

# **@AI's statements to the 45th session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities**

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UN Sub-Commission on Prevention of Discrimination  
and Protection of Minorities  
45th Session  
Working Group on Indigenous Populations

Delivered: 28 July 1993

**Oral Statement by Amnesty International**

Madam Chairperson,

Governments have for centuries treated the rights of indigenous peoples with contempt, torturing, "disappearing" and killing them in the tens of thousands when they have attempted to defend their lands, resources, culture, traditions, languages, and even their lives, and doing virtually nothing when they are victims of attack by others.

In recent years however, indigenous peoples have moved strongly to alert the world to their concerns and the abuses they suffer when they try to attain or protect their rights. Last year, the indigenous peoples of the Americas drew attention to their needs and demands in the context of the 500th anniversary of the arrival of Europeans in the Americas. In 1993, the United Nations (UN) International Year for the World's Indigenous People, indigenous peoples throughout the world have vigorously pressed their case for recognition and protection of their rights, including at the UN World Conference on Human Rights in Vienna in June and throughout the preparatory process. The award of the Nobel Peace Prize to Rigoberta Menchú, and her naming by the UN as its Special Goodwill Ambassador for the Year gave further recognition to what you, Madam Chairperson, described in Vienna as the "challenge to struggle for the recognition, protection and realization of human rights, the dignity and justice of the indigenous peoples of the world community."

Throughout its 32 year history Amnesty International has joined in the work to bring an end to abuses against the world's indigenous peoples. In recent years it has made a special effort to work alongside indigenous peoples as they struggle for their rights. In 1992, Amnesty International published its first ever report to focus solely on indigenous peoples and undertook a worldwide campaign to halt serious abuses against the descendants of the original inhabitants of the Americas -- extrajudicial executions and the judicial death penalty, "disappearance," torture and ill-treatment, the unfair trial of political prisoners and their imprisonment as prisoners of conscience. This year, progress in the protection of indigenous rights was a key issue for Amnesty International at the UN World Conference on Human Rights.

Yet, despite efforts by indigenous organizations, bodies like this Working Group and non-governmental groups, outrages against indigenous peoples in the Americas and elsewhere continue, arising from land and resource disputes, repression of indigenous activists, the so-called "war against drugs," and internal conflicts, which can find indigenous peoples "caught between two fires" and subjected to abuses by both sides. Though the manifestations may differ in different countries, the root causes are the same throughout the world, lying in the discrimination, deprivation and marginalisation to which indigenous peoples have for so long been subjected.

In the USA for example, Amnesty International has found that the death penalty is arbitrary, discriminatory and unjust in general including as applied against Native Americans. It has also reported on irregularities in the proceedings which condemned American Indian activist Leonard Peltier to two consecutive life sentences in 1977 - irregularities of such a nature that Amnesty International has long believed that the interests of justice would best be served by a re-trial in that case. Allegations of ill-treatment of Native American persons have also been of long-term concern to the organization.

In Canada, several provincial aboriginal justice inquiries have found discrimination with respect to arrests, convictions, sentencing, legal representation and redress as regards the country's native peoples. The same holds true in Mexico, where abuses including torture are carried out against indigenous peoples with impunity, while an Amnesty International study published in February 1993 found that the criminal justice system in Australia makes Aboriginals vulnerable to highly disproportionate incarceration rates, in conditions sometimes amounting to cruel, inhuman or degrading treatment. In this context, Amnesty International is especially concerned at the high incidence of aboriginal deaths in custody in Australia over a long period of years.

In Brazil, Amnesty International continues to find that Indians are regularly harassed, threatened, and killed to drive them from resource-rich areas. The authorities at all levels consistently fail to protect them effectively or to bring to justice those responsible. In the Philippines, many members of tribal communities have suffered violations primarily because of the political and economic significance of the lands they inhabit. Human rights workers there, including indigenous leaders, have also been subjected to gross abuses including extrajudicial execution; few of the perpetrators have been brought to justice. Indigenous religious leaders have also been victimised with impunity, as in Colombia.

In a special summary of its concerns regarding indigenous peoples distributed at the UN World Conference [on Human Rights], Amnesty International reiterated long-standing concerns regarding the impunity with which soldiers have arbitrarily detained, tortured, extrajudicially executed or caused the "disappearance" of hundreds of tribal people in remote states of northeast India in recent years. Indigenous women have been particularly victimised, and in Tripura state, rape by the security forces is one of the most frequently reported human rights violations. In the same document, Amnesty International also raised its long-term concerns regarding killings of defenceless tribal villagers by armed civilians, para-militaries and government forces in the Chittagong Hill Tracts of Bangladesh, while in Myanmar, the main targets of the army counter-insurgency campaign, which has claimed tens of thousands of

victims in the context of ongoing internal conflict, have been members of the Karen, Kayah, Shan and Mon ethnic groups.

In Western Sudan, Nuba villages have been attacked and destroyed in a campaign of destruction and displacement involving the deliberate killings by government forces of thousands of Nuba civilians during a 10-year civil war against the rebel Sudan People's Liberation Army (SPLA), during which the SPLA has itself been accused of the targeted assassination of a number of Nuba. In Niger the nomadic Tuaregs have suffered abuses at the hands of armed forces in reprisal for attacks by armed groups, while in Peru indigenous peoples have been victimised by both sides in that country's long-term internal conflict.

Even the most defenceless can be victimised, as in Guatemala where old people, women and children -- including babies as young as one month -- have been victims of the ferocious counter-insurgency campaign which the Guatemalan army has unleashed against the country's native peoples over more than two decades.

In many of these situations, some members of the indigenous population have reportedly taken up arms against the government, but neither this nor any other exceptional circumstances whatsoever can be invoked as a justification for torture, "disappearance," or extrajudicial execution.

The abuses detailed here are just some of the violations against indigenous peoples that Amnesty International has documented since this Working Group last met. What can be done to put a stop to such outrages?

In its 1992 report on human rights abuses against indigenous peoples in the Americas, Amnesty International made extensive recommendations about steps it believes should be taken to stop abuses against them.

For example, indigenous peoples must enjoy full protection of basic human rights. Effective mechanisms for identifying human rights abuses against them should be put into place, and thorough and impartial investigations conducted into all reported abuses to make the full truth known and bring the perpetrators to justice.

Toward these ends, governments should support efforts by this Working Group to promote better protection of the fundamental internationally-recognised rights of indigenous peoples by being responsive to the Group's requests for information and on-site visits, and taking full account of its conclusions, recommendations and proposals. Member states of the UN should ensure that both the Working Group and the UN's Voluntary Fund for Indigenous Populations are adequately funded to carry out their important tasks, and should implement fully the recommendations of the World Conference which seek to strengthen the role of UN bodies, including the Working Group, the UN Centre for Human Rights and the UN technical assistance and advisory services programs, in the protection of indigenous peoples. Amnesty International also supports the call by the World Conference that the establishment of a permanent forum for indigenous peoples within the UN system be considered.

Governments should also take preventive measures to protect indigenous peoples. For example, as so many abuses against indigenous peoples stem from land or resource disputes, governments should implement the principle reflected in Article 18 of the International Labour Organization's (ILO) Indigenous and Tribal Peoples Convention 169 (1989), which requires that: "Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offenses."

Governments should also recognise that discrimination against indigenous people is a key contributory factor to human rights violations and should initiate a plan of action to combat such discrimination.

Governments must also ensure that bilateral and multilateral development assistance and lending programs take due consideration of the welfare of indigenous peoples and should, in consultation with relevant indigenous groups, ensure that fundamental rights, including the rights to life and physical integrity, are effectively protected in the course of development projects.

Finally, Amnesty International again calls for all governments of countries where indigenous peoples reside to mark the International Year for the World's Indigenous Peoples by urgently initiating an independent national review of the extent to which indigenous peoples' fundamental human rights are respected and the steps necessary to ensure their full implementation.

It is important to act on these recommendations now. If these and other urgent steps are not taken, there is a real danger that the UN's International Year for the World's Indigenous Peoples will not see any significant progress towards protecting the human rights of indigenous peoples throughout the world. From the local to the international level, the message must be proclaimed clearly that centuries of violating the rights of indigenous peoples must end now, once and for all.

Thank you, Madam Chairperson.

UN Sub-Commission on Prevention of Discrimination  
and Protection of Minorities  
45th session  
Working Group on Detention

Delivered: 5 August 1993

### **Oral statement by Amnesty International**

Mr Chairperson,

First of all, I would like to thank Ms Palley for her constructive remarks concerning Amnesty International's list of abolitionist and retentionist countries, and we will follow-up on her comments.

As a perfect example of what Ms Palley referred to a few minutes ago, let me mention the case of Peru. Amnesty International is appalled by the decision of the Peruvian Constitutional Assembly, two days ago, to reestablish the death penalty for certain crimes - and to submit it to a referendum at a later stage - in blatant violation of the international commitments of Peru, and in particular of the American Convention on Human Rights.

Coming back to the present work of this session, Amnesty International would like to welcome the decision of the Working Group on Detention, taken at its last session in 1992, to prepare lists of abolitionist and retentionist countries. In this respect, I would like to draw the attention of the members of this Working Group, and of the Sub-Commission, to the recent trend we can observe in Africa toward total abolition. Indeed, three more African countries, namely Angola, Gambia and Guinea-Bissau, abolished the death penalty over last year.

On another field, Amnesty International welcomes the fact that the Statute of the International Tribunal for the Former Yugoslavia exclude the death penalty for war crimes and crimes against humanity.

On the dark side of the problem of death penalty, Amnesty International has repeatedly expressed its deep concern over the continued execution of juveniles in some countries, almost exclusively in the United States of America, but also in countries such as Iran, Iraq, Nigeria, Pakistan and Bangladesh.

To come back to the example of the United States, let me just mention the following figures: at the end of 1992, 34 juvenile offenders were under sentence of death in 13 states. Four juvenile offenders were sentenced to death during the year, and two had their death sentence overturned. During the 1992 state legislative sessions, Georgia, Mississippi, Ohio and Pennsylvania considered bills to prohibit the execution of juvenile offenders. None of these passed. During the very convening of this session of the Sub-Commission, on 24 August 1993, an American juvenile offender, Ruben Cantu, is scheduled to be executed.

As for the application of the death penalty to all categories (adults and juveniles) in 1992 in the USA, the following figures speak for themselves: in 1992, more than 2,600 prisoners were under sentence of death in 36 states, under US federal military law and under US federal civilian law. In addition, 31 prisoners were executed in 1992, more than in any single year since the death penalty was reinstated in the 1970s. In 1992 four states carried out their first executions in a quarter of a century or more, and one of these (Delaware) resumed executions after 46 years without any.

I would like now turn to the question of the UN Crime Branch in Vienna. As members of the Sub-Commission know, the former Committee on Crime Prevention and Control was mandated since the 1970s to carry out, among others, a regular five-yearly survey of capital punishment. The last report on capital punishment was in 1990 and the next one was due in 1995. However, after the first 1992 session of the Commission on Crime Prevention and Criminal Justice - which was established after the dissolution of the Committee on Crime Prevention - the secretariat suspended all work on these surveys, taking the view that they had not been given a mandate to continue this work by the new Commission. Conscious of the potential impact and use such a report could have in the fight for the final abolition of the death penalty, Amnesty International suggests to the present Working Group that it recommend that the Sub-Commission express its wish to see the Crime Branch ensure that it produces this report as scheduled originally.

Mr Chairperson,

Please allow me now to make two suggestions to the Working Group:

1/ The Working Group could consider studying, perhaps jointly with the Special Rapporteur on Summary or Arbitrary Executions, the Special Rapporteur on the right to fair trial and the UN Crime Branch, how states have implemented in law and practice particular parts of the recommendations of the ECOSOC Safeguards and ECOSOC Resolution 1989/64 on implementation of those safeguards. A relatively straightforward project would be for instance to determine how many states assure the full right to appeal of death sentences.

2/ The Working Group could recommend to the full Sub-Commission that it ask the Secretary General to include in the afore-mentioned five-year report of the Crime branch information on laws and treaties relating to extradition in death penalty cases.

Lastly, Mr. Chairperson, I would like to take this opportunity to inform members of this Working Group that Amnesty International will launch in October this year a major campaign aimed at contributing to the eradication of the phenomenon of extrajudicial executions and enforced disappearances. In due time, we will be pleased to transmit all information concerning this campaign to all members of the Sub-Commission.

**"DISAPPEARANCES" AND POLITICAL KILLINGS**  
**Oral Statement by Amnesty International**

Mr Chairperson,

"Disappearances" and political killings are, by their nature and scale, among the greatest threats to human rights in the world today. In some countries these practices are the preferred method for disposing of political opponents or others who challenge governments' authority. Faced with this grim reality, Amnesty International will launch, in October 1993, a world-wide campaign aimed at the eradication of "disappearances" and political killings.

International human rights standards designed to prevent these violations are only effective if they are implemented. International mechanisms developed to investigate their occurrence only produce results if governments take their recommendations seriously. There is no substitute for government action to protect human rights.

The first step that every government should take is to demonstrate clearly and at the highest level its total opposition to "disappearances" and political killings. Yet in **Tadzhikistan**, the head of state responded to the "disappearance" and killing of scores of people, mostly unarmed civilians, in the weeks after the fall of Dushanbe on 10 December 1992 by blaming "criminal groups which, posing as government forces, are murdering people on the basis of the region, nation and faith they belong to"<sup>1</sup>. However, information from other sources, including official statements, indicates that these violations were carried out by forces of the Interior Ministry or the People's Front of Tadzhikistan, a paramilitary group now seconded to law enforcement agencies.

It is important that all governments ensure that law enforcement officials use force only when strictly required and only to the minimum extent necessary under the circumstances. In the **Israeli-Occupied Territories**, almost 30 of around 100 Palestinians shot dead in the first five months of 1993 by Israeli forces were children or youths aged 16 or younger. Indeed, the killing of Palestinian civilians continues at an alarmingly high rate, often in circumstances suggesting extrajudicial execution or other unjustifiable killings.

All governments should ensure that "death squads" and other paramilitary forces operating outside the chain of command but with official support are prohibited and disbanded. Since late

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<sup>1</sup> Broadcast statement by Imamali Rakhmonov on 24 December 1992

1989, the Government of **South Africa** has been under strong public pressure to investigate damaging claims made by former security police officers that they had taken part in officially sanctioned killings of government opponents. Although a judicial commission of inquiry in 1991 reached damning conclusions about the involvement of the covert military unit, known as the Civil Cooperation Bureau (CCB), in illegal activities including the assassination of government opponents, its operatives have still not been brought to justice. Indeed, though the CCB was supposed to have been disbanded in 1990, in November 1992 a judicial commission discovered evidence that CCB operatives were still being used by the South African Defence Force to carry out illegal activities.

In all cases arrest and detention must be carried out by authorized officers following established procedures. Prisoners must never be held in secret detention but have prompt access to a judicial authority, their relatives, lawyers and doctors. However, in **India** such legal safeguards enshrined in the Constitution, the Penal Code and Code of Criminal Procedure are absent from legislation such as the Terrorism and Disruptive Activities (Prevention) Act which is in force in places such as Jammu, Kashmir and Punjab from where "disappearances" are reported. Arrests are often not recorded by - or in the case of Jammu and Kashmir not even reported to - the local police and legal remedies, including habeas corpus petitions, have proved ineffective. Increasingly, in Jammu and Kashmir the "disappeared" are killed while in custody, thus swelling the numbers of the victims of political executions.

It is of the utmost importance that all complaints and reports of "disappearances" and political killings be promptly, impartially and effectively investigated. In **Colombia** the Procurator General's office reported that during 1992 more than 2,600 complaints were lodged against the army and police for human rights violations including "disappearances" and political killings. In recent years the government has introduced numerous and far-reaching judicial and institutional reforms including the establishment of local and national ombudsmen and the petition for protection<sup>2</sup> but these have, almost without exception, failed to achieve the investigation of past violations or to curb the continuing pattern of gross human rights violations.

Investigation of reports of violations is an important first step but governments must also ensure that those responsible are brought to justice. In April 1993 the new, transitional Government of **Chad** established a commission to investigate reports of hundreds of killings committed by the army in Logone Oriental prefecture since January 1993 which named seven military officers identified by witnesses as responsible for recent violations. The government has said that some members of the security forces have been detained in connection with the killings - although others implicated have reportedly been protected from prosecution - but has not revealed their identities or the charges against them.

All governments have a role to play in ending these human rights violations. As the Vienna Declaration confirmed "[h]uman rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments".

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<sup>2</sup> *Personeros Municipales, Defensor del Pueblo and Acción de Tutela*

Governments should use all available channels to intercede with governments of countries where "disappearances" and political killings have been reported. They should also be mindful of the legitimate concern of the international community, confirmed in the Vienna Declaration, in the protection and promotion of human rights.

It took the UN Commission on Human Rights several years, even in the face of well-attested evidence of gross human rights violations, to put the situation in **Iraq** under scrutiny. Nonetheless, "disappearances" and political killings continue to occur on a massive scale. Since 1991, hundreds of others have been the victims of the government's continuing policy of "disappearance" and political killings, including Shi'a Muslims arrested after the March uprising and reportedly executed between March and June 1992 and more than 100 Shi'a clerics and students who have "disappeared" while in custody. Hundreds of others have "disappeared" in custody. Scores of unarmed civilians in the southern marshes have been killed following attacks on clearly civilian targets. These attacks intensified last month, causing at least 4,000 Shi'a Muslims to flee to Iran. The fate of some 200,000 Kurds and Arabs who "disappeared" during the 1980s has still to be resolved.

In the case of **China**, the government still refuses to accept responsibility for the killing of at least a thousand pro-democracy demonstrators, most of them unarmed, in 1989. At that time, the Sub-Commission acknowledged that this situation merited international attention. Amnesty International believes that it still does. The government continues to commit grave human rights violations, including the persistent use of violence which has sometimes resulted in death against demonstrators in **Tibet**.

The Sub-Commission should take all possible steps towards ending "disappearances" and political killings. These are violations which should not occur in any country or under any circumstances. The Sub-Commission should continue to identify situations involving these severe human rights violations and bring them to the attention of the Commission on Human Rights. It should also urge the Commission to ensure that its own mechanisms dealing with "disappearances" and summary and arbitrary executions have sufficient resources to carry out their valuable work. But, above all, the Sub-Commission must say with one voice and in tones loud enough to carry the message around the world, that "disappearances" and political killings must stop - now.

Thank you.

United Nations Sub-Commission on Prevention  
of Discrimination and Protection of Minorities  
45th session  
Agenda item 10

Delivered: 13 August 1993

**IMPUNITY**  
**Oral statement by Amnesty International**

Mr Chairperson,

Amnesty International addressed the issue of impunity and its implications for the administration of justice before this Sub-Commission in August 1991. Yet, grave human rights violations, in particular widespread "disappearances" and political killings, have continued to occur all over the world. There is an obvious link between these violations and the phenomenon of impunity - in fact, impunity is the determining element which allows sporadic violations to develop into a systematic pattern of abuse. The fight against such grave human rights violations can only be won if this problem is tackled effectively.

In respect of governments whose actions are characterized by the blatant abuse of power, impunity usually results from the same disregard for the rule of law that allows human rights violations to be committed.

In Morocco, the government has used the practice of "disappearance" since the early 1960s to punish some suspected political opponents. The "disappeared" have spent years cut off from the outside world in secret detention centres. In 1991 more than 300 men and women who had "disappeared" for up to 19 years were released, but hundreds of others remain unaccounted for. The majority may still be alive in secret detention centres. No investigations have been carried out into their fate and the Moroccan Government denies knowledge of them just as, for years, it denied secretly detaining those released in 1991. As for those who were released, the government has never accounted for their illegal detention, no perpetrator has ever been brought to justice and no provision has been made for compensating or rehabilitating the victims. The international community, which remained silent for all those years, must now urge the Moroccan Government to reveal the whole truth about all these victims and provide justice for them.

In the province of Aceh in northern Sumatra, Indonesian security forces began counter-insurgency operations against an armed political opposition group in 1989, which resulted in the killing of an estimated 2,000 civilians and the "disappearance" of scores in military or police custody. This pattern of grave human rights violations is strongly reminiscent of the situation in

other parts of Indonesia and East Timor, particularly the government's use of summary executions by anonymous "death squads", a technique which was described by President Suharto as a kind of public "shock therapy" designed to restore public order<sup>3</sup>. Serious human rights violations continue to be committed with impunity in Aceh, although on a reduced scale, while the government fails to carry out investigations, pay compensation to victims or their relatives and bring suspected perpetrators to justice.

Impunity should not persist, in theory, in states claiming to be democratic. All state institutions, in particular the judiciary and the legislature, ought to provide safeguards that ensure that perpetrators of extrajudicial executions, "disappearances" and other violations are accountable to the victims, relatives and society. Nevertheless, even these governments frequently attempt to conceal the truth by undermining the powers of the judiciary. As a result, perpetrators almost inevitably go unpunished.

From April 1992 to April 1993 in Peru Amnesty International documented 57 extrajudicial executions, as well as 209 "disappearances" following detention by the security forces. This pattern, which the organization believes to be systematic, first became evident in 1983 when the Peruvian Government began a counter-insurgency campaign against the armed opposition, which itself has been responsible for gross human rights abuses. There have been few full and independent judicial investigations during the past 10 years, and the majority of those have not been satisfactorily concluded as military tribunals almost invariably hear the cases and acquit the accused. Amnesty International knows of only two cases in the past 10 years in which members of the Peruvian army have been convicted and sentenced by military courts to significant prison terms for committing extrajudicial executions of civilians.

Amnesty laws for human rights violators represent one of the most sophisticated forms of impunity. Such legislative measures aimed at national reconciliation are instead misused to prevent the truth from emerging and justice from being done.

In El Salvador, the General Amnesty Law for the Consolidation of Peace, approved in March 1993, protects from prosecution all those responsible for carrying out or covering up "disappearances", extrajudicial executions and other gross human rights abuses committed in the context of the civil war (1980-1992). It specifically applies to those mentioned by name in the March 1993 report of the UN-appointed Truth Commission mandated to investigate some of the worst violations. Non-governmental human rights organizations challenged the legality of the amnesty law before the Supreme Court. However, in what appears to be an abdication of its constitutional powers, the Court ruled that "the judiciary does not have jurisdiction over purely political questions". In sharp contrast with its haste to pass an amnesty law for the perpetrators, the government has yet to implement many of the Commission's recommendations, including a detailed inquiry into the "death squads" responsible for thousands of killings and "disappearances" during the war, and the creation of a compensation fund for the victims.

In Mauritania the Parliament passed a law on 29 May 1993 granting total amnesty to security force members for all offences during the period 1989 to 1992, when more than 400 black Mauritians have been killed by government forces or pro-government militia. At least

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<sup>3</sup> Suharto: *Pikiran, Ucapan dan Tindakan Saya*, (Jakarta: PT Citra Lantoro Gung Persada, 1989), p.364

100 of them were extrajudicially executed in the context of mass expulsions following intercommunal violence between Mauritians and Senegalese. Dozens more "disappeared". Despite the first multi-party elections in 1992 and other political reforms, no official investigations have been carried out. A complaint by lawyers on behalf of the widows of those killed in detention was rejected by the Ministry of Justice.

These two recent examples of impunity laws are in sharp contrast with the unequivocal statement in the Vienna Declaration and Programme of Action just adopted by the World Conference on Human Rights. With reference to grave violations of human rights such as torture, this provides that: "States should abrogate legislation leading to impunity for those responsible [...] and prosecute such violations thereby providing a firm basis for the rule of law".

Mr Chairperson,

The shocking scale and cruelty of human rights abuses committed in the former Yugoslavia has led the international community to take measures unprecedented in the last four decades to hold those responsible accountable for their acts. The proposed war crimes tribunal could be one step towards breaking the cycle of impunity and violence, but only if it is just, fair and effective. Amnesty International believes that this Tribunal should be the first step in the rapid establishment of a permanent, international criminal court competent to try gross violations of human rights and humanitarian law. Otherwise the UN will be using double standards by selectively enforcing universal human rights principles. Furthermore, the creation of such a Tribunal will not remove the continuing obligation of relevant authorities in the former Yugoslavia to investigate all allegations of human rights abuses and to bring the perpetrators to justice.

Mr Chairperson,

Last year Amnesty International welcomed the Sub-Commission's decision 1992/23 in which it requested two of its experts to undertake a study on the impunity of perpetrators of violations of human rights. It hopes that useful concrete proposals to counter impunity will emerge from this study, and that the issue of impunity is fully taken into account by all experts and rapporteurs of the Sub-Commission in their work.

Thank you.

United Nations Sub-Commission on Prevention  
of Discrimination and Protection of Minorities  
45th Session  
Agenda Item 18

Delivered: 12 August 1993

**FREEDOM OF MOVEMENT**  
**Oral statement by Amnesty International**

Mr Chairperson,

Amnesty International welcomes this opportunity to address the Sub-Commission on a new issue on its agenda -- freedom of movement. The mass forcible expulsions occurring in the former Yugoslavia are the most highly publicized example of a situation where there is a need for United Nations (UN) human rights bodies to effectively and systematically address arbitrary deprivations of the right to freely move, or not to move, within or across international boundaries. Thus, forcible exile, forcible relocation of populations within a country and mass expulsion should all receive due consideration under this agenda item.

Amnesty International's main concern on this occasion is to highlight one aspect of freedom of movement that receives too little consideration by UN human rights bodies -- the right to seek asylum and the protection of refugees fleeing human rights violations. There is an international system for refugee protection, its cornerstone being the fundamental principle of non-refoulement and the 1951 Convention and Protocol relating to the Status of Refugees. Too often, however, states appear unwilling to fulfil their obligations towards those fleeing serious human rights violations such as arbitrary detention, political killings, torture and "disappearance". In all regions of the world, Amnesty International has been campaigning over the past year for the protection of refugees. For example, we have taken action on the inadequate protection for refugees and asylum-seekers in **JAPAN**; when the Government of **BANGLADESH** sought to return Burmese Muslim refugees to Myanmar in the context of a repatriation program which was not fully voluntary; and on legal changes regarding asylum in **GERMANY**.

While the denial of protection to refugees occurs throughout the world, Amnesty International wishes to draw the Sub-Commission's attention in particular to developments in the **United States of America** (USA) and in a number of countries in Europe, particularly those which are members of the **European Community** (EC). In Amnesty International's view, it is in these countries that current policies pose one of the greatest threats to the established international system of refugee protection.

In May 1992 the US Government decided that Haitian asylum-seekers intercepted at sea would be forcibly returned directly to Haiti where they were left under the jurisdiction of a

military government which, since overthrowing the democratically-elected government, has been responsible for the killing of hundreds of Haitians and has arbitrarily detained and tortured thousands of others. This policy was challenged in the US courts but, in June 1993, the US Supreme Court ruled that it did not violate domestic or international law, a ruling which was criticized by the UN High Commissioner for Refugees (UNHCR). The policy of the US Government directly undermines the authority of the non-refoulement principle, and so has implications far beyond the USA or the Haitian asylum-seekers at whom it was directed.

Recent developments in the 12 member states of the EC pose a similar threat to long-established principles of protection. Last December, the Twelve adopted criteria and procedures for dealing with "manifestly unfounded" asylum claims which, in Amnesty International's opinion, are contrary to Conclusions adopted by the Executive Committee of UNHCR. At the same time, the Twelve agreed on criteria and procedures for sending asylum-seekers to those countries outside the EC which they designate as "safe third countries". This will have the effect in many cases of forcing asylum-seekers back to countries where they may not get an effective opportunity for a fair examination of their claims. It will also put a severe strain on countries outside the EC, especially those in eastern and central Europe, which are ill-equipped to cope with the sudden arrival of thousands of asylum-seekers. The EC countries are now moving ahead to prepare common positions on interpreting certain aspects of the refugee definition set out in Article 1 of the 1951 Convention. UNHCR has already, at the request of states, prepared an authoritative handbook on the refugee definition and the EC states have not provided convincing reasons to show why separate EC guidelines are necessary.

This restrictive trend is exemplified by the inadequate response from most European countries towards those fleeing Bosnia-Herzegovina. Instead of cooperating to ensure borders in Europe remain open to those fleeing the horrors associated with "ethnic cleansing", EC member states and others have imposed visa requirements on nationals of Bosnia-Herzegovina which make it more difficult for them to flee to places where they will be genuinely safe. Recent developments in Croatia heighten our concern on this point.

Amnesty International believes that when particularly powerful countries or groups of countries pursue policies which violate international law, or take it on themselves to substantially modify or interpret the authoritative conclusions of established UN bodies such as the Executive Committee of the UNHCR, then the whole structure of international refugee protection is in jeopardy. Amnesty International has repeatedly raised its concerns about these developments in Europe, and has strongly opposed the US policy of returning Haiti asylum seekers, but these concerns have been largely ignored. We hope that the Sub-Commission will take up these issues.

Of course, the Sub-Commission should not duplicate the work of the Office of UNHCR. That is the body charged with finding durable solutions for refugees. However, the Sub-Commission can play an important role that is complementary to and supportive of UNHCR's activities. First, it could demonstrate commitment to safeguarding the international system of refugee protection by expressing its concern about the practice of any government which does not respect the fundamental principle of non-refoulement. It could indicate its concern about developments, such as those in the EC, which potentially undermine established refugee

protection standards. Ideally, these issues should receive a thorough consideration at the next meeting of the Executive Committee of the UNHCR, but it is unlikely that this will happen unless governments on the Executive Committee are urged to take action. Therefore, the Sub-Commission could usefully add its voice of concern to this debate and urge the Executive Committee to give full consideration to these issues.

Second, it is important that the Sub-Commission indicate its willingness to take up any situation where refugees are denied protection or forced to return to countries where their lives or freedom are at risk. In recent years, Amnesty International has often been unable to raise these concerns in UN human rights bodies because we are told there is no appropriate place on their agenda. The Sub-Commission has in the past, to its credit, taken up the human rights problems of marginalized groups such as minorities or indigenous peoples; Amnesty International believes it should now also seek ways to ensure protection of the human rights of those fleeing for their lives.

Finally, since it is crucial that UN human rights bodies bring pressure to bear on countries where human rights violations are causing refugees to flee the country, the Sub-Commission should urge the Commission on Human Rights to act more vigorously in respect of such situations. The new sub-item on the Commission's agenda on "Human rights, mass exodus and the displaced" must provide a mechanism for the Commission to take prompt and effective action on situations where human rights violations are forcing people to flee. The Sub-Commission should do all it can to ensure that such a system is put in place.

Thank you.