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### GERMANY: TWO MEN FACE IMPRISONMENT FOR CRITICISING STATE AUTHORITIES

Amnesty International today informed the German authorities that if Jan L. or Mathias B. are imprisoned following their forthcoming trials, the organization will adopt them as prisoners of conscience and demand their immediate and unconditional release.

Jan L. and Mathias B. are charged under section 130 of the German Criminal Code with "offering for sale writings which... attack the human dignity of others by...defaming a certain part of the population". Jan L. is to stand trial on Monday, Mathias B. three weeks later. If convicted they face a fine or up to three years' imprisonment.

The writings the two men are accused of offering for sale are contained in a document called *Police officers who make you vomit (Polizisten, die zum Brechen reizen)* which they are said to have sold during a public meeting in a Bremen courthouse in May this year. The "part of the population" they are said to have defamed is the Bremen police force.

"Criminal legislation should not be used in such a way as to stifle criticism of state authorities - including law enforcement bodies -- or to intimidate those who voice legitimate concerns about the actions or practices of state authorities," Amnesty International said today.

The 40-page document, which was produced by the Anti-Racism Office, a Bremen-based non-governmental organization, accuses the Bremen police of racist practices, including the physical ill-treatment and arbitrary arrest of blacks. In particular, the document criticizes the practice employed by the Bremen police of forcing black-African detainees to swallow emetics in order to vomit up drugs they are alleged to have swallowed.

In its letter today to the Bremen Prime Minister, who is also the Minister of Justice, Amnesty International states that it has examined a copy of the document *Police officers who make you vomit* and that it shares many of the concerns raised in it. Indeed, in August 1995 the organization itself raised with the Bremen authorities the issue of the forcible administration of emetics to detainees against their will for non-medical reasons, stating that in its view the practice "amounts to cruel, inhuman and degrading treatment".

Amnesty International also described two cases of alleged ill-treatment involving the forcible administration of emetics in a document published last week (*Federal Republic of Germany: The alleged ill-treatment of foreigners - An update to the May 1995 report, AI Index: 23/02/96*).

George B. and João S., both asylum-seekers, allege that police officers arrested them in the centre of Bremen and took them to a doctor where they were forced to swallow cups of dark liquid. George B. alleges that he was punched when he refused to cooperate and that he was tied up with plastic tape and had a tube forced up his nose. João S. alleges that although he immediately handed over drugs in his possession to the officers who arrested him, he was still made to drink the dark liquid. Reportedly one officer told him: "I like it when you Negroes get given an emetic".

In its letter to the Bremen authorities today, Amnesty International stated its belief that in offering for sale copies of the document *Police officers who make you vomit*, Jan L. and Mathias B. were exercising their right to freedom of expression, guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), both of which instruments the Federal Republic of Germany has ratified and is legally bound to observe.

## **BACKGROUND**

Both Article 10 of the ECHR and Article 19 of the ICCPR recognize a wide latitude for robust criticism of government officials, including the police. In a 1992 ruling the European Court of Human Rights<sup>1</sup>, held that conviction of a person for criticism of police brutality by the Reykjavik police force “in particularly strong terms”, based largely on reports of others, violated Article 10 of the European Convention.

The Court declared that the conviction and sentence “were capable of discouraging open discussion of matters of public concern” (para. 68). It emphasized that “freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb” (para. 27).

The Court has made clear that “[t]he limits of permissible criticism are wider with regard to the Government than in relation to a private citizen” and that “the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where there are other means available for reply to the unjustified attacks and criticisms of its adversaries in the media”.

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<sup>1</sup> Thorgeirson v. Iceland, Vol. 239, Series A, Judgment (1992)