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Human rights situations that require the Council's attention

Written statement* submitted by Amnesty 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.

[13 February 2012]

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

Yemenis still waiting for justice: No immunity for crimes under international law

Yemen's human rights situation has been of grave concern in recent years. The most shocking recent example of this has been the brutal repression of protests particularly in the first half of 2011.

The protests were fuelled by popular anger over mounting poverty, unemployment, corruption and the brutally repressive response of the government. The security forces and government supporters repeatedly used live ammunition and other excessive and lethal force against peaceful demonstrations. Protesters were attacked by snipers on rooftops and when they were at their most vulnerable by security forces, late at night and during prayer. Armed men in plain clothes attacked anti-government protesters often in the presence of the security forces and with their acquiescence. They and the security forces attacked protesters with almost total impunity. More than 200 protesters were killed and thousands injured as a result.

The security forces carried out mass arbitrary arrests and detentions and used torture and other ill-treatment. Media workers and outlets, already operating in a dangerous and repressive climate, came under attack. Some women activists who played a key role in the protests were arrested, beaten or harassed as a result.

Hundreds more have been killed on all sides in armed clashes that continue to take place across the country, leaving tens of thousands displaced and a growing humanitarian crisis in Yemen with access to water, electricity, and other essential needs becoming precarious.

The passing of an immunity law that breaches international obligations

An immunity law that breaches Yemen's obligations under international law was passed on 21 January 2012. The law has dealt a serious blow to those calling for justice and reparation for human rights violations.

The immunity law was part of the power-transfer deal that was brokered by the Gulf Cooperation Council (GCC) and signed on 23 November after negotiations that were facilitated by UN envoy Jamal Benomar. The law grants absolute immunity from prosecution to President Ali Abdullah Saleh. All officials who worked under the President during his rule are also provided immunity from criminal prosecution for "politically motivated" cases. Indefinite immunities are tantamount to amnesties which are prohibited for crimes under international law.

It is regrettable that the UN gave support to the transition power-transfer deal when it was reported to have contained an immunity provision. A UN Secretary General's directive prohibits brokering peace agreements which grant immunity for crimes under international law.¹

Amnesty International is urging on the GCC to withdraw its support for immunity for any official in Yemen, regardless of rank or affiliation. It is also urging on them and the international community at large to call on the Yemeni authorities to repeal the law.

¹ See Seventh Report of the UN Secretary-General, Observer Mission in Sierra Leone, United Nations, S/1999/836, 30 July 1999; UN Commission of Human Rights, UN Doc. E/CN.4/RES/2000/24, of 18 April 2000, para.2; Report of the UN Secretary-General on The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, of 23 August 2004, para.10.

The prolonged failure of the international community to demand accountability for alleged crimes under international law in Yemen will only encourage officials to disregard international law and UN mechanisms aimed at protecting individuals from harm and providing accountability and guarantee of non-recurrence.

At a time when authorities should be making a clean break with the long legacy of mass human rights violations by investigating and bringing those responsible to justice, they have instead enshrined impunity in national law.

The immunity law is an obstacle to achieving justice and sustainable peace in Yemen. Accountability for past abuses can serve as an effective deterrent to would-be perpetrators of future violations, as well as a necessary measure to ensure justice, truth and reparations for victims. Instead, the immunity law sends a message to those in power, that they will be rewarded with immunity no matter how poor their human rights record – as long as they eventually agree to leave office.

The immunity law breaches Yemen's obligations under international law to investigate and prosecute crimes under international law and other human rights violations. Under international law Yemen is obliged to investigate and prosecute anyone suspected of torture and other crimes under international law where there is sufficient admissible evidence. This includes its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Yemen is a state party.

In addition, as a state party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Yemen has recognized that if genocide, crimes against humanity or war crimes are committed, the provisions of the Convention (which provides that no statute of limitation may apply to these crimes) shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the state authority who tolerate their commission.

Commission of inquiry and international investigation are required

Amnesty International welcomes the government's stated commitment to put in place mechanisms to prevent further crimes under international law and other human rights violations through 'transitional justice and national reconciliation'. However, this stated commitment is incompatible with the immunity law and any such mechanisms must provide justice, truth and reparation to victims.

The track record of Yemeni authorities in investigating allegations of serious human rights violations by the security forces is very poor. It is not known what the outcomes were of investigations announced into incidents of alleged violations during 2011. The Office of the UN High Commissioner for Human Rights reported that the government was trying 78 persons regarding the killings of protesters on 18 March 2011, but it was not clear how many, if any, were members of security forces. The authorities have also generally failed to investigate the massive human rights violations committed in previous years. These include serious violations of human rights in the context of the unrest in the south of Yemen (against those seen as secessionists); in the name of countering terrorism (against those accused of belonging to or supporting al-Qa'ida); and in the context of the intermittent armed conflict in the north between government forces and the Huthi rebel movement and, more widely, the civilian population of the region.

It is imperative that the United Nations establish an independent, international, and impartial investigation into human rights violations in the events of 2011 in Yemen. This would be a vital contribution to a successful transition and is essential for ensuring justice for Yemeni victims and their families. The Human Rights Council should play a leading

role in supporting justice for the victims and their families by adopting a resolution to establish an international, independent and impartial investigation into human rights violations during 2011 in Yemen. Should it be established, the Yemeni authorities must co-operate fully with it.

Any political transition must be accompanied by full respect for human rights and the necessary legal reforms. In doing so the Yemeni authorities should acknowledge the true scale and gravity of the human rights violations that have taken place in the country over decades. They must take immediate steps to correct this legacy of human rights violations firstly by repealing the immunity law and secondly by establishing a commission of inquiry that is independent, impartial and with international experts to investigate human rights violations before the events of 2011.

Recommendations

Amnesty International urges the Human Rights Council to request the Yemeni authorities to:

- repeal the immunity law;
- cease crimes under international law and other human rights violations, in particular by reining in its security forces and ending killings of peaceful demonstrators and others;
- establish an independent, impartial and thorough commission of inquiry, with international experts and assistance to ensure it functions effectively, to investigate human rights violations prior to 2011, including extrajudicial executions, enforced disappearances, arbitrary detentions and torture and other ill-treatment;
- investigate and, where sufficient admissible evidence is found, prosecute and try in proceedings that conform to international fair trial standards and which exclude the possibility of the death penalty, those suspected of responsibility for serious violations of international human rights or humanitarian law regardless of rank or affiliation;
- allow Amnesty International and other independent human rights observers access to the country.

Amnesty International also calls on the Human Rights Council to urge states to:

- condemn the immunity law for any official in Yemen, regardless of rank or affiliation;
- provide the Yemeni authorities with the support necessary for the effective functioning of an independent, impartial and thorough commission of inquiry into human rights violations prior to 2011;
- suspend the transfer of all types of weaponry, munitions and related equipment to the Yemeni police and security forces, which could be used for excessive or lethal force in policing pro-reform protests, until effective systems of accountability for gross violations and proper training in human rights, international humanitarian law and international criminal law are in place in Yemen.

Finally, Amnesty International urges the Human Rights Council to establish an independent international investigation into human rights violations during 2011 and call on the Yemeni authorities to co-operate with it.