

## Human rights

- ❑ Further legislation was introduced to combat terrorism and protect national security, granting excessive power to the security forces in Turkey, Zimbabwe and Thailand.
- ❑ Attacks against people working in the media continued in Somalia and DR Congo.
- ❑ The Ombudsman in Argentina filed a complaint against 17 oil companies in the Supreme Court for ecological damage and social rights violations.
- ❑ The International Commission of Jurists and Human Rights Watch stated that the draft bill proposing the creation of a Truth and Reconciliation Commission in Nepal could deny victims their right to receive justice, reparation and the truth.
- ❑ The UN General Assembly approved the International Declaration on the Rights of Indigenous Peoples.

This chapter contains an analysis of the situation relating to human rights, based on the monitoring of violations reported by non-governmental human rights organisations and inter-governmental organisations. The first section deals with violations of human rights and international humanitarian law, the second with transitional justice and the third with developments in the institutional field.

### 7.1. Violations of human rights and international humanitarian law

The following section contains information on violations of human rights and international humanitarian law in areas of conflict and tension and other contexts on which the efforts of NGOs and inter-governmental organisations have been focused around the world.

#### a) The abuse of power by state security forces

The last quarter has seen continuing allegations of abuses by state security forces and government armed forces during the ordinary course of their operations.

**One of the areas in which most abuses are being perpetrated by these forces is during demonstrations and protests organized by the political opposition or civilian groups, as well as in contexts of armed conflict.** In Africa, Amnesty International reported the failure to provide either judicial or material reparation for the families of the more than 130 people killed and the 1,500 injured as a result of violent police suppression of the mainly peaceful demonstrations held in January and February in **Guinea**, and it called on the government to take immediate steps to prevent the security forces from using excessive force against the civilian population. In **DR Congo**, UNHCR complained of similar events, with particular reference to the number of people who died during demonstrations against electoral fraud and the impunity enjoyed by both the police and the armed forces. The organisation urged the authorities to bring those responsible to justice and criticised the trials of civilians by military courts, in clear violation of international law governing human rights issues. With regard to the conflict in **Sudan**, a number of allegations were made by civilian groups, among them Human Rights Watch (HRW), claiming that guards on the **Egyptian border** had killed three Sudanese citizens who were trying to cross the border between Egypt and Israel. Complaints have been made by guards on the Israeli border who witnessed the mistreatment of the migrants and the shots fired by their Egyptian counterparts. HRW said that the brutality of these crimes is even more worrying because they occurred while Egypt and Israel were holding talks about the status of asylum seekers entering Israel.

Abuses by security forces were also reported in Asia, particularly in **Pakistan**, where the police used excessive force to break up demonstrations called in the north of Kashmir to protest against the killing of opposition leaders, leaving dozens injured. In **Indonesia (West Papua)**, around thirty humanitarian and civilian organisations sent a letter to President Susilo Bambang

Yudhoyono, complaining about the increasingly repressive attitude of the state security forces and the appointment of a person who has twice been accused of crimes against humanity in Timor-Leste to a key military post. The President of the Papua People's Council, Agus Alua, also stated that the security forces were still systematically suppressing the secessionist movement, violating the human rights of the local population and deliberately creating a situation of chaos in order to be able to maintain control over natural resources in the region. Still in Indonesia, the Asian Human Rights Commission denounced the attacks aimed at the National Liberation Party of Unity in Palu, allegedly perpetrated by members of the army, and it also complained about attempts by the police and the army to cover up these attacks and refuse to investigate them. It also alleged that members of the forces are sometimes given permission to take part in these attacks, and said that the lack of action by the authorities suggested that those charged with enforcing the law could well be supporting this assault on the freedom of association and opinion.

From the heart of a context of conflict in the **Philippines**, Human Rights Watch (HRW) published a report<sup>1</sup> based on more than one hundred interviews in which it exposed the involvement of state security forces in the murder or disappearance of members of left-wing political parties and non-governmental organisations, journalists and critics in the church, denouncing the fact that to date not one of the members of the armed forces involved in recent extrajudicial executions has been successfully brought to trial. Civilian groups also complained that the security forces investigating a series of attacks in which an organised criminal network is attempting to extort money from a transport company have used these events as an excuse to detain people accused of terrorism without charge, as well as to harass Islamic organisations. Another conflict in which various organisations have denounced the actions of the security forces is the one in **Sri Lanka**, where it is alleged that state security forces had a hand in the kidnapping of children by a group of rebel deserters who have formed an alliance with the government in its fight against the LTTE armed opposition group. The government has appointed a committee to investigate these allegations. This decision was taken following heavy pressure on the government to halt the serious human rights violations that the security forces, paramilitary groups and Tamil guerrillas are perpetrating in the country.

Turning to Europe, the allegations made by various NGOs in **Russia (Dagestan)**, among them the Dagestan Mothers, referred to the existence of an illegal militarized body (made up, according to some analysts, of members of the security forces) which is operating in the Republic and abducting members of some sectors of the population, a fact that has led to calls for the resignation of the Republic's Interior Minister who is blamed for the abuses. The International Helsinki Federation for Human Rights and the Kyrgyz Committee for Human Rights (KCHR) also expressed their concern over the attacks perpetrated by the police against a protest organised by the Kyrgyz NGO Democracy, an organisation that defends the rights of the Uighur minority in Kyrgyzstan.

**Chart 1.1 The legislation that protects the excessive power of state security forces**

Some of the abuses by state security forces have in recent years received legal protection under national security laws or so-called "anti-terrorist" legislation. Some of the most recent laws to be introduced in this connection can be found in Thailand, where a draft Internal Security bill is currently under discussion in the Council of State. This draft bill, which strengthens Internal Security Operations Command, will allow operational chiefs to detain people in private centres rather than police stations for more than seven days without charge and will legitimise repressive action by government officers against individuals engaged in actions that they regard as a threat to national security. Another worrying aspect of this bill is the fact that officers exercising their authority under this legislation will be exempt from any disciplinary action or any kind of civil or criminal liability, which could lead to impunity. In India, the northeast of the country saw the application of the extended Special Armed Forces Powers Act, legislation which continues to encourage impunity and arbitrary arrests purely on suspicion that one is about to commit a crime. This legislation offers disproportionate powers to the armed forces to shoot to kill during demonstrations of more than five people or when facing individuals carrying weapons or objects that could be used as weapons. In Zimbabwe, legislation was enacted by presidential decree during this last quarter under which the so called Surveillance Law will allow the security services to intercept private correspondence and

<sup>1</sup> Human Rights Watch ; *Scared Silent. Impunity for Extrajudicial Killings in the Philippines* en <http://hrw.org/reports/2007/philippines0607/>



communications by telephone, the Internet and the postal service. The government argues that this law is aimed to improve security and prevent crimes, though there is a clear risk that it will be used to lay siege to the opposition. Another example can be found in Turkey, where it is the country's anti-terrorist legislation that has reintroduced a controversial provision that does not expressly state that the use of force must be strictly necessary and proportionate, or that the use of lethal force is only permissible when strictly necessary to save lives.

In the face of such legislation it is necessary for institutions like the judiciary to play a greater role during the actual application of the law. All of a state's public authorities, including the security forces and the armed forces, must respect the principle of the legality and proportionality of their actions. Furthermore, they must respect the human rights provisions contained in national constitutions, international treaties and the United Nations codes of conduct, all of which include guarantees and rights which are on occasion sidelined as anti-terrorist legislation grants excessive power to such bodies. One illustration of the need to control the actions of the security forces that was seen during the last three months involved the planned creation of a Police Complaints Authority in the state of Kerala in India. This body will receive complaints both from and against the state police, and it will be chaired by a retired Supreme Court Judge.

## b) Freedom of expression and political participation

Some of the people who currently suffer most repression in countries affected by armed conflict or political tensions are those who work in the media. The ability to pass on information and stimulate public debate about the current political situation in a country makes these people one of the main targets in non-democratic regimes, thus violating the state obligation to guarantee the freedom of the press and the freedom of expression. Speaking after the kidnapping and subsequent release of the journalist Alan Johnston in Palestine, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, denounced the dangerous conditions in which such people have to work when reporting from areas in conflict, underlining the fact that the safety of journalists is an essential condition in order to guarantee the freedom of expression and opinion, particularly the right to request and pass on information. In this regard, the Rapporteur stressed that the communications media must continue to denounce violence and conflict in order to assist the protection of human rights.

In Africa there was a wave of attacks against people working in the media, particularly in **Somalia**, where two journalists from the independent sector were murdered and a radio station was attacked. These attacks were vigorously denounced both by the UN's humanitarian coordinator in the country, Eric Laroche, and by UNESCO, who called on the authorities to adopt strict measures to guarantee the freedom and security of people working in the media. In **DR Congo** there was a demonstration in Kinshasa in protest against the recent killings of journalists and other media sector workers in the country, where one of the most recent victims was a journalist who was executed for having filmed President Joseph Kabila during a military parade.

In Asia, UNHCR made an appeal to the authorities in **Myanmar** in which it requested the prompt release of student leaders arrested by the regime and underlined the importance of providing open forums for citizens to express their opinions and set out their demands, an essential process in the transition to democracy and reconciliation. The Special Rapporteur on human rights in the country gave his support to this appeal and complained about the continuing violation of the freedom of expression in the country. In **India (Manipur)**, the newspapers refused to publish for a day in protest against the threats they had received, this time from armed opposition groups. From a legal point of view, the intention of the **Sri Lankan** government to reintroduce criminal legislation on defamation led to complaints from the International Federation of Journalists, which suggested that this represented a backward step in press freedom in the country.

Continuing the theme of legal protection for the right to freedom of expression, the authorities in **Tajikistan** in Central Asia signed a series of legislative amendments during the course of the last quarter aimed at criminalising defamation on the Internet, strengthening existing restrictions on the media and allowing for the imprisonment of journalists for periods of up to two years if they were deemed guilty of insult or defamation in their reports. While organisations like the National Association of Independent Journalists and the Centre for Journalists in Extreme

Situations criticised this measure, some analysts announced that it would be difficult to implement, since items criticising the regime on the Internet were for the most part published from domains outside the country. In **Armenia**, the government initiative to incorporate new amendments that would restrict the scope of foreign media organisations and programme producers in the country ended in failure, having been criticised by the OSCE and human rights organisations because of the restrictions that it imposed on the freedom of information and the press. In **Georgia (Abkhazia)**, a group of independent journalists working in the region complained that although the authorities had made a verbal promise to defend press freedom, the harassment and restriction of the media had in practice reached proportions not seen since the Soviet era. They called on the regime to support the expression of differing opinions instead of playing down the problems and pretending that the situation was normal.

### c) Torture

In Africa, particular mention should be made of **Zimbabwe**, where the local human rights organisation ZHRF denounced the increased use of torture, reporting 300 alleged cases and warning that this figure could possibly rise as the parliamentary and presidential elections scheduled for the coming year approached. Human rights organisations have complained that torture is not only being used against political prisoners but is now even being practised on common criminals. The situation is such that, according to the ZHRF, if human rights abuses continue to occur until the end of the year in the same degree that they were reported during the first half of the year, this will be the worst year for such abuses since the country entered a period of economic recession and political crisis seven years ago. Another notable event during the course of the last quarter occurred in **Togo**, where a number of civilian organisations gathered at a seminar in order to analyse progress in the implementation in the country of recommendations made by the UN Committee against Torture. Delegates called for the inclusion of a definition of the crime of torture in the country's criminal legislation, the adoption of measures to protect anyone complaining about torture or inhumane treatment, and efforts to combat impunity through the creation of an effective and independent mechanism for the investigation of reports of torture and inhumane treatment.

Turning to America, and specifically the **USA**, debate about torture increased as a result of a leaked memo sent by the General Military Procurator to a group of Republican Senators informing them that the interrogation methods used by the CIA and authorised in an executive order signed by President George Bush in July contravened the Geneva Conventions. According to the Procurator, the order merely prohibits abuses used with the aim of humiliating or degrading the individual, which could actually legitimise torture and mistreatment if it is alleged that the reason for its use is to obtain information, an intentional approach that can increasingly be found in the domestic legislation of several countries. These statements were rejected by the Department of Justice, which argued that the order complied with the minimum standards of treatment set out in the Geneva Conventions.

In Asia, the Asian Human Rights Commission condemned the systematic use of torture in the course of investigations by the police and the army in the **Philippines**, bemoaning the lack of domestic legislation to criminalise torture and calling for the implementation of measures by which victims can demand reparation and those responsible can be brought to trial. In **Thailand**, the government announced that it would shortly be ratifying the Convention against Torture. If it does so, it will be the third ASEAN country to sign this Convention.

In Europe, one of the countries in which NGOs have made allegations of torture is **Turkey**, where Amnesty International said in a report that statements presumably obtained under torture have been declared admissible by the courts, which have in turn refused to recognise independent medical evidence in cases involving torture and other mistreatment, accepting only the evidence provided by the Institute of Forensic Medicine, which is institutionally linked with the Justice Ministry. For its part, the International Helsinki Federation for human rights and the Kyrgyz human rights group *Kylym Shamy* expressed concerns over the fact that people were being tortured to death by the authorities charged with keeping order in the north of **Kyrgyzstan**. They claimed that the cases reported recently are only the tip of the iceberg in the use of a practice that extends throughout the country and the rest of Central Asia, and they

denounced the ineffectiveness of the law in the face of torture, adding that this practice cannot be reduced because those responsible refuse to be brought to account.

#### d) Economic, social and cultural rights

In Africa, the Special Rapporteur on the right to housing, Miloon Kothari, called on both the government of **Sudan** and the other governments and companies involved in the hydroelectric projects in the north of the country to respect human rights in the communities living around the dams being built. Kothari reported that dozens of homes had been destroyed as water levels in the reservoirs rose without warning, underlining the fact that living conditions in these communities had worsened in the last two years and warning of imminent mass evictions in the Merowe area. In this regard, the Rapporteur called on all states, especially China, France and Germany, along with all the companies involved, to suspend their activities until an impartial evaluation had been made regarding the impact of their work on the rights of the local population. As regards the right to education, the government and various local leaders in **Kenya** said that both poverty and the frequent conflicts between herding communities in the north of the country had stopped tens of thousands of children from attending school, leaving them more inclined to commit acts of violence. According to government statistics, 71,000 children have suffered from absenteeism in the Turkana district, 25,000 in Samburu and 3,800 in Laikipia. The issue of the social rights of children has also been raised by UNICEF, this time in **Zimbabwe**, where concern has been expressed over the consequences of the current economic crisis and the increasing difficulties faced by families in gaining access to education, food, clothing and housing, a problem that is seriously exacerbating the poor living conditions suffered by children in the country.

In America, one of the most notable events was the filing of a High Court action by Eduardo Mondino, the Ombudsman in **Argentina**, against 17 oil companies that he accused of ecological damage and the associated violation of social rights. Mondino demanded that the companies pay 550 million dollars (406 million euros), the estimated cost of repairing the damage caused by facilities that have in many cases been abandoned and are in a poor state of repair. Meanwhile, in **Peru**, indigenous people from the Achuar ethnic Amazon group demanded that the Peruvian Congress declare their habitat an emergency zone, stressing the fact that many indigenous children have both lead and cadmium in their blood due to the contamination caused by the Argentine oil company Pluspetrol. The natives expressed their concern over the state's lack of interest in defending their rights, and reported that the authorities were granting concessions to other oil companies that would damage the health of around 8,200 Achuars living in the region. In **Colombia**, Amnesty International reported the alarming fact that during the last 15 years 2,245 trade union members have been murdered, and that 3,400 had received threats and a further 138 had disappeared. It pointed to paramilitary forces as the perpetrators in the majority of cases, and also mentioned that 512 trade union members had been murdered during Alvaro Uribe's term in power. The organisation urged the government to introduce guarantees to protect union activities and respect the lives and integrity of union members, while bringing a halt to the impunity of those committing crimes against them. The same organisation published a report<sup>2</sup> in which it denounced the alarming conditions suffered by defenders of the economic, social and cultural rights of the most marginalised people in **Guatemala** and **Honduras**, who are seriously at risk of finding themselves the victims of threats, harassment, baseless charges, aggression and even murder. As regards the right to health, it is interesting to note that **Brazil** took delivery from UNICEF of the first batch of generic antiretroviral drugs manufactured by an Indian laboratory. The drug was bought by the Brazilian government through UNICEF and will be part of the treatment of the 75,000 people currently living with HIV.

In Europe, Amnesty International also published a report<sup>3</sup> condemning the discrimination suffered by the 600,000 Azerbaijanis who have been internally displaced for more than ten years as a result of the conflict in **Nagorno-Karabakh**, representing one of the largest per capita groups of internally displaced people in the world. The organisation denounced the fact

<sup>2</sup> Amnesty International; Persecution and resistance. The experience of human rights defenders in Guatemala and Honduras, at <http://www.amnesty.org/en/report/info/AMR02/001/2007>.

<sup>3</sup> Amnesty International; Azerbaijan: "Displaced then discriminated against – the plight of the internally displaced population" at <http://web.amnesty.org/library/index/engeur550102007>

that although, in theory, the internally displaced enjoy the same amount of legal protection for their rights as the rest of the population, in practice these people endure many restrictions in respect of their right to proper housing, health and jobs, and these restrictions create a number of barriers that leave the population segregated and discriminated against.

## 7.2. Transitional justice

The term ‘transitional justice’ refers to judicial and extra-judicial processes that facilitate and permit transition from an authoritarian regime to a democratic one, or transition from war to peace. Transitional justice seeks to identify any victims and their whereabouts along with the identities of those responsible for human rights violations, establishing the facts involved in these violations and designing the ways in which society can tackle the crimes committed and make the necessary reparations.<sup>4</sup>

### a) International courts: Decisions relating to international criminal liability

In **Africa**, the Prosecutor for the **International Criminal Court (ICC)**, Luis Moreno Ocampo, declared during the last quarter that the government of **Sudan** had not only failed to introduce any initiative as regards detaining the two suspects being sought by the ICC but that one of them had in fact been appointed to the position of Minister of State for Humanitarian Affairs, a development that it said was unacceptable. The two suspects are accused of targeting civilians during attacks on four villages in the east of Darfur between August 2003 and March 2004. The ICC also celebrated the fifth anniversary of the entry into force of the Rome Statute, which allowed for the Court’s creation, and UN Secretary General Ban Ki-moon remarked that the creation of this Court had been one of the greatest achievements of the century.

The Paris appeal court decided to release the two Rwandans arrested in France on 20 July 2007 and wanted by the **International Criminal Court for Rwanda (ICCR)** for their participation in the genocide. The Court’s Chamber of Instruction decided that the warrant for the arrest and detention of the two men could not be carried out due to the prevalence of the assumption of innocence. Members of both the government and the ICCR expressed their unease at a decision that owed more to political expediency than considerations of justice. Elsewhere, Juvénal Habyarimana, mayor of Bujumbura (in the Kigali Prefecture) from September 1993 to the end of 1994, pleaded guilty before the ICCR of taking part in the mass murders committed in the country. The Court accused Habyarimana of failing to open an investigation into the killings committed in his community and of not arresting those responsible. HRW condemned the fact that deaths in custody in Rwanda have risen, indicating that many of the victims had been accused of killing survivors of the genocide and other people involved in the Gacaca process.

Turning to **Europe**, Ukraine signed an agreement with the **International Court for the Former Yugoslavia** under which anyone condemned to a prison sentence by the Court could complete it in Ukraine, thus becoming the twelfth country to sign this kind of agreement with the Court. The Chief Prosecutor, Carla del Ponte, appealed to the international community, especially Montenegro and Bosnia and Herzegovina, to redouble their efforts to pursue and capture Ratko Mladic and Radovan Karadzic, who stand accused of war crimes and genocide following the Srebrenica massacre. The Prosecutor asked the EU not to sign any pre-adhesion agreement with Serbia until the country has handed over the main people accused by the Court. In addition, the recently appointed High Representative for Bosnia and Herzegovina, Miroslav Lajcak, ordered the dismissal of a high-ranking policeman and the suspension of a further 36 police officers as a result of their alleged involvement in the 1995 massacre.

### b) Mixed, hybrid and internationalised criminal courts

<sup>4</sup> Rettberg A., *Entre el perdón y el paredón . Preguntas y dilemas de la justicia transicional* [Between Pardon and the Firing Squad. The Uncertainties and Dilemmas of transitional justice]. University of the Andes, 2005

The **Special Court for Sierra Leone** reached an agreement with the United Kingdom under which Charles Taylor, the former President of Liberia, would be imprisoned in the latter country if convicted of war crimes. In the past, this Court has signed similar agreements with Sweden and Austria. Charles Taylor's trial did not resume on 20 August as originally planned, because Taylor's nine lawyers asked for more time to study the case, requesting that the judges hold procedural hearings to determine when the process would continue. Taylor dismissed his first team of lawyers last June when the trial had barely begun, rejecting the legal proceedings as unfair and pleading innocence in respect of all the charges made against him.

In Asia, prosecutors in the **UN Court for Cambodia** have requested an investigation into the involvement of Kang Kek Leu, also known as Duch, in the genocide committed by the Khmer Rouge regime. According to an agreement signed by the UN and Cambodia, the Supreme Court will investigate the main people responsible for the serious violations of both Cambodian law and international law committed between 1975 and 1979.

In **Iraq**, both HRW and the International Centre for Transitional Justice condemned serious legal mistakes in the Dujail case, in which former President Saddam Hussein and three other people were found guilty of crimes against humanity and executed. Elsewhere, fifteen of Saddam Hussein's collaborators were accused of committing one of the worst crimes against humanity in modern history, a reference to the suppression of the Shiite uprising in the country following the 1991 Gulf War when thousands of people died.

The United Nations Legal Office sent a letter to UN member states inviting them to put candidates forward to take up the position of international judge in the court set up to try those suspected of killing Lebanese Prime Minister Rafi Hariri. It is expected that the Court will begin sitting in about a year's time, once the funds required for its operation have been collected.

### c) Truth Commissions and ordinary justice

<b>Table 7.1 New developments in the work of Truth Commissions</b>	
<b>Indonesia (Aceh)</b>	In spite of the political obstacles, the provincial administration in Aceh Naggroe Darussalam is examining the possibility of setting up a truth and reconciliation committee to resolve cases involving human rights abuses.
<b>Indonesia-Timor-Leste</b>	The UN Secretary General published a statement in which he indicated that the organisation would not support the work of the Truth and Amnesty Commission until it complied with international law, adding that the UN would not support amnesties for war crimes, genocide, crimes against humanity or mass violations of human rights.
<b>Nepal</b>	The International Commission of Jurists and HRW announced that the draft bill proposing the creation of the Truth and Reconciliation Commission could deny victims the right to the truth, justice and reparation. The Commission's mandate includes looking into serious human rights violations and crimes against humanity (though without offering any definition of these terms), though it will not examine serious violations of international humanitarian law. For its part, the Office of the UN High Commissioner for Human Rights in the country had earlier expressed its serious concerns over a potential amnesty due to the lack of legal clarity displayed by the draft bill.
<b>Table 7.2 New developments in ordinary justice</b>	
<b>Afghanistan</b>	The Independent Human Rights Commission indicated that more than 18 months after approval of the Plan of Action for Truth, Justice and Reconciliation, the plan has become stalled, due both to a lack of political will to implement it and increased levels of violence in the country.
<b>Chile-Peru</b>	The Chilean Supreme Court authorised the extradition of Former President Alberto Fujimori on two charges of violating human rights (the killings in Barrios Altos and La Cantuta) and five of corruption. This revoked the decision handed down by the court of first instance on 11 July which turned down the Peruvian government's request.
<b>Iraq</b>	Leaders of Shiite, Sunni and Kurdish groups signed a national reconciliation agreement on 26 August that allowed for the reintegration of former members of the Ba'ath party into political life, a mechanism for the release of detainees, a law on the distribution of oil revenues and an undertaking to hold provincial elections, among other things.
<b>Uganda</b>	The government announced it would be holding consultations with a view to setting up a special court that would take the place of the International Criminal Court in trying

	the crimes committed by the LRA. The Office of the UN High Commissioner for human rights in the country published a report in which it indicated that ordinary people accuse both the government and the LRA equally of violating human rights.
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#### d) Apologies and pardons

Serbian President Boris Tadic made a public apology to the people of Croatia, branding the acts committed by Serbs during the war in the 1990s as atrocities. This is the first attempt that any Serbian politician has made to apologise. In Serbia, Tadic's remarks have aroused different reactions. The Prime Minister's DPS party would not support the move, classifying it as a personal opinion, unless the G17 Plus government member reacted positively to the apology.

#### e) Amnesty laws

In **Russia (Chechnya)**, President Ramzan Kadyrov announced that the authorities were preparing the draft of a new amnesty aimed at all Chechens who left the Republic under the influence of negative propaganda. In the middle of June, Kadyrov had stated that there would be no further amnesties for Chechen militants.

In **Tajikistan**, the police detained more than 25 people who were demonstrating in Dushanbe to request the release of family members held during the country's civil war. This protest took place just one day after the Tajiki parliament approved an amnesty law, though the new legislation excluded anyone detained in connection with the conflict, along with those charged with murder, the trafficking of people or drugs, terrorism or rape. The law, which has to be ratified by the President, was adopted on the tenth anniversary of the National Peace Agreement that brought the war to an end.

#### f) Justice in peace negotiations

The International Centre for Transitional Justice published a quantitative report documenting the attitude of victims of the conflict in **Uganda** towards peace and justice. This report, which was based on information gathered during 2,875 interviews carried out around the country in districts most affected by the conflict, documented the human rights violations committed by both sides and showed that the majority of those interviewed want to see the people responsible brought to justice. The interviewees made a distinction between the leaders and lowest ranking members of the Lord's Resistance Army (LRA). 52% of all those interviewed also said that it was necessary to establish procedures for forgiveness, reconciliation and reintegration among the communities affected. As regards court action, 28% believed that cases should be heard by the domestic courts, while 29% supported the ICC taking a leading role. The majority were also in favour of a process that included some form of amnesty, as many members of the LRA had originally been abducted. Although justice was only mentioned by 3% of those interviewed, 70% stressed the importance of demanding that the perpetrators of human rights violations accept responsibility for their crimes.

#### Chart 7.2 Social rights in transitional justice processes

Traditionally, processes involving accountability for abuses in the past have been restricted to the acceptance of responsibility for violations of civil and political rights and compliance with the right to the truth, justice and reparation for victims of this kind of violation. Meanwhile, claims concerning violations of social rights during conflicts have been relegated to the political and social justice arena and have not been subject to any legal process.

However, the treatment received by such rights during the transitional justice process is not consistent with the serious consequences caused to victims by situations such as denial of the right to health or work in the conflict between Palestine and Israel, which has been condemned by the Internal Court of Justice, or the millions of cases of enforced displacement in conflicts like the one in Sudan, which has been condemned by the quasi judicial mechanisms belonging to the United Nations.

This idea of a hierarchy of rights and the view that legal processes must first begin by resolving issues relating to violations of civil and political rights contradicts the principle of indivisibility enshrined in

numerous treaties, and furthermore goes against the way in which these treaties have been interpreted by the different United Nations bodies.

As regards the idea of the pre-eminence of civil and political rights, it is useful to analyse the statistics provided by the New Population-Based Data on Attitudes about Peace and Justice, in which the victims of the conflict in Uganda listed their priorities as health (45.2%), peace (41%), subsistence and land to cultivate (37.2%), food (43.2%) and education for children (30.5%). These figures illustrate the importance of social rights.

In spite of this, the majority of decisions taken by transitional justice bodies are limited to an analysis of one single category of human rights, thus breaking the indivisibility of human dignity. For example, take the case involving the Truth Commission in Timor Leste, which was one of the bodies that most reflected the impact of social rights violations. In spite of having devoted a whole chapter of its final report to the subject and underlined the fact that the impact of the conditions in which the people of Timor Leste were living was as painful and possibly longer-lasting than the impact of the violations of their civil and political rights, the Commission nevertheless decided in the end not to regard the victims of social rights violations as qualifying for reparation.

Decisions that reflect greater protection for social rights can be found, for example, in the Kupreskic case, in which the Criminal Court for the Former Yugoslavia agreed that the destruction of homes and property could constitute a crime against humanity when it involved an element of intent. In the inter-American system, the Inter-American Court of Human Rights found in the Sanchez Plan case that the government of Guatemala should have implemented health, education and infrastructure programmes for the communities that had suffered human rights violations. The Equity and Reconciliation Commission in Morocco, which was also aware of this shortfall in the protection of social rights, proposed communal reparation that would strengthen the social and economic development of specific regions that had been marginalised and excluded.

These cases therefore show that it is both possible and necessary for transitional justice processes to begin treating human rights as an indivisible whole. Violations of social rights should be investigated, those responsible should be made accountable and victims should be compensated for the hardships they have suffered. Furthermore, both institutional and legal reform processes should incorporate measures to protect social rights from a constitutional and legal point of view, implementing institutionalised forms of protection.

### 7.3. Institutional issues

This section includes information on the most important developments relating to human rights within the United Nations, the Council of Europe and the European Union.

#### a) United Nations

The last quarter has seen a number of international commemorative days marking specific issues relating to human rights. On the International Day of the Disappeared, the United Nations Working Group on Forced and Involuntary Disappearance expressed great concern over the increase in this kind of abuse around the world and the tendency for disappearance cases not to be resolved after conflicts or during the transition to democracy that follows periods of serious human rights violations. The group of experts also expressed particular disquiet at amnesty laws and similar measures that led to impunity.

The UNHCHR, the UN Special Rapporteur for Indigenous Peoples and UN Secretary General Ban Ki-Moon all recalled on the International Day of the World's Indigenous People that the world's 370 million indigenous people are still suffering discrimination and extreme poverty, and they called on the General Assembly to approve the text of the International Declaration on Indigenous Peoples. In the end, after twenty years of debate, the General Assembly has finally approved the Declaration, thus creating a universal framework that can be used to defend the rights of indigenous peoples.

Another commemorative date was the International Day in Support of Victims of Torture, on which the Committee against Torture, the UNHCHR and the Special Rapporteur on Torture expressed concern over some of the current issues relating to torture, such as the deportation

of individuals to countries in which they are in danger of being tortured and the consideration of life imprisonment as a form of torture, and they appealed once again to all countries where the death penalty is still in use to declare a moratorium on executions. They also expressed their satisfaction at the entry into force of the Optional Protocol to the Convention on Torture and the adoption by the UN General Assembly of the Convention on Forced Disappearance, calling on all states (particularly those that make systematic use of torture) to contribute to the Voluntary Fund for the rehabilitation of victims.

## b) Council of Europe

Debate relating to the prohibition of torture involved the European Court of Human Rights and developments in the case of *Nassim Saadi v. Italy*. Saadi, a Tunisian citizen living in Italy, faces deportation to Tunisia where he is at risk of being tortured. The United Kingdom and several other countries have supported his deportation, and the UK government has asked the European Court to modify the law that currently imposes a total ban on the use of torture, claiming that this ban should not be absolute in the case of foreign citizens whom a particular state wishes to deport on the grounds that the person in question is a threat to national security. During this debate, a series of NGOs including Amnesty International, the International Commission of Jurists, Interights and Redress all warned that any weakening of the total and global banning of such practices would not only be a serious mistake but would also put all of us at risk as it would diminish one of the basic values on which the European system is founded.

## c) European Union

In the **European Union**, particular mention should be made of the first report<sup>5</sup> on racism and inequality in EU member states by the Agency for Fundamental Rights. It is no surprise that the Agency chose this topic for its first report, as it was introduced as a body to replace the European Monitoring Centre on Xenophobia. The report describes examples of discrimination in the work place, the home and education, and it underlines the increase in racial violence in several member states, stressing the fact that of the 11 countries that offered information, racist crimes had increased in Denmark, Germany, France, Ireland, Poland, Slovakia, Finland and the United Kingdom between 2005 and 2006. The Agency for Fundamental Rights suggested that member states should make greater efforts to combat racism and underlined the importance of inter-community anti-discriminatory legislation. Another point made by the report is that victims of acts of discrimination are often unaware of their rights.

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<sup>5</sup> [http://fra.europa.eu/fra/material/pub/racism/report\\_racism\\_0807\\_en.pdf](http://fra.europa.eu/fra/material/pub/racism/report_racism_0807_en.pdf)