

APPENDIX B

U.S. STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2001-2008)

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I. PREVENTIVE DETENTION SPECIFIC TO PERCEIVED TERRORISM OR NATIONAL SECURITY THREATS

Australia

2008 Country Report

The law permits a judge to authorize "control orders" on individuals suspected of involvement with terrorism-related activities. These orders may include a range of measures, such as monitoring of suspects and house arrest, and may be in effect for up to a year without the filing of criminal charges. If a control order is still warranted after one year, a new order must be sought from a court. Both the preventive detention and control order provisions expire in 2015. The law mandates a review of these provisions in 2010.

2007 Country Report

Police officers may seek an arrest warrant from a magistrate when a suspect cannot be located or fails to appear; however, they also may arrest a person without a warrant if there are reasonable grounds to believe the person committed an offense. Police must inform arrested persons immediately of their legal rights and the grounds for their arrest, and arrested persons must be brought before a magistrate for a bail hearing at the next sitting of the court. **However, legislation passed in 2005 permits the police to hold individuals in preventive detention for up to 24 hours without charge if a senior police official finds it is "reasonably necessary to prevent a terrorist act or preserve evidence of such an act."** Individuals may be detained for an additional 24 hours under an extension of the initial court order. Bail generally is available to persons facing criminal charges unless the person is considered to be a flight risk or is charged with an offense carrying a penalty of 12 months' imprisonment or more. Attorneys and families were granted prompt access to detainees. Government-provided attorneys are available to provide legal advice to detainees who cannot afford counsel.

The antiterrorism law permits a judge to authorize "control orders" on individuals suspected of involvement with terrorism-related activities. These orders may include a range of measures, such as monitoring of suspects and house arrest, and may be in effect for up to a year without the filing of criminal charges. **If a control order is still warranted after one year, a new order must be sought from a court.** Both the preventive detention and control order provisions of the antiterrorism legislation expire in 2015. The law mandates a

review of these provisions after five years (in 2010). On August 2, the High Court ruled that control orders were constitutional.

On July 2, the Australian Federal Police (AFP) detained Mohamed Haneef, an Indian doctor working at a Queensland hospital on a temporary visa, under the Crimes Act for alleged links to a foiled terrorist attack in Britain. Although the act states that the maximum investigation period a person can be held without charge is 24 hours (unless extended by court order), amendments enacted in 2004 introduced a concept called "dead time," in which the allowable time for questioning of a suspect can be spread across an unspecified number of days. This enabled police to detain Haneef for 12 days before he was charged on July 14 with recklessly providing support for a terrorist group and granted bail on July 16. That day the government revoked his visa on character grounds, and he was placed in immigration detention. On July 27, he was released after the Director of Public Prosecutions dropped the charges following its examination of evidence in the case. The next day Haneef returned to India. On August 21, the Federal Court of Australia granted his appeal against the cancellation of his visa. On December 21, the full bench of the Federal Court rejected the government's appeal of the August 21 decision, and the new immigration minister stated he would accept that decision. Human rights groups, the media, and the legal profession criticized the laws under which Haneef was held and police handling of the case. The Law Council, the country's highest legal body, described the "dead time" provision as introducing "indefinite detention by stealth."

Bangladesh

2004 Country Report

The Constitution prohibits arbitrary arrest and detention; however, authorities frequently violated these provisions, even in nonpreventive detention cases. The Constitution specifically allows preventive detention, with specified safeguards, and provides for the detention of individuals on suspicion of criminal activity without an order from a magistrate or a warrant. The Government arrested and detained persons arbitrarily and used national security legislation such as the Special Powers Act (SPA) of 1974 to detain citizens without filing formal charges or specific complaints.

China

2005 Country Report

Arbitrary arrest and detention remained serious problems. The law permits police and security authorities to detain persons without arresting or charging them. It also permits sentencing without trial to as many as four years in reeducation through-labor camps and other administrative detention. Because the government tightly controlled information, it was impossible to determine accurately the total number of persons subjected to new or continued arbitrary arrest or detention. According to 2003 government statistics, more than 260 thousand persons were in reeducation-through-labor camps. Foreign experts estimated that more than 310 thousand persons were serving sentences in these camps in 2003. According to published SPP reports, the country's 340 reeducation-through-labor facilities had a total capacity of about 300

thousand persons. In addition the population of special administrative detention facilities for drug offenders and prostitutes grew rapidly following a campaign to crack down on drugs and prostitution. In 2004 these facilities held more than 350 thousand offenders, nearly three times as many as in 2002. The government also confined some Falun Gong adherents, petitioners, labor activists, and others to psychiatric hospitals.

Among those specially targeted for arbitrary detention or arrested during the year were current and former China Democracy Party activists, Falun Gong practitioners, domestic and foreign journalists, unregistered religious figures, and former political prisoners and their family members. Business associates of released Uighur political prisoner Rebiya Kadeer were detained in Xinjiang from May to December. Her relatives were also harassed on several occasions after her March release abroad (see sections 2.c. and 5).

Colombia

2004 Country Report

The law prohibits incommunicado detention. Anyone held in preventive detention must be brought before a prosecutor within 36 hours to determine the legality of the detention. The prosecutor must then act upon that petition within 36 hours of its submission. Despite these legal protections, instances of arbitrary detention continued.

In August the office of the Human Rights Ombudsman, a group of NGO's, and two private individuals filed four Constitutional Court challenges to the 2001 Law on Security and National Defense on the grounds that, among other things, it would infringe on the right to due process of persons detained or investigated by the military (See Section 1.e.). The law does not specify the maximum period detainees may be held before being turned over to civilian authorities.

Equatorial Guinea

2005 Country Report

The government did provide responses on the status of 39 persons previously detained for crimes against the state. Several of the persons had been detained for months or years without judicial proceedings. They were brought before a judge during the year for brief hearings and remanded back to prison for unspecified crimes against the state, rebellion, or terrorism, to be held in "preventive detention" until trial. In at least three cases, a previous judgment of completion of sentence was overruled by the government's Fiscal (attorney general) for unexplained reasons. For 20 persons the government said there was no information, although many sources have reported their detention.

Finland

2004 Country Report

Preventive detention is allowed only in exceptional circumstances, such as during a declared state of war, or for narrowly defined offenses, including treason, mutiny, and large-scale arms trafficking. There were no reports of preventive detention.

India

2008 Country Report

The National Security Act (NSA) permits police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as one year. State governments must confirm the detention order, which is then reviewed by an advisory board of three high court judges within seven weeks of the arrest. Family members and lawyers are allowed to visit NSA detainees, who must be informed of the grounds of their detention within five days (10 to 15 days in exceptional circumstances).

Human rights groups expressed concerns that the NSA would allow authorities to order preventive detention after only a cursory review by an advisory board and that no court would overturn such a decision.

Israel

2004 Country Report

The law permits, subject to judicial review, administrative or preventive detention (i.e., detention without charge or trial), which was used in a small percentage of security cases. In such cases, the Minister of Defense may issue a detention order for a maximum of 1 year, which can be extended every 3 months. Within 24 hours of issuance of a detention order, detainees must be brought before a district judge who can confirm, shorten, or overturn the order. If the order is confirmed, an automatic review takes place after 3 months. Detainees have the right to be represented by counsel and to appeal detention orders to the High Court of Justice; however, according to the Association for Civil Rights in Israel (ACRI) and Adalah, the Legal Center for Arab Minority Rights in Israel, the police can delay a suspect's meeting with counsel for up to 48 hours in certain extreme cases. **If the detainee is suspected of committing a "security offense," the police can delay notification of counsel for up to 10 days with the consent of a judge, which was usually granted. The court can delay the suspect's meeting with counsel for an additional 21 days. The Government may withhold evidence from defense lawyers on security grounds.**

2001 Country Report

The law prohibits arbitrary arrest; however, in some instances, the Government has not observed this prohibition. Defendants are considered innocent until proven guilty and have the right to writs of habeas corpus and other procedural safeguards. However, a 1979 law permits, subject to judicial review, administrative, or preventive, detention (i.e., without charge or trial), which is

used in a small percentage of security cases. In such cases, the Minister of Defense may issue a detention order for a maximum of 1 year, although such orders may be extended. Within 24 hours of issuance, detainees must appear before a district judge who may confirm, shorten, or overturn the order. If the order is confirmed, an automatic review takes place after 3 months. Detainees have the right to be represented by counsel and to appeal detention orders to the High Court of Justice; however, the security forces may delay notification of counsel with the consent of a judge. According to human rights groups and legal experts, there were cases in which a judge denied the Government's request to delay notification of counsel. At detention hearings, the security forces may withhold evidence from defense lawyers on security grounds. The Government also may seek to renew administrative detention orders. However, the security services must "show cause" for continued detention, and, in some instances, individuals were released because the standard could not be met.

Italy

2008 Country Report

Authorities may impose preventive detention as a last resort, if there is clear and convincing evidence of a serious felony or the crime is associated with the Mafia or terrorism. Except in the most extraordinary situations, preventive detention is prohibited for pregnant women, single parents of children under age three, persons over age 70, and those who are seriously ill.

Jordan

2007 Country Report

The law prohibits arbitrary arrest and detention; however, the government did not always observe these prohibitions. The law provides that citizens are subject to arrest, trial, and punishment for the defamation of heads of state or public officials and dissemination of "false or exaggerated information outside the country that attacks state dignity."

Some human rights groups continued to voice concern over the 2006 Prevention of Terrorism Act, complaining that its definition of terrorism might lead nonviolent critics of the government to be arrested or detained indefinitely under the provisions of the act. At year's end the government had not made use of the act.

Malaysia

2004 Country Report

The Government stated that the implementation of preventive detention measures to combat terrorism by foreign governments underscored the country's continued need for the ISA. However, in 2003, the Minister of Legal Affairs said that the Government was reviewing the ISA and would incorporate Suhakam's recommendations into its report.

Under the Emergency Ordinance, the Internal Security Minister may issue a detention order for up to 2 years against a person if he deems it necessary to protect public order, or for the "suppression of violence, or the prevention of crimes involving violence."

Morocco

2004 Country Report

Under the antiterrorism law, administrative detention has increased from 48 to 96 hours, with two additional 96 hour extensions allowed at the prosecutor's discretion. Some defendants were denied access to counsel or family members during this initial period, which is when the accused is interrogated, and abuse or torture is most likely to occur.

Some members of the security forces, long accustomed to indefinite access to detainees before charging them, continued to extend the time limits. In November 2003, AI reported that some of those arrested had been held incommunicado for up to 5½ months. A large increase in detainees and prisoners led to an increase in allegations of incommunicado detentions that were difficult to confirm. In 2003, the Government announced that several thousand persons had been detained for links with terrorist groups, including involvement in the May 16 suicide attacks. Human rights activists and local attorneys estimated the number of detainees to be more than 4,000.

The police were required to notify a person's next of kin of an arrest as soon as possible; however, lawyers were not always informed promptly of the date of arrest, and thus were not able to monitor compliance with the administrative detention limits.

The law provides for a limited system of bail; however, it rarely was granted. The law does not require a written release to be issued for a person to be released from detention. In some instances, defendants were released on their own recognizance. Under a separate military code, military authorities may detain members of the military without warrants or public trial.

Although accused persons generally are brought to trial within an initial period of 2 months, prosecutors may request up to five additional 2-month extensions of pretrial detention. Thus, an accused person may be kept in detention for up to 1 year prior to trial.

Nepal

2008 Country Report

Under the Public Security Act (PSA), security forces may detain persons who allegedly threatened domestic security and tranquility, amicable relations with other countries, or relations between citizens of different classes or religions. The government may detain persons in preventive detention for up to six months without charging them with a crime. The detention period can be extended after submitting written notice to the Home Ministry. The security forces must notify the district court of the detention within 24 hours. The court may order an additional six months of detention before the government must file official charges.

In June authorities arrested under the PSA three Tibetan community leaders, two of whom were naturalized citizens. Three weeks later the Supreme Court ruled that the detention order failed to demonstrate an "immediate threat" to sovereignty, territorial integrity, or public order, as is constitutionally required for the use of preventive detention. The Supreme Court also found that the detention order cited the incorrect section of the PSA. This ruling resulted in the Tibetans' immediate release.

Other laws, including the Public Offenses Act, permit detention without charge. This act, and its many amendments, covers crimes such as disturbing the peace, vandalism, rioting, and fighting. Human rights monitors expressed concern that the act vests too much discretionary power in the chief district officer (CDO). Police arrested many citizens involved in public disturbances, rioting, and vandalism and detained them for short periods without charge.

2005 Country Report

Under the Public Security Act, security forces may detain persons who allegedly threatened domestic security and tranquility, amicable relations with other countries, or relations between citizens of different classes or religions. The government may detain persons in preventive detention for up to six months without charging them with a crime. The detention period could be extended after submitting written notices to the home ministry. The security forces must notify the district court of the detention within 24 hours. The court may order an additional six months of detention before the government must file official charges. The government commonly applied this act in cases involving suspected Maoists and political and civil rights activists (see section 1.b.). Human rights groups alleged that the security forces used arbitrary arrest and detention to intimidate communities considered sympathetic to the Maoists.

Pakistan

2008 Country Report

The district coordination officer may order preventive detention for as long as 90 days and may extend the detention for an additional 90 days with court approval. **Human rights organizations charged that a number of individuals alleged to be affiliated with terrorist organizations were held indefinitely in preventive detention.** In corruption cases, the National Accountability Bureau (NAB) may hold suspects indefinitely provided judicial concurrence is granted every 15 days.

Until the parliamentary elections in February, the government used preventive detention, mass arrests, and excessive force to quell or prevent demonstrations, political rallies, or civil unrest. There were no reports that the government elected in February engaged in these practices.

Under the FCR in the FATA, political agents have the legal authority to impose collective punishment, preventively detain individuals as long as three years, and require "bonds" to prevent undesired activity. Human rights organizations expressed concern with the concept of collective responsibility, as authorities used it to detain members of fugitives' tribes, demolish their homes, confiscate or destroy their property in the tribal areas and around the country, or lay

siege to a fugitive's village pending his surrender or punishment by his own tribe in accordance with local tradition.

2007 Country Report

On June 15, Amnesty International expressed concern regarding a series of arbitrary arrests of opposition party workers and other political activists that had occurred over a two-week period. According to media reports, police arrested approximately 800 to 1,200 persons, primarily in Punjab, to prevent mass demonstrations protesting the suspension of the chief justice in March.

In early September police arrested hundreds of party workers from the PML–N in an effort to prevent welcome rallies for the return of exiled former prime minister Nawaz Sharif.

Following President Musharraf's declaration of an SOE on November 3, the government jailed or placed under house arrest approximately 6,000 lawyers, judges, political party activists, and civil society leaders. Most of those detained remained in prison for a few hours or up to a few days. At year's end 11 judges and three attorneys remained under house arrest. This included the former chief justice and those members of the Supreme and High Courts who refused to take an oath of allegiance to the Provisional Constitution Order, as well as attorneys Aitzaz Ahsan, president of the Pakistan Supreme Court Bar Association, Tariq Mehmood, and Ali Ahmed Khan. Authorities released attorney Munir Malik, former president of the Supreme Court Bar Association, from detention and provided him medical treatment for kidney failure following charges of mistreatment.

Saudi Arabia

2004 Country Report

The law prohibits arbitrary arrest and detention and limits the period of arrest to 5 days without charges being filed; however, in practice, persons were held weeks or months and sometimes longer, and the law gives the Minister of Interior broad powers to detain persons indefinitely.

The authorities may detain without charge persons who publicly criticize the Government, or may charge them with attempting to destabilize the Government (see Sections 2.a. and 3). Following the demonstrations in December in this year and in October 2003 in a number of cities, authorities arrested and detained political protesters for weeks prior to charging them (see Sections 2.a. and 3).

Spain

2004 Country Report

A judge may authorize semi-incommunicado detention for terrorism suspects, in which suspects have access only to a court-appointed lawyer.

Singapore

2008 Country Report

Some laws--the ISA, the Criminal Law (Temporary Provisions) Act (CLA), the Misuse of Drugs Act (the drug act), and the Undesirable Publications Act (UPA)--have provisions for arrest and detention without a warrant, and under the ISA, CLA, and drug act, executive branch officials can order continued detention without judicial review. **The ISA has been employed primarily against suspected security threats. In the past these threats were Communist related; however, in recent years the ISA has been employed against suspected terrorists.** The CLA has been employed primarily against suspected organized crime and drug trafficking.

The ISA and the CLA permit preventive detention without trial for the protection of public security, safety, or the maintenance of public order. The ISA gives broad discretion to the minister for home affairs, at the direction of the president, to order detention without filing charges if it is determined that a person poses a threat to national security. The initial detention may be for up to two years and may be renewed without limitation for additional periods of up to two years at a time. Detainees have a right to be informed of the grounds for their detention and are entitled to counsel. However, they have no right to challenge the substantive basis for their detention through the courts. The ISA specifically excludes recourse to the normal judicial system for review of a detention order made under its authority. Instead, detainees may make representations to an advisory board, headed by a Supreme Court justice, which reviews each detainee's case periodically and must make a recommendation to the president within three months of the initial detention. The president may concur with the advisory board's recommendation that a detainee be released prior to the expiration of the detention order, but he is not obligated to do so.

Syria

2008 Country Report

The 1963 Emergency Law authorizes the government to conduct preventive arrests and overrides constitutional and penal code provisions against arbitrary arrest and detention, including the need to obtain warrants. In cases involving political or national security offenses, arrests were often carried out in secret with cases assigned in a seemingly arbitrary manner to military, security, or criminal courts. Suspects were detained incommunicado for prolonged periods without charge or trial and denied the right to a judicial determination regarding pretrial detention. Unlike defendants in regular criminal and civil cases, security detainees did not have access to lawyers prior to or during questioning, as well as throughout the preparation and presentation of their defense. In most cases detainees were not informed of charges against them until their arraignment, which often was months after their arrest. Additionally, those suspected of political or national security offenses were arrested and prosecuted under ambiguous and broad articles of the penal code and subsequently tried in either the criminal or security courts.

Tanzania

2004 Country Report

Under the Preventive Detention Act, the President may order the arrest and indefinite detention without bail of any person considered dangerous to the public order or national security. This act requires that the Government release detainees within 15 days of detention or inform them of the reason for their detention. The law allows a detainee to challenge the grounds for detention at 90-day intervals. The Preventive Detention Act was not used during the year. The Court of Appeals ruled that the Act cannot be used to deny bail to persons not considered dangerous to society; despite this ruling, however, the Government has not introduced corrective legislation. The Government has additional broad detention powers under the law, which permit regional and district commissioners to arrest and detain for 48 hours persons who may "disturb public tranquility."

Trinidad & Tobago

2004 Country Report

The Minister of National Security may authorize preventive detention in order to prevent actions prejudicial to public safety, public order, or national defense, and the Minister must state the grounds for the detention. There were no reports that the authorities abused this procedure.

United Kingdom

2008 Country Report

Police may detain an ordinary criminal suspect for 96 hours without charging him or her. However, detention for more than 24 hours must be authorized by a senior police official, and detention of more than 60 hours requires the approval of a magistrate. No one except terrorism suspects may be detained without charge longer than 96 hours. Authorities may hold terrorism suspects for up to 28 days before formally charging them; they are entitled to counsel during this period. A government bill to extend the period of detention without charges from 28 to 42 days in terrorist cases was a significant source of controversy during the year; the bill was withdrawn after leaders in the House of Lords indicated it would be defeated there. Existing law permits the extended detention of foreigners who are suspected of being terrorists but who cannot be deported immediately because of the risk they would be tortured or executed in their countries of destination. Such individuals may appeal their designation as terror suspects.

The law gives defendants awaiting trial the right to bail, except for those judged to be flight risks, likely to commit another offense, suspected terrorists, or in other limited circumstances. Detainees may make telephone calls and have legal representation, including government provided counsel if they are indigent.

The Terrorism Act permits a judge (or the home secretary, with a judge's permission) to impose "control orders," which include a range of restrictions, up to house arrest, on individuals suspected of involvement in terrorism related activities, regardless of nationality or perceived

terrorist cause. Control orders were first employed in January. In October the Law Lords ruled that the 18 hour curfew the home secretary had imposed on one group of individuals constituted a deprivation of liberty beyond what was permissible under the law. In two other cases, the Law Lords questioned the fairness of the hearing which two individuals received when they challenged the control orders served on them. On October 1, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) criticized the government's detention of terrorism suspects. The law normally requires suspects to be transferred to prisons after 14 days; however in the case of terror suspects this was extended to 28 days to protect the public and permit further investigation. The CPT's objections were based on conditions at the high security detention facility at Paddington Green police station, which they regarded as inadequate for prolonged detention. Government representatives responded that detention in police facilities beyond 14 days were exceptions that they believed to be "reasonable and proportionate."

2007 Country Report

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The law permits a judge (or the home secretary, with a judge's permission) to impose "control orders" on individuals suspected of involvement in terrorism-related activities, regardless of nationality or perceived terrorist cause. The control orders include a range of restrictions up to house arrest.

2006 Country Report

On March 30, the Terrorism Act of 2006 was enacted, allowing the police to detain terrorism suspects for up to 28 days before formally charging them. The government used this law to detain 17 suspects following the August terror plot to hijack commercial aircraft and blow them up over foreign cities.

Defendants awaiting trial have a statutory right to bail except when there is a risk that they would flee, commit another offense, or in other limited circumstances. Detainees are allowed to make telephone calls and have legal representation, including state-provided counsel if indigent.

The law permits extended detention of foreigners suspected of being terrorists, but who cannot be removed from the country immediately due to concerns that they will be subjected to torture or the death penalty in their country of origin. Such detainees have the right to appeal their certification by the government as terror suspects. The government concluded memoranda of understanding with some countries to permit the return of suspected terrorists to their countries of origin and was seeking similar agreements with others, despite NGO concerns with the human rights records of those countries (see section 1.c.).

The Prevention of Terrorism Act of 2005 permits a judge (or the home secretary with a judge's permission) to impose "control orders" on individuals suspected of involvement in terrorism-related activities, regardless of nationality or perceived terrorist cause. The control orders include

a range of restrictions up to house arrest. In April a high court judge declared that Section 3 of the act was incompatible with the right to a fair trial according to the European Convention on Human Rights.

2005 Country Report

The law permits extended detention of foreigners suspected of being terrorists but who cannot be removed from the country immediately, due to concerns that they will be subjected to torture in their country of origin. Such detainees have the right to appeal their certification by the government as a terror suspect, and all the detainees are free to leave the country at any time. In March the government enacted the Prevention of Terrorism Bill, which permits a judge (or the home secretary with a judge's permission) to impose "control orders" on individuals suspected of involvement with terrorism-related activities regardless of nationality or perceived terrorist cause. The control orders include a range of restrictions up to house arrest.

2004 Country Report

The law also provides law enforcement authorities with the power to detain for up to 48 hours without charge individuals suspected of having committed a terrorism-related offense. A court may extend this period for a maximum of 14 days.

Detainees are allowed to make telephone calls and have legal representation. The law limits the amount of time that a suspect can be detained without a formal charge and requires that an inspector review the detention at set intervals to ensure that it is necessary and lawful.

The Anti-Terrorism, Crime, and Security Act (ATCSA) allows for extended detention of foreigners suspected of being terrorists but who cannot be removed from the country immediately, due to concerns that they will be subjected to torture in their country of origin. Detainees have the right to appeal their certification, and all the detainees are free to leave the country at any time. On December 16, the Law Lords ruled that the ATCSA detention powers violated the European Convention on Human Rights, which has been incorporated into the law. The Government announced that the 11 individuals detained under ATCSA would remain in detention while Parliament and the Government decided how to respond to the ruling.

Defendants awaiting trial have a statutory right to bail except when there is a risk that they would flee, commit another offense, or in other limited circumstances.

2003 Country Report

This Act also allows for extended detention of immigrants and asylum seekers suspected of being terrorists but who cannot be removed from the country immediately. Human rights groups object to provisions of these laws, arguing that they reverse the burden of proof and provide inadequate safeguards against abuse by law enforcement officials. These objections focused on the broad definition of terrorism employed in the law, the proscriptive powers of the state, and the powers of arrest, detention, and interrogation. The Special Immigration Appeals Commission ruled in 2002 that these detention powers were unlawful and violated the Government's obligation under the European Convention of Human Rights. The Government appealed the

ruling, and in 2002, the Court of Appeals ruled that the detention powers complied with the European Convention on Human Rights.

Yemen

2004 Country Report

During the year, the Government continued to detain suspects accused of links to terrorism. In November, the Government arrested Saudi-born Mohammed Hamdi al-Ahdal (AKA Abu Assam al-Maki), who has been implicated in the 2000 attack on the USS Cole. During the year, the Government arrested Hadi Dulqum, a weapons dealer, al-Qa'ida associate, and supplier of weapons for the group. In November, the President released approximately 90 security detainees not facing charges in honor of Ramadan. A parliamentary report issued in September 2002 contained an acknowledgement by the Minister of Interior that such detentions violated the Constitution; however, it asserted that they were necessary for national security. The Government sponsored an ideological dialogue led by Islamic scholars to obtain assurances from detainees to repent past extremism, denounce terrorism, commit to obeying the laws and Government, respect non-Muslims, and refrain from attacking foreign interests. More than 150 detainees have undergone the dialogue process since 2002, most of whom were released. At year's end, more than 50 persons who were accused of specific crimes or unwilling to repent remained in detention.

II. PREVENTIVE DETENTION FOR UNSPECIFIED PURPOSES

Algeria

2007 Country Report

Judges rarely refused prosecutor requests for extending preventive detention. Detention can be appealed to a higher court but is rarely overturned. If the detention is overturned, the defendant can request compensation. In December 2005, the minister of justice acknowledged publicly that prosecutors sometimes abused investigative detention. Detainees generally had prompt access to a lawyer of their choice and, if indigent, were provided a lawyer by the government.

Angola

2008 Country Report

Excessively long pretrial detention continued to be a serious problem. An inadequate number of judges and poor communication among authorities contributed to it. Police often beat and then released detainees rather than prepare a formal court case. In some cases, authorities held inmates in the prison system for up to two years before their trials began. An NGO estimated that more than 50 percent of inmates were pretrial detainees, most of whom had not been formally charged. The government did not release detainees who had been held beyond the legal time

limit, claiming the 2006 release of approximately 2,000 pretrial detainees resulted in an increase in crime.

Benin

2008 Country Report

There were credible reports that the gendarmes and the police exceeded the legal limit of 48 hours of detention in many cases, sometimes by as much as a week. Authorities often used the practice of holding a person indefinitely "at the disposition of" the public prosecutor's office before presenting the case to a magistrate. Approximately 75 percent of persons in prison were pretrial detainees. Inadequate facilities, poorly trained staff, and overcrowded dockets delayed the administration of justice.

Burkina Faso

2008 Country Report

The law limits detention without charge for investigative purposes to a maximum of 72 hours, renewable for a single 48-hour period, although police rarely observed these restrictions. The average time of detention without charge (preventive detention) was one week; however, the law permits judges to impose an unlimited number of six-month preventive detention periods, and defendants without access to legal counsel were often detained for weeks or months before appearing before a magistrate. Government officials estimated that 23 percent of prisoners nationwide were in pretrial status. In some cases detainees were held without charge or trial for longer periods than the maximum sentence they would have received if convicted of the alleged offense. There was a pretrial release (release on bail) system; however, the extent of its use was unknown.

Burundi

2008 Country Report

Prison conditions remained harsh and sometimes life threatening. Severe overcrowding persisted, and in August APRODH reported that 9,613 persons were held in 11 facilities built to accommodate a total of 4,050. According to government officials and human rights observers, prisoners suffered from digestive illnesses and malaria, and some died as a result of disease. APRODH reported 57 cases of torture and abuse of prisoners and detainees, as well as arbitrary and prolonged detentions, in Rumonge Prison in Bururi Province. For example, 59 percent of prisoners were "preventive detainees" held without charge.

Mozambique

2008 Country Report

In detention facilities, overcrowding did not appear to be a serious problem. During the first half of the year, the LDH visited several police station detention facilities and noted that some

detainees continued to be held beyond the maximum police station preventive detention period of 48 hours.

2007 Country Report

The LDH found that more than 500 detainees in the Maputo Central Prison (Machava) had been held beyond the 90-day preventive detention period. Of the prisons visited, 399 prisoners remained in jail after the end of their sentences (including 206 at the Maputo Central Prison). The LDH described 35 facilities as "physically inadequate."

Malaysia

2008 Country Report

The constitution stipulates that no person may be incarcerated unless in accordance with the law. However, the law allows investigative detention to prevent a criminal suspect from fleeing or destroying evidence while police conduct an investigation. Four laws also permit preventive detention to incarcerate an individual suspected of criminal activity or to prevent a person from committing a future crime. Such laws severely restrict, and in some cases eliminate, access to timely legal representation and a fair public trial.

Four preventive detention laws permit the government to detain suspects without normal judicial review or filing formal charges: the ISA, the Emergency (Public Order and Prevention of Crime) Ordinance, the Dangerous Drugs (Special Preventive Measures) Act, and the Restricted Residence Act.

Philippines

2008 Country Report

A variety of national executive orders and laws provide for the welfare and protection of children. Police stations have child and youth relations officers to ensure that child suspects are treated appropriately. However, procedural safeguards were often ignored in practice. The BJMP stated that 4,213 minors were held on "preventive detention" while their trials were underway, and an additional 130 children, convicted from January to November, were serving sentences. Many child suspects were detained for extended periods without access to social workers and lawyers and were not segregated from adult criminals. NGOs believed that children held in integrated conditions with adults were highly vulnerable to sexual abuse, recruitment into gangs, forced labor, torture, and other ill treatment. There were also reports that many children detained in jails appeared to have been arrested without warrants.

Armenia

2008 Country Report

Lengthy pretrial or preventive detention remained a problem. In practice the authorities generally respected the provision of the law stipulating that pretrial detention could not extend beyond 12

months. However, the law does not set any limits for detention of defendants once the case is sent to the court, and there were cases when defendants spent three or more years in detention before a verdict was reached. Although the law requires a well-reasoned decision to justify grounds for an extension of custody, judges routinely prolonged custody on seemingly unclear grounds. Authorities reported that during the year, pretrial detainees constituted on average approximately 714 persons out of a prison population of nearly 3,969.

Germany

2008 Country Report

Although the law does not allow courts to punish persons twice for the same crime, it allows for "subsequent preventive detention." In cases involving rape, homicide, or manslaughter, courts may order offenders to serve supplemental detention. Such preventive detention requires a court finding, based on at least one expert opinion, that the convicted person could pose a danger to the public. Such detention may last indefinitely.

Bangladesh

2008 Country Report

Using the Special Powers Act that allows preventive detention, the government detained prominent business leaders. Most of those persons were then tried under existing anticorruption legislation. Most high-profile cases were handled under the Emergency Power Rules and therefore initially denied suspects both the right to bail and the right to appeal their cases during the course of the trial. The Supreme Court, however, restored some of its bail jurisdiction through a ruling and exercised the authority to consider bail petitions.

Argentina

2008 Country Report

The law provides for the right to bail, except in cases involving narcotics, violent crimes, and firearms violations. Although the bail system was used, civil rights groups claimed that judges were more likely to order the holding of indicted suspects in preventive or pretrial detention than to allow suspects to remain free pending their trial.

Bolivia

2008 Country Report

More than 70 percent of detainees awaited sentencing, but the courts provided release on bail for some detainees. Judges have the authority to order preventive detention for suspects deemed a flight risk. If a suspect is not detained, a judge may order significant restrictions on the suspect's movements.

Denial of justice through prolonged detention remained a problem. Although the law establishes that a case's investigatory phase cannot exceed a maximum of 18 months and that the trial phase cannot exceed three years, some suspects were held in preventive detention longer than the legal limits. If the investigatory process is not completed in 18 months, the detainee may request release by a judge; however, judicial corruption, a shortage of public defenders, inadequate case-tracking mechanisms, and complex criminal justice procedures kept some persons jailed for more than 18 months before trial.

2007 Country Report

Children from 11 to 16 years of age may be detained indefinitely in children's centers for known or suspected offenses, or for their protection, on the orders of a social worker. There is no judicial review of such orders.

Ecuador

2008 Country Report

While both the previous and the new constitution prohibit arbitrary arrest and detention, in 2006 the UN Working Group on Arbitrary Detention noted that provisions in the Criminal Procedure Code, the Penal Code, and some regulations adopted by central or provincial authorities "undermine the guarantees and protection offered." The working group cited two laws of particular concern: one imposes an obligation on judges to order detention for persons awaiting trial, i.e., "preventive detention," which in practice created a situation in which thousands of persons were detained for longer periods than the constitution allowed, often years longer, thus violating their right to be tried within a reasonable time. The second measure abolishes sentence reductions, which led to a large number of persons serving lengthy sentences for minor offenses. In 2006 the Constitutional Court ruled the preventive detention provision unconstitutional, holding that no person can remain in prison unsentenced for more than one year for penal crimes and six months for lesser crimes. The clock for inmates already incarcerated and all future incarcerated individuals started in October 2007. However, in October 2007 Congress passed an interpretative law determining that detainees who purposely delayed the judicial process were not subject to the ruling of the Constitutional Court.

Haiti

2008 Country Report

Police frequently did not observe the legal requirement to present detainees before a judge within 48 hours, and prolonged preventive detention remained a serious problem. For example, judges sometimes failed to report for work or the police lacked vehicles to transport the accused to courthouses. Consequently, many detainees were held for extended periods in preventive detention without being informed of charges against them.

2007 Country Report

The law prohibits arbitrary arrest and detention, and the constitution stipulates that a person may be arrested only if apprehended during the commission of a crime, or on the basis of a warrant by a legally competent official such as a justice of the peace or magistrate. The authorities must bring the detainee before a judge within 48 hours of arrest. In practice officials frequently ignored these provisions. With so many detainees being held in preventive detention without the benefit of a hearing and in violation of the 48-hour rule, it was difficult to determine how many of them were arbitrarily arrested or detained.