



■ Countries with serious human rights violations according to HRIN (indicator no.8)

5. Human rights and transitional justice

- The Escola de Cultura de Pau's 2009 Human Rights Index lists 20 countries with the highest degree of vulnerability and lack of compliance with human rights and the IHL.
- The so-called war against international terrorism continued to undermine human rights on a global scale.
- The 20th anniversary of the Rights of the Child took place in the context of the persistent violation of the economic and social rights of children on a global scale.
- The International Criminal Court issued an international arrest order for the Sudanese president Omar al-Bashir, the first against a serving leader, while governments continued to fail to cooperate in the detention of suspects.
- The Spanish Congress imposed considerable limitations on the principle of universal jurisdiction without advancing a previous debate on this issue.
- The former Peruvian president Alberto Fujimori was found guilty of serious violations of human rights committed during his mandate.
- The Liberian Truth Commission presented its final report in which it recommended setting up a criminal court to try war crimes.

This chapter begins with a geographical analysis of the state of human rights and of the International Humanitarian Law (IHL) as well as questions such as the impact of the so-called war against international terrorism and some of the main subjects of debate in 2009. This first part concludes with the presentation of the results of the **2009 Human Rights Index (HRIN)**. The second part deals with the most important elements of the current processes of transitional justice. The chapter begins with a map of the 20 countries with the highest degree of civilian vulnerability and noncompliance with human rights and the IHL.

5.1. Human rights: analysis of the situation on an international scale

a) Systematic violations of human rights

Many States carried out serious and systematic violations of human rights during 2009. What follows is a list of some of the situations that deserve special attention.

In the **context of Africa**, there were serious violations of human rights in **Algeria** amid a general climate of impunity regarding past and present abuses. In spite of introducing an amendment to the Penal Code in 2004, making torture a crime, human rights groups continue to receive many complaints of people being held incommunicado in unofficial centres and of detainees being tortured.¹ In **Chad** sexual violence against women continued and the Government restricted freedom of expression, as a result of which many journalists and people in the field of human rights were the victims of intimidation and arbitrary arrest. In **Côte d'Ivoire** the Government, which in September 2003 accepted the jurisdiction of the International Criminal Court (ICC), once again refused to receive an ICC mission to open an investigation into the serious violations of human rights committed in the country. In **Ethiopia** the security forces were responsible for torture, extrajudicial executions and arbitrary arrests, according to various NGOs. In **Guinea Conakry**, the virulence of the military repression of opposition movements reached a peak in September with the death of more than 150 people who were demonstrating over the demand that no member of the Military Junta could present themselves at the presidential elections. The UN International Commission charged with investigating this violence said the violent acts carried out in the country amounted to crimes against humanity. According to Amnesty International, the police continued to use torture against detainees and restricted freedom of expression through imprisonment. The kidnapping of exiled Equatorial-Guineans in neighbouring countries and their illegal transfer to secret detention centres in Equatorial Guinea was a common practice carried out with the connivance of officials in other countries.²

1. Human Rights Watch. *World Report 2009*. New York: HRW, 2009, at <<http://www.hrw.org/world-report-2009>>.

2. Amnesty International, *Equatorial Guinea: Submission to the UN Universal Periodic Review*. AI, November-December, 2009, at <<http://www.amnesty.org/en/library/asset/AFR24/002/2009/en/19e4a019-8d7e-49f8-bb1a-8c3bf38d3ff6/afr240022009en.pdf>>.

In **Nigeria** security forces continue to act with impunity in the oil-rich area of the Niger Delta, committing persistent and serious violations of human rights, such as extrajudicial execution of suspects, torture and extortion. In **DR Congo**, in May the UN condemned the growing violation of human rights perpetrated against the civilian population in the east of the country. In October, Philip Alston, the UN special rapporteur on extrajudicial, summary and arbitrary executions, said after a visit to the country that there had been no decrease in the amount of sexual violence and that the number of known reports barely reflected the degree of violence prevailing in the area.³ In **Somalia** journalists and human rights workers were in constant danger and the militias held thousands of people illegally. In **Sudan**, the people of Darfur were mistreated and tortured systematically and at a national level opposition politicians were held incommunicado in high-security cells for long periods. On the other hand, 103 people were condemned to death for their supposed part in an attempt by the JEM armed group to take the capital in May 2008, although none was executed.⁴ Meanwhile, in **Uganda** the authorities continued to threaten the media and accused Government critics of sedition, defamation and promoting violence. In **Zimbabwe**, members of the MDC party, large numbers of civil society organizations and human rights activists continued to condemn persecution of their sympathizers by the security forces and veteran militias loyal to president Robert Mugabe.

Police violence and extrajudicial executions were persistently carried out in Brazil

Regarding the state of human rights on the American continent and the Caribbean, it should be pointed out that police violence and extrajudicial executions were persistently carried out in Brazil and that the overcrowded and inhuman conditions prevailing in Brazilian jails continued to be one of the main human rights issues during the year. Philip Alston, the UN special rapporteur on extrajudicial, summary and arbitrary executions said that in **Colombia** extrajudicial executions of civilians attributed to the Army were carried out systematically, although the Government denied the scale of the problem.⁵ There were also a growing number of murders of trade unionists, which reached the highest level in the world and of which, according to Human Rights Watch (HRW), 96% of cases went unpunished.⁶ In the **US** president Barack Obama who, on assuming the presidency had committed himself to closing Guantánamo prison in January 2010, reiterated his commitment to closing it but admitted it was not possible to do so by the proposed date and declined to set a new date. In mid-December Obama ordered the acquisition of a prison in Illinois to house some of the prisoners who were still in Guantánamo. In April, the Justice Department declassified four CIA memoran-

dums written between 2002 and 2005 which revealed the use of torture in the fight against terrorism. However, in July the Government rejected requests by Manfred Nowak, the UN's special rapporteur on torture, and Martin Scheinin, the special rapporteur on human rights and the fight against terrorism, to visit the prison. In May the US was chosen for the first time to form part of the UN Human Rights Council for a period of three years. On the other hand, attention should be drawn to the events on June 5 in Bagua, in northeast **Peru**, in which 34 people died during clashes with the police, which was the subject of a report by James Anaya, the UN's special rapporteur on the rights of indigenous people.⁷ In early 2010 Peru's Supreme Court ratified the 25-year prison sentence handed down in 2009 to the former president Alberto Fujimori. The former Peruvian leader (1990-2000) was found guilty of culpable homicide, premeditated murder, causing serious injury and kidnapping during the massacres in Barrios Altos and La Cantuta, which cost 25 deaths in 1991 and 1992, as well as the kidnapping of the journalist Gustavo Gorriti and the businessman Samuel Dyer in 1992. According to Amnesty International, this ruling is one of the most important in recent years by making a head of state responsible for crimes committed by bodies that he ordered into existence.

As for Central America, in **Guatemala** impunity was not only the norm for crimes committed during the conflict but continued to be a problem in relation to more recent crimes, as was reported by Leandro Despouy, the UN's special rapporteur on the independence of magistrates and lawyers, during his visit to the country in July. In **Haiti** a dysfunctional and politicized judicial system contributed to the worsening conditions of overcrowding in prisons, which occasionally gave rise to serious illnesses that were not treated. Meanwhile, human rights defenders continued to be the object of threats and attacks.

On a continent of **Asia**, **Afghanistan** was caught up in the worst wave of violence since the fall of the Taliban government and widespread violations of human rights were committed with complete impunity. Women and girls were the most badly affected and insecurity meant that many girls didn't go to school for fear of attack. There continued to be very limited freedom of expression, with continued attempts to silence opposition through threats and intimidation. In **Banda Aceh** the government passed unanimously a law enforcing the strict application of sharia, with severe punishments for homosexuality and premarital relations, including stoning in the case of adultery. In **Bangladesh** the police and the Rapid Action Battalion (an elite force set up to fight crime and terrorism) continued to carry out extra-

3. Declaration by Philip Alston, UN special rapporteur on extrajudicial, summary and arbitrary executions, on his mission to DR Congo from 5-15 October 2009 at <http://www2.ohchr.org/english/issues/executions/docs/PressStatement_SumEx_DRC.pdf>.
 4. See Chapter 3 (Peace processes).
 5. Declaration by Philip Alston, UN special rapporteur on extrajudicial, summary and arbitrary executions on his mission to Colombia 8 - 18 June, 2009, at <<http://www.dhhcolumbia.org.co/node/232>>.
 6. Human Rights Watch, *Obama must speak to Uribe about his human rights concerns*, June 2009, at <<http://www.hrw.org/en/news/2009/06/26/colombia-obama-debe-expresarle-uribe-preocupacion-por-derechos-humanos>>.
 7. Observations made by James Anaya, UN special rapporteur on indigenous people, on the situation of the indigenous people of the Amazon and the events of June 5 and on ensuing days in the Peruvian provinces of Bagua and Utcubamba, Peru, 20 July 2009, at <<http://www.aprodeh.org.pe/documentos/anaya.pdf>>.

judicial executions which were covered up by the authorities. In **China**, clashes between the Uigur and Han communities in Xinjiang, followed by state repression, led to 156 deaths, more than 50 disappearances and the detention of more than 1,400 people, nine of whom were punished with the death penalty.⁸ In the **Philippines** there was an ever-growing number of murders at the hands of death squads while reforms designed to reduce the number of killings of dissidents and others and to guarantee that those in power would respond to the abuses committed, were not applied. In **India**, Amnesty International condemned the excessive use of force by the police during ethnic clashes and violence against religious and linguistic minorities. Explosions in various parts of the country killed hundreds of people and, by way of response, the Government arbitrarily arrested and tortured suspects.

Another pertinent event was the new three-year prison sentence given to activist Aung San Suu Kyi in August by a **Myanmar** court, which was later commuted to a further 18 months house arrest. In November, Tomás Ojea, the UN's special rapporteur on human rights in Myanmar, urged the government to free political prisoners and prisoners of conscience before the 2010 elections so that they could take part. In **Pakistan** there were continued "honour killings" for alleged breaches of moral codes, particular in the case of adultery, with women the main victims, although there are no exact figures for 2009.

In **Central Asia**, there were continuing cases of religious repression and harassment of human rights defenders and journalists. In **Kyrgyzstan** human rights defenders were arrested and in some cases held in psychiatric hospitals. In January the president ratified a law on religious practices which prohibited proselytism. Meanwhile, in **Uzbekistan** NGOs were closely watched by the State and were not allowed to receive funds from abroad. In the **Caucasus**, independent journalists were intimidated, arrested and sent to prison after staged trials in **Azerbaijan** and there were continued attacks and even murders of independent journalists. In April, the NGOs HRW, Memorial, Human Rights Centre and Russian Justice condemned the Russian Government for ignoring more than 100 rulings handed down by the European Court of Human Rights which said that **Russia** was responsible for serious violations of human rights in Chechnya. In July, and following the recommendation in May⁹ by a Universal Periodic Review of Russia, seven UN human rights experts asked Russia for an invitation to visit the country in order to help the authorities carry out an independent investigation into

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the murder of activists in recent years. UN's special rapporteur on torture, who planned to visit the country in July, decided to postpone his visit when the Russian Government said that private interviews with detainees were against laws of the Russian Federation.

In **Europe**, according to a survey published in April by the EU's Fundamental Rights Agency (FRA), racism and xenophobia prevailed throughout the year, with increasing attacks on Roma people being among the most widespread in Europe.¹⁰ In **Bosnia and Herzegovina** thousands of women and girls who were raped during the war still have no access to justice and there was a prevailing climate of impunity in regard to this type of crime. In **Spain**, according to Amnesty International, the authorities continued to use the Criminal Justice Law, under which people can be held incommunicado for five days in all cases and up to 13 days if they are suspected of terrorist crimes.¹¹

In the **Middle East**, **Saudi Arabia** carried out a campaign of harassment of human rights defenders with the pretext of fighting terrorism and continued to discriminate against Shia Muslims who make up between 10 and 15% of the population. In **Iran**, there were an increasing number of arrests of journalists who criticized the Government and who condemned the death and disappearance of many people after the presidential elections in June.¹² In **Iraq** there was an alarming increase in the number of executions (120 people were executed during the year) after unfair trials. Finally, a year after Israel's huge military offensive against the **Gaza Strip** no one had been called to account for the war crimes and other serious violations of human rights condemned by a UN research team and by Palestinian, Israeli and international human rights organizations.¹³

b) The International Humanitarian Law (IHL) and human rights in the context of armed conflict

During 2009 a large number of civilians were victims of armed conflicts. Rape continued to be used as a weapon of war and yet again many minors were used as child soldiers. Antipersonnel mines and other armaments continued to cause death and mutilation among civilians. In this regard, the Cartagena Summit, held in Colombia at the end of the year, reviewed progress and outstanding challenges 10 years after the Convention on the Prohibition of Antipersonnel Mines came into force. In the annual report to the UN Council on Human Rights, Radhika Coomaraswamy, the special representa-

8. Human Rights Watch, *We are afraid to even look at them*, October 2009, at <<http://www.hrw.org/en/reports/2009/10/22/we-are-afraid-even-look-them>>. Also see Chapter 2 (Socio-political crises).

9. Final Document of the Periodic report of the Human Rights Council of the Russian Federation, at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/135/87/PDF/G0913587.pdf?OpenElement>>.

10. European Union Agency for Fundamental Rights, *The Situation of Roma EU Citizens Moving to and Settling in Other EU Member States*. European Union, 9 November, 2009, at <http://fra.europa.eu/fraWebsite/home/pub_cr_roma-movement_en.htm>.

11. Amnesty International, *Spain: Out of the shadows. Time to End Incommunicado Detention*. AI, 15 September 2009, at <http://www.es.amnesty.org/uploads/media/Salir_de_las_sombras.pdf>.

12. See Chapter 2 (Socio-political crises).

13. See Chapter 4 (Humanitarian crises).

tive for children and armed conflicts, expressed grave concern for the continuing violation of human rights committed against minors by parties to conflict, in flagrant violation of international norms, and said that the only measure against the recruitment of child soldiers and other serious abuses suffered by children was to bring those responsible to justice.¹⁴

In **Africa**, according to UN figures, the Army and armed groups in **Chad** recruited between 7,000 and 10,000 children. In the **Central African Republic** all parties involved in the conflict committed serious abuses against children, including rape and forced recruitment, with complete impunity. On the other hand, the conflict in **DR Congo** was completely entrenched and, according to Philip Alston, who visited the country in October, the situation could not be more desperate. The level of impunity for the massacres was such that even Bosco Ntaganda, wanted by the ICC for using child soldiers, occupied a senior position in the military operations of the past year. In September, UNICEF said that parties to the conflict in DR Congo had recruited and used more child soldiers than in any other conflict in the world. On a positive note, since the beginning of the year UNICEF succeeded in freeing 2,813 children, including 360 girls, from groups who were using them as soldiers, sexual slaves and workers in various African countries. Also in Africa, the UN High Commissioner for Human Rights, Navi Pillay, warned in July that there was proof of atrocities committed against civilians in **Somalia** and said that displaced people, human rights and humanitarian workers were the ones who are most vulnerable to these abuses. Sima Samar, a UN expert on the human rights situation in **Sudan**, expressed concern for the restrictions imposed by the Government on journalists and human rights defenders and emphasized the importance of guaranteeing freedom of expression and association in order to create an atmosphere suitable for elections scheduled for April 2010.

In **America**, Philip Alston, the UN special rapporteur on extrajudicial executions, said that in **Colombia** there were a large number of so-called “false positives” (civilians murdered by of the army who were later listed as guerrillas or paramilitaries killed in combat). According to *The Report on the Situation of Human Rights and International Humanitarian Law in Colombia* which refers to 2008,¹⁵ drawn up by the UN High Commission, approximately 1,800 of these false positives were counted in this period.

In **Asia**, it should be pointed out that **Afghanistan** signed up at the end of the year to the Additional Protocols (1977) of the Geneva Convention in relation to the protection of victims of international and other armed conflicts. Radhika Coomaraswamy, the UN special representative for children in armed conflicts, condemned the growing number of attacks against children by the Taliban and other armed groups in Afghanistan, as well

as the fact that the Taliban continued to use children for suicide attacks, attack schools and used acid to burn the faces of girls and teachers. At the same time, the office of the UN High Commissioner for Human Rights condemned the numerous illegal detentions in Afghanistan, saying that in many cases those arrested did not enjoy the basic rights enshrined in the Constitution.

In the **Philippines**, Philip Alston, the UN's special rapporteur on extrajudicial, summary and arbitrary executions confirmed that progress had been made since the recommendations drawn up during his visit to the Philippines in 2007 but condemned the lack of action regarding death squads, the murder of left-wing activists and the general climate of impunity. In **Sri Lanka**, both the armed group LTTE and the Armed Forces committed serious violations of the IHL, including war crimes. The LTTE took civilians by force in the conflict zone to use them as “human shields” against Government forces who in turn used heavy artillery, indiscriminately causing civilian deaths and injuries.

In **Europe**, a year after the conflict between **Georgia** and the **Russian Federation**, thousands of civilians remained displaced with little hope of returning home. Both they and the various thousands who were able to go home faced an insecure future. In April, Russia announced the end of the “anti-terrorist operation” that it had been carrying out for 10 years in Chechnya, saying that normality had returned. However, no one has been called to account for the serious violations of human rights committed during the last 10 years. Serious abuses continued, including kidnappings and disappearances. These were confirmed by local NGOs, such as Memorial, and international organizations such as the UN Committee on Human Rights and the human rights commissioner of the Council of Europe, who urged Russia to end the climate of abuse against civilians and allow independent investigations.¹⁶ In **Ingushetia**, according to the organization Memorial, kidnappings continued at approximately the same level as in 2008. In October, the European Parliament awarded the Sakharov prize to Memorial for its human rights work in former Soviet territory.

In the **Middle East**, six years after the invasion of **Iraq**, the human rights situation there continued to be precarious and there was a prevailing climate of impunity. The organization HRW strongly condemned a wave of attacks against civilians after US troops withdrew from cities and villages on June 30. Regarding the conflict between **Israel and Palestine**, the UN mission led by the South Africa and Judge Richard Goldstone arrived in the Gaza Strip in June to investigate alleged war crimes committed by Israel and Hamas during Israel's offensive the previous December and January.¹⁷ In October, the UN Human Rights Council approved a resolution based on the report presented by Goldstone which condemned Israel and the Islamist Palestinian group Ha-

14. See <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-49_E.pdf>.

15. United Nations, *Annual report of the UN High Commissioner for Human Rights on human rights in Colombia*. A/HRC/10/32, March 9 2009, at <[http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/SNAA-7VD3FA-informe_completo.pdf/\\$File/informe_completo.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnidFilename/SNAA-7VD3FA-informe_completo.pdf/$File/informe_completo.pdf)>.

16. See Chapter 1 (Armed conflicts).

17. United Nations, *Report of the UN investigating mission into the conflict in Gaza*. A/HRC/12/48 25 September 2009, at <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>>.

mas for war crimes during the offensive. On November 5 the UN General Assembly approved a resolution asking that the secretary-general send the Goldstone report to the Security Council, while Israel rejected the report as biased. Meanwhile, in March the organization Breaking the Silence published a report with testimony from 54 Israeli soldiers who said they had received very “permissive” orders, such as that they could open fire on any building or person that to them appeared suspicious.¹⁸ At the same time, the International Red Cross said that six months after the Israeli attack the Palestinians of Gaza faced growing poverty and deteriorating living conditions, among them the collapse of the health system and a lack of medicine.

c) Human rights and terrorism

The so-called war on international terrorism continued to undermine human rights on a world scale and States that resorted to banned practices under international law continued to claim that these were necessary in the name of national security. According to a report published by the group of human rights experts, Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, the war against terrorism adopted by countries all over the world since 2001 represents a serious threat to the integrity of the international human rights framework. The report condemned the fact that these policies, which were originally adopted as a provisional measure, have become permanent.¹⁹ The UN's special rapporteur for human rights in the war against terrorism, Martin Scheinin, announced in March that a study was being prepared on the practice of **secret detentions** and said that this investigation, which was being carried out jointly with the rapporteur on torture Manfred Nowak, would examine the question in depth. The rapporteur warned that in some countries intelligence agencies have been given

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extended powers to interrogate, arrest and hold people and that the practice on the part of intelligence agencies of not presenting “confidential” evidence in court, instead of proving beyond a reasonable doubt the guilt of the accused, amounted to a threat to the rule of law. The report criticized the US for its policy of extraordinary rendition and censured the United Kingdom, Australia and other countries for offering to help the Americans. Scheinin, who has always spoken openly about the need to put limits on the powers of intelligence agencies, had already urged the UN in October 2008 to restructure or eliminate the existing terrorist blacklist.

As for torture, the four secret memoranda which the US Government decided to make public at the beginning of the year revealed the use of *waterboarding* (simulated drowning) and other maltreatment in the name of the struggle against terrorism. Barack Obama banned the use of this technique and annulled the legislation passed by the administration of his predecessor George W. Bush under which *waterboarding* was not regarded as torture. However, later announcements by Obama and the attorney-general, Eric Holder, confirming the impunity of those responsible for the tortures were, in the words of Amnesty International,²⁰ incompatible with the US's obligation under international law to bring those responsible to justice. By the end of the year it was not considered possible to honour Obama's commitment to close Guantanamo by January 2010, even though various European countries expressed their willingness to take in a number of prisoners. On a positive note, human rights organizations expressed satisfaction with the measure adopted by the Obama administration to suspend military tribunals in Guantanamo. However, the US Government blocked the publication of photographs showing the abuse of prisoners in US custody in Afghanistan and Iraq.

Box 5.1. The Goldstone report on the Israeli military incursion into the Gaza Strip

After a two-day debate, on November 5 the UN General Assembly approved a resolution which asked the secretary-general to send the Goldstone report, drawn up by the UN mission that investigated violations of human rights perpetrated during the Israeli military incursion in the Gaza Strip, to the Security Council. This report was the result of three months of research led by the South African judge Richard Goldstone, who said in his report that both Israelis and Palestinians were guilty of war crimes. The text of the resolution, promoted by the Arab League and the Movement of Non-aligned Countries, was adopted with 114 votes in favour, 18 against and 44 abstentions. The resolution backed the report and asked the secretary-general that he inform the General Assembly within three months on the advances made regarding the report's recommendations, with a view to adopting new measures. On the other hand, the document urged Israel and the Palestinians to carry out within the same period of three months an independent investigation into violations of international humanitarian law committed during the Israeli incursion from December 2008 to January 2009. Israel, the US, Poland and Australia were among the countries that opposed the resolution. The report recommended that evidence concerning war crimes be sent to the international Criminal Court if the parties (Israel and Hamas) didn't carry out independent investigations. Before the resolution was approved, many speakers underlined the importance of the Goldstone report, which was described as an important step to ending what was described as “Israel's impunity in its crimes against Palestinians”. During the Israeli incursion 1,440 Palestinians and 13 Israelis died.

18. See testimonies 2009 at <http://www.shovrimshatika.org/news_item_e.asp?id=28>.

19. International Commission of Jurists, *Assessing Damage, Urging Action, Report of the Eminent Jurist Panel on Terrorism, Counter-terrorism and Human Rights*. Geneva: ICJ, 2009, at <<http://www.icj.org/IMG/EJP-Report.pdf>>.

20. Amnesty International, *Impunity for CIA torture is incompatible with USA's international obligations*, AI, April 17, 2009, at <<http://www.amnesty.org/es/news-and-updates/impunidad-torturas-cia-incompatible-obligaciones-eeuu-20090417>>.

During the year there was growing pressure on the US Government to release details about secret prisons run by the CIA in which terrorist suspects were held. The Washington Post²¹ revealed in 2005 that shortly after the attacks on New York and Washington on September 11, 2001, the CIA had set up secret prisons for people suspected of belonging to the al-Qaeda terrorist network in at least eight countries, among them Afghanistan and the Guantanamo military base in Cuba. The newspaper also said that some of these prisons were located in Eastern Europe, but did not reveal which countries were involved at the request of senior members of the US administration. However, HRW said that independent research showed that the CIA facilities in the region were in Poland and Romania.²²

On the International Day Against Torture on June 26, Terry Davis, secretary-general of the Council of Europe, recalled the recommendations made in 2006 to member states in relation to so-called “**extraordinary rendition**” (rendition flights) and secret detentions in Europe and regretted the limited response. Davis warned European states that the secret CIA flights and illegal kidnappings would not be forgotten and urged governments to unconditionally reject these activities. Meanwhile, a report presented in August by the inspector-general of the CIA made it clear that Europe’s role in practices that violated the European Convention on Human Rights has been much greater than was earlier thought. However, the number of activities listed in the report was incomplete as, according to the American Civil Liberties Union (ACLU), various sections had been blanked out.²³ In regard to advances in the protection of human rights in the war against terrorism, one thing that stands out is the first sentence handed down in November by an Italian judge who condemned 23 former CIA agents to between five and eight years in prison for the kidnapping of the former Milan imam, Abu Omar, in February 2003. Omar was first taken to the Italian air base at Aviano and then to the German base at Ramstein before being sent to a high-security prison in Egypt, where he was held for four years and was allegedly tortured.²⁴

d) Human Rights Index 2009

The Human Rights Index (HRIN) of the Escola de Cultura de Pau (School for a Culture of Peace, ECP) measures the degree of vulnerability of citizens and the failure of States to comply with human rights obligations in 195 countries (the 192 member states of the United Nations, as well as the Palestinian Authority, Taiwan and the Vatican) over a fixed period of time and according to different sources. It is made up of 22 spe-

cific indicators divided into three dimensions: a) the non-ratification of the main instruments of the International Human Rights Law, and International Humanitarian Law (IHL), b) violation of International Human Rights Law and c) violation of the International Humanitarian Law.²⁵

The following table shows the 20 countries offering the least protection and the lowest compliance with the human rights obligations of States according to the HRIN 2009.

Table 5.1. **Countries offering the least protection and with lowest compliance with human rights obligations according to the HRIN 2009**

Myanmar	Thailand	Iraq	Turkey	Congo, DR
Sudan	Russian Fed.	Sri Lanka	Yemen	Uganda
Pakistan	Somalia	China	Algeria	Ethiopia
Nigeria	India	Nepal	Afghanistan	Israel

These figures are in contrast with the eight countries that can count on a special geographical²⁶ procedure from the United Nations or were the subject of some type of resolution by the CDH or the UN during sessions held in 2009.²⁷

In regard to the violation of the International Human Rights Law (dimension b of the HRIN) the 24 countries in the upper range are:

Table 5.2. **Countries that systematically violate the International Human Rights Law according to the HRIN 2009**

Myanmar	Mexico	Zimbabwe	India	Uzbekistan
Sudan	Pakistan	Algeria	Iraq	Burundi
Nigeria	Russian Fed.	Bangladesh	Malaysia	Cambodia
China	Thailand	Eritrea	Somalia	Ethiopia
Equatorial Guinea	Kenya	Guinea	Sri Lanka	

These indicators show that in a large number of countries (122) there was systematic discrimination (on grounds of race, ethnicity, religion, gender, sexual orientation or place of origin) or cases of the abuse and exploitation of children. In 103 countries there was torture and maltreatment; 63 practised systematic arbitrary arrests and in 29 there were deaths in custody. The number of countries where there were extrajudicial executions rose to 63 and in another 78 a climate of impunity prevailed regarding the violation of human rights.

21. The Washington Post, *CIA Holds Terror Suspects in Secret Prisons*. 2 November 2005, at <<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html>>.

22. Human Rights Watch, *World Report 2009*. HRW, 2009 at <http://www.hrw.org/en/world-report-2009/european-union#_Poland_1>.

23. America Civil Liberties Union (ACLU) is a US organization that protects and guards individual liberties guaranteed under US law and the Constitution. See *ACLU Obtains Detailed Official Record of CIA Torture Program*. 24 August 2009, at <http://www.aclu.org/human-rights_national-security/aclu-obtains-detailed-official-record-cia-torture-program>.

24. El País, *La justicia italiana condena a 23 agentes de la CIA por secuestro*, November 4 2009, at <http://www.elpais.com/articulo/internacional/justicia/italiana/condena/23/agentes/CIA/secuestro/elpepuint/20091104elpepuint_15/Tes>.

25. Appendix VII contains data, a description of the indicators and the evaluation and weighting of the HRIN.

26. There are currently special proceedings relating to Burundi, Cambodia, North Korea, Haiti, Myanmar, the Palestine Occupied Territories (since 1967), Somalia and Sudan.

27. See appendix VI.

As for the indicator on the death penalty, according to Amnesty International, 2,390 people were executed in 25 countries during 2008. As in previous years, the countries with the highest number of executions were **China, Iran, Saudi Arabia, Pakistan** and the **US**. These countries accounted for 93% of all executions carried out during the year. The continent with the highest number of executions was Asia. In America there were 38 executions: 37 in the US and one in the state comprised of the islands of **St. Kitts and Nevis**. The region with the second highest level of executions (21%) was the Middle East and North Africa. There were at least two executions in sub-Saharan Africa, in **Botswana** and **Sudan**. In spite of being party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, **Liberia** reintroduced the death penalty for the crimes of theft, terrorism and the hijacking of aircraft, a regrettable step backward.²⁸ On the other hand, **Europe** may become the first region in the world that doesn't practice the death penalty. In 2008 there were at least four executions in **Belarus**. For the past 10 years there has been a moratorium in the **Russian Federation** on executions and death penalties, although there has not yet been legislation abolishing the death penalty.

2009 marked the 20th anniversary of the adoption of the Convention on the Rights of the Child

Rights; and the increasingly widely held view that on a world scale, poverty amounts to one of the most flagrant violations of human rights.

The year 2009 marked the 20th anniversary of the adoption of the **Convention on Children's Rights (CCR)**, the main instrument of international law that obliges states to protect and guarantee the rights of children. The Convention, **adopted by every country in the world with the exception of the US**, brings together in 54 articles the rights to physical, intellectual and social development of children under 18. However, in spite of this historic landmark, failure to grant these rights in the majority of countries means that the violation of children's rights—especially social and economic rights—continues on a huge scale. To begin with it should be

pointed out that every year 11 million children (that is to say, 30,000 a day) die before they reach the age of five, mainly through malnutrition. In several continents the situation is endemic. According to UNICEF figures, almost one and a half million under-fives suffer from chronic malnutrition.²⁹ **Infant mortality** is closely linked to poverty: advances in survival rates of the under-fives have happened much more slowly in poor countries and among the poorest of those countries with more resources. Improving public health services is a key element, as well as improving access to drinking water and better sanitation, the lack of which is the main cause of sickness and death in this age group.

In the field of education, the figures have improved, but UNICEF estimates that there are still 93 million children who do not go to primary school, most of them girls, mainly in sub-Saharan Africa and southern Asia. Another important statistic is the large number of child labourers. Although in some countries it is difficult to come by reliable statistics, it is estimated that there are some 246 million **child labourers** in the world. And according to UNICEF, some 1.2 million children are victims of **child trafficking** as demand increases for boys and girls who are employed either in the home or are sexually exploited.³⁰ In this regard, it is worth noting that the estimates regarding compliance with the Millennium Development Goals (MDO), which include various goals related to the social and economic rights of children, indicate that most countries have not complied with the majority of these objectives. According to the 2009 Report on the UN Millennium Development Goals,³¹ although there have been clear advances, up to now these advances have been undermined by food, economic and environmental crises. A UNICEF report published at the end of 2009 provides statistical evidence of the impact of these events on children.³²

Finally, the following table shows the 22 countries with the worst record of violating the IHL. In this regard state agencies or armed opposition groups in 31 countries violated some clause of the IV Geneva Convention within or outside their territory and 43 countries had regular or irregular forces that recruited children, according to the HRIN.

Table 5.3. Countries that systematically violate the IHL according to HRIN 2009

Afghanistan	Lebanon	Somalia
Chad	Myanmar	Sri Lanka
Colombia	Nepal	Sudan
Congo, DR	Nigeria	Thailand
Philippines	Pakistan	Turkey
India	Central African Republic	Uganda
Iraq	Yemen	Yemen
Israel	Russian Fed.	

e) Principal debates

One of the most pertinent debates in the human rights field during 2009 has centred on the persistent violation of children's rights on an international scale, 20 years since the adoption of the Convention on Children's

28. Amnesty International, *Executions in 2008*. AI, 2008, at <<http://www.amnesty.org/es/death-penalty>>. Figures for 2009 published in March 2010.

29. UNICEF, *The State of the World's Children*. UNICEF, November 2009, at <http://www.unicef.es/documentacion/documentos_ampliado.htm?iddocumento=87>.

30. UNICEF, *Child protection from violence and abuse: the treatment of boys and girls*. UNICEF, September 2009 <http://www.unicef.org/spanish/protection/index_exploitation.html>.

31. United Nations, *Millennium Development Goals. Report 2009*. United Nations, 2009, at <http://www.un.org/spanish/millenniumgoals/pdf/MDG_Report_2009_SP_r3.pdf>.

32. UNICEF, *Progress for Children: A report card on child protection*. UNICEF, September 2009, at <http://www.unicef.org/spanish/publications/files/Progress_for_Children-No.8_SP_081309.pdf>.

Finally, it should be highlighted that children are also the main victims of armed conflict. An estimated 20 million children live as **refugees** or have suffered **internal displacement** as a result of conflict. And every year, **landmines** kill or mangle between 8,000 and 10,000 children around the world. There are also an estimated 300,000 **child soldiers** taking part in more than 30 conflicts³³ around the world in spite of the fact that international law prohibits the recruitment of children into the Armed Forces and armed groups and considers it a war crime.³⁴

Another area on which human rights work is focused is **poverty**, one of the most flagrant violations of human rights on an international scale. Close to 1 billion people live on less than one dollar a day, while inequality within and between countries continues to grow. Furthermore, according to figures published by the FAO in October 2009, the number of people suffering from malnutrition has reached 1 billion, 100 million more than in 2008.³⁵ According to other important data from Social Watch, every day 100,000 people die from hunger –30,000 of them under five years old– and another

854 million people do not have enough food to cover their basic nutritional needs.³⁶ Faced with this, a number of human rights NGOs and international agencies demanded during 2009 that the question of poverty be treated from a perspective of human rights. In this regard, Irene Khan, the secretary-general of Amnesty International, said that poverty is a negation of social and economic rights, including food shortages and the use of food supply as a political weapon. She condemned the fact that, in their struggle to control the economic crisis, political and business leaders have given secondary consideration to problems related to human rights. The situation of extreme and widespread shortages continued and came to a head during 2009 because of the economic crisis. In spite of this, the UN declaration on human rights and poverty made on December 10, 2006 remains relevant. This states that, although poverty is clearly a cause and effect of the violation of human rights, it is rarely seen in a human rights perspective, and that the full relaxation of human rights, including the struggle against poverty, is a duty and not a mere aspiration.³⁷

Box 5.2. The Optional Protocols of the Rights of the Child

In an effort to eliminate the growing abuse and exploitation of children throughout the world, in 2000 the UN General Assembly approved the Optional Protocols of the Convention which reinforced the protection of children from becoming involved in armed conflicts and sexual exploitation. A Protocol is “optional” as it doesn’t apply automatically to states that have already ratified the Convention. There may be additional obligations that are usually more demanding than those contained in the original Convention. Fundamentally, the Optional Protocol on the sale of children, child prostitution and child pornography obliges governments to investigate and punish crimes related to these activities. It demands penalties not just for those who offer or supply children for sexual exploitation, organ transplants, profit or forced labour, but also to anyone who receives a child destined to take part in any of these activities. It is estimated that around 1 million children (mainly girls, but also a considerable number of boys) are victims of commercial sex networks. Up to now more than 100 countries have signed and ratified this Protocol but work is needed to involve other relevant sectors, such as the tourist industry.

The Optional Protocol on the participation of children in armed conflicts sets at 18 the minimum age for a compulsory recruitment and urges States to do everything possible to avoid under-18s taking part directly in hostilities. It also establishes that states must use judicial means to prohibit armed groups from recruiting children. According to figures from the most recent report by the Coalition to Stop the Use of Child Soldiers, Africa is the continent with the largest number of child soldiers, while in Latin America it is estimated that around 14,000 children are linked to armed groups in Colombia and the paramilitary groups backed by the Army. In Europe, it is thought that children are involved in various armed groups in the Chechen Republic of the Russian Federation, although it is difficult to know the exact number because of the limited access to the area afforded to the media and NGOs. In any case, figures show that it is a phenomenon that forms a part of the majority of current conflicts. As regards this type of crime coming to court, it is worth highlighting that in 2009 the International Criminal Court initiated what is up to now the first trial of such a case in which Thomas Lubanga, leader of the UPC in DR Congo, was charged with, among other charges, recruiting and using children. The Court also issued arrest warrants for crimes related to children against members of the armed groups of the DR Congo and Uganda, and the Special Tribunal for Sierra Leone made history in 2007 when it sentenced various people for committing this type of crime.

33. See Chapter 1 (Armed conflicts).

34. See part c) on the International Humanitarian Law.

35. FAO, *The state of food security on the world 2009: Economic crises, impacts and lessons learned*. FAO, 2009, at <<http://www.fao.org/docrep/012/i0876s/i0876s00.HTM>>.

36. Social Watch, *Report 2009. People First*, Social Watch, 2009, at <<http://www.socialwatch.org/sites/default/files/SocialWatch-Informe-2009.pdf>>.

37. See UN declaration on 10 December 2006 on human rights and poverty at <http://www2.ohchr.org/english/events/day2006/docs/Overview_HRD2006.FINAL_sp.pdf>.

5.2. Transitional justice

What follows is a review of some of the most important developments in relation to the process of transitional justice during 2009,³⁸ among them the question of universal jurisdiction, the work of the International Criminal Court and of mixed hybrid and international tribunals, as well as truth commissions and other investigative commissions.

a) Universal jurisdiction

Universal jurisdiction is an instrument to be used to circumvent international impunity whenever a State investigates and takes legal action against people who have allegedly committed crimes outside of their territory. It reflects equally the obligation of states, laid down in international treaties on human rights, to try or hand over those held responsible. Very often this principle is the last option open to victims to get to the truth and to obtain justice and reparations in those countries where it is difficult to investigate or bring to trial political or military figures that are still active or have occupied relevant positions in the country's political sphere, or other people close to them. The concept of universal jurisdiction is based on the idea that certain crimes are such atrocities for the international community as a whole that states are authorized, indeed obliged, to investigate and try the alleged perpetrators wherever they may have committed the crime and regardless of the nationality of the author or the victim of the crime. This principle is particularly important when it is borne in mind that in a large majority of countries, those assumed to have committed these crimes are rarely tried for lack of juridical capability or because of political pressure.

Since the end of the Second World War, more than 15 countries have used universal jurisdiction in investigations or trials of people suspected of having committed crimes against international law, among them Germany,

Australia, Austria, Belgium, Canada, Denmark, Spain, the US, Finland, France, Norway, the Netherlands, United Kingdom and Senegal, while others, such as Mexico, have extradited people from other countries for trial under this principle. The **US** is proposing a law called "Crimes Against Humanity Act 2009" which, should it be passed, will make it a federal crime to carry out a widespread and systematic attack against civilians which involves murder, slavery, torture, rape, arbitrary arrests, extermination, taking hostages or ethnic cleansing. The law would cover this type of crime committed anywhere in the world by a US citizen or any other person present in the US, regardless of their nationality. However, while HRW expressed satisfaction with the plan, it was also concerned that the law departed from the international definition of crimes against humanity. In particular, the proposed law requires that an attack against civilians must be both widespread and systematic, while the normally accepted definition is "widespread or systematic".

Trials related to war crimes and crimes against humanity began in numerous countries during 2009. Among the most notable was the trial that opened on December 18, 2009 in **Argentina** of former military personnel active during the Argentinean dictatorship (1976 to 1983). Eighteen officials were accused of violations of human rights carried out in the Escuela Mecánica de la Armada (ESMA), one of the main torture centres in Latin America. When the Argentine army took power in 1976 it decided to apply the so-called "National Process of Reorganization" and during the following seven years between 9,000 and 30,000 people were murdered or disappeared. During the Process, the ESMA was the main detention centre in the country and served as a base for paramilitary units and special groups who kidnapped people from their homes or in the street. People who were taken to ESMA suffered terrible tortures and then disappeared. It is thought that 5,000 Argentineans passed through ESMA of whom 1,500 were anaesthetized and thrown into the sea from planes

Box 5.3. The restriction on the principle of universal jurisdiction in Spain

On May 19, 2009, without any public debate, the Spanish Congress approved, by a large majority, a Government initiative to modify article 23.4 of the Ley Orgánica del Poder Judicial (Organic Law on Judicial Power) which establishes the principle of universal jurisdiction. This reform limited the power of the Audiencia Nacional (High Court) regarding universal jurisdiction in cases where there were links to a "relevant connection" (a concept as yet not defined), Spanish victims or where those responsible for the crime were in Spain. The reform also established other formal criteria on admissibility that made the investigation and bringing to trial of a crime under this juridical regime more difficult. Under this new article, High Court judges will not be able to take action if an investigation or an "effective persecution" of the matter in hand was already open in the country where it had been committed or if an international tribunal or other competent court has opened an investigation into the matter. This requirement represents a *de facto* barrier to the admission of new cases, given that it is extremely difficult to research and prove that there is no case already open in the country of origin or in another country. On the other hand, it leaves the door open to hear the case within the national jurisdiction without the necessary judicial guarantees simply to stop any possibility of Spain acting under universal jurisdiction. The High Court currently has 15 cases open under this principle. These relate to the investigation of genocide in Guatemala, Rwanda and Tibet, war crimes in Gaza, torture in Guantanamo and, more recently, acts of piracy off the coast of Somalia. These trials can lay the foundations for jurisprudence such as in the 2005 sentence in the Scilingo case, the only trial completed till now in Spain that recognizes that states are competent to act in the interests of the international community.

38. Transitional justice is understood to mean the combination of judicial and extrajudicial mechanisms put into play by societies in transition to deal with a past of violations and systematic abuse of human rights. Transitional justice's main strategies consist of bringing to justice (through international, mixed, hybrid and traditional courts), reform of State institutions (security forces and public office holders), truth commissions and historic clarification (official and unofficial and international commissions) reparations to victims (restitution, indemnity, rehabilitation, moral or collective memory compensation and guarantees against repetition) as well as efforts towards reconciliation.

in so-called “death flights”. It is thought that fewer than 200 Argentines survived being taken to the centre.

b) The International Criminal Court (ICC)

Throughout 2009 it was once again clear that there was a general lack of collaboration between states and the ICC in the arrest and handing over of those suspected of war crimes and crimes against humanity, thus creating one of the main obstacles to the development of the Court's outstanding cases.³⁹ One thing that stands out in this regard was the controversy generated by the warrant issued in March for the arrest of the Sudanese president **Omar al-Bashir**, on charges of war crimes and crimes against humanity in Darfur, the first relating to an incumbent leader, which led to the presentation of a petition to the AU, later watered down, to the effect that the order should be ignored by member states. This was backed by a large number of African countries who felt that the ICC was ignoring violations of human rights committed on other continents, and was also heavily criticized by other African governments and local human rights NGOs. It should be borne in mind that Africa is a continent with the most representation –30 countries– in the ICC and as a result of which a large number of African countries have specific obligations under the Rome Statute. In any case, the arrest warrant for president al-Bashir restricted to a certain degree his international movements as he feared arrest.

In spite of the difficulty of arresting suspects, the judicial processes continued on course and the prosecutor said that investigations into crimes had been opened in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea, Kenya and Palestine. In regard to ongoing cases, the court opened the way in October to confirm charges against Bahr Idriss Abu Garda, leader of the rebel group URF, and the first war crimes suspect to stand before the Court in relation to the situation in **Darfur**. The ICC Appeal Court confirmed that it was admitting the case against the former leader of the FRPI, **Germain Katanga**, although he alleged that the ICC had violated the principle of complementarity. **Jean-Pierre Bemba**, the former vice-president of DR Congo, arrested in May 2008, remained in detention awaiting trial in spite of a judge's decision to grant him provisional release. The Court chief prosecutor, Luis Moreno Ocampo, appealed against his ruling because he considered the suspect a flight risk and finally the order was suspended. The trial against Bemba, accused of war crimes and crimes against humanity, allegedly committed in the Central African Republic between October 2002 and March 2003, is expected to begin in April 2010.

The trial of **Thomas Lubanga**, the leader of the UPC accused of war crimes and recruiting child soldiers be-

tween 2002 2003 in the east of DR Congo, began in January 2009 after a long delay during 2008 due to a procedural error. By the end of the year, the Chamber had heard testimony from some 30 people, 25 of whom had to be given special protection. Regarding crimes committed in **Kenya**, in July the former UN secretary-general Kofi Annan handed a sealed envelope to the Court prosecutor, Luis Moreno Ocampo, containing the names of at least 10 senior members of the government allegedly involved in a wave of violence that spread across the country after the presidential elections in 2007, leaving more than 1,500 people dead and around 300,000 people displaced. This act provoked a range of reactions but the Kenyan vice-president, Kalonzo Musyoka, expressed his concern and said that the former UN secretary-general had precipitated in handing over the list because the Government had not yet reached the deadline for passing a tribunal law, expected in August.⁴⁰ The Government eventually admitted that it was incapable of taking measures and said it was ready to cooperate with the ICC, after the failure to set up a special tribunal before September 30. At the end of November the Court prosecutor asked to open a *motu proprio* investigation into the case.

c) Ad hoc international criminal tribunals

The International Criminal Court for Rwanda (ICCR)⁴¹ saw the arrest of important suspects, plus numerous sentences and initiated particularly significant trials. However, it was also the subject of fierce criticism, one of which concerns the refusal to take cases within Rwandan jurisdiction. For this reason Martin Ngoga, the country's attorney-general, told the UN Security Council that the Tribunal's decision not to try outstanding cases in Rwandan courts undermined efforts to reform the country's judicial system and made national reconciliation more difficult. Tharcisse Karugarama, the Rwandan justice minister, said that the ICCR had not kept its promise that the Rwandan accused would be sent to serve their sentences in their country of origin and said he didn't understand why the tribunal had not sent prisoners to Rwandan prisons when these were considered adequate for the Special Tribunal on Sierra Leone. The Mpanga prison was built in 2004 to house 7,500 prisoners accused of genocide and one of its wings was set aside for prisoners from the ICCR which, however, has not as yet sent any of its detainees. Another important debate arose in August when HRW said the ICCR would lose credibility if it didn't try and condemn those members of the Rwandan Patriotic Front (RPF) suspected of committing war crimes who were currently in power in Rwanda. However, the chief prosecutor of the ICCR, Hassan Jallow, said on numerous occasions that he had done everything possible to investigate crimes committed by all parties and had told the UN Security Council in June that there was no clear accusation

39. See <<http://www.icc-cpi.int/Menu/ICC>>.

40. See Chapter 2 (Socio-political crises).

41. This tribunal was set up by the UN Security Council under resolution 955 on November 8 1994 to bring to justice those responsible for genocide and other serious abuses of International Humanitarian Law in Rwanda and neighbouring countries between January 1 and December 31, 1994.

against the RPF. HRW believes that the attempt last year by Rwanda to try members of the RPF in their own country –known as the Kabgayi case– was in reality a political cover-up and proof of the malfunctioning judicial system.

The work of the **International Criminal Tribunal for the former Yugoslavia** (ICTY) was marked by delays in the trial of **Radovan Karadzic**, president of the self-proclaimed Serbian Republic of Bosnia and Herzegovina, who boycotted the trial until the third hearing. Faced with this situation, the tribunal asked for an official lawyer to represent Karadzic and announced that the trial would resume in March 2010 in order to give time for the defence to prepare. The tribunal rejected Karadzic's claim to immunity based on an agreement signed in 1996 with the then US ambassador to the UN, Richard Holbrooke. The latter denied the existence of such an agreement and the prosecutor said that no documents had been found to confirm the existence of such a pact. Meanwhile the former Serbo-Bosnian president **Biljana Plavsic** was freed, having served two thirds of her sentence in a Swedish jail for war crimes committed between July 1991 and December 1992. Plavsic gave herself up voluntarily to the ICTY in 2001 and was jailed for 11 years. In May 2009, the Swedish prison service told the tribunal that in October Plavsic would have completed two thirds of her sentence and therefore under Swedish law she could be freed. At the end of the year the ICTY agreed to the freeing of Plavsic, known as the "Iron Lady", the highest ranking official in the former Yugoslavia who had been found guilty of taking part in the Bosnian war.

In regard to the genocide at **Srebrenica**, Peter McCloskey, the tribunal's prosecutor, asked for life sentences for seven high-ranking Serbo-Bosnian military officers and policemen. Among the accused were people who had been close to Ratko Mladic, the Army Chief of Staff in the Republika Srpska, such as Colonel Ljubise Beara, the Serbo-Bosnian army's head of security and thought to be one of the main architects of the massacre. All seven pleaded not guilty to war crimes, crimes against humanity and genocide. In December 2009, the prosecutor Serge Brammertz once again demanded greater haste on the part of Serbia for the arrest of the two war criminals still on the run, **Ratko Mladic** and **Goran Hadžic**.⁴² Quite aside from the legal question, it continued to be a vitally important political issue in regard to Serbia's aspirations to join the EU. Meanwhile, Patrick Robinson, the tribunal president urged the UN Security Council to establish a reparations commission linked to the tribunal, given that currently no such mechanism exists, although it is one of the pillars of International Law.

d) Mixed, hybrid or internationalised criminal courts

The **Special Tribunal for Sierra Leone**⁴³ handed down some of its last sentences in Freetown, while asking for more resources to complete its mandate in 2010. The Tribunal, which is funded by countries' voluntary contributions, feared trials might be stopped, among them the trial of the former Liberian president Charles Taylor,⁴⁴ which began in January 2008 and whose verdict was expected at the beginning of 2010. This court, which has handed down some of the first sentences for forced marriages within an armed conflict and for the use of child soldiers, was also criticized for not bringing to trial some war crimes suspects and which has led to increasing popular discontent over the almost 10 years of its existence.

The **Extraordinary Chambers in the Courts of Cambodia**⁴⁵ had problems establishing themselves throughout the year, mainly because of corruption, lack of funds and Government interference, according to various local and international organizations. With the aim of dealing with corruption cases, the appointment of an independent assessor with the job of guaranteeing legal process was announced in August. This has been a key question as the Chambers have seen a significant reduction in funds because their credibility has been called into question. The UN, for example, stopped funding them in July 2008, leaving the Chambers entirely dependent on international donations. Government pressure on the judiciary was more than ever in evidence when it announced it was not possible to try more suspects apart from the five who were already in custody. As a result, the prosecutor Robert Petit resigned, presumably in part due to the position of his Cambodian counterpart Chea Leang, who was against more trials claiming that he was concerned about national security.

In spite of that, it is important to note that in 2009 the case against Kaing Guek Eav, alias "Duch", began, during which the accused admitted responsibility for the deaths of more than 10,000 people and expressed remorse. The prosecutor asked for a 40-year sentence for Duch who, at the end of the trial, unexpectedly asked for his freedom in what amounted to a complete about-face in his behaviour during the trial. In what was an innovation for transitional justice, in this trial civilian victims had legal representation, could take part in the investigation and were allowed to question witnesses, experts and the accused during the trial. However, this was not put into practice correctly, as it proved too traumatic for those victims who decided to take part in the trial, many of them ethnic Chams, who had suffered greatly under the regime.

42. Ratko Mladic faces numerous charges, some of them related to the murder of 8,000 men and boys in Srebrenica in July 1995. Goran Hadžic is accused of murder, persecution, torture and other war crimes and crimes against humanity committed when he was president of the self-proclaimed state in southern Croatia in the early 1990s.

43. This tribunal tries people responsible for war crimes and crimes against humanity committed during the civil war in Sierra Leone 1991-2002.

44. In 2006 the Security Council authorized holding the trial in The Hague on security grounds. If found guilty, Charles Taylor would serve his sentence in the UK. Taylor was accused of 11 crimes against humanity, including the murder and mutilation of civilians, kidnapping women and girls into sexual slavery and using children as combatants.

45. This tribunal was set up in 2003 to try leaders of the Khmer Rouge for serious human rights abuses committed 1975-1979 and is made up of Cambodian citizens and judges and foreigners.

In March, four years after the assassination of the former Lebanese prime minister Rafiq Hariri, the **Special Tribunal for Lebanon**, created by the UN in 2007 at the request of the Lebanese Government, opened in The Hague. Daniel Bellemare, a Canadian who had previously presided over the International Independent Investigation Commission (IIIC), which was based in Beirut, was appointed as the chief prosecutor. The Tribunal, which has a budget of \$51.4 million –of which Lebanon has provided 49% while the rest is made up of voluntary contributions from UN member states– will deal with terrorist acts, rebellion, civil war and inter-religious conflict. Its establishment was a sensitive question in Lebanon, where there is considerable tension between the pro-Syrian and anti-Syrian tendencies. François Roux, a French lawyer, was named by the UN secretary-general to head the Defence Office of the Special Tribunal for Lebanon with the object of organizing the maximum possible training sessions, especially for lawyers from the Middle East who

Attention is drawn to the Liberian Commission's final report which recommended the establishment of a criminal court to judge war crimes

want to work in the tribunal, and thus to create a strong defence team.

e) Truth commissions and other clarification commissions

What follows is a review of the most significant advances and its setbacks during 2009 in the field of truth commissions and other clarification commissions. Attention is drawn to the Liberian Commission's final report which recommended the establishment of a criminal court to judge war crimes and serious violations of human rights and the IHL. The Commission put it this way an end to the legacy of human rights abuses that took place over 14 years of armed conflict. Formally established in June 2006, and after three years of work, the Commission also confirms the need to redress, both individuals and communities and to introduce institutional reforms in the country.

Table 5.4. Truth and other commissions: advances and setbacks in 2009

Korea, Rep.	In March the Truth and Reconciliation Commission confirmed that at least 3,400 civilians and prisoners in the Busan, Masan and Jinju jails were victims of soldiers and police from July to September 1950. This is the first official confirmation in the country of suspicions that members of the police force and military were involved in the indiscriminate murder of prisoners.
Liberia	In a preliminary report presented by the Commission at the beginning of 2009, its members recommended the establishment of a criminal court to judge war crimes, serious violations of human rights and of the IHL committed in Liberia between January 1999 and October 2003. While rejecting amnesty for these crimes, the delegates urged a general amnesty for children and other people who were forcibly recruited. In June the Commission presented its final report, including its conclusions on the roots of the conflict and its impact on women, children and Liberian society in general. It recommended that president, Ellen Johnson Sirleaf, be barred from holding public office for 30 years for her alleged involvement in the civil war and has support for Charles Taylor. The president, who had given evidence under oath to the Commission in February, asked to be pardoned and said she had only backed Taylor in order to get rid of the former Liberian dictator Samuel Doe. This revelation had a considerable impact on Sirleaf's image both inside and outside the country, given that she was the first woman to be elected president in Africa, while Commission members received death threats. The report also called for all the leaders of armed groups to be tried, including the former president Charles Taylor and 100 other people, for serious violations of human rights, war crimes and crimes against humanity. Among the list of accused were the names of various members of Sirleaf's Government. In August the Liberian Parliament postponed the implementation of the Commission's recommendations, which could include the prosecution of senior officials such as the president, and said that the electorate should be consulted first. On the other hand, the Liberian diaspora urged that the final report be implemented in full as well as the Commissions other recommendations, while other factions viewed this as tendentious. ⁴⁶
Togo	In June the Togo Government named the members of the Truth, Justice and Reconciliation Commission established after a consultative round in 2008. This Commission is supported by the OHCHR and is presided over by the Catholic Bishop Nicodème Barrigah. The Commission is to look into events that occurred in Togo between 1959 and 2005, years of intense political violence.
Kenya	On July 30 the Government established a Commission for Truth, Justice and Reconciliation despite criticism from civil society, the Church and the international community, all of which insisted that what was needed was a special tribunal and that the creation of a commission was part of a strategy on the part of president Mwai Kibaki and prime minister Raila Odinga to protect some of their supporters implicated in the crimes. Florence Jaoko, the president of the National Commission on Human Rights, said that the two years allocated for this task were probably insufficient. The Commission, made up of six local and three international experts, was sworn in during August and its mandate includes the investigation into historic injustices from 1963 until the post-electoral violence that took place in 2008. ⁴⁷
Nigeria	The Commission for Truth and Reconciliation, known as Kayode Eso, and set up by the government of the Rivers State to look for ways of guaranteeing a lasting peace in the Delta region, presented its report and recommendations. Adolphus Karibi-Whyte, a retired Supreme Court judge, expressed serious doubts over whether the Commission could achieve its objective because he believed that a majority of people who had given testimony before it had not told the truth.

46. For more information see <<https://www.trcofliberia.org/>>.

47. For more information see <http://www.knchr.org/index.php?option=com_frontpage&Itemid=1>.

Other truth commissions (under preparation or discussion)

Brazil	At the end of the year the president Lula da Silva announced the establishment of a Truth Commission to investigate crimes committed under the military regime. The plan, which has received widespread criticism, envisages taking new testimony and staging reconstructions of murders, disappearances and torture. However, at the end of the year Lula agreed to amend the project before sending the final version to Congress in order to avoid a showdown with the Armed Forces.
Burundi	There was a continuing consultation process in regard to which instruments of transitional justice could be used in the country, in particular a Truth Commission.
Congo, DR	Throughout 2009 there were a number of proposals of how to get to the truth about crimes committed in DR Congo especially in Ituri, in the northeast, where for years massive human rights abuses have gone unpunished. Some NGOs, who believe that impunity for these crimes could revive tensions and lead to a violent reaction on the part of the victims, believe that a form similar to the Amani process (which means peace in Swahili) launched in January 2008 to restore peace in north and south Kivu would be useful, as would the establishment of a Truth and Reconciliation Commission designed especially for Ituri.
Ex Yugoslavia	The Regional Commission for Truth-seeking about War Crimes committed in former Yugoslavia (RECOM), a network made up of NGOs, associations and individuals once more called for the establishment of a regional truth commission to look into the serious human rights abuses committed in the area.
Philippines	The Catholic Bishop Pedro Arigo, the senior representative of the Episcopal Commission on Prison Pastoral Care, part of the Catholic Bishops' Conference of the Philippines, once again suggested the setting up of a Truth Commission to close the case of the double assassination of Benigno Aquino, leader of the opposition to the dictator Ferdinand Marcos, and Rolando Galman, a communist guerrilla. The Philippines government freed 10 former soldiers who have spent 26 years in jail for the murder of the former senator Aquino and of Galman in 1983 but the former senator's family protested at their release. Arigo said a Truth Commission could establish the facts and help victims to heal their wounds.
Solomon Islands	In April, the Truth and Reconciliation Commission, whose five members were presided over by Father Ata, began work investigating the causes of the ethnic conflict that took place between 1998 and 2003. The commissioners began work three months before the Commission officially opened. The South African Archbishop Desmond Tutu gave his support during its inauguration.
Nepal	A lack of coordination between the ministers for the interior and for peace, concern about elections in April and a lack of political initiative meant that the law to establish a Truth and Reconciliation Commission over serious human rights abuses committed equally by the Government and the Maoists during the armed conflict from February 1996 to November 2007, remained paralyzed throughout 2009. The law, drawn up by the minister for peace, has been revised on four occasions because of a series of disagreements concerning a clause offering amnesty to people responsible for war crimes.
Pakistan	In September Asif Ali Zardari, the Pakistan president, said he wanted to set up a Truth and Reconciliation Commission along the South African model. Asif Ali Zardari, said that Asma Jehangir, a widely respected human rights lawyer, might preside over the Commission.
Uganda	The Ugandan Congress urged the establishment of an Independent Truth and Reconciliation Commission that would bring together politicians from all sides to discuss how to prevent or resolve the country's civil wars.
Zimbabwe	In mid-2009 a group of religious organizations and Christian leaders urged setting up a commission to investigate cases of political violence that have occurred since 2008, decide how those responsible should be punished and how to indemnify victims. The Christian group includes Catholics, Protestants, Anglicans, Evangelicals and Pentecostals who said that the reconciliation campaign initiated by the government would not be effective unless it publicly revealed everything that happened during the electoral period. The group also insists that the Church must take a key role in the national reconciliation and peace process.

Finally, it should be noted that legal proceedings against companies suspected of involvement in human rights abuses during the apartheid in South Africa, took their course. The lawsuit filed in 2002 in a New York Court under the Alien Torts Calim Act against 33 US based companies - presently eight-, and known by the name "Case Khulumani" alleges that the companies were instruments that led to the abuses and that the apartheid system drew significant financial and logistical support from these companies. According to the judge oversee-

ing the case, Ford, GM and Daimler provided, for example, special armoured vehicles to the country's security forces despite being aware of the crimes committed by the regime, and IBM provided identity documents with discriminatory remarks. This case raises many questions in post-apartheid South Africa but also raises new questions regarding the responsibility of transnational and non-state actors in human rights abuses committed during armed conflicts or dictatorial regimes.