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SPECIFIC GROUPS AND INDIVIDUALS

Written statement* submitted by Pax Christi International, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2003]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The tragic events of 11 September 2001 affected people and communities all over the world: from the family members who lost near and dear ones in New York and Washington to South Asian minority communities in the UK to Central American migrant workers in the USA to asylum seekers in Australia. Today, Pax Christi International wishes to draw the attention of members of this 59th United Nations Commission on Human Rights to the consequent policies that have victimised thousands of innocent people. We wish to particularly draw attention to the millions of refugees, asylum seekers and migrants who, on the basis of their religion or national backgrounds, have been made targets of new policies to ‘defend and protect.’

Refugees and asylum seekers

UN Security Council Resolution 1373, adopted soon after 11 September 2001, called on States to work together to prevent and suppress terrorist acts. It also called on them to prevent terrorists from abusing the asylum system. It is true that this measure is in compliance with the 1951 UN Refugee Convention. The Convention specifically excludes persons who have committed serious non-political crimes. At the same time, there was the fear, which has since been substantiated, that an unwarranted linkage would be made between terrorism and refugees. Hostility against and adverse treatment of refugees and asylum seekers is not a new phenomenon. In the present climate, they are even further victimized.

On 18 December 2001 the UK government enacted the Anti-terrorism, Crime and Security Act 2001, a law that deviates from Article 5 of the European Convention on Human Rights in its explicit detention of people "suspected" of terrorism. Ruling on the legitimacy of this new law, UK's Immigration Appeals Tribunal on 30 July 2002 said that powers under Part 4 of the Anti-terrorism, Crime and Security Act 2001 are "not only discriminatory and so unlawful under Article 14 to target non-British citizens but also... disproportionate in that there is no reasonable relationship between the means employed and the aims sought to be pursued. On that ground, [they] have decided that the 2001 Act, which is the measure derogating from the obligations under the Convention, to the extent that it permits only the detention of foreign suspected international terrorists is not compatible with the Convention" (Source: Stawatch News online: `Special Immigration Appeals Commission says anti-terrorist law is unlawful`)

In Australia, Pax Christi International has repeatedly drawn attention to the failure of the government to safeguard the right and the protection of asylum seekers. Our Australian section has also expressed concern over statements made by Prime Minister John Howard making a direct link between Australian border-protection laws and the September 11 attacks. In an interview with the ‘Courier Mail’ (7 November 2001), he is quoted as saying: “Australia has no way to be certain that terrorists, or people with terrorist links, were not among asylum seekers trying to enter the country by boat from Indonesia.”

However, between July 2000 and August 2002 the Australian Security Intelligence Organisation (ASIO) assessed 5,986 asylum seekers and found that “in none of those cases had it been assessed that the person’s entry into Australia would pose a direct or indirect threat to Australia’s security”.

In Australia's federal budget handed down on May 14, 2002, emphasis was placed on "Border Protection" to which an increase of Australian \$1.2 billion would be devoted as well as a series of measures designed to thwart asylum seekers' ability to make application for refugee status within Australia's migration zone. This included "offshore processing" for the next four years (Nauru and Manus Island), even though there are no such agreements in force with the islands. On the other hand, Australian budgetary allocation to the United Nations High Commission for Refugees has been almost halved (from Australian \$14.3 million to Australian \$7.3 million).

Violence and discrimination against immigrants

In Australia the "War on Terrorism" has a distinctly racial and religious undertone. Of particular concern is the attempt to tighten security laws through parliament. Although existing legislation already covers crimes of murder, arson and sabotage, the *ASIO* (Australian Security Intelligence Organisation) *Legislation Amendment (Terrorism) Bill 2002* threatens to undermine existing norms that Pax Christi considers fundamental to a democratic society. The Islamic Council of Victoria voices "concern in the Muslim community that Australian legislation can and will be used against the Muslim community, based on racial and religious profiling, involving harassment and perhaps detention without any evidence of wrongdoing."

In the aftermath of the bombings in Bali of October 12, 2002, which affected the Indonesian community as well as foreign tourists, Australia's response has increased fears among migrant communities throughout the country. The Australian Federation of Islamic Councils had to issue a warning to schools and societies in the aftermath of attacks on an Imam's family and a Sydney mosque. Women wearing the veil have been especially targets of harassment and abuse.

This legislation, greatly enhancing ASIO powers, would mean the banning of some organizations, that possession of certain 'documents' would be an offence and that 'suspects' could be held incommunicado without a right to legal representation and without the right to remain silent. Arrest and detention could be carried out even in the absence of credible evidence. Making the ASIO virtually unaccountable, deployment of a secret police force raises concerns of the potential abuse of its powers by individuals. There have already been raids on the homes of "suspected terrorists," though no arrests were made. An Indonesian parliamentary delegation has already visited Australia to investigate ASIO raids on Indonesian nationals.

In the United States, non-governmental organisations have reported that in the two months following the September 11 attacks more than 1,200 non-US nationals were taken into custody in nationwide sweeps for possible suspects. Partial data released by the government in November 2001 revealed that most were men of Arab or South Asian origin detained for immigration violations. Another 100 or so were charged with criminal offences, none directly related to the events of 11 September.

The US government has already launched a major expansion of its power to detain immigrants, a move that erodes basic constitutional freedoms. Measures have included indefinite detention, secret detention and secret trials. While there are provisions in the law for alternatives to detention, the US Immigration and

Naturalization Service (INS) has instead opted to increase the scope for detention, which also benefits the growing network of local government contracts and for-profit prisons. Also implemented has been an unprecedented role for local police and enforcement in immigration processes. Opponents note that this has created a climate in which immigrants fear seeking medical help in emergency rooms and/or do not trust local police to report crimes, etc., since this might lead to their deportation. (Source: Center for Migration Studies, 2002).

Derogation of civil and political rights

Pax Christi International questions the attempt to create a single European zone for the purpose of extradition to an external country, such as the USA, and the possibility of issuing a court order in one member state that would be enforceable in all others. Such changes would give immense power to prosecuting authorities and offer little guarantee of freedoms and the rights of individuals in return (Source: EU Counter Protest Policy and September 11. Jonathan Friend published by University of Exeter UK [www.ex.ac.uk]), guarantees that are expressly delineated in international law.

Politicians in Europe have also rushed to the top of the agenda laws that threaten to curb civil liberties and potentially reduce safeguards against human rights abuses. In December 2001 European leaders agreed on measures that would facilitate the transfer of people suspected of criminal offences from one EU member state to another by replacing extradition proceedings with a European arrest warrant. The warrant will make it far easier for states to extradite an individual whom they suspect has plotted or committed terrorist crimes. It may also threaten constitutional rights of protestors in member states because the "dual criminality" requirement for extradition would be removed. This requires that the individual be recognised as a criminal and would be punished in states, the one attempting to prosecute and the one in which the individual resides, before he can be extradited. (Source: EU Counter Protest Policy and September 11. Jonathan Friend published by University of Exeter UK (www.ex.ac.uk))

Australia, which has prided itself on being a guardian of civil and political rights in the Asia-Pacific region, has dramatically altered its position as a result of its new fight against terrorism. One immediate consequence of the Bali bombing has been the Australian government's developing relationship with the Indonesian police and military. There is now movement toward exonerating Indonesia's special forces – earlier criticized by Australia for its policies against the people of East Timor – and toward training Kopassus in Australia. Kopassus (Special Army Forces), the most feared and brutal forces in Indonesia, carry on the killing and the training of militia in West Papua. This renewed relationship with Kopassus is one of the more serious dimensions of the War on Terrorism's expansion into Southeast Asia.

Conclusion

The leading powers in the world today must be called to account for their actions taken in the name of the "War on terrorism" post-September 11. Those most vulnerable to human rights abuse -- refugees, asylum seekers and immigrants, as well as those working to defend the rights of the most vulnerable in these countries -- must

not be made further vulnerable by being the targets of this new so-called ‘war.’

We, therefore, call upon the members of this Commission to recommend that:

1. Countries sought for their protection and security by refugees and asylum seekers uphold their obligations under international law with respect to these vulnerable groups, upholding the principle of assumed innocence for all migrants and asylum seekers and not considering them a priori suspects.
2. State parties not abrogate any of the rights that refugees and asylum seekers claim under the 1951 Refugee Convention or those claimed by this protected category of persons, along with all immigrants under the International Convention on Civil and Political Rights, the International Convention on the Elimination of all forms of Discrimination, the ECHR and Fundamental Freedoms and the European Union Charter of Fundamental Rights.
3. Countries practising the illegal detention of asylum seekers and immigrants immediately end this policy and ensure that those already detained are treated according to state obligations with respect to detainees under international law.
4. All countries that support the “War Against Terrorism” respect and uphold the right to fair trial of those persons in detention as a result of this conflict.
5. The international community become fully aware of the permissive impact certain arguments and measures used in the “War against Terrorism” have on xenophobic attitudes, aggression and acts of ethnic or racist discrimination.
6. All governments and politicians avoid stirring the electorate’s increased feelings of insecurity and distrust towards refugees, asylum seekers and migrants in general and Muslims in particular and to refrain from using the present climate of fear and hostility for political gain.
