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Human Rights Council

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Agenda item 3
Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development
Agenda item 4
Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, the Women's International League for Peace & Freedom, the Union of Arab Jurists, the Arab Lawyers Union, the General Arab Women Federation, North-South XX1, the United Towns Agency for the North-South Cooperation, the Indian Movement "Tupaj Amaru", the Arab Organization for Human Rights, the Asian Women's Human Rights Council, the Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale -OCAPROCE International, Human Rights Now, the International Federation of University Women, the Organisation Mondiale des associations pour l'éducation prénatale, the World Wide Organization for Women, non-governmental organizations in special consultative status; the International Human Rights Association of American Minorities, the Indian Council of South America, the World Peace Council, International Educational Development, Inc., nongovernmental organizations on the roster

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

[2 September 2013]

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

Arbitrary arrest and detention in Iraq*

Arbitrary detention, or the arbitrary deprivation of liberty¹, is prohibited in all of the major international human rights instruments including the International Covenant on Civil and Political Rights (Art. 9), the Universal Declaration of Human Rights (Art. 9) and the Arab Charter on Human Rights (Art. 14), of which Iraq is a party².

Despite the legal weight behind the protection from arbitrary detention, Iraq continues to arbitrarily deprive Iraqis of their liberty at alarming rates. According to the Iraqi Ministry of Justice and Ministry of Human Rights, as of 31 December 2012 there were 42,360 detainees in Iraqi prisons.³ These are the official numbers provided by the ministries, but evidence, secret prisons and longstanding common practices in Iraq guarantee that these are not accurate and that the real numbers are in fact much higher.

Enforced disappearances and secret prisons

The Working Group on Arbitrary Detention (hereinafter the Working Group) has affirmed that "secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human being under customary international law. Iraq is an expert in this heinous practice. The existence of secret prisons in Iraq is well known. They were used by US and UK forces during the occupation and their use continued under the successive governments, and currently under Maliki. It is here that some of the worst torture and human rights violations take place⁵. Due to their nature, it is impossible to determine how many people have been arbitrarily detained or have perished within these

^{*} Please see last page for list of NGOs without consultative status, also sharing the views expressed in this statement.

¹ The Working Group on Arbitrary Detention considers cases of deprivation of liberty as arbitrary under customary international law where: a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty; b) The deprivation of liberty results from the exercise of the rights of freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights; c) The total or partial non-observance of the international norms relating to the right to a fair trial established in the Universal Declaration of Human Rights and in the relevant international instruments is of such gravity as to give the deprivation of liberty an arbitrary character; d) and e) will not be included for the purpose of this report

The prohibition of arbitrary detention is so universally accepted that it not only holds a place in treaty and international law, but also under *jus cogens*, rendering derogation from it impossible.

³ UNAMI Human Rights Office/OHCHR, Report on Human Rights in Iraq: July-December 2012, Baghdad, June 2013, available at http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf

⁴ United Nations document A/HRC/22/44, Report of the Working Group on Arbitrary Detention, 24 December 2012, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf

⁵ By definition, anyone detained in a secret prison is victim of arbitrary detention as their whereabouts are hidden from their family, there is no official record of their arrest, they d not fall under the protection of the law, and due process is non-existent. In most cases, missing persons were last seen being taken away by men in police or military uniforms. For many of their family members, the only hope is that they are being held in secret prisons, which would at least indicate that they are still alive. In holding these detainees for indefinite periods of time and keeping their whereabouts from their families, these detentions are tantamount to arbitrary detentions.

prisons' walls over the years, but it is certain that it is tens of thousands, if not more, and that they do not calculate under the official number of detainees provided by the ministries⁶.

Cases of arbitrary arrest and detention

Random arrests and night raids continue to be common practice in Iraq. People are arrested without warrants, charges, or on the premise that they are terrorists or Baathists. In one case, in which, according to officials numbered approximately 1,500, were arrested under direct orders by Maliki for being "Saddam Hussein loyalists plotting against the government." Arrests and detention under these circumstances are inarguably arbitrary. 8

Another telling example of the mass arbitrary arrests carried out under official orders occurred in March 2012 preceding the Arab League summit, which took place in Baghdad. There are numerous confirmed reports of at least 4000 people who were arbitrarily arrested during this single occasion. A further confirmation of the arbitrariness of these arrests lies in that they were conducted as "precautionary" measures to prevent terrorist attacks, "embarrassing" public protests, and as a ministry of interior official stated, to keep "security incidents to a minimum during the summit, while the world was watching...."

A more alarming wave of arrests occurred between the beginning of August 2013 and 12 August 2013, (the end of the Muslim holiday Eid Al-Fitr). In an interview on 13 August 2013 by Al-Sharqiya News, General Ali Ghaidan Majid, the Iraqi Land Forces Commander, confirmed that an operation had been conducted around Baghdad and later expanded to Al-Anbar and other provinces resulting in the arrest of close to 1,000 people and the killing of others. He described all those arrested and killed as "terrorists", a common excuse used by the government to justify its arrests and executions. Al-Maliki confirmed General Majid's statements in his televised address on 14 August 2013, announcing that over 800 "terrorists" had been arrested, dozens killed and assuring that these operations would continue. As of 21 August 2013, the number of arrests become more than 1500 persons. ¹⁰

Immediately following the arrests, two members of the Iraqi Parliament spoke out against them. One of them, Mohammed Iqbal from Nineveh province, reiterated that the parliament supports efforts to arrest terrorists, but that those arrested during the recent campaigns were innocent, calling the arrests arbitrary, discriminatory and without basis. Iqbal called on the army to be frank and transparent, assuring that they are only trying to cover up their failure in improving security and capturing real terrorists by arresting and detaining the innocent

The head of Iraq's ministry of human rights' humanitarian affairs department reports that there are currently 16,000 Iraqis who are still missing, however many kidnappings and disappearances go unreported so this figure is much lower than the reality. Some have estimated the number to be in the hundreds of thousands. See, Huffington Post, *Iraq War's Missing Prisoners: Families Search For 16,000 Unaccounted Who May Be Held In Secret Prisons*, 15 March 2013, available at http://www.huffingtonpost.com/2013/03/15/iraq-war-thousands-missing-secret-prisons_n_2883932.html

Human Rights Watch, Iraq: Mass Arrests, Incommunicado Detentions, 15 May 2012, available at http://www.hrw.org/news/2012/05/15/iraq-mass-arrests-incommunicado-detentions

According to Ministry of Justice officials, many of these prisoners had not yet been transferred "into the full custody of the justice system" as required by law and were instead transported "in and out of various prison facilities, sometimes without adequate paperwork or explanation" and all under the authority of Al-Maliki. See, Ibid

Many of the arrests were carried out without warrants, detainees were held without being charged, and some have reported mistreatment, torture and having been forced to sign confessions; all properties of arbitrary arrest and detention. Ibid

The operations of arrests are being conducted in Baghdad, its surrounding area and expanded to include the provinces of Anbar, Ninewa and Salah al-Din.

and televising it. He assures that the same story has been repeated since the beginning of the occupation--hundreds of "terrorists" are arrested only to later be found innocent—and that it is always the innocent that are the victims, attacked by both terrorists and the government. The governor of Anbar, which includes part of Lake Tharthar where many arrests were made, challenged the government to show evidence that those arrested were tied to terrorism and called for their release. He affirms that those arrested were innocent, in particular those at the lake, which were composed of farmers, fishermen and families vacationing and celebrating Eid Al-Fitr.

Anti-terrorism: A mask for arbitrary detention

"The use of 'administrative detention' under public security legislation...or other administrative law, resulting in a deprivation of liberty for unlimited time or for very long periods without effective judicial oversight, as a means to detain persons suspected of involvement in terrorism..., is not compatible with international human rights law." Whether Iraqi law refers to it as 'administrative detention' or not, tens of thousands of people have been detained, many for years on without a trial, on the grounds that they are involved in terrorism. Administrative detention in and of itself does not constitute arbitrary detention, but becomes arbitrary when, such as in Iraq, there is complete disregard for, and non-observance of, international due process norms.

The Anti-Terrorism law is extremely ambiguous, in particular with regards to Article 4, allowing for it to be manipulated for personal or political reasons¹². Convictions under Article 4 are punishable by death. In addition to covering those carrying out terrorist attacks, the article includes anyone who planned, promoted, financed, assisted or enabled the terrorists and their acts in any way. A committee chaired by Deputy Prime Minister Al-Shahristani who is examining the detainee situation has itself stated that serious problems are confronted in applying the law.^{13,14} Rendering this law even more unjust is its reliance on al-mukhbir al-sirri (secret informers) who report alleged terrorist activities and are protected by legal amnesty and anonymity.¹⁵ This practice has led to countless cases of false accusations and wrongful executions¹⁶.

United Nations document E/CN.4/2005/6, Report of the Working Group on Arbitrary Detention, 1 December 2004, available at http://daccess-dds-

ny.un.org/doc/UNDOC/GEN/G04/167/19/PDF/G0416719.pdf?OpenElement

According to the UN Working Group on Arbitrary Detention, "A detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon an arbitrary piece of legislation or is inherently unjust...." This is precisely the case of Iraq and Anti-Terrorism Law no. 13 of 2005. United Nations document A/HRC/22/44, Report of the Working Group on Arbitrary Detention, 24 December 2012, available at

 $http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf\\$

Mushreq Abbas, Iraq's Anti-Terrorism Law Criticized, Al Monitor, 16 April 2013, available at http://www.al-monitor.com/pulse/originals/2013/04/iraq-terrorism-law-executions-controversy.html

One example given on the injustices that can be committed by the ambiguity of the law is that a family member can be arrested under Art. 4 and thus sentenced to death for not providing information on a son, for example, involved in terrorist activity, even if the family genuinely did not know of the involvement.

Dr. Salim Al-Jubouri, Member of Iraqi Parliament and Chairman of the Iraqi House of Representatives Human Rights Committee, Letter addressed to the World Congress Against the Death Penalty, 13 June 2013, available at

http://iraqsolidaridad.files.wordpress.com/2013/06/carta_congreso_pena_muerte_13_jun_2013.pdf

According to Former Minister of the Interior Jawad Al-Bulani, 14,500 people had been convicted on terrorism offences alone.16 This was the number before his term ended in 2010; thousands more have been convicted since. Arrests and detentions under such unjust laws and conditions are arbitrary.

No end in sight

Cases continue to abound of arrests in Iraq without warrants; secret prisons¹⁷; denial of access to lawyers; years of detention without being charged or given due process¹⁸; and sentences imposed based on forced confessions, many acquired under torture.^{19,20}

The Working Group has itself previously investigated cases of arbitrary detention in Iraq²¹, but the government has been unresponsive and continues its campaigns of arbitrary arrests. This same group has confirmed that "International law recognizes detention or other severe deprivation of physical liberty as a crime against humanity where it is committed as part of a widespread or systematic attack against any civilian population." With tens of thousands of innocent people being targeted and arrested or detained arbitrarily in Iraq, this is undoubtedly a case of a crime against humanity and like all crimes, its perpetrators must be brought to justice.

The urgency of this situation is best demonstrated by a speech given by Maliki on 18 August 2013, in which he stated that the current military operations taking place around Baghdad and the provinces of Anbar, Ninawa and Salah al-Din will continue forever. Speaking in the province of Babylon, Maliki assured that he will not listen to, or take into account any condemnations or statements against these operations and reiterated once again that the arrests will continue until he has "put an end to all those seeking to create sectarian sedition." His threats went even further, promising to end any and all demonstrations against the political process in Iraq and declaring that as was the case in Egypt, his government is capable of ending the demonstrations, and could do so in less than an hour. 25

As sustained by the Working Group, "The notion of promptness in Art 9, para 3 of ICCPR is one key element under which detention can be arbitrary"

Even women are not shown mercy in the face of these cruel injustices—women are raped before arrests and during detention; accused of false charges and detained for prolonged periods without due process. Several women are on death row and have been executed on unfounded terrorism charges. See: Wijhat Nadhar, *The Dark and Secret Dungeons of Iraq. Horror Stories of Female Prisoners*, Global Research, 03 December 2012, available at http://www.globalresearch.ca/the-dark-and-secret-dungeons-of-iraq-horror-stories-of-female-prisoners/5313974

²¹ In its report to the HRC, the Working Group on Arbitrary Detention presented its adopted opinions regarding detained persons. It reviewed the cases of 198 persons from 37 countries. Of those 198 cases, 78 were in Iraq. The Working Group did not receive a government response for any of the 78 cases, every one of which was determined to consist of arbitrary detention.

United Nations document A/HRC/22/44, Report of the Working Group on Arbitrary Detention, 24 December 2012, available at

 $http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf\\$

From speech given by Al-Maliki on 18 August 2013, reported on by Al Sharqiya News, available at http://www.alsharqiya.com/?p=66084

²⁴ Ibid, translated from Arabic

²⁵ bid, translated from Arabic

In their 2013 World Report, available at https://www.hrw.org/sites/default/files/wr2013_web.pdf, Human Rights Watch reported that "Forces controlled by the Defense, Interior, and Justice Ministries, as well as elite forces reporting directly to the prime minister's office, continued arbitrary detentions of a broad spectrum of detainees, including in secret prisons outside the purview of the Interior and Justice ministries."

UNAMI Human Rights Office/OHCHR, Report on Human Rights in Iraq: July-December 2012, Baghdad, June 2013, available at http://www.ohchr.org/Documents/Countries/IQ/HRO_July-December2012Report.pdf; Wijhat Nadhar, The Dark and Secret Dungeons of Iraq. Horror Stories of Female Prisoners, Global Research, 03 December 2012, available at http://www.globalresearch.ca/the-dark-and-secret-dungeons-of-iraq-horror-stories-of-female-prisoners/5313974

These threats cannot be allowed to materialize. Without immediate international action, tens or hundreds of thousands of more lives risk falling victim to arbitrary arrest, arbitrary detention and Iraq's well-established system of injustice.

We call on:

- The Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment should visit Iraq and fully investigate the most recent cases of arbitrary detention outlined in this report, as well as all cases of arbitrary detention, ill treatment and summary execution
- The Special Rapporteur on the promotion and protection of human rights while countering terrorism should pressure the Iraqi government to amend the Anti-Terrorism Law, particularly Article 4, in order to bring it into accordance with international human rights standards
- The U N and the Human Rights Council to ensure that all human rights violations in Iraq during the sanction and the invasion and occupation be investigated by an international independent body. A Special Rapporteur for Iraq be immediately reinstate.

Notes:

The following are NGOs without consultative status, who also share the views expressed in this statement: BRussels Tribunal, Arab Lawyers Association- UK, Geneva International Centre for Justice (GICJ), Association of Humanitarian Lawyers (AHL), The International League of Iraqi Academics (ILIA), The Iraqi Commission on Human Rights (ICHR), Women Will Association (WWA), Organization for Widows and Orphans (OWO), Ikraam Center for Human Rights, Belgian Peace Movement, Ligue camerounaise des droits de l'homme. Monitoring Net of Human Rights in Iraq (MHRI), Women Solidarity for an Independent and Unified Iraq, Alliance to Renew Cooperation among Humankind, International Coalition against War Criminals (ICAWC), Medical Aid for the Third World, Association of Iraqi Diplomats (AID), The African Association of Human Rights (AAHR), Protection of Human Rights Defenders in the Arab World, Moroccan Association for the Right to a Fair Trial, Americans Against the War (France), General Federation of Iraqi Women (GFIW), The International Action Center (IAC), American Worker, Association of Iraqi Intellectuals and Academics, The International Network of Arab Human Rights NGOs, America In Solidarity, Federacion De Mujeres Cubanas, Association of Victims of American Occupation Prisons, International Anti-Occupation Network (IAON), International Lawyers.org, International Society of Iraqi Scientists, The Perdana Global Peace Foundation, Kuala Lumpur Foundation to Criminalise War, Spanish Campaign against the Occupation and for Iraq Sovereignty- CEOSI, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, El Taller International, World Courts of Women, Center for Development Studies- India, Wariscrime.org, Action Center for Justice, 1% A Peace Army.org, A Bigger Tent.org, Agir contre la guerre (France), American Voices Abroad (Berlin, Germany), American Voices Abroad Military Project (Europe), Anti War Fair, Arizona Christian Peacemakers, Armbands for Peace, Arms Against War, Artists Against the War, Backbone Campaign, Be the Change, Become Active, Bike for Peace (Germany), Bill of Rights Defense Committee, Bird Dogger Org., Children of Iraq Association (UK), Bloomington Peace Action Coalition (IN), Blue State News Only, Boston Mobilization, Bring Democracy Back, Bring Them Home, Butterfly Gardeners Association, Citizens for Accountability on Iraq, California for Democracy, Camp Casey Blog, Camp U.S. Strike for Peace Campaign, Campaign Against Sanctions and Military Intervention in Iran, Canada Watch, Carolina Peace Resource Center (SC), Cartoon Free America, Catalysts of Hope, Central Colorado Coalition on the Iraq War, Chester County Peace Movement (PA), Cindy Sheehan Org., Cities for Peace, Citizens for Legitimate Government, Citizens for Peace & Justice, Human Rights for all-Morocco, Christian Clergy For Impeachment.com, Clothing of the American Mind, Coalition Against Election Fraud, Coalition for Impeachment Now (COIN), Code Pink, the Iraqi Association for Human Rights (IAHR), Al-Basa'er Media Association, Consumers for Peace.org, Dhafir Trial.org, DC Anti-War Network.org, Democracy Action, Democracy for America Meetup (Birmingham, AL), The Democratic Activist, Democracy

Rising.org, Democratic Underground, Human Resources (Tbilisi, Georgia), Democratic Renewal, Democrats.com, Earth Day.org, Earth Island Institute, East Cobb Democratic Alliance (Cobb County, GA), Eastern Long Island Democracy for America (NY), ECU Peace and Justice NC, Election Solar Bus, Environmentalists Against War, Envision a New America, Foundation for the Development of Fox Valley Citizens for Peace and Justice (IL), Global Exchange.org, Global Network Against Weapons & Nuclear Power in Space, Global Resistance Network, Gold Star Families for Peace, Grandmothers Against the War, Grandmothers for Peace, Grass Roots Impeachment, Grass Roots Impeachment Movement, Grassroots North shoreWI, Green Delaware, Hawaii CD-01 Impeachment Action Coalition, Historians Against the War, Honk to Impeach, Idriss Stelley Foundation, Impeach Bush Cheney, Independent Progressive Politics Network, Impeach Bush Coalition, Impeach Bush TV.org, Impeachbush-cheney.com, Impeach Central, Impeach for Peace - Marshall, TX, Impeachable Treason, Impeach Duh, Impeachment Sunday, Inform Progressive Virginia, International Socialist Organization, Impeach Bush Cheney Net, Iraq Veterans Against the War, Iraq Veterans Against the War - Kansas City, Justice Through Music, Lake Merritt Neighbours Organized for Peace (Oakland, CA), Latinos for America, Leader of the Free Word - a great screen saver, Liberal Democracy Alliance, Liberal Kids, LIBERTY TREE Foundation for the Democratic Revolution, Los Angeles National Impeachment Centre, Louisiana Activist Network, Marijuana Policy Project, Massachusetts Impeachment Coalition, Men's Project for Peace, Michael Moore Online.org, Michigan Peace Works, Military Families Against the War (UK), Military Free Zone, Stop the War Coalition (Bedford, UK), Plataforma Aturem la Guerra (Stop the War Catalonia), Million Musicians March, Mission Not Accomplished, Montgomery County Progressive Alliance (MD), Musicians and Fine Artists for World Peace, Muslims for Peace (Australia), National Lawyers Guild - Chicago chapter, National Lawyers Guild - Detroit & Michigan chapter, Northeast Impeachment Coalition, North Jersey Impeach Group (NJ), Northeast Georgia Peace Corner Group (Helen, GA), Northwest Ohio Peace Coalition, Northwest Progressive Institute (Pacific Northwest US), Not in Our Name.org, Not in Our Name (Aotearoa, New Zealand), Nyack Impeachment Initiative (NJ), Ohio Progressive Action Coalition, One Global Community, Olympia Citizens' Movement to Impeach Bush/Cheney (WA), One Million Reasons, Operation Cease Fire, Operation Impeachment, Orange County Grassroots (CA), Out of Iraq, Out of Iraq Bloggers Caucus, Patrick Henry Democratic Club, Patriotic Pulse, Patriots for Gore, Peace Action, Peace Action Wisconsin, Peace and Accountability, Peace Drum, Peace Majority, Peace Movement Aotearoa (New Zealand), Peace Reso.org, Peninsula Peace and Justice Center (Palo Alto, CA), People's Campaign for the Constitution, People Powered Impeachment, People's Email Network, People's Glorious Five Year Plan, Picnic to Impeach, Pixel4Peace.org, Playing in Traffic, PledgeToImpeach.org, Political Cooperative, Politics and Art, Progressive Action Alliance, Progressive Action Center, Progressive Avenues, Progressive Democrats of America, Progressive Democrats of Hawaii Project Filibuster, Project for the OLD American Century, Refusing to Kill.org, Rescue Our Democracy, Sacramento for Democracy (CA), St Pete for Peace (FL), Sampsonia Way, San Diego for Democracy, School of the Americas Watch, Sheehan for Congress, South Florida Impeachment Coalition, South Mountain Peace Action (Maplewood & South Orange, NJ), Springs Action Alliance (CO), Stop the War Coalition (UK), Students for Impeachment, Students Towards a New Direction (STAND), Summit County Progressive Democrats (OH), The Known UnKnowns, The Politically Incorrect Cabaret, The Rational Response Squad, Think Blue Dems, Time for Accountability, Toronto Coalition to Stop the War (Canada), Torture Abolition and Survivors Support Coalition International, True Blue Liberal.org, Trumansburg Impeachment (NY), Truth Empowered, Truthtelling Project, UC Nuclear, Underground Action Alliance, Unitarian Universalist Peace and Justice Group (Nantucket, MA), United Blue USA, United for Veterans (Wayne, MI), United Progressives, Upbeat Defiance, US Peace Memorial, US Tour of Duty: Iraq Veterans and Military Families Demand the Truth, Velvet Revolution, Vet Gulf March, Veteran Intelligence Professionals for Sanity, Veterans for Peace, Chapter 27, Virginia Grassroots Coalition, Voters for Peace, We the People for Peace, We the People Network, We the People Now, We The People United Bangladesh.org, Peace Surge, Peace and Justice Action League of Spokane (WA), Stop the War (UK), U.S. Peace Council, World Can't Wait.org, World Prout Assembly, Komite Internazionalista- Basque, Asociación Paz, Igualdad y Solidaridad Internacional, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, Málaga, Spain, Stop Fascism Action Network, The Asian Jurists Centre, Association of Human Rights Defenders in Iraq (AHRDI), The African Center for Human Rights (ACHR), Veterans for Peace, Your Declaration of Independence.org, Arab Lawyers Network-UK, Conservative Centre of Environmental & Reserves in Fallujah (CCERF), Willie Nelson Peace Research Institute, Studies

Centre for Human Rights and Democracy, The Iraqi Centre for Human Rights, Association internationale des droits de l'homme.