been "driven mad" by his treatment, managed to get word of his existence to their lawyers.[50]

PARTICIPATION OF OTHER COUNTRIES IN THE RENDITION NETWORK

Since late 2005, investigations carried out by Amnesty International, the Council of Europe and the European Parliament have implicated European states in the US-led rendition and secret detention program.51 Investigations by the Council of Europe indicated that between 2003 and 2005, Poland and Romania hosted secret prisons run by the CIA, where detainees who were victims of enforced disappearance were held in conditions amounting to torture or other cruel, inhuman or degrading treatment.

The role of European states in renditions and secret detention has ranged from active participation to tacit collusion. European agents in Sweden, Macedonia and Bosnia and Herzegovina have detained suspects and turned them over to US custody without judicial process. In Italy, a carabinieri officer helped US agents abduct a suspect off a street in Milan before his rendition to Egypt. Europe's airports have been freely used by CIA-operated planes that have transported victims of rendition, hooded and chained, to interrogation and ill-treatment in secret incommunicado detention in locations around the world.

Despite the egregious violations inherent in the practice of rendition, European states have not taken

measures to prevent further European involvement in rendition and secret detention, and have failed to investigate violations carried out by their nationals or on their territory. Although individual prosecutors in some countries have made laudable efforts to investigate and ensure accountability for past violations, European governments have invoked national security or state secrecy grounds to thwart investigations.

Some European states failed to cooperate fully with the inquiries established by the Council of Europe Secretary General, the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament. According to the 2007 PACE report: "Many governments have done everything to disguise the true nature and extent of their activities and are persistent in their uncooperative attitude."[52] Many states, as well as NATO, did not respond to questionnaires distributed by the PACE investigators. The report singled out Poland, Romania, Macedonia, Italy and Germany for particular criticism. The European Parliament's TDIP report of 2007 deplored the lack of cooperation by the governments of Austria, Italy, Poland, Portugal, and the UK.[53]

Most known victims of rendition were initially detained in Pakistan, where the government worked closely with the USA on intelligence matters. Those who were apprehended in 2001 and 2002 have frequently described being sold into US custody by local police or border officials. In 2005, Pakistani officials publicly stated that some 700 "*al-Qa'ida* suspects" had been arrested since 2001, most of whom were handed over to US custody.

The rendition network operates across every continent. Kenya has carried out unlawful transfers to Somalia, Ethiopia and into US custody. Between December 2006 and February 2007 more than 140 people, including some Kenyans, were arrested by Kenyan authorities as they entered Kenya from Somalia, where fighting between government forces and the Union of Islamic Courts had escalated. The Kenyan government said that these arrests were to prevent "terrorists" fleeing the conflict in Somalia from crossing into Kenya. Most detainees were held for weeks without charge or access to any legal process, and some were reportedly tortured or otherwise ill-treated. In January and February 2007, at least 85 of these people were transferred – again without any legal process – to Somalia, and some from there to Ethiopia. Dozens remain the victims of enforced disappearance. Kenya has also transferred detainees directly into US custody without due legal process: in February 2007, Mohamed Abdulmalik, a Kenyan citizen, was arrested in Mombasa and held incommunicado there and in Nairobi. On 26 March 2007, the US Department of Defense announced that Mohamed Abdulmalik had been transferred to Guantánamo Bay.

SECRET DETENTION AND ENFORCED DISAPPEARANCE

On 6 September 2006, US President George W. Bush announced the transfer of 14 men from secret CIA custody to military detention at Guantánamo. This was the first time that the USA program of clandestine interrogation and detention, long an open secret, was publicly acknowledged. Although the President noted that no-one was then being held by the CIA, he emphasized that the secret detention program would "continue to be crucial", and at least two additional "high value" detainees have since been transferred from CIA custody to Guantánamo. In June 2007 Amnesty International and five other

NGOs published details about some three dozen individuals, believed to have been held in the CIA program, whose fate and whereabouts remain unconfirmed. It is unclear whether they have been transferred to the custody of other governments, remain in US custody, or if they are alive or dead.[54]

The CIA operated its secret detention program in covert prisons outside the USA, known as "black sites". The locations of these sites remains unknown, their operations are classified at the highest level of secrecy, and they have never been open to any scrutiny or inspection. The identity of those detained is not disclosed to family members, lawyers, or humanitarian organizations such as the International Committee of the Red Cross (ICRC), and detainees are isolated from each other and from the outside world. "Black sites" reportedly existed in at least eight countries at various times since 2002.[55]

Secret detention violates international human rights and humanitarian law. Torture and enforced disappearance, which frequently accompany the use of secret incommunicado detention, are both crimes under international law, and must be investigated, and the perpetrators brought to justice. However, the illegality of the CIA's secret program has been accompanied by a complete absence of accountability for such crimes. In July 2007 President Bush issued an executive order effectively re-authorizing the CIA's use of secret detention and interrogation, and that order remains in force.[56]

Many other countries, some listed in this brief, also hold security suspects in secret detention, but do so in their own territory. Algeria, for example, keeps those suspected of having knowledge of terrorist activities in secret detention, and their families are denied all knowledge of their whereabouts. The Human Rights Committee expressed concern about numerous reports pointing to the existence of secret detention centres, and urged the government to take a range of concrete measures to ensure compliance with Article 9 of the ICCPR and to end enforced disappearances.[57]

In some countries the use of enforced disappearance has increased in the context of the "war on terror". In Pakistan, enforced disappearances rarely occurred before September 2001. Since then, many hundreds of people have been arbitrarily detained and held in secret places. Although the practice was initially employed against those with alleged links to *al-Qa'ida*, it soon spread to activists involved in pushing for greater ethnic or regional rights, including Baloch and Sindhis. The "disappeared" were denied access to lawyers, families and courts and virtually all are believed to have been tortured or otherwise ill-treated. The Pakistan Supreme Court started hearing individual petitions on the "disappeared" in 2006, and Supreme Court activism resulted in some 186 persons being traced from a list of 458 enforced disappearances pending before the court: those located were either released or their whereabouts were made known. The November 2007 declaration of emergency rule by then President Pervez Musharraf prompted the dismissal of most of the judges in Pakistan's higher courts. Since then, no further cases have been heard, and hundreds remain "disappeared".[58]

EXTENDED POWERS OF DETENTION WITHOUT TRIAL

Under cover of the "war on terror" many countries have extended their powers of detention without trial, sometimes indefinitely, while curbing important safeguards, in violation of human rights standards.

In March 2007, a new Federal Law on Counteracting Terrorism was adopted in the Russian Federation. It failed to set out explicit safeguards for individuals detained in counter-terrorism operations, and allowed the armed forces to conduct such operations even outside the territory of the Russian Federation. The UK is now considering a bill that would allow terror suspects to be held for up to 42 days without charge.[59] The Human Rights Committee criticized the proposals saying it had already been concerned by the extension of pre-trial detention, under the 2006 Terrorism Act, from 14 days to 28 days, and was "even more disturbed by the proposed extension of this maximum period of detention under the Counter-Terrorism Bill from 28 days to 42 days".[60]

The Anti-Terrorism Act (No. 2) 2005 in Australia established "preventive-detention orders", allowing a person to be held for 24 hours, extendable to 48 hours by a judicial officer, if there are grounds to suspect that the person will commit an "imminent terrorist act" or their detention is necessary to preserve evidence about a recent attack. There is a high risk that such orders could be based on secret information, and could be contrary to the right to fair trial. The Act also introduced the power to detain and question suspects for up to seven days. Restrictions on the right to seek a judicial review during this period, according to the Special Rapporteur on human rights and counter-terrorism, "[offend] the right to a fair hearing and the right to have the legality of one's detention determined by an independent and competent authority".[61]

Spain's Code of Criminal Procedure, in Articles 509, 520bis and 527, allows for a maximum period of 13 days incommunicado detention for persons suspected of terrorism-related offences. The government extended the time limit of detention under such conditions – widely known to facilitate torture – in 2003 and has persistently ignored calls by the UN Committee against Torture, the Human Rights Committee and the Special Rapporteur on human rights and counter-terrorism to abandon the regime.

The Human Rights Committee has also expressed concern about the use in France of long-term pre-trial detention in terrorism and organized crime cases, extending for periods up to four years and eight months. Recognizing that several safeguards existed, including periodic review of the custodial decision by "liberty and custody judges" (*juges des libertés et de la détention*), the Committee noted that the institutionalized practice of extended investigative detention, before proceeding to a final charge and criminal trial, is difficult to reconcile with the Covenant's guarantee of trial within a reasonable time. It called on France to "limit the duration of pre-trial detention."[62]

Morocco's Law No. 03-03 of 28 May 2003 extended what were already long periods of detention without charge or judicial review. Detainees can now also be denied access to a lawyer for up to six days. In Egypt thousands of administrative detainees are being held without charge under emergency laws, in force since 1981 and extended for another two years in May 2008. Some of them have been held continuously since the early 1990s.[63] People arrested as terrorist suspects who are not charged or who are acquitted are often kept in administrative detention by the Interior Minister under emergency legislation.

Since the adoption of Resolution 1373 in 2001, the number of victims of arbitrary arrest and detention in Saudi Arabia has risen from the hundreds to the thousands. In July 2007, the Minister of Interior said that security forces had detained 9,000 security suspects between 2003 and 2007, and that 3,106 of

them remained in detention.[64] Large numbers of detainees are believed to be held in or near to Mekkah and Jeddah in the west, Riyadh and Buraida in the centre and al-Dammam in Saudi Arabia's Eastern Province.

In Iraq, the US-led Multinational Force (MNF) is holding around 23,000 people in the prisons and detention facilities under its control, namely Camp Cropper at Baghdad Airport, Camp Bucca near Basra in the south, and Camp Susie near Sulaimaniya in the Kurdistan region of Iraq. The vast majority of these detainees are held without charge or trial, some for up to five years.

The authorities in Malaysia have increasingly sought to justify its 48-year-old Internal Security Act (ISA) as a necessary tool to fight terrorism. The law allows for preventive detention, and provides for incommunicado detention of up to 60 days, which is often carried out in secret locations, substantially increasing the risk of torture and other ill-treatment. After the initial 60 days, detainees can be issued two-year detention orders, renewable indefinitely. Hundreds of individuals accused of being Islamist militants have been detained without trial under the ISA since 2001.

CHALLENGES TO FAIR TRIAL GUARANTEES

The principles of fair trial are well established.[65] They include the presumption of innocence; the right to be informed promptly of the charges faced; to be tried without undue delay by a competent, independent and impartial tribunal; to be tried in person; to defend oneself in person or through legal assistance and to have access to legal counsel. Those facing trial also have the right to examine, or have examined, the witnesses for the prosecution; not to be compelled to testify against oneself or to confess guilt; and to have any conviction and sentence reviewed by a higher tribunal according to law. Yet in case after case, those detained in the context of the "war on terror" have been denied these rights and protections. Some states have created special courts, others have tried civilians accused of involvement in or links to terrorism in military courts, or have adopted procedures which otherwise fail to meet international standards for fair trial.

Under its global war paradigm, for example, the USA has sought to remove what it calls "unlawful enemy combatants" from the protections of the US Constitution and of international human rights law, including the fair trial standards enshrined in the ICCPR. The right to trial within a reasonable time is denied to "unlawful enemy combatants": the vast majority of those held in Guantánamo have not been charged, although two have been tried and convicted, and about 20 more face charges under the Military Commissions Act (MCA) of 2006, including two young men who were taken into custody when they were children, under the age of 18.

Military commissions under the MCA, signed into law on 17 October 2006, do not meet international fair trial standards. They lack independence from the executive branch of government; they may admit information obtained in contravention of the international prohibition of cruel, inhuman or degrading treatment or punishment; the right to be represented by a lawyer of the detainee's choice is restricted; the rules on hearsay and classified information may severely curtail a defendant's ability to challenge the case against him. Moreover, the commissions, which apply only to non-US citizens, are

discriminatory, in violation of international law. At any such trials, the defendants will be men who have been subjected to years of indefinite detention, whose right to be presumed innocent has been systematically undermined by a pattern of official commentary on their presumed guilt.66 Even if they are acquitted or complete serving a sentence, there is no guarantee of release. Salim Hamdan, a Yemeni convicted by a military commission in August 2008 of "providing military support for terrorism", will have served his sentence by the end of 2008. The Pentagon, however, confirmed that he could remain in indefinite detention as an "enemy combatant" regardless of the sentence.

Other countries have brought terrorism suspects to trial in courts that also do not meet international standards for fair trial. In Egypt, for instance, a parallel system of emergency justice, involving specially constituted "emergency courts" and the trial of civilians before military courts, has been established for cases deemed to affect national security. Under this system, safeguards for fair trial, such as equality before the law, prompt access to lawyers and the ban on using evidence extracted under torture, have been routinely violated. After such grossly unfair trials some defendants have been sentenced to death and executed. Amended Article 179 of the Constitution paves the way for a proposed new antiterrorism law. It also allows the President to bypass ordinary courts and refer people suspected of terrorism to any judicial authority he likes, including military and emergency courts.[67]

Sudan's Anti-Terrorism Special Courts also fall far short of international fair trial standards. Some of those sentenced in August 2008 only met their lawyer for the first time on the day they were sentenced, others were reported to have been tortured and forced to confess while held in incommunicado detention. As regards access to independent legal counsel, the Human Rights Committee has stressed that it is an important safeguard against torture and other ill-treatment and essential in giving effect to the right to challenge the legality of detention. Under the provisions of Act No. 2006/64 of January 2006, France limits terror suspects to restricted access to lawyers (once after 96 hours and once after 120 hours), thus undermining the right to counsel and facilitating ill-treatment in custody. The Human Rights Committee raised concerns in a recent report about these provisions and recommended that France "should ensure that anyone arrested on a criminal charge, including persons suspected of terrorism, are brought promptly before a judge, in accordance with the provisions of Article 9 of the Covenant.[68]

Most defendants in terrorism-related cases in Algeria have inadequate or no access to legal counsel during detention or when first brought before an examining judge. Lawyers acting in such cases in Tunisia complained that they could not be present during pre-trial detention and that there were breaches of client – lawyer confidentiality. The Human Rights Committee voiced concern in March 2008 that lawyers could be obliged to testify or face imprisonment, and that investigators and judges may remain anonymous, practices that do not conform with Articles 6, 7 and 14 of the Covenant.

Asylum seekers or those facing deportation face unfair procedures as a result of heightened concerns about national security. For example, in the UK, appeal proceedings against orders for deportation on "national security" grounds before the Special Immigration Appeals Commission are profoundly unfair because they take place, in part, in closed hearings which consider information, including intelligence material, which is kept secret from the deportee and his lawyers of choice. In Denmark, Section 25 of the Aliens Act allows the expulsion of non-nationals deemed to pose a threat to national security,

without the person in question being informed of the grounds on which they are considered to pose such a danger, and without having a right to challenge the order in a court of law. These provisions could allow individuals to be expelled to countries where they would be at risk of grave human rights violations, including torture or other ill-treatment.

CONCLUSION

This brief review of counter-terrorism measures in selected countries illustrates the pressing need for all UN Member States to initiate a prompt and thorough review of their counter-terrorism laws and practices to ensure that they are brought in line with human rights standards. In so doing, states must act upon the specific recommendations made by the High Commissioner for Human Rights, the relevant Special Procedures of the Human Rights Council including, especially, the Special Rapporteur on human rights and counter-terrorism, as well as the specific observations and recommendations made by the relevant treaty bodies, including the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination.

The High Commissioner for Human Rights has repeatedly emphasized that "compliance with international human rights standards is essential where any counter-terrorism measure involves the deprivation of an individual's liberty."[69] Moreover, the Human Rights Committee, in an important General Comment relevant to all measures taken in the name of security, has emphasized that even in cases of a public emergency which threatens the life of the nation, all State Parties to the ICCPR are obliged to uphold fundamental requirements of fair trial, which include the presumption of innocence and the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention.[70]

ANNEX I

VICTIMS OF TERRORISM

Attacks by armed groups which deliberately target civilians, and indiscriminate attacks by such groups, are grave abuses of human rights. When such attacks take place in the context of an armed conflict they can constitute war crimes. When these are widespread or systematic attacks on the civilian population in furtherance of an organizational policy, such attacks can also constitute crimes against humanity. Certain conduct committed with the intention to destroy, in whole or in part a national, ethnical, racial or religious group can amount to genocide. Victims of such attacks have rights to justice, truth and reparation, in accordance with international standards such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the Basic Principles and Guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law.

While states often focus on counter-terrorism policies, they must not neglect the needs and rights of victims. As former UN Secretary-General Kofi Annan stated, "a counter-terrorism strategy must emphasize the victims and promote their rights"[71].

States must move beyond mere rhetoric on "solidarity" with victims, and ensure in law and in practice the respect and protection of human rights of victims, including through dedicating adequate resources without discrimination on any ground prohibited by international law.

The Council of Europe has adopted Guidelines on the Protection of Victims of Terrorist Acts, committing to various measures for the assistance of victims. Building on guidelines and principles agreed by the United Nations and the Council of Europe, Amnesty International has identified the principles that should guide states' treatment of victims.

Amnesty International calls on other states and regional bodies, in consultation with victims, NGOs and national human rights institutions, to adopt and implement similar transparent guidelines with a view to ensuring that the rights of victims are respected in a framework that ensures the protection of the human rights of all persons.

In particular, the following principles should guide states' treatment of victims:

- States shall treat victims and their families with humanity, compassion and dignity with due respect for their privacy.

- States should acknowledge the status of victim to both the direct victims of terrorist attacks and

their families, as well as to people who have suffered harm in intervening to assist victims or to prevent their victimization.

- The acknowledgement of the status of victim and the granting of assistance shall not depend on the identification, apprehension, prosecution or conviction of the perpetrator(s).

- States should promptly provide to victims, in a language that they understand, information about their rights, including to reparations.

- Following a terrorist attack, States have the obligation to open a prompt, thorough, effective and independent official investigation, capable of leading to the identification of the persons reasonably suspected of being responsible for such act. Victims must have the right to present and challenge evidence and receive prompt information about the progress of the investigation, unless they specifically request not to. The methods, scope and results of the investigation should be made public. At all stages of the investigation and any subsequent proceedings, appropriate measures must be taken to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, in a manner that is consistent with the rights of all suspects and accused persons to a fair trial.

- States should ensure that emergency medical and psychological assistance is available and accessible to any person having suffered mentally or physically following a terrorist attack. States should also ensure the availability, accessibility and provision of necessary and appropriate continuing assistance, including medical, psychological, legal, social and material to victims of terrorist attacks as well as to their families.

- The rights of victims, including to reparations, should be protected without any discrimination or distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, national, ethnic or social origin and disability. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as their sex, language, nationality, ethnic or social origin, religion, cultural background or disability.

- States must guarantee effective access to the law and to justice to victims of terrorist attacks and their families. In particular, information, aid and assistance should be provided to ensure effective access to the law and to justice, notably to cover the costs that such procedures can entail, including legal assistance. Victims should be allowed to participate in criminal proceedings, including presenting their views at relevant stages, in a manner that is consistent with the rights of the accused to a fair trial.

- Victims have a right to reparation, which include compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Mechanisms for reparations should be easily accessible, involve a simple procedure and allow for reparation to be provided for rapidly. In some cases, states should consider establishing reparations programs to ensure that victims receive prompt, full and effective reparations.

- States should enact effective legislation and procedures (including legal aid) to enable victims to pursue civil claims against perpetrators and their estates or their organizations or others who assisted in the commission of the crime. When reparation is not fully available from other sources, in particular

through the confiscation of the property of the perpetrators, States should introduce a mechanism to ensure fair and appropriate reparation to victims.

- States should ensure that barriers such as state and other immunities cannot prevent victims of serious human rights abuses from seeking reparations against other states or their representatives before national courts or enforcing such reparations orders made by their national courts.

- States must respect and protect the freedom of expression and freedom of association of victims, victim associations and other civil society organizations. Such individuals and groups should be able to campaign and offer assistance without any hindrance from State authorities or others.

- States must also prevent further indirect victimisations of minority communities which often suffer violence and harassments after an attack.

- Law enforcement, judicial authorities, social services officials and other concerned personnel should receive training to sensitize them to the needs and rights of victims.

- Reparations for victims of terrorism should not be, directly or indirectly, at the expense of reparations for other types of human rights abuses, including victims of human rights violations in the context of counter-terrorism. States should maintain equity between all victims and not create a hierarchy of victims.

Miscarriages of justice and other human rights violations against suspected perpetrators of terrorist attacks violate the victims' rights to justice and truth. When states hold in their custody suspected perpetrators of attacks against civilians and refuse to bring them to justice in a fair trial, instead subjecting them to enforced disappearances, indefinite detention without trial, or unfair trials, states not only violate the rights of suspects but also the rights of the victims of the attacks, who without fair trials will not be able to see justice done and learn the truth about those attacks. Wrongful convictions resulting from unfair trial compound the problem, as the case is closed and those who are actually culpable remain at large, leaving the victims with neither truth nor justice, and still in the dark about the true identity of those responsible. Justice for the victims of terrorist attacks will not be achieved without fair trial of the suspects.

ANNEX II

OPEN LETTER TO MEMBERS OF THE SECURITY COUNCIL AND MEMBERS OF THE GENERAL ASSEMBLY

Adoption of resolution 1822 on listing and delisting of suspected terrorists

Ref.: TIGO 40/2008.163

8 July 2008

Dear Ambassador,

On 30 June 2008 the Security Council unanimously adopted resolution 1822 (2008) extending the mandate of the Analytical Support and Sanctions Implementation Monitoring Team for a further 18 months. The team oversees the application of targeted sanctions against *al-Qa'ida* and the Taliban.

Amnesty International is deeply disappointed that the Security Council failed to create 'fair and clear procedures… for placing individuals and entities on sanctions lists and for removing them". The 2005 World Summit and members of the General Assembly, in adopting the UN Global Counter-Terrorism Strategy in 2006, called for such an outcome. The Security Council itself committed to establishing such procedures in its Presidential Statement of 22 June 2006.

Particularly regrettable is that the Council failed to create essential safeguards: an independent review mechanism to examine de-listing requests and direct access by those listed, or targeted to be listed, to fair hearings providing basic guarantees. The Council did not even take the modest step of expressing an intention to consider further proposals regarding an independent review mechanism in future. Rather, the Council merely called on the Committee established under resolution 1267 (1999) "to keep its guidelines under active review".

We recognize that the Council, in adopting resolution 1822 (2008), has made minor improvements towards addressing the lack of fair and clear procedures in the current sanctions regime. We also acknowledge and welcome the persistent efforts by certain non-permanent members and other

Member States to promote enhanced fairness of the procedures, although they remained largely unsuccessful. Due to their efforts, the new resolution directs the Committee established under resolution 1267 to conduct a review of all names on the Consolidated List by 30 June 2010, and thereafter to conduct an annual review ensuring that each name is reviewed at least within three years (OP 25 and 26). (Amnesty International had recommended periodic reviews of all names every six months and that a consensus requirement for de-listing be replaced by a simple majority vote).

The Council also directs each state, when proposing a name for inclusion on the list, to provide a 'detailed statement of case', to identify those parts thereof that may be publicly released, and also that a 'narrative summary' of reasons for listing is made public on the Committee's website (OP 12 and 13). (Amnesty International had recommended that all those listed receive full information on the comprehensive grounds that formed the basis for the decision and of the criteria applied in deciding the listing.)

Noteworthy also is that Member States are now required to notify those listed "in a timely manner" of a listing decision with "the publicly releasable portion of the statement of the case" (OP17). [Amnesty International had recommended that full information for the listing must be made available, if not to the listed person or entity, than at least to a review panel and that the sanctions Committee or the Focal Point be required to inform the listed person or entity direct rather than leaving action with Member States concerned.]

Finally, the Council included a much needed reference in the resolution to the obligation to uphold international human rights, refugee and humanitarian law in combating terrorism. Amnesty International regrets, however, that the stated commitment to that principle was only made in a preambular paragraph and plainly is not given effect in the operative part of the resolution, the provisions of which continue to fall well below international human rights standards. This adds to the burden of UN Member States who must ensure that they meet their obligations under the Security Council sanctions regime as well as their obligations under international human rights law.

In addition to our concerns about the lack of fairness, due process, and transparency in the procedures, Amnesty International remains concerned at the broad and vague terms used in the resolution which are incompatible with general principles of legality and that can therefore facilitate abuse. Operative paragraph 2 lists among the indications to be relied upon in defining an individual, group, undertaking, or entity as "associated with" *al-Qa'ida*, Usama bin Laden and the Taliban the catch-all language "or…otherwise supporting acts or activities of". The United Nations' and other human rights mechanisms have repeatedly recognized that sweeping and vaguely worded provisions like these can have a serious, negative impact on individual rights, and are fundamentally inconsistent with international human rights standards.

Despite the small positive steps taken by the Council in adopting resolution 1822 (2008), the human rights deficit in the current sanctions regime, as described in our 3 June 2008 open letter to the Council, persists. Amnesty International urges the Security Council to immediately request and consider concrete proposals to ensure that "fair and clear procedures" are created by the Council that enable Member States to meet their obligations under the targeted sanctions regime as well as those under

international human rights law.

Amnesty International expresses the hope that the General Assembly, in its forthcoming review of the UN Global Counter-Terrorism Strategy, will consider and stress the need for substantial further improvements in the current sanctions regime to ensure the creation and implementation of truly 'fair and clear procedures', in accordance with international human rights law and standards, for listing and de-listing individuals. The UN Charter, which stresses UN conformity "with the principles of justice and international law", requires no less.

We recommend to that end that UN Member States take the following as their starting point: the June 2006 recommendations made by the UN Secretary-General, those made by concerned UN Member states, by the High Commissioner for Human Rights, by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as well as the recommendations made by NGO's.

Our office will be pleased to provide further information.

Yours sincerely,

Yvonne Terlingen

Head of Amnesty International Office at the United Nations

ENDNOTES

[1] Report of the Secretary-General, Uniting against Terrorism: Recommendations for a global counter-terrorism strategy (A/60/825).

[2] UN General Assembly resolution (A/60/288, Annex, Plan of Action, part IV). The other three pillars are: (i) Measures to address the conditions conducive to the spread of terrorism, (ii) Measures to prevent and combat terrorism, (iii) Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard.

[3] Although the Global Strategy "encourage[s] non-governmental organizations and civil society to engage, as appropriate, on how to enhance efforts to implement the Strategy" there are no procedures or structures in place for NGO's to interact with the UNGA about implementation of the Global Strategy. The Informal meeting of the Plenary on the Implementation of the United Nations Global Counter-Terrorism Strategy, held at UN headquarters on 4 December 2007, provided a platform for States to exchange views but human rights organizations like Amnesty International were not given an opportunity to contribute to the debate.

[4] See, e.g., Israel and the Occupied Territories and the Palestinian Authority: Without Distinction – attacks on civilians by Palestinian armed groups (MDE 02/003/2002), Iraq: In cold blood: abuses by armed groups (AI Index: MDE 14/009/2005), and Afghanistan: All who are not friends, are enemies: Taleban abuses against civilians (AI Index: ASA/11/0012007).

[5] Statements by former UN Secretary-General Kofi Annan, 12 April 2002 and 10 March 2005.

[6] Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/8/13, para 4). For a succinct description of the relationship between human rights and terrorism, the human rights challenges that have arisen and how States can address them, see Human Rights, Terrorism and Counter-terrorism, fact Sheet No. 32, Office of the High Commissioner for Human Rights, 2008.

[7] Only three years later, in October 2004, did the Security Council come close to adopting a definition on terrorism when passing resolution 1566. In that resolution the Council identified, for the first time, elements of terrorism, emphasizing that there must be an intention of causing death or serious bodily injury. OP3 of resolution 1566 reads: "Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature."

[8] United Nations: Proposed Anti-Terrorism resolution undermines human rights (IOR 40/000/2004).

[9] E/CN.4/2006/98, para 54.

[10] E/CN.4/2006/98, paras 57 – 62, also providing other country-specific examples.

[11] The Office of the High Commissioner for Human Rights has provided a range of good tools to assist states in this task. Its most recent publication, Human Rights, Terrorism and Counter-terrorism, Fact Sheet No. 32, Office of the High Commissioner for Human Rights, 2008, is mentioned in note 7. See also, A Human Rights Perspective on Counter-Terrorist Measures: Note to CTC Chairman submitted upon Mary Robinson's departure as UN High Commissioner for Human Rights (Further guidance) 23 September 2002. OHCHR has also announced that it is updating its Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism

[12] Discussion Paper prepared by the governments of Denmark, Germany, Liechtenstein, the Netherlands, Sweden and Switzerland, Improving the implementation of sanctions regimes through ensuring 'fair and clear procedures,' 2 July 2008 (A/62/891 – S/2008/428).

[13] All letters are available from Amnesty International on its website. The letter dated 3 June 2008 addressed to the Security Council is also available in Arabic, French and Spanish.

[14] China, France, the Russian Federation, the United Kingdom, the United States of America.

[15] This was also emphasized by the Special Rapporteur on Human and Rights and Counter-Terrorism, following his May 2007 visit to the United States. He concluded "that the international fight against terrorism is not a 'war' in the true sense of the word, and reminds the United States that even during an armed conflict triggering the application of international humanitarian law, international human rights law continues to apply. He reiterates that international human rights law is also binding upon a State in respect of any person subject to its jurisdiction, even when it acts outside its territory" (A/HRC/6/17/Add.3, Summary).

[16] Report of the UN High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/8/13) paras 20 – 23.

[17] Available at http://allafrica.com/stories/200807071545.html.

[18] A/HRC/6/17/Add.3, para 41.

[19] UK: Human rights: a broken promise (AI Index: 45/004/2006) is one of a range of Amnesty International publications on the issue concerning the UK.

[20] CCPR/C/GBR/CO/6, para 26.

[21] UN Special Rapporteur on Human Rights and Counter-Terrorism concludes visit to Spain, 14 May 2008, available at http://www2.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm.

[22] CCPR/C/NOR/CO5, para 9.

[23] CCPR/C/CAN/CO/5, para 12.

[24] CCPR/C/IRL/CO/3, para 11.

[25] Human Rights Watch, Preempting Justice: Counterterrorism Laws and Procedures in France, July 2008.

[26] Turkey: Briefing on the wide-ranging, arbitrary and restrictive draft revisions to the Law to Fight terrorism (AI Index: EUR 44/009/2006).

[27] Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: Mission to Turkey (A/HRC/4/26/Add.2) paras 14 – 18, 16 Nov 2006.

[28] CCPR/C/DZA/CO/3, para 17. See Amnesty International report, Algeria: Unrestrained powers: Torture by Algeria's Military Security (MDE 28/004/2006) available at http://www.amnesty.org/en/library/info/MDE28/004/2006.

[29] E/CN.4/2006/98 Add.1, para 15, CCPR/C/TUN/CO/5, para 15.

[30] Israel and the Occupied Territories: Road to Nowhere (AI Index: MDE 15/093/2006) and Enduring occupation: Palestinians under siege in the West Bank (AI Index: MDE 15/033/2007).

[31] Official Records of the General Assembly, 58th session, Supplement No.40 (A/58/40) vol I Chap. IV, para 85 (14).

[32] A/HRC/6/17/Add.4 , 16 November 2007, para 14.

[33] CCPR/C/CHL/CO/5, para 7.

[34] A/HRC/4/26/Add.3, para 15.

[35] A/HRC/6/17/Add.4, para 55.

[36] A/HRC/6/17/Add.2, see paras 45-52, 61, 62, 65, 67 and 78.

[37] Under Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any statement made as a result of torture cannot be invoked as evidence in any proceeding, except against a person accused of torture as evidence that the statement was made.

[38] See, e.g., USA: A case to answer: from Abu Ghraib to secret CIA custody (AI Index: AMR 51/013/2008); USA: Human Dignity Denied, October 2004 (AI Index: AMR 51/145/2004); USA: Guantánamo and Beyond: The continuing pursuit of unchecked executive power, May 2005 (AI Index: AMR 51/063/2005); USA: Amnesty International's Supplementary Briefing to the UN Committee against Torture (AI Index: AMR/061/2006).

[39] Human Rights Committee, United States of America: Concluding observations (CCPR/C/USA/Q/3/CRP.4) paras 13-17.

[40] Conclusions and recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, see paras 14-26.

[41] See Egypt: Systematic abuses in the name of security (AI Index: MDE 12/001/2007).

[42] Jordan: Your confessions are ready for you to sign: Detention and torture of political suspects (AI Index: MDE 16/005/2006).

[43]Turkey: The Entrenched culture of Impunity must end (AI Index: EUR 44/008/2007) and Letter addressed to Mr. Adbullah Gul, Turkish Deputy Prime Minister and Minister of Foreign Affairs, Thomas Hammarberg, Council of Europe Commissioner for Human Rights, available at

https://wcd.coe.int/ViewDoc.jsp?id=1105025&BackColorInternet=FEC65B&Back ColorIntranet=FEC65B&BackColor Logged=FFC679.

[44] CCPR/C/GBR/CO/6, para 12.

[45] CCPR/C/CAN/CO/5, para 15.

[46] Afghanistan: Detainees transferred to torture: ISAF complicity? (AI Index: ASA 11/011/2007).

[47] See, e.g., Amnesty International Urgent Action, Fear of torture and ill-treatment (AI Index: MDE 23/005/2007) of 1 February 2007, issued to seek protection for Yemeni and Saudi Arabian nationals being swapped by their respective governments.

[48] See, supra note 43.

[49] Amnesty International interview with Abu Omar, April 2007.

[50] See Below the Radar (AI Index: 51/051/2006) April 2006.

[51] See Amnesty International, Partners in crime: Europe's role in US renditions, June 2006 (AI Index: EUR 01/008/2006), and State of Denial: Europe's role in rendition and secret detention, June 2008 (AI Index: EUR 01/003/2008). See also the European Parliament's Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners (TDIP), Interim Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, 15 June 2006; Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, 30 January 2007; European Parliament resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)), P6_TA(2007)0032, 14 February 2007.

[52] Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report, 11 June 2007, Dick Marty, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, para 3.

[53] 30 January 2007 TDIP report, paras 56-57, 59.

[54] Amnesty International, Cage Prisoners, Centre for Constitutional Rights, Center for Human Rights and Global Justice, Human Rights Watch, and Reprieve, Off the Record: US responsibility for enforced disappearances in the "war on terror" (AI Index: AMR 51/093/2007) June 2007.

[55] According to a November 2005 report in the Washington Post, there were "black sites" in some eight countries at various times since 2002, and the 2007 report by the Parliamentary Assembly of the Council of Europe (op cit) established "with a high degree of probability" that the CIA had operated black sites in Poland and Romania, and perhaps in other European states or territory. There were reportedly black sites in other countries including Afghanistan, Jordan, Pakistan and Thailand, but no country has ever admitted to hosting a black site, and the facilities were reportedly used in rotation, to prevent detection, with several sites available at any given time. See Below the Radar (AI Index: 51/051/2006) and A case to answer: from Abu Ghraib to secret CIA custody (AI Index: AMR 51/013/2008).

[56] See Amnesty International, USA: Law and executive disorder; President gives green light to secret detention program (AI Index: AMR 51/135/2007) August 2007, available at

http://www.amnesty.org/en/report/info/AMR51/135/2007.

[57] CCPR/C/DZA/CO/3, paras 11- 12.

[58] Denying the Undeniable: Enforced Disappearances in Pakistan (AI Index: ASA 33/018/2008). In August 2008, eight judges of the Singh High Court were reinstated.

[59] United Kingdom: Amnesty International's briefing on the Counter-Terrorism Bill 2008 (AI Index: EUR 45/010/2008).

[60] CCPR/C/GBR/CO/6, para 15.

[61] A/HRC/4/26/Add.3, paras 43 – 47.

[62] CCPR/C/FRA/CO/4, para 15.

[63] The Human Rights Committee, supervising implementation of the ICCPR, has repeatedly emphasized that even under an officially declared state of emergency, "Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature" (General Comment 29, CCPR/C/21/Rev.1/Add.11). Egypt is a party to the ICCPR.

[64] See AFP report: Saudi Arabia foils 180 'terror' attacks since 2003, 2 July 2007.

[65] Articles 9 and 14 ICCPR, *inter alia.*

[66] For details, see USA: Justice delayed and justice denied? Trials under the Military Commissions Act (AI Index: AMR 51/044/2007).

[67] Egypt: Systematic Abuses in the name of Security (AI Index: MDE 12/001/2007).

[68] CCPR/C/FRA/CO/4, para 14.

[69] A/HRC/4/88, para 32.

[70] "States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law ... through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence". Human Rights Committee, General Comment No. 29 on Article 4 ICCPR (CCPR/C/21/Rev.1/Add.11, para 11). See also para 16.

[71] Uniting Against Terrorism (A/60/825).