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Racism and the administration of justice

[Back cover text]

In 1994 up to a million men, women and children were slaughtered in Rwanda in just 100 days. The genocide showed how quickly racism – in this case in the form of ethnic hatred – can erupt into bloodshed and despair, particularly when it is fuelled by those in power or those seeking power.

Racism, to varying degrees and in various forms, infects virtually every country of the world. The law and its administration, which should uphold the values of justice and equality, is one of the primary forces in opposing the effects of racism. Yet justice systems all too often fail in this purpose and instead mirror the prejudices of the society they serve.

This report illustrates how racial discrimination in the administration of justice systematically denies certain people their human rights because of their colour, race, ethnicity, descent (including caste) or national origin. Based on research conducted by Amnesty International in recent years, it shows that members of ethnic minorities often suffer torture, ill-treatment and harassment at the hands of the police. In many parts of the world they face unfair trials and discriminatory sentencing which puts them at increased risk of harsh punishments, including the death penalty.

Action to combat racism is needed urgently. This report concludes with recommendations on how governments can work to end racism in the administration of justice.

[End]

Racism and the administration of justice

This report is a contribution to the struggle against racism and specifically to the debate centred on the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It is also a contribution to Amnesty International's worldwide campaign against torture.

Other reports issued as part of the campaign against torture which was launched in October 2000, include:

Take a step to stamp out torture (AI Index: ACT 40/013/2000);

Hidden scandal, secret shame – Torture and ill-treatment of children (AI Index: ACT 40/038/2000);

Broken bodies, shattered minds —Torture and ill-treatment of women (AI Index: ACT 40/016/2001);

Stopping the torture trade (AI Index: ACT 40/002/2001); *Crimes of hate, conspiracy of silence — Torture and ill-treatment based on sexual identity* (AI Index: ACT 40/001/2001).

The campaign aims to galvanize people around the world to join the struggle to end torture.

Amnesty International (AI) is a worldwide movement of people who campaign for human rights. AI's work is based on careful research and on the standards agreed by the international community. AI is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

AI mobilizes volunteer activists in more than 140 countries and territories in every part of the world. There are more than 1,000,000 AI members and subscribers from many different backgrounds, with widely different political and religious beliefs, united by a determination to work for a world where everyone enjoys human rights.

AI works to promote respect for all the human rights set out in the Universal Declaration of Human Rights and other international standards. It holds all human rights to be universal, indivisible and interdependent.

In seeking to contribute to the observance worldwide of all human rights, AI's program of research and action is focused on some of the gravest violations of the right to freedom of conscience and expression, freedom from discrimination, and the right to physical and mental integrity. AI's campaigning against such violations includes working to:

- free all prisoners of conscience — people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, who have not used or advocated violence;
- ensure fair and prompt trials for all political prisoners;
- abolish the death penalty, torture and other ill-treatment;
- end “disappearances”, political killings, and other unlawful killings in armed conflict.

AI holds governments accountable not only for violations inflicted by their own agents, but also for failing to protect people against abuses by other individuals. AI also calls on armed political groups to respect human rights and stop abuses such as detention of prisoners of conscience, hostage-taking, torture and unlawful killings.

AI seeks to support the protection of human rights by other activities, including its work with the United Nations (UN) and regional intergovernmental organizations, and its work for refugees, on international economic, military, security and police relations.

Racism and the administration of justice

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Introduction

In just 100 days up to a million men, women and children were slaughtered in one country, largely because of racism. The place was Rwanda. The year was 1994. The vast majority of the victims were members of the Tutsi ethnic group.

The genocide in Rwanda shows how quickly racism – in this case in the form of ethnic hatred – can erupt into bloodshed and despair, particularly when it is fuelled by those in power or those seeking power. It also shows the devastating consequences when the state and the international community fail to act to stop racism. Rwanda should serve as a stark reminder to us all that racism, in whatever form it takes, must be combated whenever it appears, as it inevitably leads to violations of human rights.

Racism is an attack on the very notion of universal human rights. It systematically denies certain people their full human rights just because of their colour, race, ethnicity, descent (including caste) or national origin. It is an assault on a fundamental principle underlying the Universal Declaration of Human Rights (UDHR) – that human rights are everyone's birthright and apply to all without distinction. It undermines all human rights, be they civil, political, economic, social or cultural.

The right not to suffer racial discrimination is a fundamental principle of international human rights law. The principle appears in virtually every major human rights instrument as well as in the UN Charter. Indeed, one of the stated purposes of the UN is to "achieve international cooperation... in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion".¹

And yet racial discrimination persists in virtually every society, despite all the efforts of the UN and organizations around the world dedicated to combating racism, and the fine-sounding commitments in so many constitutions and laws.

The concept of race has no biological basis. It is a socio-political construction usually based on supposed physical characteristics of groups. Racial categories are arbitrary and often used for political ends. The meaning of race and the ideological expressions of racism have changed over time and across continents. Racism has often been used by dominant racial groups to justify their domination, and in some cases racist attitudes are an expression of alienation and despair among the powerless, including victims of racism.

For example, racial discrimination against Roma occurs widely in Europe because Roma are perceived as an “inferior” ethnic group, a perception based in some countries on the lifestyle or relative poverty of Roma communities. Racist attitudes have emerged between people of similar racial backgrounds because of political issues, such as between Hutu and Tutsi in Rwanda and Burundi. In the Balkans, nationalists wanting to set members of the same ethnic group against each other have invented new national identities tenuously based on notions of ethnicity.

The various manifestations of racism are invariably linked to broad economic and social issues. In the modern globalized market economy, the poor and the marginalized are frequently members of racial groups whose position has been determined by generations of exploitation, oppression and discrimination by other racial groups. Racist ideologies have helped to create and then reinforce the inequalities – racial groups who had been enslaved, impoverished and disenfranchised, or even virtually exterminated, were branded as biologically inferior. This was used to justify the power and privileges of the dominant groups, and perpetuated inequalities by blocking access to education, land and other resources, jobs, positions of influence and prosperity.

The worst violations of human rights based on racism, such as genocide and “ethnic cleansing”, catch the headlines. Less well publicized are the abuses that take place every day in the context of the administration of justice partly or solely because of racism. Amnesty International (AI) seeks to draw attention to these abuses in this report. The report, which is based on research conducted by AI in recent years, illustrates some of the patterns of racism in the administration of justice worldwide.

Amnesty International’s work against racism

AI opposes racism through its work to promote observance of the UDHR around the world. It calls for ratification and implementation by states of international and regional human rights instruments that prohibit all forms of discrimination. It also works worldwide on cases of grave violations of the right to be free from racial discrimination.

Specifically, AI opposes racism by working for the release of prisoners of conscience² imprisoned by reason of race, descent, or national or ethnic origin; and through its work on cases where racism is a factor in abuses including torture, ill-treatment, the death penalty, “disappearances”, unfair trials of political prisoners, unlawful killings, excessive use of force, forcible exile, mass expulsions and house destruction. The organization also opposes discriminatory legislation that facilitates these violations. In addition, AI intervenes when racial discrimination prevents redress for victims and perpetuates impunity for perpetrators of human rights violations, or hinders the right of those fleeing persecution to seek asylum.

AI’s work against racial discrimination on the basis of race, descent (including caste), colour, ethnicity or national origin is based on the definition set out in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination:

“In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

This report is not intended to be a global or comprehensive survey of racism. It highlights particular countries and cases of relevance to the question of the administration of justice on the basis of AI’s experience.³ There are numerous other countries, cases and issues that could have been, but

have not been, included. For example, many people are victims of discrimination based on a combination of factors, such as race, religion, gender, sexual orientation, disability, age and economic status; many suffer racial discrimination and prejudice outside the system of justice; and there are countless abuses of human rights arising from racism and discrimination in the wider field of economic, social and cultural rights.

International human rights law

Governments are obliged under international human rights standards to tackle racism in all its forms. This includes repealing discriminatory legislation that facilitates abuses and denies equal access to justice, and providing effective protection against racist abuses in the community as a whole. It also means ensuring that the laws and institutions of the state address the root causes of racism, rather than replicating or fomenting it for political ends.

The prohibition of racial discrimination constitutes a general principle of international law.⁴ The International Court of Justice stated more than 30 years ago that the protection from racial discrimination is one of those obligations that, by their very nature, “are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection... such obligations derive... from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.”⁵

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted unanimously in 1965 by the UN General Assembly. It outlines substantive rights and a series of steps for the elimination of racial discrimination in all its forms. The Convention also aims to promote de facto racial equality, to enable the various ethnic, racial or national groups to enjoy all human rights on an equal basis, in the civil, political, economic, social and cultural fields. In addition, states that ratify the Convention are obliged to protect people from discrimination by private individuals as well as state-sponsored discrimination.

The Convention set an important precedent by creating a body to monitor and review actions taken by states to fulfil their obligations under the Convention – the Committee on the Elimination of Racial Discrimination (CERD). Some of the findings of CERD are included in this report.

Prohibition of discrimination is also at the heart of each of the main UN human rights instruments dealing with the administration of justice. Among such key instruments are: the International Covenant on Civil and Political Rights (ICCPR); the UN Basic Principles for the Treatment of Prisoners (Basic Principles); the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles); the Convention on the Rights of the Child; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

The experiences of millions of people worldwide testify to a simple fact: where there is racism there can be no justice. That is why it is essential that international human rights law prohibiting racial discrimination is respected everywhere and at all times.

Action to end racism

Most governments would be hard pressed to eradicate all traces of racism in society. However, they are obliged to work to ensure that the state does not in any way promote or tolerate racism, and instead actively combats it.

There are many steps that can be taken. To begin with, all states should ratify without reservations and implement in full international human rights treaties prohibiting racial discrimination and requiring fairness in the administration of justice. In line with international standards, the countries’ constitution and laws should clearly prohibit all forms of discrimination, and such laws should be rigorously enforced. The government should publicly and consistently send a clear message that racism will not be tolerated – in society in general and in all agencies of the state. All crimes with a racist element should be thoroughly investigated and the perpetrators brought to justice.

In many states, racist abuses by officials are rarely prosecuted – and in the few cases that do come to court there is often a failure to convict. A major step forward, therefore, would be to ensure that prosecution and conviction rates are increased by determined, thorough, independent and impartial investigations and monitoring of such cases.

However, it is not enough simply to prosecute individuals as and when cases of racist abuses by officials come to light. Such action on its own does not address issues such as institutional racism in the police, discriminatory patterns of recruitment into the agencies that administer justice, and disparities in sentencing practices between different racial groups. Mechanisms must be put in place to uncover patterns of racism in the administration of justice – and to institute remedies that tackle the causes of the discrimination. Among such remedies are human rights and race-awareness training for those working in the justice and asylum determination systems; recruitment drives among ethnic minorities; and reviews of laws and practices that have a disparate impact on particular communities.

Racism, is not confined to the institutions of the state. It can also be found at any level of civil society. The responsibility for combating racism therefore extends to everyone. There are countless initiatives that we can take to fight against bigotry, prejudice, discrimination and injustice, whether we act as individuals, through our social, political, community, cultural, religious or sporting groups, or with organizations that focus on human rights.

Around the world, persecuted communities have organized themselves to defend their rights. Campaigns to raise awareness about racism and to oppose it, to expose miscarriages of justice and to assert the rights of minorities and asylum-seekers have brought success. They have resulted in the release of prisoners wrongfully convicted. They have forced governments to repeal discriminatory laws and to introduce legislation prohibiting “race-hate” crimes. They have led to anti-racism training being introduced for officials in public authorities and in the administration of justice. The solidarity and support offered by human rights organizations give encouragement to groups who are at risk and defending their rights. Together, we can marginalize racists and eradicate the poison of racism from society.

AI welcomes the opportunity which the 2001 UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides to cast the spotlight on racial discrimination in all its forms. The organization hopes that this report and its recommendations will generate strong action by all governments to end racial discrimination in their own countries and worldwide.

1: Discrimination and the law

“Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.”

Justice Blackman, US Supreme Court, 1994

Racism, to varying degrees and in various forms, infects virtually every country of the world. The law and its administration, which should seek to uphold the values of justice and equality, is one of the primary forces in combating the effects of that racism. Yet justice systems all too often fail in this purpose and instead mirror the prejudices of the society they serve. That is why it is vital that every justice system has procedures and safeguards to prevent discrimination, including laws that prohibit and punish discrimination, and mechanisms to check and rectify patterns of discrimination.

Racialized administration of justice often reflects deep-rooted historical patterns of oppression against groups marked out by their colour, caste, ethnicity and nationality. These patterns exist within particular societies, or may transcend national boundaries so that some groups, such as people of African descent or Roma, face discrimination in the different countries in which they have settled. Racism in the administration of justice can also take the form of specific laws and discriminatory treatment directed at “foreigners” in general or those who are seeking asylum.

The most extreme form of sustained racial discrimination enforced by law in the past century was seen in apartheid South Africa. For over 40 years and under a system condemned universally as a crime against humanity, the country’s black majority suffered denial of their human rights solely on the basis of the colour of their skin. The discrimination they faced was backed by the force of law, which had been created and maintained by white minority governments. Black South Africans, including people classified as “coloured” or Indian, were economically and socially marginalized, politically

disenfranchised, and vulnerable to widespread and gross violations of their human rights by agents of the state who could arbitrarily detain, torture and kill with impunity.

The apartheid system in South Africa has been ended and most countries have laws or constitutions that prohibit racial discrimination. However, not all national legal systems pass the basic test of Article 7 of the UDHR, which states: "All are equal before the law and are entitled without any discrimination to equal protection of the law."

In Israel, for example, several laws are explicitly discriminatory. These can be traced back to Israel's foundation in 1948 which, driven primarily by the racist genocide suffered by Jews in Europe during the Second World War, was based on the notion of a Jewish state for Jewish people. Some of Israel's laws reflect this principle and as a result discriminate against non-Jews, particularly Palestinians who had lived on the land for generations.⁶

Various areas of Israeli law discriminate against Palestinians.⁷ The Law of Return, for instance, provides automatic Israeli citizenship for Jewish immigrants, whereas Palestinian refugees who were born and raised in what is now Israel are denied even the right to return home. Several statutes grant privileges to those who have completed military service, but as Palestinians (except for those belonging to the Druze community) are exempt from conscription they cannot enjoy the privileges. Other statutes explicitly grant preferential treatment to Jewish citizens in areas such as education, public housing, health and employment.

Once discrimination is enshrined in law, even if it is only in a few aspects of the law, the whole state and system of justice is affected. Racist attitudes and practices are seen as legitimate and inevitably seep into other areas of the administration of justice, as is clear in Israel and even more so in the Occupied Territories (see Chapter 4).⁸

Prejudice against Palestinian citizens of Israel is widespread in the Israeli criminal justice system. For example, when Palestinians rioted throughout Israel in protest at the killing of Palestinians in al-Aqsa mosque precinct in Jerusalem in late September 2000, hundreds of Palestinians were arrested. At the same time scores of Jews were arrested after anti-Palestinian demonstrations. A policy of seeking remand in custody until the end of the trial was, according to the Attorney General, applied to Jews as well as to Palestinians. However, this policy – which effectively meant four to six months' detention before trial – affected a far higher proportion of Palestinians than Jews. As at 30 October 2000, according to the Ministry of Justice and the police, about 1,000 Israeli citizens had been arrested since 28 September. About 66 per cent (660) were Palestinians and 34 per cent (340) were Jews, but 89 per cent of those detained until the end of trial were Palestinians.

Palestinians suspected of non-political offences also face discrimination in Israel's criminal justice system (although to a much lesser extent than in the military system in use in the Occupied Territories). A detailed study conducted by two Israeli academics published in 1998 found that although the law explicitly prohibits discrimination, Palestinians, whether Israeli citizens or not, are more likely than Jews to be charged after arrest, sentenced to terms of imprisonment, and given harsh sentences – when all other factors are accounted for. They concluded, "The findings of the aggregated data leave no room for doubt that the decisions made at each stage of the criminal procedure discriminate against Arabs."⁹

The discrimination is even greater against Palestinians from the Occupied Territories (see Chapter 4). However, Palestinian citizens of Israel find themselves frequently treated – in detention patterns and sentencing – like Palestinians from the Occupied Territories, with longer sentences and refused parole or home visits if they have committed political offences. Moreover, when Palestinians demonstrated in September and October 2000, throwing stones and burning tyres, they were shot at by police and border police – the treatment commonly meted out to Palestinians in the Occupied Territories. Despite the deaths of 13 people and hundreds of injuries, the police action was praised by Prime Minister Ehud Barak and it took weeks of protests to get a Judicial Commission of Inquiry into the killings. A border policewoman who testified before the Commission of Inquiry in March 2001, told a journalist from the Hebrew newspaper Yediot Ahronoth: "We handle Jewish riots differently. When such a demonstration takes place, it is obvious from the start that we do not bring our guns along. These are our instructions."

The introduction of racially discriminatory laws is not just a feature of the past. In Fiji, for example, existing racial segregation is being extended. A military-backed government, installed after a

violent coup attempt in May 2000, has been pursuing racially discriminatory policies in favour of indigenous Fijians, despite two court rulings upholding the country's 1997 Constitution which prohibits discrimination.

The attempted coup led to widespread human rights abuses, targeted particularly at Fijians of ethnic Indian origin (known as Indo-Fijians). Coup leaders incited racist attacks against Indo-Fijians and for weeks, indigenous mobs terrorized towns and villages, robbed Indo-Fijian farms and homes, raped Indo-Fijian women and took scores of people hostage.

On 29 May 2000 the armed forces took power, declared martial law and published emergency decrees, drafted by the indigenous Chief Justice, to replace the Constitution and abolish the Supreme Court.

In July 2000 the military arranged the appointment of Laisenia Qarase as interim Prime Minister who formed a predominantly indigenous Fijian administration. He appointed a committee to review the 1997 Constitution with the aim of replacing it with one that guarantees political supremacy and economic advancement for indigenous Fijians. The same month Laisenia Qarase presented plans for new laws and policies to guarantee political supremacy and economic benefits for indigenous Fijians. Known as the "Blueprint", the plans seek to reverse the gradual removal of racial segregation and discrimination imposed in Fiji after two military coups in 1987. For example, major business licences and new state-funded benefits in education, economic, social and cultural development would be reserved for indigenous Fijians.

Such racial discrimination enshrined in national law is rare. Much more common is for non-discriminatory laws to be implemented in a racially discriminatory manner.

In Burundi, for example, more than 6,400 people are awaiting trial, most accused of politically motivated violence since 1993. Virtually all are Hutu civilians, even though members of all ethnic groups have been involved in the killings and the Tutsi-dominated security forces have been responsible for the unlawful killing of thousands or tens of thousands of people each year.¹⁰ Over 200,000 people have reportedly been killed in Burundi since the country descended into civil war following the assassination of the country's first democratically elected President, Melchior Ndadaye, a Hutu, in 1993.

Hundreds of civilians, most of them Hutu, have already been tried and sentenced to long terms of imprisonment or death for participation in the massacres of tens of thousands of mainly Tutsi civilians which followed the assassination of President Ndadaye. Many trials were grossly unfair. Burundi has two Hutu lawyers and when trials began in 1996, lawyers from other ethnic groups were often unwilling to take on cases involving Hutu defendants. Owing in part to a UN program of judicial assistance, most defendants now receive legal help from lawyers from both Hutu and Tutsi ethnic groups. However, the tens of thousands of killings of Hutu in reprisal attacks by Tutsi-dominated armed forces and Tutsi civilians remain unpunished.

Throughout the civil war, Hutu and Tutsi formed armed gangs, armed opposition groups and militia, all of which committed gross human rights abuses. Members of Hutu-dominated armed opposition groups have been prosecuted for such acts. By contrast, members of Tutsi militia, particularly active in the 1994-96 period, which were responsible for the unlawful killing of Hutu politicians and other civilians, have not been brought to justice, and many were subsequently integrated into the armed forces. The few Tutsi soldiers convicted of the extrajudicial execution of Hutu have been sentenced to relatively light sentences, in some instances only a few months' imprisonment. Such figures make one thing absolutely clear – justice is being applied selectively, with ethnic bias.¹¹

The judiciary in Burundi is overwhelmingly dominated by judicial officials from the Tutsi ethnic group, particularly at the higher levels. The services responsible for arrests and investigating cases are also heavily dominated by Tutsi. At the inter-Burundian peace negotiations in Arusha, Tanzania, which resulted in the signing in August 2000 of an Agreement for Peace and Reconciliation in Burundi (still to be implemented), much of the discussion on reform of the judiciary focused on addressing ethnic balance through accelerated training.¹²

In Burundi, discrimination in the criminal justice system is blatant. In most countries, however, it is very difficult to show in individual cases that racist attitudes, policies or procedures lie behind a decision to prosecute, convict, mete out a harsh sentence or deny the right of appeal. On occasion, the racism is revealed – for example by the words of a judge or other justice official. More often, racism can only be identified by looking at patterns of arrest, conviction and sentencing in relation to the racial

background of the defendant or the victim of the crime, the racial background of those involved in administering justice, and so on.

To do this, information relevant to discrimination is needed – information that is simply not collected in most countries. The lack of such data in itself is a strong indication of deficiency in the justice system, as information is an essential tool in the fight against racism in the administration of justice. The identification of discriminatory patterns is the first step towards finding ways of combating the discrimination.

In some countries, the collation of material on discrimination is hindered not just by official reluctance to collect and publish it, but also by political repression which prevents human rights organizations operating freely. In such places, it is often clear to those caught up in the criminal justice system that racism plays an enormous role in determining guilt or innocence, type of sentence and conditions of detention. But without statistics of discriminatory practices, the discrimination may be hard to expose and demonstrate.

In the USA, it would be hard to find even a hint of discrimination in law. Yet extensive studies and analysis of relevant data have shown that racial discrimination is a significant feature of the administration of justice across the country.

Research into the death penalty at both state and federal level over the past two decades has consistently shown a pattern of sentencing anomalies which cannot be explained without reference to racial factors.¹³ For example, the race of the murder victim appears to be a major factor in determining who is sentenced to death. Blacks and whites are the victims of murder in almost equal numbers, yet more than 80 per cent of prisoners executed between 1977 and 2001 were convicted of the murder of a white person.

In Kentucky, every death sentence up to March 1996 was for the murder of a white victim, even though over 1,000 homicide victims had been black.¹⁴ A study of 2,000 murder cases in Georgia found that the odds of a death sentence were four times higher for cases with white victims than for cases with black victims.¹⁵ The chances of a death sentence in cases in which blacks murdered whites were as much as 11 times higher than when whites murdered blacks.

The race of the defendant is also a factor. A study found that in Philadelphia a black defendant is four times more likely to receive a death sentence than a white defendant.¹⁶ Since Pennsylvania reintroduced the death penalty in 1978, more than eight times as many blacks as whites have been sentenced to death. These and many nationwide studies have persistently found that aggravating factors such as the severity of the crime cannot explain the disparities.

A 1998 report by the Death Penalty Information Center concluded: “Examinations of the relationship between race and the death penalty... have now been conducted in every major death penalty state. In 96 per cent of these reviews, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both.”¹⁷

Some of the contributory factors for this racial discrimination have been explored by AI in recent reports, including *Killing with prejudice: Race and the death penalty in the USA*.¹⁸ In brief, these include the impact of prosecutorial discretion combined with racial bias; the exclusion of minorities from jury duty; prejudice in the jury room; the appointment of racially biased legal representatives who mount inadequate defences; the acceptance of racial stereotypes by people involved in the judicial process; and the failure of the authorities to act decisively to combat racism in the administration of justice.

Black and ethnic minorities also suffer disproportionate rates of incarceration, forming as they do 60 per cent of the 1.7 million people currently in jail in the USA. Overall, black men are admitted to prison at more than eight times the rate of white men, and one third of all young black men are in jail or prison or on parole or probation. In some cities the proportion is even higher – up to 80 per cent in some communities.

For women, the disparity is also striking: the rate of imprisonment of black women is more than eight times that of white women; for Hispanic women the rate is four times higher.¹⁹ Children of racial and ethnic minority backgrounds are also greatly overrepresented at all stages of the general and juvenile justice systems. They make up 15 per cent of the population aged between 10 and 17, but account for around 31 per cent of youths arrested, 44 per cent of youths held in custody in juvenile

facilities, nearly half of all juveniles tried in adult criminal courts, and 58 per cent of all juveniles confined in adult prisons.²⁰

Such racial disparities in rates of imprisonment were acknowledged as a problem by the government in its report to the UN Committee on the Elimination of Racial Discrimination (CERD) in September 2000. The report noted that, “Various studies indicate that members of minorities (especially Blacks and Hispanics) may be disproportionately subject to adverse treatment throughout the criminal justice process.”²¹

The disparities have been exacerbated by the government’s “war on drugs” initiative – an example of how “neutral” laws can have a racially disproportionate impact. One report showed that blacks comprise around 63 per cent and whites around 37 per cent of all drug offenders admitted to state prison, even though federal surveys and other data show clearly that this racial disparity bears little relation to racial differences in drug offending (there are reportedly five times more white drug users than black).²² The report found that black men are incarcerated for drugs offences at a rate 13.4 times higher than white men. This is primarily because of public penal policies and law enforcement priorities in which poor minority urban neighbourhoods – and street dealers – have been the principal targets of the “war on drugs”, rather than more affluent and largely white suburban areas.

The racial disparities in US sentencing appear even more marked in the case of young offenders. A study sponsored by the US Justice Department and six leading US foundations found that for those charged with a drug offence, black youths were 48 times more likely than white youths to be sentenced to juvenile prison.²³

Under US state and federal law, racial disparities in law enforcement are constitutional as long as they are not undertaken with discriminatory intent or purpose. This is a narrower definition than that given by the Convention on the Elimination of All Forms of Racial Discrimination, which defines racial discrimination as conduct that has the “purpose or effect” of restricting rights on the basis of race.

The US authorities have taken some action to address racism in the administration of justice, but there is still no requirement on states to monitor and take measures to reduce disproportionate minority confinement. As a result, blacks and other minorities still remain at far higher risk of imprisonment than whites because of racial discrimination. They also remain at higher risk of execution.

Another aspect of racially discriminatory practices commonly seen in the application of the law is the denial of translators or interpreters during interrogation and court hearings to people who do not speak or read the official language. In such cases, even if the law is non-discriminatory, defendants are inevitably denied the right to a fair trial.

In Sri Lanka, for instance, the prominence given to the Sinhalese language in the day-to-day running of the judicial system has meant that many Tamil political prisoners have been discriminated against on the basis of language. They have their statements to the police recorded in Sinhalese, a language most of them do not speak or understand. These statements are admissible as evidence under the Prevention of Terrorism Act (PTA), and are often extracted under torture. Trials and hearings in the north and east are in Tamil and English, but many serious cases, including many of those under the PTA, are tried in the capital, Colombo. Most court proceedings in Colombo and other parts of the south are conducted in English or Sinhalese which, owing to a shortage of court-appointed interpreters, has restricted the ability of Tamil-speaking defendants to get a fair hearing. Few judges speak Tamil and there are no law reports and few legal textbooks in Tamil.

Such discriminatory practices occur against a background of internal conflict in Sri Lanka centred on the Sinhala-Tamil divide, a conflict that has involved violence and widespread human rights abuses by all sides. The government has complied only slowly with legislation requiring the publication of all laws in English, Sinhala and Tamil.

The law should be one of the main instruments in any society for combating racial discrimination. If the law is itself discriminatory, or is allowed to be applied in a discriminatory fashion, then individuals and groups will be denied justice, the victims of racism as well as others will lose confidence in the law as a fair arbiter of justice, and it becomes much more likely that racist attitudes and practices among state officials and members of the public will continue, if not increase.

2: Torture, ill-treatment and excessive use of force

“She was crying when she came back. She told us she had been raped by three or four soldiers. She cried for a long time.”

These words, describing the trauma suffered in 1999 by a woman from Suva Reka in Kosovo, highlight the widespread use of rape and other torture against ethnic Albanians during one of the many conflicts that have marked the break-up of the former Yugoslavia. Those vilified by the various nationalist politicians as “the enemy”, or as less than human, were seen as legitimate targets for human rights violations simply because of their national, ethnic or religious identity. Serbs in Croatia, Muslims in Bosnia and ethnic Albanians in Kosovo have been among those targeted for torture, ill-treatment, unlawful killings and other abuses.

For example, in June 1992 a 17-year-old Bosnian Muslim girl was taken by Serbs in Yugoslav People’s Army uniforms from her village of Kaloševici, near Teslic in Bosnia-Herzegovina, to huts in nearby woods. She told how she was held there for three months, along with 23 other women. She was among 12 women who were raped repeatedly in the huts in front of the other women. One of the perpetrators told her, “You will bear a Serbian child.”

In Equatorial Guinea, one of hundreds of members of the Bubi ethnic group arrested in early 1998 solely because of their ethnic origin described what happened to a fellow inmate, Barbosa Elobé, who subsequently died in detention:

“One of his feet became infected because of the torture. Gangrene set in and he went crazy. He was eating his own shit. He didn’t realize what he was doing.”²⁴

In early 1998, following attacks by some Bubis on several military barracks on Bioko Island, the authorities arrested about 500 men and women. Almost all were arrested solely because of their Bubi ethnic origin. Many were tortured by the security forces and at least six died as a result.

The Bubis, the indigenous population of Bioko Island, were caught in a systematic program of reprisals and arrests that lasted several weeks. Security forces swept into Bubi villages, in some cases executing people summarily. Bubis were indiscriminately harassed at checkpoints, beaten, robbed and abused by security forces. Bubi women were raped in their homes. Members of the security forces also looked on as pro-government mobs beat and raped Bubi women. Relatives of those wanted by the authorities were detained as hostages.

More than 110 of those arrested were tried in May 1998 in connection with the attacks on the military barracks. After summary military trials lasting five days, 15 people were sentenced to death (later commuted to life imprisonment) and 70 were sentenced to prison terms ranging from six to 26 years. All the convictions were based on confessions allegedly made under torture. An AI delegation observing the trial saw clear signs that the accused had been tortured: some of the defendants had fractured bones and at least 10 had part of their ears cut off.²⁵

In Burundi, the use of torture is rife, particularly at the hands of the military and gendarmerie who often detain suspects outside any legal framework. Torture has been an important tool of the Tutsi-dominated armed forces in their efforts to suppress insurgency by Hutu-dominated armed opposition groups. Members of the civilian Hutu population – generally considered suspect solely because of their ethnic group – have been arbitrarily arrested, detained and tortured. While most political detainees are at serious risk of torture, Hutu accused of collaboration with armed opposition groups are particularly vulnerable, especially when held secretly or incommunicado in military positions or camps. Some have died as a result of their injuries. They have been beaten with electric cables and sticks; struck with heavy implements on the joints, the soles of the feet and the genitals; and tied in excruciatingly painful positions for long periods. Their torturers have not been prosecuted or even disciplined.

Examples such as these highlight how racism paves the way for human rights violations such as torture and ill-treatment. Racist ideas depict the victims not as human, but as objects that can be treated inhumanely. In countries riven by racial conflict or tension, torture and ill-treatment are often rife, and in many countries the targets of racism suffer disproportionately from torture and ill-treatment.

The disregard for human life and dignity in a racist context is also apparent in relation to excessive use of force by agents of the state. International standards stipulate that force should be proportionate to the threat faced – and that firearms should be used only in self-defence or the defence of others against imminent threat of death or serious injury and “only when less extreme means are insufficient to achieve these objectives”.²⁶ Yet in many places, those entrusted by the state with firearms seem only too ready to pull the trigger, especially if the suspect belongs to a group that faces racial discrimination. In such cases, there is also frequently a reluctance by the authorities to investigate the shootings thoroughly and to hold police officers to account if they have misused firearms.

In some countries, such as Israel and the Occupied Territories, and Indonesia, security forces regularly violate international human rights standards when confronted by demonstrations organized by certain national or ethnic groups. In other countries, individuals from racial minorities suspected of crimes are disproportionately at risk of being victims of excessive use of force by state officials.

In France, for example, people of non-European appearance, particularly if they are young men, appear to be at far greater risk of being shot by police than young men who are white. A disproportionately high number of victims of reckless shootings by police are people whose ethnic origin lies in the Middle East and Africa. Such incidents often occur during police investigations of car thefts in towns and poor suburbs where many young people of North African origin live.

In April 2000, three days of rioting in southern Lille followed the killing of Riad Hamlaoui, an Algerian resident in France. Riad Hamlaoui was shot dead by police while he was travelling as a passenger in a car that had been reported stolen. The bullet was fired at close range. Both Riad Hamlaoui and the driver of the car were unarmed. The police officer was placed under investigation and suspended from duties pending the outcome of inquiries.

In Germany too, most victims of excessive or unwarranted force during arrests and of ill-treatment by police have been foreign nationals or members of ethnic minorities, as recorded by AI.²⁷ Between January 1992 and March 1995, AI monitored cases of such abuses, including two cases where the ill-treatment amounted to torture. In all but a handful of the 70 cases recorded, the victims were foreign nationals, including asylum-seekers and refugees, or members of ethnic minorities. In many instances, there was little doubt that racism was a motivation, as the victims reported racist abuse by the officers involved.

A major concern for AI was the apparent failure of the German authorities to bring to justice alleged perpetrators of such abuses – a pattern seen in many other countries. Although criminal investigations had been opened into all cases of alleged police ill-treatment reported to AI, they were often not carried out promptly, impartially and thoroughly. Many of the officers allegedly responsible therefore escaped prosecution and few faced disciplinary sanctions, while few of the foreign or ethnic minority complainants were compensated for the injuries suffered. In a number of instances where officers were found guilty of ill-treating detainees, the sentences imposed on the guilty police officers were nominal.

In 1997 CERD expressed its concern in relation to Germany about “instances of police brutality against foreigners, particularly Africans and Turks, which have been reported in the press. Better training and stricter disciplinary action against the perpetrators appear to be necessary.”²⁸

In May 1998 the UN Committee against Torture, reviewing Germany’s report, stated that it was concerned about both the large number of reports of police ill-treatment and “about the apparently low rate of prosecution and conviction in the alleged incidents of ill-treatment by the police, especially of people of foreign descent”.²⁹ It recommended “that both internal disciplinary measures against offending police officers and the external prosecutorial and judicial measures be significantly strengthened to ensure that in future all police officers accused of ill-treatment of domestic and foreign nationals alike are brought to justice”.³⁰

Since 1997, AI has received fewer allegations of racist ill-treatment and excessive use of force by German police, although most allegations are still made by foreign nationals. In March 2001 CERD expressed its concern about “repeated reports of racist incidents in police stations as well as ill-treatment inflicted by law enforcement officials on foreigners”.³¹ Many victims say that they have been subjected to kicks, punches and kneelings, and sometimes abused with racist language.

In September 1999, for example, 22-year-old Serge Menga-Nsibi, a man of African origin, was arrested in Essen after he objected to the police searching his vehicle. He said that at the police station

two police officers banged his head on a wall, and during interrogation an officer repeatedly kicked and punched him. He said he was then forced to undress and subjected to racist insults. When he was taken to a cell, he was again kicked and hit, causing him to temporarily lose consciousness. A medical report indicated that Serge Menga-Nsibi suffered first-degree concussion, bruising to his head and a cut to his face. The police officers denied the allegations and brought criminal counter-charges against the detainee. A criminal investigation into the allegations against the police officers was terminated by the Essen state prosecutor on the grounds that the allegations were based on false suspicion and slander.

The number of reported cases of racist abuse by police in Germany is probably fewer than the true figures, as some victims do not lodge a complaint. One reason for this is that the victims believe that there is little chance of securing a successful conviction of a police officer accused of ill-treatment. Furthermore, the victims may not make complaints against certain police “excesses” which are committed in a manner which do not constitute actual physical ill-treatment, such as racist verbal abuse and threats of violence.³² Moreover, complaints must be lodged with the very institution – the police – that has allegedly inflicted the abuse as there is no independent body to review complaints.

Racist abuses by police have been recorded in many other countries of Western Europe. For example, “Visar”,³³ a 14-year-old refugee from Kosovo, had been living in Switzerland for nine and a half years in October 1999 when he reportedly suffered a serious racist attack by police.³⁴ He said he was at a bus stop in the Geneva suburb of Le Lignon on 1 October watching an argument unfold between some youths and a local resident. When police arrived the youths fled, but Visar said that he remained at the bus stop and that the police then ordered a police dog to attack him, even though he was making no attempt to flee. The dog bit his right thigh. He was thrown to the ground by police and handcuffed. He said that the police then racially insulted and physically abused him, and made derogatory and racist remarks about his family. He was then interrogated without his parents being given the opportunity to be present.

He said the police tried to force him to admit to being a part of the street disturbance and that during the questioning police hit him on the back of the neck with a bottle of water, stamped on his feet, and squeezed him so tightly around the neck that he had difficulty breathing and feared he was going to die. After the interrogation, the police called a doctor to examine the dog bite. Visar does not appear to have been charged in connection with the street disturbance, but when his father collected him, he said that both were made to sign forms that they did not understand.

On 13 October 1999 Visar’s father lodged an administrative complaint against three police officers with the Geneva Chief of Police. The complaint was accompanied by a medical certificate issued by the family doctor which recorded “several wounds” to Visar’s thigh, neck and chest. Administrative and judicial investigations were subsequently opened which are still under way. A judicial investigation is apparently also under way into a complaint lodged by the police, accusing Visar of calumny.³⁵

All over the world the connection between racism and brutality by state officials is clear. It is therefore of utmost importance that all law enforcement officials are given a clear message that racism will not be tolerated, and that all allegations of brutality and other human rights violations made by victims of racism will be thoroughly and independently investigated and the perpetrators brought to justice.

3: Impunity and lack of state protection

Francisco de Assis Araújo, an indigenous leader known as “Chicão”, was killed on 20 May 1998 by a gunman in Pesqueira, Pernambuco state, Brazil, while visiting relatives.³⁶ He was well known for defending the traditional lands of the Xucuru people in Pernambuco against the encroachments of large ranches, and had been receiving death threats since 1989. He was the third person in six years believed to have been killed in connection with disputes over Xucuru territory.

Federal police were sent to look into his killing. The investigation was subsequently halted despite evidence that suggested the killing was directly linked to disputes over indigenous land. Three eyewitnesses described the gunman, but the police failed even to come up with an artist’s impression.

Over the years there have been frequent occurrences of assaults, massacres and targeted killings in Brazil of indigenous people and those who defend their rights. Yet those who carry out these abuses in order to get their hands on the natural resources that they covet on indigenous lands – often illegal gold miners, loggers and hired gunmen – can be virtually certain of getting away with their crimes.

In Brazil, as in many other countries, racism in the administration of justice leads to impunity for the perpetrators of human rights violations. The state deliberately turns a blind eye to abuses committed by its agents and others against certain groups, leaving those communities vulnerable to further abuses. Racism also excludes certain groups of people from full access to the normal mechanisms of redress and legal remedy, again leaving perpetrators of human rights abuses confident that they will not be held to account for their actions.

In some countries, official neglect and lack of interest in abuses committed in a racist context lead to a failure to put in place adequate mechanisms to identify and correct patterns of discrimination. Institutional racism can also mean that certain groups are denied equal protection of the law against violence inflicted on them in society at large – not just by public officials – such as racist attacks by political groups or crimes such as murder. In other words, state inaction, as well as state action, may result in racial discrimination in the administration of justice.

In parts of Latin America, the degree of inaction by the state in response to abuses directed at indigenous peoples has made the state in effect complicit in the abuses. This has been particularly clear where the state authorities and big businesses are in conflict with indigenous populations over land and other natural resources.

In Guatemala the long battle continues against the impunity which has so far prevailed in all but a handful of cases of the tens of thousands of human rights violations committed by the Guatemalan security services between 1966 and 1996.³⁷ The violations occurred on a gross scale, particularly during the army's implementation of counter-insurgency policies aimed primarily at indigenous peoples in the Guatemalan highlands. A February 1999 report prepared by the UN-sponsored Historical Clarification Commission (CEH) concluded, among other things, that the army had committed genocide in four specific areas of the country against indigenous peoples.

Despite the signing of peace accords, which formally ended the civil conflict in December 1996, and the CEH report, there has been little or no justice for those who suffered human rights abuses during the civil conflict. In the few trials that have taken place in connection with the abuses, witnesses and their families, together with survivors, have been threatened and intimidated by those allegedly responsible, and only a few civil patrollers and low-ranking military have so far been convicted.

Recently there have been renewed attempts through the Guatemalan courts, via prosecutions abroad and through the Inter-American system, to hold the perpetrators of the abuses to account. Fresh attempts are being made to trace those who “disappeared”, and some of the child survivors of past attacks – who were taken as virtual child slaves by those responsible for the killings or were adopted abroad – have come together to seek justice and reparations for the loss of life and property suffered by their communities.

The Tululché case is one of the very few human rights cases that has concluded with a guilty verdict for a perpetrator of human rights abuses in Guatemala. It highlights some of the difficulties for indigenous people trying to see justice done. The case involved the prosecution of former military commander (local civilian representative of the military) and civil patrol leader Cándido Noriega for more than 150 human rights violations he allegedly committed in the early 1980s against indigenous inhabitants of Tululché village in El Quiché department. The violations include 35 counts of murder, 44 kidnappings, 14 rapes and 53 lesser attacks on individuals.

Terrorized by Cándido Noriega for years, victims and witnesses to the violations he allegedly perpetrated only came forward in 1992 to initiate proceedings against him. These proceedings eventually ended in 1997 with Cándido Noriega being acquitted after a trial marred by what MINUGUA, the UN Verification Mission in Guatemala, termed as “serious irregularities”. The irregularities included lack of translation facilities for non-Spanish-speaking witnesses and disparaging remarks against indigenous people.

In a second trial, Cándido Noriega was again acquitted. AI's observer at the trial judged that there had been a racial element to the rejection of much of the witness testimony.

In November 1999, some 17 years after the abuses were committed, a third trial ended with the tribunal finding Cándido Noriega guilty of six first-degree murders and two homicides. Cándido Noriega was sentenced to 220 years' imprisonment, of which he could serve a maximum of 30 years under Guatemalan law. He was acquitted, however, of kidnapping, aggravated robbery, arson, causing bodily harm, breaking and entry, and larceny. In February 2000 an appeal against the conviction was rejected and in August 2000 the Supreme Court confirmed the sentence of Cándido Noriega.

Impunity and lack of state protection against racially motivated human rights abuses have also been features of several conflicts in Africa. In the Democratic Republic of the Congo (DRC), for example, widespread killings and other human rights abuses occurred during a civil war that threatened to tear the country apart during the first five years of its independence from Belgium in 1960. No judicial or other mechanisms were invoked to bring those responsible to justice after Mobutu Sese Seko seized power and ended the civil war in 1965. Some 40 years on, human rights abuses on the basis of identity continue in and around the country, and so does impunity.

After President Mobutu announced political reforms, including the right to form political parties, some political leaders in Zaire (as the country was then called) whipped up ethnic differences to gain support from their ethnic groups. In 1992 politicians in Shaba region (now Katanga province) incited violence against people, most of them members of the Luba ethnic group, who originated from neighbouring Kasai region. Shabian government officials and politicians accused Kasaian Luba migrants of dominating the economic life in Shaba to the disadvantage of Shabians. They also accused Kasaians of supporting Kasaian opposition leader Etienne Tshisekedi wa Mulumba. Hundreds of Kasaian Luba were killed and virtually the whole community was expelled from the region, their property and homes seized or destroyed by groups of Shabians. Only on limited occasions did the security forces intervene to protect them, and even then they acted independently of the central or regional government, which in most cases failed to intervene. Largely because the Zairian government saw itself as a beneficiary of the atrocities against Kasaians, those responsible for the persecution were never brought to justice nor censured in any way.

In 1993 further ethnic violence broke out in North-Kivu province incited by Zairian political leaders and prominent members of various ethnic groups. Initially, the civil strife was between Hutu and Tutsi on one side, collectively known as Banyarwanda, and several other ethnic groups such as the Hunde and Nyanga on the other side. As in Shaba, local officials and politicians seeking political and economic domination incited violence against the ethnic groups of their opponents. Much of the violence was centred around control of land and whether Hutu and Tutsi should be recognized as Zairian nationals and therefore entitled to participate in future political institutions under a multi-party political system. After many delays the government deployed soldiers to quell the violence, but the soldiers themselves were sucked into the inter-ethnic violence. Often, individual commanders or units took the side of the group that paid them most and committed atrocities against their opponents, including numerous unarmed civilians. As many as 6,000 people are thought to have been killed during the first few months of the violence. As in Shaba, the authorities failed to bring to justice those responsible for inciting or carrying out the atrocities.

The fragile Hutu-Tutsi coalition subsequently collapsed, mainly because of mutual distrust as a result of ethnic-based armed conflict in neighbouring Rwanda, from where many members of the two ethnic groups had originated. Some Zairian Tutsi leaders in Zaire provided material resources, fighters and political support to the Tutsi-dominated armed opposition group known as the Rwandese Patriotic Front (RPF), while some Hutu leaders supported the Hutu-dominated Rwandese government. No mechanisms were put in place by the Zairian government or the international community to prevent an escalation of the conflict. An explosive situation was created when more than a million Rwandese Hutu, many of them armed former combatants involved in the genocide of Tutsi in Rwanda, fled to eastern Zaire (including North-Kivu) when the RPF seized power.

The new Rwandese Tutsi-dominated government and army (known as the Rwandese Patriotic Army – RPA) became increasingly concerned about Zairian-based Hutu armed incursions into Rwanda and persecution of Tutsi in eastern Zaire.

The ensuing political conflict and violence in North-Kivu spread to South-Kivu, where local political leaders accused all Tutsi of being Rwandese nationals who had no right to land and other property in Zaire and sought to deprive them of political rights. The Zairian government allowed the persecution to escalate, culminating in the expulsion of hundreds of Tutsi to Rwanda.

The situation was exacerbated when Tutsi fighters, including some who had joined the RPA and were trained in Rwanda, started a guerrilla war in South-Kivu. This was quickly followed by direct involvement in the fighting by the RPA. Between October 1996 and mid-1997 tens of thousands of Hutu in refugee camps and on the run in Zairian forests were massacred by the RPA and other Tutsi-dominated Congolese forces which overthrew President Mobutu and brought Laurent-Désiré Kabila to power in May 1997.

AI and other human rights organizations called for an international inquiry into the atrocities and for those responsible to be brought to justice. A UN inquiry into the 1996-97 massacres was obstructed by the DRC government of Laurent-Désiré Kabila. Its preliminary report stated that the forces, particularly the RPA, that had overthrown President Mobutu had been responsible for massacres and other grave human rights abuses against unarmed civilians, particularly Rwandese Hutu refugees, and that there was evidence that a crime of genocide may have been committed. Nearly four years after the ethnically targeted atrocities, the inquiry has not been completed and no one responsible has been brought to justice.

When war broke out in August 1998 between the forces allied to the DRC and Rwandese governments, the DRC authorities stated that Rwanda was responsible for the massacres of Hutu. The DRC government has since publicly stated that it would cooperate with an international inquiry into the 1996-97 massacres. In 1998 the DRC government set up a national commission of inquiry to investigate the atrocities, but the commission is not known to have carried out any investigation.

After Tutsi-dominated Rwandese forces and Congolese armed opposition groups began an armed campaign to overthrow President Laurent-Désiré Kabila's DRC government, some senior government officials overtly incited the Congolese population and the security forces against Tutsi, accusing them of supporting the Rwandese invasion. In late 1998, in areas under government control, many Tutsi and people perceived to be Tutsi were killed, tortured, raped or unlawfully detained, or "disappeared". Hutu accused of supporting the Rwandese invasion were also attacked. Hundreds of Tutsi detainees were later helped by humanitarian organizations to leave the DRC.

In areas under the control of the Rwandese forces and Tutsi-dominated armed opposition groups, particularly the Goma-based Congolese Rally for Democracy, members of ethnic groups perceived to be anti-Tutsi or opposed to the occupation of the DRC by Rwandese and other foreign forces were targeted; thousands were killed, particularly in North-Kivu and South-Kivu provinces. Their ethnicity appears to have been the main criterion used to accuse them of supporting the DRC government or armed groups, such as the *mayi-mayi*, comprising members of Fuliro, Bembe and other ethnic groups, opposed to Tutsi domination. Many Hutu of Congolese and Rwandese origin, particularly in North-Kivu, were also targeted for their perceived support of former Rwandese Hutu militia known as *interahamwe*.

Mayi-mayi, *interahamwe* and other armed groups opposed to the Rwandese occupation of eastern DRC have also carried out killings and other human rights abuses against Tutsi and others suspected of supporting Rwanda, particularly in South-Kivu province. Apart from a warrant by the Belgian authorities for the arrest of former DRC Foreign Affairs Minister Yerodia Ndombasi for inciting violence against Tutsi, no action has yet been taken to bring to justice those responsible for ethnic-based persecution and atrocities in the DRC since the country's independence in 1960.

Lack of state action in a racist context is apparent in other forms elsewhere in the world. In many countries, complaints of racially motivated ill-treatment by police are inadequately investigated and on the rare occasions when the perpetrators are prosecuted and convicted, they are given derisory punishments (see Chapter 2). Victims who lodge complaints with the authorities may also find they are not protected against threats, intimidation, harassment or arbitrary counter-complaints by those against whom the complaint has been made.

State indifference and lack of action in response to racist abuses by people other than officials is also a common pattern around the world. The International Convention on the Elimination of All

Forms of Racial Discrimination emphasizes the duty of states to ensure the right of everyone “to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution”.

In Europe, for example, racist crimes by gangs, far right groups or individual members of the public are often not treated seriously or not recognized as racially motivated. Such denial of protection for black and ethnic minorities indicates institutional racism in the administration of justice. It leaves minority communities distrustful of the police and judiciary, and vulnerable to further racist assaults.

In the United Kingdom (UK), the police have been found negligent in their response to racist attacks. In 1993 a black teenager, Stephen Lawrence, was killed in a racist attack. No one was convicted of the murder. An official inquiry into the police investigation of the killing found that the investigation had been fundamentally flawed “by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers”.³⁸ Progress following the Lawrence report to root out such institutional racism has been slow.

Michael Menson died after being set on fire in a racist attack in London in January 1997. The police treated the case as suicide for almost two years, even though Michael Menson had made statements about the circumstances of the attack before he died. Following a reinvestigation by the Racial and Violent Crimes Task Force, three men were charged in March 1999 with his murder; two were subsequently convicted of manslaughter and the third was convicted of murder.

The circumstances of the deaths of Harold and Jason McGowan in Telford, in July 1999 and January 2000 respectively, also renewed allegations that the police were not investigating violent deaths of black people with the same rigour as in cases involving white victims.³⁹ The police assumed suicide in both cases, ignoring information about racist threats by white supremacists allegedly received by Harold McGowan and his family, one of which had been reported to the police by Harold McGowan before his death.

In 2000 The UN Committee on the Elimination of Racial Discrimination (CERD) expressed its concern in relation to the UK that “racist attacks and harassment are continuing and ethnic minorities are feeling increasingly vulnerable”. It also expressed its concern about “the finding of ‘institutional racism’ within the police force and other public institutions, which has resulted in serious shortcomings with regard to investigations into racist incidents”.⁴⁰ It noted, however, that an important number of recommendations by the government to improve the handling of racist crimes were being implemented.

CERD expressed similar concerns about Italy in 1999, especially in relation to “the continuation of incidents of racial intolerance, including attacks against foreigners of African origin and against Roma people, which are sometimes not recognized by the authorities as having a racial motivation and are not prosecuted”.⁴¹

Victims of racist attacks in Libya have also been denied adequate protection by the state. For example, racist attacks in September and October 2000 on sub-Saharan Africans, including Nigerian, Chadian and Sudanese nationals, reportedly led to dozens of killings and scores of injuries. The authorities claimed that only five people, including a Libyan, had died.⁴²

The outbreak of violence began in Tripoli and neighbouring al-Zawiyah where Libyan civilians attacked sub-Saharan Africans. The authorities failed to protect the migrants and violence quickly spread to other parts of the country. Many migrants were left homeless and without money after their homes were burned and looted. As a result, they were forced to live in special camps, where sanitation was reportedly very poor and where, on occasion, members of the security forces failed to protect them from further attacks. On at least one occasion, there were allegations of police involvement in the attacks.

Large numbers of Chadians, Ghanaians, Nigerians and other sub-Saharan Africans were repatriated after seeking refuge at their embassies. It appeared that there was no serious attempt by the authorities to interview them or carry out prompt and thorough investigations into the attacks before they were returned to their countries of origin.

All over the world the failure of the state to take adequate action in response to crimes with a racial element has dire consequences for the victims of racism. It creates a climate in which both police and members of the public feel they can get away with racist crimes, and in which racial minorities feel unprotected by the state and are left vulnerable to attack.

4: Ethnicity, nationality and conflict

“Kigali is an absolute horror. The killers have passed by. They have gone by one by one through each house. The dead number thousands, if not tens of thousands.”

Eyewitness to the 1994 genocide in Rwanda

Some of the most virulent forms of racism in justice systems appear in societies torn apart by ethnic or nationalist conflicts, with the conflict forming the background and sometimes the official justification for discriminatory treatment by the police and security forces against people from the “enemy” camp. In order to acquire or stay in power, political leaders frequently incite racial hatred to motivate their forces, dehumanize the enemy and legitimize human rights abuses. As a result, racism pollutes all aspects of society, including the justice system.

Africa

On 6 April 1994 Rwandese President Juvénal Habyarimana was killed, together with Burundian Hutu President Cyprien Ntaryamira and other senior officials, when his presidential jet was shot down. The assailants remain unidentified, but the attack triggered Rwanda’s genocide, which had been long in preparation. In the following 13 weeks, as many as a million people, most of them members of Rwanda’s minority Tutsi ethnic group, died at the hands of Rwanda’s Hutu-dominated government forces, Hutu militias or ordinary civilians organized and urged on by extremists. Tens of thousands of Hutu also perished because they opposed the killing of Tutsi and the forces that carried out the atrocities. Countless victims were tortured, including by being raped, or maimed.

Rwanda’s Hutu and Tutsi ethnic groups share a common history, culture and language. Previously insignificant ethnic differences between Hutu and Tutsi were whipped up by rulers during the colonial period. Belgian colonizers used Tutsi agents to institutionalize oppression of Hutu who became second-class citizens. Reacting to this oppression, Hutu organized an overthrow of the Tutsi monarchy and domination in 1959 and, in so doing, carried out atrocities against Tutsi. Thousands of Tutsi were forced to flee the country during the early 1960s, and others fled during upheavals between Hutu political and regional factions, which led to a coup in 1973 led by Major-General Juvénal Habyarimana.

By the early 1990s, a disintegrating economy and rising popular dissatisfaction encouraged the Rwandaese Patriotic Front (RPF), composed primarily of Uganda-based Rwandese Tutsi exiles, to invade Rwanda. Within days of the RPF invasion on 1 October 1990, massacres of Tutsi began, organized and implemented by local administrators with the tacit approval – if not at the behest – of the national government. Between October 1990 and April 1994, local leaders launched 17 large-scale attacks on the Tutsi in 12 communities – precursors to the genocide that was to occur with devastating speed in April, May and June 1994. Two thousand Tutsi and dozens of Hutu were killed. The government made no attempt to identify or apprehend those responsible. This impunity encouraged further atrocities.

The RPF was also responsible for killings and other abuses against unarmed Hutu civilians in northern Rwanda. In areas occupied by the RPF, several hundred thousand Hutu were either driven from or fled their homes and land. Many Hutu died from hunger and disease in overcrowded camps for the displaced.

Throughout this period, the governing elite worked hard to redefine the Rwandese population into “Rwandese” – those who backed the President – and “*ibytso*” (accomplices of the enemy), the Tutsi minority and Hutu opposed to the government. The Presidential Guard trained and the government armed the *interahamwe* (“they who attack together”) and *impuzamugambi* (“they who have the same goal”) militias. The ruling elite laid further groundwork for genocide through public meetings and the distribution of inflammatory and racist material to the press and radio. The government maintained an identity card system, inherited from colonial times, which specified the ethnic origin of each citizen. During the genocide this enabled the killers to quickly identify Tutsi.

The international community failed woefully in their response to the tragedy. In November 1993 the UN began a deployment of peace-keepers – the UN Assistance Mission in Rwanda (UNAMIR) – consisting of 2,500 troops. On 21 April 1994, after the genocide had begun and there

had been attacks on some of the UN peace-keepers, the UN Security Council decided to reduce the deployment to 270 troops. In addition, several states were reluctant to use the term genocide, apparently motivated by a lack of will to act to stop the killings. Even after the UN Security Council decided to act in mid-May, UNAMIR was not given the personnel and other resources needed to achieve its mission. The RPF itself opposed a further deployment of UNAMIR. Only a few hundred UNAMIR troops had been deployed before the RPF achieved military victory and formed a new government in July.

While the primary blame for the genocide in Rwanda rests with Hutu leaders, the guilt and innocence did not run along ethnic lines. The RPF systematically and indiscriminately killed, according to estimates, thousands of mainly Hutu civilians, and some Tutsi accused of colluding with the Hutu-dominated government during the genocide. Yet these abuses were largely ignored by the international community. In addition, not all Hutu supported the genocide and not all Hutu have blood on their hands. Observers estimate that 10 per cent of the Hutu population participated in the killings.

Rwanda now faces enormous challenges in dealing with the aftermath of the genocide. The problems confronting the Rwandese judiciary are immense. The judicial system was weak before the events of 1994, possessing limited resources and subject to political interference. During the genocide, this already vulnerable structure was destroyed. Today, there are an estimated 125,000 people in custody. The vast majority of them are accused of taking part in the 1994 massacres. The basic human rights of large numbers of these detainees are being denied. Many were arbitrarily arrested or unlawfully detained. Many have been held for years without trial and without much investigation or collection of evidence against them. Conditions in many of Rwanda's prisons and detention centres are life-threatening and amount to cruel, inhuman and degrading treatment.

Special legislation dealing with the genocide-related cases was enacted in September 1996. People convicted under this genocide law have the right of appeal but only on the narrow grounds of errors of law or flagrant errors of fact, and only within 15 days of the verdict. The first genocide trials in Rwanda were held in December 1996. In April 1998, despite international appeals against the death penalty, the government publicly executed 22 people for having led or participated in the genocide. The trials of at least some of those executed were grossly unfair. No executions have been carried out since then, but death sentences continue to be passed at a high rate. The rate of genocide trials has progressively improved. However, the number of people tried so far (around 3,100 by the end of 2000) – even when coupled with the few thousand releases – has made only a small dent in the overall population of pre-trial detainees, and some trials continue to fail minimum international standards for fair trial.

In November 1994 the UN established the International Criminal Tribunal for Rwanda (ICTR) to prosecute people responsible for genocide and other serious violations of international humanitarian law committed in Rwanda between 1 January and 31 December 1994. The ICTR has so far detained 45 people, tried nine cases and made eight judgments. AI strongly supports the work of the ICTR as a vital part of efforts to end impunity and the cycle of violence in the region, although it is concerned about inefficiencies, delays and procedural abuses in relation to the tribunal's work.

Since the genocide, the RPF and its armed wing, the Rwandese Patriotic Army (RPA), which became the national army in July 1994, have committed numerous grave human rights violations, including thousands of unlawful killings mostly of Hutu unarmed civilians. Virtually no RPF soldiers or officials have been brought to justice for either these violations or those committed before and during the genocide.⁴³

In AI's view there can be no lasting peace or reconciliation in Rwanda or the surrounding region without justice. Those responsible for the genocide and other human rights abuses must be brought to account. Establishing the responsibility of individual Hutu is the only way to diminish the ascription of collective guilt to all Hutu. For similar reasons, it is essential that the Rwandese government and the international community bring to justice RPA soldiers suspected of committing gross human rights violations.

In many other parts of Africa, where states combine an enormous variety of ethnic groups, conflicts and human rights violations frequently have an ethnic context. In some countries, the forces of the state are drawn predominantly from one ethnic group – the legacy of European colonialism, when whites largely occupied such positions but also adopted a policy of divide and rule by promoting

one particular African ethnic group into subordinate positions of power. Such distortions of power based on ethnicity often outlasted the demise of colonialism and the nationalist struggles culminating in independent statehood. In other cases, post-independence armed struggles for power or resources have been played out along ethnic lines, resulting in particular groups dominating or resisting domination, with the latter being targeted for gross violations of their rights.

History may explain particular situations of ethnic domination, but all too often governments that should be striving to implement equal rights for all their citizens and prevent discrimination are manipulating ethnic divisions for short-term political ends and thereby contributing to ethnic conflict. They are also failing to combat racial discrimination in the administration of justice. In addition, in Africa as in other continents, the rights of minorities delineated by ethnicity are too often ignored, creating “second-class citizens”.

In Kenya, since multi-party elections were introduced in 1992, state officials have been increasingly involved in stirring up inter-ethnic conflict and have been directly involved in human rights violations against people from certain ethnic communities.⁴⁴ They have also consistently failed to provide sufficient security to areas affected by inter-ethnic violence or to address adequately human rights abuses – to an extent that implies complicity in the abuses.

At the time of the second multi-party elections in December 1997, for example, parts of the Rift Valley were affected by politically motivated ethnic violence. The attacks followed a similar pattern seen before and after the 1992 elections, when supporters of the ruling Kenya Africa National Union (KANU) attacked and dispossessed of their land members of ethnic groups considered to support the opposition. The involvement of high-ranking government officials in the 1991-94 ethnic clashes was widely known.

In Sudan, racial or ethnic groups have for many years been targeted by government as well as opposition forces for gross human rights abuses in the context of a protracted civil war that has so far cost two million lives.⁴⁵ Although the current war, which began in 1983, cannot be reduced to race (Arabs/Africans) or religion (Islam/Christianity), or north versus south, racist attitudes exert an enormous influence on the behaviour of officials in the war zones. Almost everywhere, issues of ethnicity underlie the worst human rights violations. In particular, a sense of racial discrimination by the central authorities fuels the grievances of many southerners and people claiming African origin from other parts of Sudan.

Many ethnic groups have been singled out for gross human rights violations by government forces fighting the Sudan People’s Liberation Army (SPLA), formed in 1983 in the south to oppose northern Sudanese domination. In particular, the Nuba of central Sudan, most of whom (like southerners) see themselves as an oppressed African minority in an Arab-dominated society, have been persistently attacked and killed with impunity (on suspicion of sympathizing with the SPLA) by government-backed militia and the Popular Defence Force (PDF), a paramilitary force controlled directly by the military. Regular government troops have also massacred villagers and arrested and killed educated Nuba. The assaults have led to thousands of Nuba deaths and the displacement of tens of thousands of Nuba into so-called “peace-villages” in areas under government control. There, women have been raped, and women and children have been abducted (see Chapter 5). Hundreds of Nuba leaders have been arrested, scores of whom have “disappeared”.

In southern Sudan, the Dinka and Nuer have suffered horrendous levels of abuse. Government and PDF troops have been responsible for many extrajudicial executions, and for widespread rape and abduction of women. Tens of thousands of Dinka and Nuer have fled as a result.

In Bahr el Ghazal and the oil-rich areas, government forces have forcibly displaced hundreds of thousands of people, often identified solely by their ethnic origin, to clear land for railways and oil exploration. Nuer civilians are the main victims of human rights violations linked to oil exploration, including extrajudicial executions, rape, forced displacement, abduction, looting of cattle and burning of homes. Such policies have led to widespread famines, particularly among the internally displaced people.

In Ethiopia, the Oromo, who constitute over a third of the population, are the largest of over 70 different ethnic groups (or “nationalities”), followed by the Amhara. Other major ethnic communities include the Tigrayans, Eritreans, Somalis, Afars, Gurago and Sidama. A new federal Constitution in 1995 reorganized the country along ethnic lines into nine regional states, and the ruling Ethiopian

People's Revolutionary Democratic Front (EPRDF), which is dominated by the Tigray People's Liberation Front (TPLF), is implementing a policy of "ethnic federalism".

Under Article 39 of the Constitution, every nationality and people in Ethiopia has an unconditional right to self-determination, including the right to secession if they so wish. However, all regional states are ruled by pro-EPRDF groups that are backed by EPRDF security, military and political officials who often use abusive methods to preserve power. Members of opposition parties who challenge Tigrayan rule or advocate greater autonomy for a particular region in Ethiopia continue to face harassment, arbitrary arrest, and torture or ill-treatment in detention.

Members of the Oromo ethnic group have been particularly singled out for persecution. They have in many instances been accused of supporting or of having links with the Oromo Liberation Front (OLF), an armed group which was formerly attached to the EPRDF but left in 1992 protesting at abuses against its supporters. Several thousand Oromo have been held incommunicado for years without charge or trial, while others face unfair trials. Some are prisoners of conscience. Many detainees were tortured and there are fears that some who "disappeared" several years ago were extrajudicially executed.

During the 1998-2000 war with Eritrea, the Ethiopian authorities arbitrarily detained thousands of Eritreans, many of whom had lived in Ethiopia all or most of their lives. Around 54,000 Eritreans were forcefully expelled under cruel and degrading conditions in systematic and countrywide operations between June 1998 and February 1999, after they were stripped of their Ethiopian citizenship.

Eritrea also arbitrarily arrested several thousand Ethiopian civilians during the war solely on account of their national origin, and detained them in "internment" camps where conditions initially amounted to cruel, inhuman and degrading treatment. Most have now returned to Ethiopia under the auspices of the International Committee of the Red Cross, which supervised the release or repatriation of civilians on both sides detained on account of their national origin or as a consequence of the war. The detentions and expulsions violate the Geneva Conventions, which Ethiopia and Eritrea have both signed.

Europe

"The only good Chechen is the dead Chechen."

Reportedly said by Moscow police officers during interrogations of Chechens in 1999

In the Russian Federation, officials have fostered a climate of hatred and suspicion towards all Chechens and other people from the Caucasus in the context of the ongoing war being waged in Chechnya.⁴⁶ Those living in Moscow and elsewhere in the Russian Federation face arbitrary detention, ill-treatment and torture by police. In Moscow and other big cities they also face unconstitutional measures such as the practice of making residency permits (the propiska) mandatory, which has been abolished in Russian law but is still used locally, including during anti-terrorist operations. This has led to the expulsion of thousands of Chechens from Moscow. Many were arbitrarily detained after the police stopped them in the street for an identity check and found that they were without the permit. A number of Chechens were ill-treated and tortured following arrest. It was reported in late 1999 that Moscow police were instructed not to issue residency permits to people from the Caucasus and especially to Chechens.

The Russian authorities have repeatedly blamed Chechens for "terrorist" bombings without waiting for the results of official investigations. Such statements have heightened anti-Chechen sentiment in Russia and given the green light to police to violate the rights of Chechens, particularly in the context of anti-terrorist operations. In August 2000 a newspaper report – confirmed by a Moscow police spokesman – revealed that at the end of every shift police officers have to complete a form showing how many Chechens, Georgians and Azeris they have detained.

There have been numerous reports of police fabricating criminal charges against Chechens and planting drugs or weapons on them. In more than 50 cases of Chechens tried in Moscow in 2000, most were found guilty and sentenced to terms of imprisonment, despite compelling evidence that the charges had been fabricated.

There has also been a systematic failure by the authorities to investigate complaints of torture and ill-treatment of Chechens by police. In July 1995 the UN Human Rights Committee expressed concern “at reports of harassment shown towards persons belonging to minority groups from the Caucasian region taking the form of searches, beatings, arrests and deportation”.⁴⁷

In the Balkans, years of conflicts fought along national or ethnic lines have left millions of people in minority communities vulnerable to abuses by local authorities and with little protection against violence by neighbours. For example, Serbs, Roma and other minorities who live in Kosovo continue to suffer almost daily attacks, despite international efforts to protect them.⁴⁸ Just one of many horrific incidents happened on 18 December 1999, when grenades were thrown into the small Serb and Roma enclave in the middle of Orahovac (Rahovec). One Serb died and several people were injured. In most such attacks, no proper investigation is carried out and the perpetrators remain free to kill again.

Minorities in Kosovo, particularly Serbs, are in practice denied their civil, political and cultural rights, including the right to life, freedom of expression, freedom of movement and the right to use their own language, as well as social and economic rights. They also have to live with a barely functioning criminal justice system that, when it does operate, blatantly discriminates against them.

In Serbia, meanwhile, ethnic Albanians from Kosovo and other minorities suffered grossly discriminatory treatment in the criminal justice system. In particular, members of minority communities brought before the courts were likely to suffer unfair trials. For example, in December 1999, 15 ethnic Albanians from Kosovo were tried in Serbian courts and sentenced to between two and 15 years’ imprisonment. Some statements reportedly obtained through torture were used as evidence, and defendants were denied their right to private communication with their defence lawyers.

In Turkey, the government’s conflict with Kurdish nationalists forms the backdrop to widespread discrimination against Kurds in the administration of justice. In December 1994 Leyla Zana and three other deputies of the Turkish parliament were convicted of membership of an illegal armed organization and sentenced to 15 years’ imprisonment by one of Turkey’s State Security Courts.⁴⁹ Part of the grounds for conviction were cited as: “... that the defendant Leyla Zana on 18 October 1991 did wear clothes and accessories in yellow, green and red while addressing the people of Cizre...” The “crime” of the colours was that they represented the defendants’ Kurdish identity.

The prosecution followed Leyla Zana’s inauguration as a member of parliament representing the Social Democratic Populist Party. After taking the oath of loyalty in Turkish as required, Leyla Zana added in Kurdish: “I have completed this formality under duress. I shall struggle so that the Kurdish and Turkish peoples may live together in a democratic framework.” Pandemonium followed in the chamber, with cries of “separatist”, “traitor”, “arrest her” and even “hang her!”

In AI’s view, there was no evidence that Leyla Zana or the other defendants were members of an illegal armed organization, nor were they accused of acts of violence. All four are prisoners of conscience, imprisoned in effect for proclaiming their Kurdish identity and political aspirations.

The estimated 13 million Kurds in Turkey face widespread, although not open, discrimination on the basis of their ethnic identity both in law and in the administration of justice. After the foundation of the Republic of Turkey in 1923 the new state was defined as a unitarian nation state in which no ethnic minorities were considered to exist.⁵⁰ Since then, Kurds and other ethnic groups have been at risk of human rights violations if they insist on being recognized as a separate ethnic group or nation. Articles 26 and 28 of the 1982 Constitution still ban statements and publications “in a language prohibited by law”, which indirectly refers to Kurdish. A related law was lifted in 1991. Turkish citizens of Kurdish origin who do not speak

Turkish – most of them women, children and elderly people – have been denied translation from or into their mother tongue when confronted with the Turkish judicial system, which constitutes a violation of international fair trial standards.⁵¹ Mothers have been humiliated or harassed when speaking Kurdish with their imprisoned children.

Several articles in Turkish law which carry long prison sentences are mainly or solely used for any statements on the existence of Kurds or other ethnic groups in Turkey or when rights are demanded for these groups. For example, Article 8 of the Anti-Terror Law carries prison terms of between one and three years for so-called “separatist” propaganda without advocating violence. Under this article, assistant professor of economics Dr Fikret Bakaya was sentenced in June 2000 to

16 months' imprisonment for an article he published in the pro-Kurdish newspaper *Özgür Bakış* on the trial of Abdullah Öcalan, leader of the armed opposition group, the Kurdistan Workers' Party (PKK). Fikret Başkaya had already been a prisoner of conscience in 1994-95 when he served a sentence under the same article for a book in which he had dealt with the Kurdish issue in one chapter.⁵²

Article 8 has been applied less often in recent years since it has come under criticism from the European Union and others. However, human rights defenders, politicians, writers, journalists and many others who have referred to Kurds have increasingly faced trials and convictions under Article 312(2) of the Turkish Penal Code, which carries a prison term of between one and three years for incitement to hatred based on religious or ethnic difference. Among the victims is Akın Birdal, who was President of the Turkish Human Rights Association until convictions forced him to resign. He served two one-year sentences in 1999 and 2000. His only "crime" was to call for a peaceful solution to the armed conflict which had continued between the Turkish security forces and the PKK since 1984, in speeches related to World Peace Day 1995 and 1996.⁵³

The Turkish state has used the military and the police to suppress armed Kurdish opposition, and widespread human rights abuses have been committed by both sides to the conflict. The Turkish military and police have been responsible for extrajudicial executions, "disappearances", mass arbitrary arrests and the wholesale use of torture. The majority of the victims have been Kurdish civilians not involved in acts of violence. Most of these gross human rights violations still await independent and comprehensive investigations. Thousands of Kurds have also been imprisoned for political offences (most of them charged with supporting or being a member of an illegal organization), many after trials which failed to comply with international fair trial standards.

Anyone criticizing the situation of Kurds in Turkey or demanding cultural, legal, political or other rights for Kurds, or arrested on suspicion of links with Kurdish political organizations – whether legal or illegal – may be tried by State Security Courts. People detained for offences under the jurisdiction of State Security Courts may be legally held incommunicado for up to four days, but in practice this period is often extended. Procedures laid down in the Criminal Procedure Code, such as the requirement to register detainees and notify their families, are frequently ignored, facilitating "disappearances" and torture. Many other fair trial rights are routinely violated. These include access to lawyers; the right to be presumed innocent; the right to prepare a defence and defend oneself; the right to be informed promptly of the charges; and the right to a full trial before an independent and impartial tribunal.⁵⁴

Children of all ages who are suspected of offences coming within the jurisdiction of the State Security Courts are excluded from all protective mechanisms set out in the law on juvenile justice and also from some provisions of the Criminal Procedure Code, including provisions on access to lawyers, appointment of lawyers, interrogation solely by a prosecutor, and trial before a juvenile court. Children suspected of such offences may also be held incommunicado for up to four days, and held in police or gendarmerie detention for up to seven days. In the four provinces under state of emergency rule – all of them mainly inhabited by Kurds – children may be detained by the police or gendarmerie for up to 10 days before appearing before a judge. According to the Diyarbakır Bar Association, more than 220 Kurdish children – 27 of them under the age of 15 – were tried by a State Security Court in Diyarbakır in 1999.

Kurdish people are particularly targeted for arbitrary arrest and torture during periods of heightened tension or conflict between the Turkish state and Kurdish opposition. For example, in 1999, when widespread protests followed the arrest of PKK leader Abdullah Öcalan, mass arbitrary arrests and torture of Kurds were reported. Between 8 and 12 June, for instance, around 50 Kurds from Tilkiler and other villages in the Kahramanmaraş province were arrested and taken to the Pazarcık Gendarmerie Command.⁵⁵ There, they were reportedly beaten and otherwise tortured. Some said that they were forced to eat human excrement. Some were suspended by their arms which were tied behind their backs. One detainee told his lawyer: "They inserted the truncheon into my anus... Throughout the eight days, they forced me to sit naked on the concrete floor, without allowing me to lie down."

Until radical reforms are made to Turkey's legal system, Kurds who identify themselves as Kurds and those who defend their rights will continue to suffer discrimination and other gross violations of their human rights.

Middle East

When televisions around the world showed pictures of 12-year-old Muhammad al-Dura being shot dead in the Gaza Strip on 30 September 2000 while cowering in his father's arms, it brought to international attention one of the many long-standing patterns of human rights violation suffered almost exclusively by Palestinians at the hands of the Israeli forces. Over the years, the Israeli security forces have consistently responded to demonstrations by Palestinians with excessive use of lethal force when neither their lives nor the lives of others were in imminent danger. They have also pursued an openly stated policy of "liquidating" by assassinations Palestinians suspected of having organized attacks against Israelis.⁵⁶ Previous periods during which Palestinians have been unlawfully killed in large numbers include the 1987-93 uprising (intifada), September-October 1996 and May 2000. The victims have included children and bystanders to protests.

Between September 2000 and March 2001, nearly 400 Palestinians, including more than 100 children, were killed by Israeli security forces during widespread demonstrations, and more than 10,000 Palestinians were injured.⁵⁷ The Israeli police, border police and the Israel Defence Force (IDF) used excessive lethal force, firing rubber-coated metal bullets and live ammunition, including high-velocity bullets, at demonstrators. Some Palestinians were deliberately targeted and extrajudicially executed.

An AI delegation that visited Israel and the Occupied Territories in October 2000 concluded that the security forces were tending to use military methods to police demonstrations, rather than policing methods designed to protect lives. Sometimes the security forces initially used tear gas to disperse protests, but often resorted to shooting lethal weapons within minutes. The ammunition was potentially lethal and was used randomly over a wide area.

Within Israel it took weeks of protest before the government set up a Commission of Inquiry into the killing of 13 Palestinian citizens of Israel. In relation to the killings of hundreds of Palestinians from the Occupied Territories virtually no investigation was carried out. AI complained that such failure to investigate killings cheapened Palestinian life and encouraged reckless or nervous soldiers to fire on and kill Palestinians with impunity.

Since 1967, when Israel occupied the West Bank, East Jerusalem and Gaza, Palestinians from these Occupied Territories have suffered many forms of discrimination.⁵⁸ In the administration of justice they have been governed by more than 3,000 military orders. Unlike Israeli settlers living on confiscated Palestinian land in the Occupied Territories, who live under Israeli law, Palestinians can be held for up to 90 days without access to lawyers.⁵⁹ Palestinians, but not Israeli settlers (see page 54), are tried in military courts, where they often receive unfair trials. Convictions are almost invariably based exclusively on the accused's confession, which has usually been extracted under duress. AI's research indicates that there is a presumption of guilt rather than innocence in relation to Palestinians appearing before these courts.

Torture has been used systematically on Palestinian prisoners over the years, and its use was effectively legal until September 2000. From 1987, interrogations by the General Security Service (GSS) were regulated by secret guidelines drawn up by the Landau Commission, which allowed "a moderate measure of physical pressure" to be used against "hostile terrorist activity". In effect this meant that techniques that amounted to torture were used against Palestinians (never against Jews). The Landau guidelines were never made public, but certain methods of torture were described by thousands of Palestinians and their use was confirmed by the GSS in court hearings. Among the torture methods used were shabeh, sleep deprivation, often for days, while being shackled in painful positions, hooded and exposed to loud music; gambaz, where the detainee is forced to squat sometimes for hours; tiltul (hazz), violent shaking which can cause loss of consciousness and continued to be authorized even after it had caused the death of a detainee in 1995; and psychological pressure, including threats to life and family.

In 1998 the UN Committee on the Elimination of Racial Discrimination (CERD) expressed its profound concern that "detainees of Arab ethnic origin are disproportionately subjected to inhuman and degrading interrogation under the Landau Commission rules and that the Supreme Court has failed to declare this illegal."⁶⁰

In September 1999 the torture techniques described above were finally ruled unlawful by the Israeli Supreme Court. However, brutality, including beatings and degrading treatment of Palestinians at checkpoints or upon arrest by border police or the army continue to be reported. Moreover, since October 2000 there have been a number of occasions when former methods of torture have been reported, including shabeh as well as beatings and exposure to extremes of heat and cold. It is thought that the Attorney General now authorizes each use of torture, using a loophole in the 1999 Supreme Court judgment – the authorization given to the security services to use “the defence of necessity” as a reason for using torture.

Another discriminatory practice used against Palestinians in the Occupied Territories, including Jerusalem, is house destruction. Houses belonging to the families of those who have placed bombs or otherwise attacked Israelis (or are believed to have done so) have been frequently demolished in the past. Since 1967 thousands of Palestinian homes have also been demolished ostensibly because the homes had been built “illegally” – without a permit. Officials and spokespersons of the Israeli government have maintained that the demolition of Palestinian houses is based on planning considerations and is carried out according to the law. However, the policy has been based on discrimination. Palestinians are targeted for no other reason than that they are Palestinians. Israeli officials have manipulated old laws and discriminated in the application of that law, strictly enforcing planning prohibitions where Palestinian houses are built and freely allowing amendments to the plans to promote development where Israelis are setting up colonies (commonly known as settlements).

While military orders are applied to Palestinians, Israelis who have set up settlements in Israel’s Occupied Territories are subject to Israeli law and tried in Israeli courts, pay Israeli taxes and receive Israeli benefits and services. Settlers are exempted from the harassments of military occupation such as road closures and curfews. Outside East Jerusalem, Palestinians are prohibited from entry to settlements unless they have a permit. Settlers are armed and those aged between 18 and 60 serve in a paramilitary “guard service”.

After the setting up of the Palestinian Authority following the signing of the Oslo peace agreement in 1993 by Palestinian and Israeli leaders, and especially after the latest outbreak of violence since September 2000, the Occupied Territories became a land of barriers, mostly erected by Israeli security forces, between town and village, and village and village. At these checkpoints, Palestinians are frequently refused passage and may be arrested and beaten, and sometimes shot. In very few cases are thorough and independent investigations initiated into complaints of such violations, leaving the border guards to act with almost total impunity.

In fact, complaints of brutality by state agents brought by Palestinians rarely lead to prosecutions. The Israeli human rights organization HaMoked found that of 441 cases of Palestinian complaints against members of the IDF between 1988 and 1997, only 22 resulted in soldiers being tried before a military court.⁶¹ In cases whose results are known, no soldier was given a custodial sentence for brutality.

Elsewhere in the Middle East, people of Kurdish origin have historically suffered widespread discrimination and human rights violations in the states in which they live. In Iraq, waves of repression by the authorities have torn Kurdish communities apart and devastated millions of lives over the years.⁶² Most notoriously, in August 1988 a chemical weapons attack by Iraqi forces on the town of Halabja instantly killed an estimated 5,000 unarmed Kurdish civilians. Thousands of other Kurds were killed in further attacks in the north in this period, resulting in the exodus of over 50,000 Kurds to Turkey.

In the 1980s, hundreds of thousands of Kurds “disappeared” after arrest by Iraqi security forces, most never to be seen again. Kurds in Iraq have also suffered widespread arbitrary arrests, torture, ill-treatment and executions after summary trials.

Since mid-1997 thousands of Kurds and a number of other non-Arabs, including Turkmen and Assyrians, who have lived all their lives in the oil-rich Kirkuk region, about 260 kilometres north of the Iraqi capital Baghdad, have been expelled to Kurdish provinces in the north (now controlled by Kurdish organizations) because of their ethnic origin. The authorities have given targeted Kurdish families the choice of going to southern Iraq or to the northern Kurdish provinces. If they choose to go north, their property and food ration cards are confiscated.

In preparation for such expulsions, the head of the household of each targeted family has been detained until all arrangements for the expulsion have been completed. Each has also had to sign a statement in the local police station declaring that they were freely choosing to move to the north. Their empty properties in the Kirkuk region have been given by the authorities to pro-government Arabs brought in from other regions in Iraq.

The expulsion of Kurdish families and other non-Arabs continued throughout 1998 and 1999. As at May 1999 at least 91,000 people had reportedly been deported to the northern provinces by the Iraqi authorities.

Asia

Across Asia, millions of people have suffered blatant discrimination in the administration of justice and other human rights violations because of their ethnic origin against a background of armed conflict or intercommunal tension.⁶³

In Myanmar (Burma), for instance, ethnic minorities have been persistently targeted by the authorities for gross human rights violations as the government tries to unify by force the multi-ethnic country and speed up economic development. Ethnic minority civilians are the main victims of the central Burman army's counter-insurgency tactics against armed opposition groups. The Rohingyas – Burmese Muslims who live in the northern Rakhine (Arakan) State – as well as other minority ethnic groups such as Karen, Mon, Shan, Akha and Karenni have all been targeted for political killings, torture and ill-treatment. Vast numbers of these minorities have been seized by the army to work as porters. They have been arbitrarily detained, tortured and ill-treated as punishment if they cannot perform as required. They have been repeatedly beaten, deprived of food, water, rest and medical treatment – and sometimes killed if they attempt to escape. Countless others have been forced to work as unpaid labourers on new construction projects, or have been forcibly “resettled” into relocation camps.

For example, a Karen refugee in Thailand described to AI how troops arrived in her village demanding 20 porters. The troops opened fire on students leaving the village Bible school, killing two young people, Saw Pha Blaw, a 16-year-old boy, and Naw Htoo Paw, an 18-year-old woman. She said that a month later the troops returned and executed her brother for allegedly passing information to an armed opposition group. As a result of such attacks, she fled to Thailand, joining around 110,000 other Karen refugees already there.

In China, ethnic Uighurs living in the Xinjiang Uighur Autonomous Region (XUAR) have been targeted for gross human rights violations in the context of a continuing government campaign to quell increasing ethnic unrest and resistance to official policies or Chinese rule. The unrest among the Uighurs has been fuelled by growing unemployment, widespread discrimination in education, health and jobs, the government's policies on agriculture and birth control, and increasing curbs on fundamental freedoms, including cultural and religious freedoms. The denial of legitimate channels for expressing grievances has led to outbursts of violence, including attacks on local officials and bombings carried out by Uighur underground opposition groups. However, many people not involved in violence have also suffered human rights violations.

The government's response to ethnic unrest and opposition has been harsh repression. It has increasingly resorted to arbitrary detention, summary trials and executions to silence real and suspected opponents. It has also imposed new restrictions on cultural and religious rights, which it sees as potential threats to its control over the region.

The XUAR is the only region of China where political prisoners are known to have been executed in large numbers in recent years. Since 1997, at least 240 Uighurs have been executed after summary trials for alleged involvement in armed opposition activities or terrorist acts. There have also been reports of killings of Uighurs by the security forces in circumstances which appear to constitute extrajudicial executions. Torture is endemic in the XUAR as elsewhere in China, but male Uighur political detainees have reportedly been subjected to some forms of sexual torture not reported elsewhere in China.

Police brutality and racist abuse against Uighurs have also been reported in other parts of China. In March 2001, for example, around 100 Uighur street vendors in Shenzhen, southern China, reportedly protested publicly against police beatings of two Uighur vendors, which resulted in the two

being seriously injured. This reportedly followed other incidents of police brutality and harassment of Uighurs in Shenzhen over the previous months.

Through neglect, discrimination and repression, the Uighurs, like Tibetans and other ethnic minorities in China, have been denied the full benefits of the economic and social developments of the past decade, and have seen their cultural rights eroded. In the XUAR, as in the Tibet Autonomous Region, this trend has been exacerbated by a massive influx of ethnic Chinese migrant workers. In both regions, attempts by Uighurs and Tibetans to air their views or grievances and exercise peacefully their most fundamental human rights have invariably been met with repression. Recently, the government launched a “Western Development Campaign”, with the stated purpose of accelerating the economic development of the poorest regions in the west of China, including the XUAR and Tibet. It seems, however, that this scheme is giving priority to infrastructure projects and the exploitation of natural resources for the benefit of the country as a whole rather than these regions. It is feared this may result in a large increase of ethnic Chinese migrant workers and entrepreneurs in the regions and contribute to the further marginalization of the indigenous populations.

In 1996 CERD expressed concern about several issues in China, including the “lack of protective legal provisions for minority groups”, and “the actual enjoyment of the right to freedom of religion”, particularly in the XUAR and Tibet. It noted “disparities in access to economic, social and cultural benefits by different ethnic groups”, which CERD thought “may generate racial discrimination towards disadvantaged groups”. It also expressed concern about “reported cases of violation in the autonomous regions of Xinjiang and Tibet of the right to security of the person and protection against violence or bodily harm.”⁶⁴

CERD made 16 recommendations to the Chinese government, including to make all acts of racial discrimination punishable by law, to avoid restricting the exercise of the religious rights of minorities, to provide information to CERD on the number and percentage of people detained who are of minority origin relative to the total prison population, and to review any policies or practices that may result in a substantial alteration of the demographic composition of autonomous areas. Developments in the XUAR and Tibet over the past few years show that several of these recommendations have been completely ignored. In early 2001 China submitted its latest periodic report to CERD, but the text had not been made public as at April 2001.

All these situations of conflict along nationalist or ethnic lines around the world show just how important it is to combat racial discrimination whenever it occurs. If racism is promoted or tolerated by government ministers, justice officials, the media or members of the public, racial tensions can quickly erupt into open conflict. Once this has happened, only suffering on a mass scale can follow and rebuilding a society free of discrimination becomes an even harder task.

5: Colour, caste and culture

“Police officers have increasingly come to rely on race as the primary indicator of both suspicious conduct and dangerousness.”

Report on Police Conduct and Community Relations, National Association for the Advancement of Colored People, USA, March 1993

One legacy of the slave trade and European colonialism is racism on the basis of colour. To justify the enslavement and domination of millions of people, an ideology of racial superiority on the grounds of skin colour was developed. Africans sought for slavery were branded as less than human because of their physical features so their brutal exploitation and early deaths could be ignored. Colonial rule was justified on the basis of the “civilized” nations, economically more developed and populated mainly by whites, “civilizing” the lands inhabited mainly by non-whites.

In the modern world, the poor are frequently members of racial groups whose position has been determined by past enslavement, exploitation, colonial domination and discrimination. Racist ideologies have been modified, but racial discrimination on the basis of colour continues – and perpetuates the inequalities by denying equal access to education, jobs and other opportunities.

The historical patterns of oppression are reflected in racially discriminatory practices in the administration of justice. People of African descent face such discrimination almost everywhere they

have settled, and in some West European countries people whose racial origin lies in former colonies are particularly vulnerable to racist treatment in the justice system.

Disparities in the treatment of racial minorities by the police, for example, may be due in part to underlying social and economic inequalities. Often, a disproportionate number of people from black and ethnic minorities live in poor neighbourhoods where police activity is high because of more reported or perceived crime. However, studies in several countries show that such factors do not entirely explain away the disproportionately high rates of abuses suffered by black and ethnic minorities at the hands of the police.

There are several other reasons that may explain the overrepresentation of minorities in complaints against the police. The police may see race as an indicator of criminality. The activities of a minority of police officers may be motivated by or result in racist abuses without remedial action. It may be that some laws, such as those allowing police to stop and search people, are targeted primarily at one racial group or at areas where racial minorities live. It may be that racism infects every aspect of police work, including which people are targeted for arrest, which crimes are investigated or ignored, and how certain types of detainee are treated.

These issues are explored below by looking at situations in Europe, the Americas and Africa. The final section of this chapter, covering parts of Asia, deals with racial discrimination on the basis of caste (descent).

Europe

“Negroes deserve to be hit first, then asked their name.”

Advice reportedly given by a senior Austrian police officer during a training session of subordinate officers, 1999

Racism on the basis of colour has been documented in much of Europe. In general terms, racial minorities are more likely than white people to be detained on suspicion of offences such as drug dealing, theft or not having identity papers. They also figure disproportionately in cases of excessive use of force by police, ill-treatment and deaths in custody. Allegations of racist abuses by police are rarely investigated effectively, and few authorities adequately monitor complaints of racist treatment by police or others administering justice.

In the UK, institutional racism in the police as well as racial disparities in the rest of the justice system have been widely documented. Research has shown that police use harsher measures against the black community and target particular practices on it, such as “stop and search” operations. Also, for the same offence, black people face more serious charges than whites, are less likely just to be cautioned and more likely to be imprisoned, and appear to be given longer sentences on average than their white counterparts. Black people are also under-represented among the officials of the criminal justice system. There are no black Law Lords or Court of Appeal or High Court judges, and black people make up only 0.8 per cent of circuit judges.⁶⁵

Racism is also widespread in a large number of British prisons. A December 2000 confidential prison service report following the murder of 19-year-old Zahid Mubarek by a racist and violent cellmate in Feltham Young Offenders Institution and Remand Centre concluded that the prison was institutionally racist, with ethnic minority staff and inmates enduring overt racist abuse and harassment by prison officers. The report stated that officers were twice as likely to use control and restraint force against black or Asian inmates than against white prisoners. The Director General of the Prison Service, Martin Narey, stated in January 2001: “It goes beyond institutional racism to blatant malicious pockets of racism.” After the conviction of Robert Stewart for the murder of Zahid Mubarek, in November 2000 the Minister for Prisons announced an inquiry by the Commission of Racial Equality into racism in three prisons: Feltham (England), Brixton (England) and Parc Prison (South Wales).

In Spain, there have been a disturbing number of allegations of ill-treatment by police which appear to have racial connotations.⁶⁶ A rising number of reported cases involve ill-treatment or alleged ill-treatment of people of foreign origin who have been arrested in connection with identity checks.

On 29 January 2001 Spain’s Constitutional Court ruled that skin colour could be used as a criterion in police identity checks, thereby heightening concerns that individual police practice, involving racial discrimination, had been converted into constitutional doctrine.

Rosalind Williams, a black woman of US origin, had lived in Spain for 33 years and is a Spanish national. In December 1992, while on holiday, she and her husband and son arrived at Valladolid railway station. As they left the train a National Police officer approached Rosalind Williams and asked for her papers. He did not ask for the papers of her husband or son, who are white. When questioned about this discriminatory treatment, the officer reportedly replied that he was under orders to “identify people like her”. She was then taken to a police station, where a check was carried out. Rosalind Williams and her family appealed to the Constitutional Court against a decision of the Interior Ministry and subsequent judgment of the National Court, which found that the officer had not acted improperly. The basis of their appeal was Article 14 of the Spanish Constitution, which forbids discrimination on grounds of race.

While re-emphasizing its repugnance for racial and ethnic discrimination, the Spanish Constitutional Court decided that police officers engaged in the search for illegal immigrants were within their rights to take into account specific physical or ethnic characteristics that could reasonably be assumed to belong to people who were not Spanish. This, argued the Court, was not indicative of racial prejudice. One of the six judges who considered the case dissented from the majority verdict – Julio Diego Gonzalez Campos argued that to introduce race as a criterion for selecting who should be subjected to police identity checks was an infringement of Article 14. He argued that Spain was a multicultural society and the fact that many people of foreign origin who lived in Spain could be subjected to identity checks, possibly time and again, on the basis of racial origin alone, not only affected personal dignity, but frustrated integration into Spanish society.

In Austria, rising levels of racism by officials have been clear in recent years. A report issued in April 2001 by the Council of Europe’s Commission against Racism and Intolerance (ECRI) expressed its concern about the behaviour of the police towards people who belong to minority groups. It also noted that most of the legal provisions aiming to fight racism and discrimination do not bring effective protection, and expressed grave concern about the use of racist and xenophobic propaganda in politics.

AI has recorded a number of cases of racist ill-treatment of detainees by police in Austria in recent years. For example, police officers who allegedly assaulted Mohammed Ali Sylla, a French citizen of African origin, called him “negro son-of-a-bitch” and other derogatory names, according to witnesses. One of the policemen allegedly asked a woman in the crowd watching the assault why she was so concerned about a “negro”.

The alleged assault took place on 3 March 1999 at an underground station in Vienna. Mohammed Ali Sylla was reportedly stopped by police on suspicion of drug dealing. According to witnesses, he was punched, kicked and beaten with truncheons by police while he lay on the floor of a room into which he had been taken. He was also sprayed with pepper spray after he had been beaten and forced to the ground. He was brought to trial in April 1999, charged with resisting arrest and physically injuring the police officers. He was sentenced to nine months’ imprisonment, eight of which were suspended.

Serious concerns emerged about the way police dealt with witnesses in the case. The witnesses were reportedly not interviewed for 20 days. Before they were, the most senior officer in the Viennese police force publicly appeared to question their reliability. The then leader of one of the police trade unions reportedly threatened the witnesses with prosecution, saying, “They only want to protect drug-dealing black Africans from the police and not the other way round – parents and children from those types of criminals.”⁶⁷ In 2000 AI learned that two police officers accused of ill-treating and racially abusing Mohammed Ali Sylla attempted to sue privately two of the eyewitnesses for defamation of character. An initial court hearing into the counter-complaint in August 2000 was adjourned for technical reasons.

Concerns about racism in the senior ranks of the Austrian police force were highlighted in August 1999 when it emerged that a senior police officer had allegedly made racist comments to 30 subordinate police officers during a training session. He was reported to have said that “negroes deserve to be hit first, then asked their name”. The officer was reassigned after the incident became public and an investigation into the allegations of racism was instigated. In February 2000 it was reported that no criminal action would be taken against the police officer. It is not clear whether internal disciplinary measures are still pending.

Reports of racist policing in Austria have sometimes been associated with “stop and search” operations targeted at racial minorities – a pattern seen in many other European countries. In several cases, Austrian nationals have been deprived of their liberty and reportedly ill-treated or subjected to cruel, inhuman or degrading treatment by Austrian police on the pretext that they did not have identification to prove that they were not illegal immigrants. Under Austrian law, it is an offence only to refuse to show the police a passport or go with them to where the passport is.

Reports of ill-treatment and racist abuse of detainees by police in Switzerland continue to be received.⁶⁸ In January 2000, for example, “Didier”,⁶⁹ a 17-year-old Angolan student living in Geneva, lodged a complaint with the Geneva Attorney General accusing three officers of causing him bodily harm and subjecting him to racist insults in November 1999 after he was detained on suspicion of being involved in a street fight. Didier said he was thrown to the ground and hit with truncheons by more than one officer. He was hit again when being taken to a police station and on several occasions called a “dirty nigger” (“*sale nègre*”). In the cell at the station he was kicked and again beaten with truncheons. He said that he lost consciousness and that when he came round, he had been stripped to his underwear. He was questioned by a police officer, without the presence of any adult to represent his legal interests. He was released the following morning after appearing before a judge attached to the Juveniles Court, where he learned for the first time that he had been accused of resisting the police. In January 2000 he was acquitted of this charge. The Attorney General promptly opened a preliminary investigation into Didier’s complaint, and subsequently ruled that there were no grounds to justify further action. Didier was never questioned about his allegations and he lodged an appeal. In August, a Geneva court overturned the Attorney General’s April decision and ordered that an investigating magistrate carry out a full inquiry.

In March 1998 the UN Committee on the Elimination of Racial Discrimination (CERD) expressed concern about “serious incidents of police brutality [in Switzerland] in dealing with persons of foreign ethnic or national origin”⁷⁰ and recommended more intensive training for law enforcement officials. In March 2000 ECRI noted continuing police ill-treatment particularly of non-citizens and Swiss of foreign origin, stressed the importance of setting up an independent body to investigate such complaints, and urged more systematic police training on the subjects of racism and discrimination.⁷¹

In Belgium too, black and other minorities figure disproportionately in cases of police ill-treatment. For example, Charles Otu, a Belgian citizen of Ghanaian origin, said that he was ill-treated by Brussels law enforcement officers on 14 October 2000.⁷² He alleged that he was repeatedly physically assaulted, threatened and subjected to racist insults by officers. During his detention, he was asked to sign a document in Dutch, a language he does not understand. He refused. He lodged a complaint accompanied by a medical certificate issued within hours of his release later that day. An inquiry was initiated.

In May 1999 the Centre for Equal Opportunities and Opposition to Racism, a body reporting to the Belgian Prime Minister and parliament, indicated that a significant percentage of formal complaints of racism made over a six-year period related to ill-treatment by law enforcement officials.⁷³ In March 2000 ECRI stressed, “the urgent need to address the problem of manifestations of racism on the part of some law enforcement officials, as well as the need to provide the means for a better response on the part of the authorities to complaints of racist behaviour.” It reported, “The acts most recurrently cited [in relation to racism] are discriminatory identity checks... insults, bodily injuries, arbitrary detention and humiliating treatment. A considerable proportion of complainants are young males of North African origin.”⁷⁴

The report also stated that the number of formally registered complaints did not reflect the true nature of the problem, “since many members of minority groups are reluctant to resort to a formal complaint due to lack of confidence in the possibility of redress or fear of further reprisals.” ECRI further expressed its concern at the police’s apparent reluctance to acknowledge any racist behaviour by officers.

Across Europe, there is widespread discrimination against people of Roma origin.⁷⁵ In most countries where they live, many Roma share the religion and language of the majority community. The racism arises because they are perceived by the majority community as racially inferior, a perception largely based on cultural stereotypes which have contributed to the economic and social marginalization of Roma.

The discrimination faced by Roma is most widespread in Central and South East European countries where Roma form sizeable minorities.⁷⁶ In several of these states, subtle forms of discrimination have turned into open racial hatred and violence against Roma in recent years. In many places too, a low level of literacy and qualifications among Roma, combined with discrimination in employment practices, leaves the vast majority of Roma unemployed. The resultant poverty leads some Roma into crime, mainly theft. This is used by politicians and the media to stir up even more prejudice against them. The Bulgarian media, for instance, in crime reports often refers pejoratively to Roma suspects as “our dark-skinned compatriots” and blames Roma for the vast majority of crime. The prejudice such reporting encourages means that Roma are automatically seen as criminals and blamed for any disturbance or crime. As a result, they are more likely than others to suffer abuses of their rights at the hands of law enforcement officials, particularly torture and ill-treatment, and arbitrary detention.⁷⁷

“I will get all you Gypsies” were the words reportedly spat out at a 50-year-old Roma woman, Darina Naidenova Pacheva, by a Bulgarian police officer as he pulled his victim up by her hair. She had gone to the police station in Vulchedrom on 14 April 1997 in response to a summons about the theft of hens. She described how she was beaten on the hands with a truncheon and made to kneel on a stool and beaten on the soles of her feet. The officer then hit her on the left shoulder and twice on the head. She was released later that afternoon. A medical examination confirmed she had suffered injuries to her shoulder, hands and soles of her feet.

The racist treatment of Roma in Bulgaria was highlighted in April 2000 when the murder of an ethnic Bulgarian man in the village of Mechka near Pleven prompted a campaign by ethnic Bulgarian villagers to expel all Roma. The village mayor banned Roma from being served in village shops or grazing their animals on village land. Police officers prevented threatened acts of violence, but over the next few days reportedly detained at random several Roma for 24-hour periods.

A similar pattern of racist abuses by police and members of the public against Roma is evident throughout Romania, and the authorities have failed adequately to protect Roma lives and property. In most cases, the incidents have not been fully and impartially investigated.⁷⁸

The early 1990s saw a sharp rise in racist attacks on Roma in Romania.⁷⁹ Since the mid-1990s, however, the incidence of such racist violence has decreased, although Roma are still vulnerable to attack with little or no protection offered by police. In 1999, CERD noted the 1997 establishment of a National Office for Roma in Romania as a positive step, but expressed concern about the continuing disadvantaged situation of Roma. It also expressed concern about the inadequate nature of legislation in Romania used to punish and prohibit racial discrimination, the act of forming or belonging to racist organizations, and continuing expressions of xenophobic attitudes and racial prejudice in the mass media, which have been directed against the Roma minority in particular.⁸⁰

In Hungary, Roma face many forms of discrimination that have marginalized them socially and economically. A view that Roma are inherently criminal is widespread among police and the public. Continuing reports of ill-treatment of Roma by police in Budapest and other towns show a pattern of racially biased policing against Roma. Roma who file complaints or talk to the media about alleged ill-treatment by police risk being further ill-treated or intimidated by police. For example, László Sárközi, a Roma student who was allegedly beaten by police in June 2000, said he was subsequently insulted and intimidated in his student hostel by police officers after he filed a complaint and appeared on television.⁸¹

In the Czech Republic, Roma are particularly vulnerable to racist attacks, against which they do not receive adequate protection from the authorities.⁸² Reports have been regularly received of violent assaults against Roma, particularly by gangs of “skinheads”, and of harassment of Roma by other extremist groups. Police officers often fail to intervene to protect Roma or to investigate allegations of such violence seriously. There have also been allegations of police collusion with “skinheads” and racist organizations. Where prosecutions have taken place, the courts have shown a tendency to convict the perpetrators of attacks resulting in serious injury or death only for less serious, peripheral offences.

In August 1999 CERD noted the increasing number of racially motivated attacks against minority groups in the Czech Republic, particularly against Roma. It also expressed concern about the lack of effectiveness of and confidence in the criminal justice system in preventing and combating

racial crimes and the ineffective implementation of existing legislation to prosecute perpetrators of incitement to racial hatred.

In Slovakia too, Roma face ill-treatment by police. A paper issued by the Slovak government in September 1999 acknowledged that Roma communities do not enjoy the full protection of the law.⁸³ A common pattern of abuse is police officers carrying out punitive operations targeted at entire Roma communities in response to suspected crimes committed by individual Roma. For example, on 2 December 1999 up to 100 riot police equipped with guns and dogs arrived at apartment blocks in which the Roma community of Zehra settlement lives.⁸⁴ They sealed off the blocks and ordered hundreds of people to leave their homes. Police officers allegedly beat some of the Roma inhabitants with batons and fired rubber bullets at others. Among those injured by the shooting was a 14-year-old boy. Some of the police officers reportedly shouted abuse which appeared to be racially motivated, such as; “You are dogs”.

In the Federal Republic of Yugoslavia (FRY), Roma continue to be the victims of attacks by “skinheads”. The police have often allegedly been reluctant to carry out full investigations into such incidents.⁸⁵ In some cases, police have themselves ill-treated Roma. However, the treatment of Roma appears to have improved in the FRY since the government headed by President Vojislav Koštunica was elected in September 2000.

The situation of Roma in Kosovo remains precarious because of continuing inter-ethnic tensions and violent attacks on them.⁸⁶ Fears for their security restrict the movement of Roma, making access to food, work, schooling, healthcare and other necessary activities, difficult. Roma have been forced either to live among ethnic Albanians (many of whom regarded them as Serb “collaborators” during the war in 1999) or to face displacement and live in the Serb enclaves where there is greater, but not guaranteed, security from violent attacks by ethnic Albanians. Attacks on Roma have often consisted of the throwing of hand grenades into houses.

There have also been reports of abuses against the Roma minority in Bosnia-Herzegovina, Macedonia and Albania, as well as in countries in Western Europe, including Italy, Greece and Portugal.⁸⁷

USA and Latin America

“For too many people, especially in minority communities, the trust that is so essential to effective policing does not exist because residents believe that police have used excessive force, that law enforcement is too aggressive, that law enforcement is biased, disrespectful, and unfair.”

Janet Reno, Attorney General of the USA, April 1999

In the USA, evidence of racially discriminatory treatment and bias by police has been widely documented by commissions of inquiry, in court cases, citizen complaint files and countless individual testimonies. Abuses include racist language, harassment, ill-treatment, unjustified stops and searches, and arbitrary arrests. Racial disparities are also apparent in the application of the death penalty and rates of incarceration (see Chapter 1). Moreover, across the USA, the overwhelming majority of victims of police brutality, unlawful shootings and deaths in custody are members of black or ethnic minorities. In Chicago, for instance, a local journal analysed police shootings and found that of 115 civilians shot dead between 1990 and 1998, 82 were black, 16 Latino, two Asian and only 12 white.⁸⁸

Such disparities have created much anger in the victimized communities. For example, eight fatal shootings by police in Connecticut between September 1998 and mid-1999, mainly of minorities, led to widespread protests by the black community. There was also an outcry when New Jersey state troopers shot at four young, unarmed black and Latino men travelling to basketball trials in April 1998, wounding three of them. The troopers had stopped the youths as they were driving down the New Jersey Turnpike, a major state highway, and opened fire after the youths’ van inadvertently rolled backwards. Two of the troopers, who were later charged with attempted murder and assault in the case, had been indicted months earlier on 19 misdemeanour charges of falsifying their records to conceal the number of minority drivers they had stopped. The April 1998 shooting triggered a state and federal inquiry into complaints voiced for years that the New Jersey police targeted minority drivers for traffic stops along the same stretch of highway.

Claims that police engage in “racial profiling” – the practice of stopping and searching people on the basis of their race or ethnicity – have caused mounting concern across the USA in recent years. In April 1999 an interim report by the New Jersey Attorney General’s office concluded that state troopers had been using race as a basis for stopping drivers on a major inter-state highway, thereby confirming complaints made over many years by minorities, including black police officers. The same month, the US Justice Department announced that it had enough evidence of discriminatory treatment by the New Jersey state police to bring a “pattern and practice” lawsuit for federal civil rights violations. In December 1999 the state entered into a consent decree (court-sanctioned agreement) with the federal Justice Department barring state police from using race as a basis for making traffic stops.

The problems in New Jersey reflect a wider national problem. Similar claims of racial profiling have been made against police forces across the USA, including in California, Colorado, Florida, Indiana, Maryland, Massachusetts, Pennsylvania, Oklahoma, Rhode Island and Texas.

Other high-profile unjustified police shootings have exposed patterns of racism in various police forces. For example, four white New York City police shot dead an unarmed West African immigrant, Amadou Diallo, outside his apartment in February 1999. The police reportedly mistook his wallet for a gun. This was one of more than a dozen questionable shootings by the New York Police Department of minority suspects in five years. The officers were acquitted of criminal charges, but an analysis by federal prosecutors found that the unit to which the officers had belonged – the Street Crime Unit – had engaged in racial profiling by disproportionately singling out blacks and Hispanics in stop-and-frisk operations. In December 1999 the New York state Attorney General released a report that showed that blacks and Latinos were much more likely to be stopped and searched in New York than whites, even when the statistics were adjusted to reflect higher rates of crime in certain minority neighbourhoods.

In the past two years many US jurisdictions have implemented measures for monitoring the race and ethnicity of those stopped by police to try to eliminate the problem of racial profiling. While these are welcome measures, many systems are limited by concentrating only on traffic stops.

Some police departments have recruited more officers from minority groups in recent years and introduced racial sensitivity training programs. However, in many areas there is still a wide gulf between the racial composition of the police force and the local community, and there remains evidence of discrimination towards black or Latino officers within some law enforcement agencies.

There are also many reports of racist abuse by prison guards in the US prison system. For example, in Red Onion State Prison in Virginia, the predominantly black prison population is guarded by virtually all white staff. Allegations of abuses include racist verbal abuse, such as being called “nigger” and “boy”, excessive use of force, shootings and torture including electro shocks. Black and latino prisoners housed in Wallens Ridge State Prison, Virginia, under contract from Connecticut, told state investigators in October 2000 that guards had called them derogatory terms such as “porch monkey” and “coon”. One inmate alleged he was told, “Yo, black boy, you in the wrong place. This is white man’s country.”

In some Latin American countries too, people of African origin are vulnerable to racist ill-treatment by police and other abuses of their rights because of their colour.

In Brazil, for example, there is a vast social and economic gap between races. Indigenous peoples, Asians, the considerable Afro-Brazilian community as well as those seen as non-whites or of mixed race officially make up around 45 per cent of the population, yet most social indicators, such as those on income, housing, education and access to healthcare, consistently show that those belonging to racial minorities are far from being fully integrated within society.

The creation of the anti-racism federal law 9459/1997 on 13 May 1997 was an attempt by the state to recognize the fact that race is an issue in Brazil and one that has to be addressed. Nevertheless, few if any of the cases brought under this law progressed far in the courts, and according to AI’s information, none has been upheld.

Furthermore, all cases taken to court under this law have dealt with defamation. None has yet dealt with race and the criminal justice system. Many experts have testified that those detained in the prisons and police stations around much of the country are predominantly of Afro-Brazilian origin. However, detailed statistical research into this field, by the authorities or independent bodies in Brazil, is still lacking. This type of information is vital to establishing a clearer understanding

of the treatment of racial minorities under the criminal justice system.

While racial minorities, especially those of Afro-Brazilian descent, continue to suffer the worst effects of marginalization, they are also the most likely to come into contact with the state public security system. The picture is further complicated by the fact that many of those working in the poorest paid, least trained and most dangerous sectors of public security, either as police or prison staff, are predominantly of Afro-Brazilian descent.

Despite the lack of comparative statistical data on the treatment of racial minorities, particularly Afro-Brazilians, and white citizens in the criminal justice system, there is no doubt that Afro-Brazilians are disproportionately targeted by the security forces and are routinely denied the advantages allowed to white middle-class criminal suspects.

In 2000 the São Paulo Police Ombudsman reported that in the previous year 54 per cent of criminal suspects killed by police were black. In other areas of Brazil with higher populations of Afro-Brazilians this statistic would probably be even higher.

Africa

Historically, the African continent has suffered greatly from racial exploitation and oppression, through the devastations of the Transatlantic and Eastern slave trades, and the various forms of white European colonialism. The legacies of several centuries of cruelty and exploitation are still apparent in the underdevelopment of the African continent and the underprivileged position of communities of African descent elsewhere in the world.

The legacy of the apartheid system in South Africa can still be seen in the urban townships and squatter settlements where the majority of the country's black population lives. Despite the enormous strides taken to eliminate discrimination by law since the ending of apartheid with the first democratic elections in April 1994, the devastating social and economic impact of 40 years of apartheid rule will take much longer to remedy.

The post-apartheid Constitution in South Africa guarantees that "everyone is equal before the law and has the right to equal protection and benefit of the law". The state as well as private individuals "may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth".⁸⁹ These values were entrenched in ordinary law through the Promotion of Equality and Prevention of Unfair Discrimination Act.⁹⁰ The Act also embodied in domestic law the state's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, which it had ratified without reservation in January 1999.

Racism and the legacy of apartheid was nevertheless still identified as a "major problem affecting the development of a human rights culture" in South Africa's National Action Plan for the Promotion and Protection of Human Rights, which had been agreed by the Cabinet and the national parliament, after public discussion, and lodged with the UN in December 1998. The National Action Plan recommended measures to improve the law and law enforcement practices, and for training and public awareness-raising.

These vital transformations, primarily in the legal sphere, have been accompanied by efforts to retrain law enforcement officers, particularly from the South African Police Service. A comprehensive training package, "Human Rights and Policing", developed by the Human Rights Unit of the police Legal Services Division, includes a section on "Equality and the Principle of Non-Discrimination" in policing work. Inevitably though, the struggle to transform institutions involved for decades in the violent implementation of apartheid policies will be a long one.

The difficulties were brought home when, in November 2000, South African state television broadcast a secretly made police "training video" which showed white police officers deliberately encouraging police dogs to attack three captive black men. The video, which had been made in 1998, was brought to the attention of the authorities before it was publicly broadcast. The sustained and deliberate infliction of pain by the police, coupled with their extreme racist verbal abuse of the prisoners, caused a shock of recognition and outrage among many South Africans. The national Commissioner of Police ordered the officers implicated in the incident to be arrested and suspended

from duty. Six police officers subsequently appeared in court on a number of charges, including assault with intent to cause grievous bodily harm. They were released on bail pending trial.

At times the South African police have turned a blind eye to private acts of brutality motivated by racism. In one such case, 19-year-old Archie Nqubelane was beaten by five white members of a private security company known as BBR, in the Johannesburg area on 20 February 1999. They accused him of stabbing the father of a BBR member earlier in the day and attacked him with fists, batons and gunbutts. When a witness and a member of the young man's family attempted to stop the assault, they were threatened with violence. Archie Nqubelane's relative had a gun pointed at her and was called a "bloody kaffir", a racist term of abuse. When the police arrived on the scene, they appeared to know the BBR members and proceeded to arrest Archie Nqubelane and his companion, Douglas Mtunyana, who had also been assaulted but less severely. The following day family members traced the two young men to the cells at Booyens police station. Archie Nqubelane was still in blood-soaked clothes, with his face swollen, bruised and his eyes half closed. His back was bruised and swollen and it was painful for him to lift his arms. His relatives pleaded that he be transferred to hospital for treatment, which the police permitted. Two days after the assault both detainees were charged in a magistrates' court with attempted murder and remanded in custody at Diepkloof prison.

On 16 August 1999 the state withdrew charges against Douglas Mtunyana. When Archie Nqubelane was released on bail on 25 August, after the intervention of a legal aid lawyer and a human rights monitor, his health was very poor. On 28 September 1999 he was acquitted by the magistrates' court of the charge against him.

Although in February 1999 the families of Archie Nqubelane and Douglas Mtunyana had filed a complaint of wrongful arrest and assault against the BBR members, the police investigators appeared to show little interest in the case. However, in November 2000 the Ministry of Justice informed the families that the Director of Public Prosecutions in Johannesburg had decided to prosecute two of the BBR members on two counts of assault with intent to do grievous bodily harm. The trial against them started in February 2001 but was adjourned at the request of the defence. In March the case was adjourned again when the accused men failed to appear in court. As at mid-April 2001 the police investigating officer was still looking for the accused, against whom warrants of arrest had been issued.

The roots of racism in Africa today cannot be disentangled from the history of colonialism and the slave trade. The old slave trade is no more, but slavery has not been eradicated from the continent. Slave-like working conditions and practices such as bonded child labour and trafficking of women for prostitution persist. Women are bought and sold in Western Africa for sexual exploitation in Europe, and children are sold for labour in parts of Western Africa, where legal protection is largely absent.

A new form of slavery has emerged in Sudan in the context of the racially divisive civil war (see Chapter 4). The perpetrators are mainly northerners from the Baggara tribes, culturally Arab and Muslim. The victims are southerners, predominantly Dinka from Bahr el Ghazal, culturally African and practising traditional religions or Christianity, and people from the Nuba Mountains and Ingessana Hills.

Thousands of people, primarily women and children, have reportedly been abducted during raids in Bahr el Ghazal by government-allied militias such as the Popular Defence Forces (PDF), the government-armed tribal militias of Murahleen and Baggaras, and by the regular army. They are reportedly treated as war booty and are forced to carry looted goods, to cook and clean for soldiers and to perform sexual services for their captors. Many are reportedly taken to the farms of their abductors or relatives, around Nyala in Darfur, in southern Kordofan and in Babanusa, to work in the fields, herd cattle and do housework. Some are reportedly sold further north in the capital, Khartoum.

According to abductees who have managed to escape, torture and ill-treatment by abductors are common. Women and girls are raped, tortured, sometimes killed, beaten and denied food. Boys are also reportedly sometimes raped and some are forcibly recruited into the PDF. Some abductees have allegedly had their names changed into Arab names and have been forced to convert to Islam.

Sudan, as a signatory to the 1926 UN Slavery Convention, is obliged to eradicate slavery-like practices and abductions. Yet in the context of the civil war, successive governments in Khartoum have supplied arms and support to local militias in the border zone with the south to counter rebel forces. These tribal militias, as well as the PDF and elements of the regular army, have been responsible for abducting people as war booty. It is difficult to assess whether or not the government in Khartoum is

encouraging enslavement, but the government is responsible for the actions of the militias which it arms and supplies and which are under its chain-of-command. To date, such forces appear to be able to act with impunity, including in the practice of abducting and enslaving people.

The Sudanese government has always denied the existence of slavery and while admitting that “abductions, hostage-taking and kidnapping” occur, claims that such practices are customary and that it has no control over them. However, under pressure from UN and human rights agencies, the government has in effect taken some steps in response to criticisms of abductions and enslavement. In May 1999 it created the Committee for the Eradication of the Abduction of Women and Children (CEAWC), headed by the President’s Advisor for Human Rights and Deputy Minister of Justice, Ahmed al-Mufti. CEAWC has acknowledged, at least indirectly, the issue of abductions and enslavement. It reported that many of the women who had been abducted and kept in bonded labour had given birth to children fathered by their “owners”.

CEAWC has so far “redeemed” (freed and reunited with their families) from slavery approximately 400 people. Some non-governmental organizations (NGOs) say that they have “redeemed” thousands of people.⁹¹ Estimations of the number of southern Sudanese held in forced labour and slavery in northern Sudan range from between 5,000 and 15,000⁹² to more than 100,000⁹³ people, a majority of them women and children.

Slavery, in whatever form it takes, is an extreme form of dehumanization and is almost always linked to racial discrimination. Urgent action must be taken by governments where slavery practised and by the international community to eradicate it once and for all.

Asia

“The Universal Declaration of Human Rights says that all people are born equal, so that gives us a new kind of hope... the UN should respond to a matter like this [discrimination against Dalits] because the whole matter of caste is being treated as an internal issue, as a local problem. But there are laws and legislation to curb untouchability, but in a real sense the people are not free.”

Dalit human rights defender Ruth Manorama, speaking about the National Campaign on Dalit Human Rights at a summit for human rights defenders, France, December 1998

In Asia millions of people suffer discrimination because of their descent or caste. Often the discrimination results in extreme poverty and marginalization for such groups, leading to further discrimination on the basis of economic status. Among the victims are the Burakumin in Japan and the Dalits in the Indian subcontinent.

There are between one and three million Burakumin in Japan. Ethnically Japanese, they were historically deemed to belong to the two *senmin* or “despised citizen” classes. These were classified as *eta* (“extreme filth”) – people who did “polluting” tasks such as animal slaughter, and *hinin* (“non- humans”) – people who were beggars, prostitutes and criminals.⁹⁴ Today, Burakumin continue to face discrimination in many aspects of their lives, particularly in education and employment, with the result that family income is 60 per cent of the national average. Little research is available about the treatment of Burakumin in Japan’s justice system.

The discrimination faced by 160 million Dalits (“untouchables”, known legally as Scheduled Castes) in India was highlighted at the National Public Hearing on Dalit Human Rights in Chennai in April 2000, where a cross-section of the country’s most oppressed people gathered to give evidence of their suffering. Many Dalit victims of atrocities came from across the country – from Gujarat, Punjab, Maharashtra, Rajasthan, Orissa, Uttar Pradesh, Bihar, Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.

One who spoke was an elderly man who recalled in broken sentences the gruesome details of the carnage he had recently witnessed in Kambalapalli village in Kolar district, Karnataka. His wife, daughter and two sons were burned alive, along with three others, when members of the Reddy community (caste Hindus) set fire to three huts belonging to *Dalit* families. His eldest son, the first graduate from the village, had been murdered two years earlier, also by caste Hindus. With folded hands, he pleaded for protection for the few survivors in his family. All the Dalits in the village had

fled in fear of further attacks. None wanted to return home as they believed the police would not protect them.

Despite the abolition under Indian law of “untouchability”, the practice continues in many rural areas, where inter-dining and inter-marriage between *Dalits* and other castes is still taboo, and *Dalits* continue to be socially stigmatized and segregated. They also suffer verbal and physical abuse at the hands of higher castes. Today, around 90 per cent of *Dalits* live in rural areas and are usually landless agricultural labourers, many of whom are in debt. A large number are obliged by landlords to work off their debts as bonded labourers, despite the fact that this practice was declared illegal more than 20 years ago.

Constitutional guarantees, enabling legislation, and welfare measures to prevent discrimination and promote opportunities for social and economic advancement have brought minor improvements in the lot of *Dalits*, but these improvements have been accompanied by a brutal backlash from the dominant castes in many areas. The Scheduled Caste and Scheduled Tribes Commission revealed that between 1981 and 1991 atrocities against *Dalits* went up by 23.4 per cent.

Dalits also live in many other areas of the world such as Europe, North America and other parts of Asia – often brought there as labourers – where in the diaspora communities they often continue to suffer from caste discrimination.

Dalits in India suffer a wide range of human rights violations, despite legal safeguards that are supposed to protect them. Among the violations that are persistently reported are torture (including rape), arbitrary arrest, extrajudicial execution and harassment. *Dalits* are also often the victims of violence by those high in the caste system, and by those in castes which are just above the *Dalits* in the system, who consider any improvement of the position of *Dalits* a threat to their own position.

Violations against *Dalits* are currently punishable under the 1989 Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act [1989]. This Act and the 1995 Rules which accompany it form an impressive legislative and administrative framework for the protection of *Dalits* and *Adivasis* (tribal people or “Scheduled Tribes”) in India. Many state governments have also set up special units of government to deal with what is commonly called “civil rights protection”. However, it is widely accepted that the Act and the special units have failed to provide relief to *Dalit* victims of atrocities. Large parts of the Act have been ignored by state governments – usually because of a lack of political will, the disinclination of officials to acknowledge social injustices, caste bias in the criminal justice system, and the absence of any institution to monitor systematically the implementation of the legislation. Abuses against *Dalit* communities frequently go uninvestigated and unpunished, and those who take action to seek redress are often subjected to further violations of their rights. As a result, there is a widespread feeling of impunity among those committing atrocities against *Dalits*.

Dalits are particularly vulnerable to torture and ill-treatment and there is evidence of blatant anti-*Dalit* discrimination within the police system. Physical and verbal abuse and intimidation by police on the basis of caste – not only of detainees but also of those who visit the police station to make a complaint – is common. During an AI visit to India in December 2000, it was widely admitted by officials that strong caste prejudices exist within the police.

Local police frequently refuse to file First Information Reports (FIRs) when *Dalits* approach them to report crimes. This is often because the police act at the behest of powerful local interests who may be behind the crimes. Officials often act under the influence of political parties or dominant social groups who want to keep *Dalit* communities suppressed. In numerous clashes between caste groups, police have regularly sided with members of other caste groups against *Dalits*. While *Dalits* can complain about non-registration of FIRs to higher authorities, action taken on the basis of such complaints is often too late and fails to provide the direct protection against threats and harassment necessary to ensure that complaints are pursued.

In many cases, police have reportedly beaten members of the *Dalit* community following requests by members of upper caste communities that they be punished.

Dalit populations exist in other countries of South Asia. In its report to CERD in 1997, the government of Nepal admitted that although outlawed since 1963 and made punishable by the democratic Constitution of 1990, “untouchability is still practised in some sections of society”.⁹⁵ There are widespread reports from Nepal of *Dalits* being subjected to similar forms of segregation of

living, eating and educational spaces as in India and of violent reactions by upper castes to any attempts by Dalits to change this situation. Similar concerns exist about non-implementation of legal safeguards against caste discrimination.

Dalits have started to organize to make their concerns heard. In late 1999, hundreds of Indian human rights groups collected more than 2.5 million signatures on petitions addressed to the Indian Prime Minister demanding the abolition of “untouchability” and urging UN bodies to take seriously the issue of caste-based abuses and discrimination. The National Campaign for Dalit Human Rights is taking the campaign against what it describes as India’s “hidden apartheid” to the international arena. The Indian government, however, has consistently refused to concede that the issue of caste-based discrimination should be discussed within the context of racial discrimination. It has maintained this position in successive reports submitted to CERD. However, CERD has clearly stated that caste-based discrimination falls within the scope of “descent” as part of the definition set out in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

6: Indigenous peoples

There are an estimated 300 million indigenous peoples worldwide. In spite of the wide cultural and ethnic diversity of indigenous peoples, there are often striking similarities in the discrimination and patterns of abuse they have suffered and continue to suffer.

The precarious existence of indigenous peoples around the world is a legacy of the murderous arrival of colonists and outsiders settling on their land. Many communities were wiped out by massacres and imported disease. Indigenous people who did survive were impoverished and barely recognized as human beings with rights, and their cultures were marginalized.

Today, international law, often backed by national law, expressly protects the full range of their human rights, as accorded to everyone, as well as a range of rights specific to indigenous peoples. Yet all too often the authorities fail to protect these rights. In some countries, the state is directly involved in human rights violations against indigenous peoples. In others, indigenous communities continue to suffer abuses by a range of forces because the authorities fail to investigate and bring those responsible to justice.⁹⁶

Recognition of the rights of indigenous peoples was a slow process – and some Asian and African states still refuse to accept the claims by some communities within their territories that they are indigenous. However, in the international community as a whole, significant progress has been made, particularly since the 1980s.

A global consultation in Geneva, Switzerland, in 1988 drew attention to the vulnerability of indigenous peoples to racism and racial discrimination. The participants recommended that governments should adopt legislative, administrative, economic and social measures to eliminate policies and practices which discriminate against indigenous individuals, communities and nations. A UN seminar in Geneva in 1989 called for indigenous peoples to be recognized as proper subjects of international law with their own collective rights. At the UN World Conference on Human Rights in Vienna, Austria, in 1993, states were urged to “take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous peoples, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.”

Despite this progress, indigenous peoples still face discrimination in almost every aspect of their lives and are still being targeted for a wide range of human rights abuses almost everywhere they live. As already shown in Chapter 3, their vulnerability to such abuses is enhanced by the lack of protection they are accorded by the state.

In many parts of the Americas, indigenous people are the most marginalized in society. They face racial discrimination and the appropriation of lands they claim have belonged to them for many generations. This has led to a wide range of violations of their human rights, especially in the context of disputes with landowners and, more recently, with national and multinational companies intent on

exploiting natural resources on indigenous territories. Almost invariably, the perpetrators of such abuses have got away with their crimes.

In Guatemala, discrimination and lack of respect for the basic humanity of some 70 per cent of the population – the country's indigenous peoples – permeate every aspect of society and were major factors motivating and “justifying” the wholesale rapes and massacres carried out against indigenous peoples during Guatemala's long “dirty war” in the late 1970s and early 1980s. During the war between the army and the armed opposition, the National Revolutionary Guatemalan Unity (*Unidad Revolucionaria Nacional Guatemalteca* – URNG), tens of thousands of indigenous peasants were massacred by the Guatemalan army and their civilian adjuncts, the civil patrols, during army sweeps through indigenous areas.

Even though a formal peace was declared in December 1996, discrimination continues to exclude Guatemala's indigenous peoples from most aspects of national life. It means that they are not represented in their native tongues in criminal trials where they are the defendants, nor in proceedings in which they attempt to give testimony to end the impunity of those responsible for the gross abuses of the past.

In Honduras, indigenous people have suffered repeated attacks by individuals or groups allegedly linked to local authorities and the military, resulting in at least 25 killings in the past decade. They have also suffered frequent abuses by private individuals, including death threats and intimidation, with the alleged or apparent collusion of local officials.

In recent years the police have harassed people involved in the growing protests and activism of indigenous people in Honduras determined to protect their rights. For example, in May 1997 a 10-day peaceful demonstration in the capital Tegucigalpa was organized to protest against the killing of two members of the Chorti indigenous group, Cándido Amador Recinos (see following page) and Ovidio Pérez Hernández, and to demand land for the Chortis. During the demonstration, protesters were harassed by police and intimidated by unidentified people in cars. On 12 May a massive contingent of police and armed soldiers used excessive force to evict the demonstrators. Several demonstrators were injured. Similar police responses to demonstrations by indigenous groups also took place in 1998 and 1999.

In Brazil, leaders and members of the various indigenous communities are still being threatened with abuses and targeted in violent assaults by local landowners with the complicity of the local authorities. The safety of Macuxi and Wapixana indigenous groups in Roraima state, for example, is of particular concern following a spate of attacks and threats in 2000.⁹⁷ In March 2000, for instance, two nuns working with Macuxi and Wapixana indigenous people were stopped while travelling in a car by more than 30 landowners and their farm-hands. They were threatened with violence if they did not stop supporting indigenous land claims.

The assaults are rooted in the slow federal process of legalization of indigenous territories which is being fiercely contested by landowners. In some cases, local and state authorities have fuelled anger between the indigenous and non-indigenous populations by publicly opposing this process, making indigenous groups even more vulnerable to attack.

In 2000, in the run-up to official celebrations to mark the 500th anniversary of the arrival of the Portuguese on Brazilian soil, several groups set up “Outros 500” (“Other 500”). The initiative was to highlight the situation of indigenous people, racial minorities and other marginalized groups in Brazilian society. On 22 April 2000, the day of the anniversary, demonstrators from black and indigenous groups as well as many other supporters of Outros 500 tried to march to the location of the official celebration. Units of military police blocked the road and then reportedly used excessive force to break up the peaceful demonstration. Apparently without provocation, they attacked marchers with tear gas, rubber bullets and batons, injuring 30 protesters. Some 141 protesters were detained. As a result of the police action, the demonstration was kept away from the official celebrations.

Televised scenes of police violence against indigenous and black marchers were broadcast nationally and internationally. The authorities, including the President, praised the police for their action, and no inquiry into the police operation was launched. By this response, the authorities appeared to confirm the claims of the protesters – that black, indigenous and marginalized people in Brazil are denied justice.

Members of Mexico's indigenous population are often victims of human rights violations committed by the security forces. Many indigenous people in Mexico have developed high levels of community organization to defend their rights peacefully. In Santiago Xanica, Oaxaca state, such activism has been met with violence and intimidation, reportedly at the hands of local bosses, the military and police. Juan Cruz López and Joel Díaz López were two of six members of the Committee for the Defence of Indigenous Customs to be attacked between April 1999 and January 2000, reportedly by supporters of the Institutional Revolutionary Party (Partido Revolucionario Institucional – PRI), the then ruling party of Mexico.

A new government, led by President Vicente Fox Quesada, of the National Action Party, took office in December 2000. It pledged to respect fully the rights of Mexico's indigenous people. However, the governorship of Oaxaca remains in the hands of the PRI and in many parts of Oaxaca state the PRI reportedly continues to protect those responsible for human rights violations against indigenous people.

Indigenous communities in Africa also suffer widespread abuses and are given little or no protection by the state. In the Great Lakes Region of Africa, for example, hunter-gather and former hunter-gatherer peoples are among those who suffer particular forms of discrimination and are accorded little protection by the state. They refer to themselves, although they are not recognized as such by their governments, as indigenous peoples. The Batwa Pygmies, for instance, live in parts of Burundi, Rwanda, southern Uganda and the Kivu Region of the Democratic Republic of the Congo. They have been dispossessed of almost all their land and are considered of extremely low status. They are forced to live in segregated communities, and in some cases are not allowed to use the same facilities or to socially mix with other groups. Their low status has led to them being targeted during the many conflicts in the Great Lakes Region. None of the governments has made an effective effort to protect them.

In Kenya, the Ogiek – an indigenous people who are forest-dwellers and honey gatherers in Tinnet forest – have long suffered from human rights abuses. In May 1999 the government evicted between 5,000 and 10,000 Ogiek from Tinnet forest, part of Kenya's Mau forest. The same month the Ogiek community, supported by the Roman Catholic Church, contested the eviction. In a ruling finally given in March 2000, the Nairobi High Court ruled that the Kenyan government was within its rights to evict the Ogiek. The judgment even denied that the Ogiek were indigenous to Tinnet.

In Australia too, the legacy of generations of human rights abuses committed against Aborigines is still apparent in the administration of justice. For example, in 1997 an Aboriginal woman told police officers in the Northern Territory in Australia that she had been raped by two men. When she gave her name, she was arrested and remained in custody even after a medical examination by a doctor who was not told that she was under arrest. Police said that she was detained because there was an outstanding warrant against her for her failure to appear in court on a minor charge. Although the doctor had confirmed she was a rape victim, she was taken to court in the rain, locked in an uncovered cage on the back of a police van. Police officers reportedly justified her treatment on the grounds that she had been better cared for in the police cells than she would have been in her "primitive" Aboriginal community home.

Such cases illustrate that the administration of justice in Australia remains heavily weighted against Aborigines. Aboriginal people are vastly overrepresented in both the juvenile justice and criminal justice systems, and are more likely to die in custody than non-Aborigines. The reasons are clear – Aborigines continue to suffer economic disadvantage, social disruption and systemic discrimination.

Following a 1989-91 Royal Commission into Aboriginal Deaths in Custody (RCIADIC), Australian federal and provincial governments promised to reduce the disproportionate incarceration of Aborigines. However, various state and territory governments introduced sentencing laws that impact disproportionately on Aboriginal people, particularly during "law and order" campaigns mounted for political purposes.

Two recent official reports surveying the situation since the Royal Commission cited statistics suggesting discrimination.⁹⁸ For example, in various Australian states Aborigines are between five and almost 22 times more likely than other Australians to be in prison. In 1999 more than three-quarters of

all prisoners in the Northern Territory and well over a third of all prisoners in Western Australia were Aborigines. (Aborigines make up only two per cent of Australia's population.)

Such disparities persist despite judicial and other public inquiries pointing out serious neglect of Aborigines' rights. While penal laws are not racially discriminatory, their application often tends to impact most harshly on Aborigines. In 1999 magistrate Pat O'Shane criticized as "pin-pricking racism" the practice of serving released Aboriginal prisoners with warrants for previous offences.

In March 2000 the UN Committee on the Elimination of Racial Discrimination (CERD) recommended changes to mandatory imprisonment schemes that "appear to target offences that are committed disproportionately by indigenous Australians, especially in the case of juveniles."⁹⁹ CERD called on the Australian government "to address as a matter of utmost concern" several issues relating to Aborigines. The government dismissed the findings, describing them as "an insult to Australia", and in August 2000 decided to restrict its cooperation with the UN human rights system.

An alarming number of Aborigines have died in custody, often as a result of lack of care, despite government reports claiming implementation of the Royal Commission's recommendations. An April 2001 report by the government-funded Australian Institute of Criminology found that "almost three times as many indigenous persons died in prison custody in the post-RCIADIC decade [1990-99] than in the decade examined by the Royal Commission [1980-89]."¹⁰⁰ In 1999 Aborigines accounted for 22 per cent of all deaths in prison custody. Aborigines also die more often than other prisoners of illness. A December 2000 Ombudsman report criticized the Western Australia Ministry of Justice for its failure to comply with its own and international standards on prisoner health care, and for routinely ignoring coroners' recommendations to prevent deaths in custody. He also reported the case of Colin Shaw, a terminally-ill Aboriginal prisoner who died in hospital in 1997 while restrained by leg-irons "in accordance with usual practice".

In 1998 the national Human Rights and Equal Opportunity Commission reported on its inquiry into the forced removal, under past government policies effective up to 1970, of tens of thousands of Aboriginal children from their families solely because of their race. The Commission found that some of the policies had been "genocidal" and that the authorities had been aware of physical abuse suffered by many removed children. The Commission reported on the continuing effects of human rights abuses suffered by Aborigines, including ill-treatment and restrictions on freedom of movement.

Over the years AI has received reports of physical ill-treatment, lack of care, harassment and intimidation of Aboriginal people by law enforcement officials. The alleged perpetrators have rarely been held to account and in some cases they have escaped justice. For instance, in September 2000 a white tribunal acquitted three white police officers of assaulting young Aborigines in Ipswich, Queensland, in 1997. The tribunal reached this decision despite viewing a film which clearly showed the officers punching and kicking the victims, while some of the victims were being held by other officers. The tribunal also commended the officers for using violent new restraint techniques.

The Australian government has been reluctant to confront provincial authorities over their responsibilities for past and present discrimination faced by Aborigines. In early 2000 Prime Minister John Howard intervened to prevent proposed federal legislation aimed at bringing provincial mandatory imprisonment laws into line with international human rights law. In May 2000 the Prime Minister refused to participate in public events to recognize past human rights violations against indigenous peoples. He also indicated his opposition to proposals for national reconciliation and racial tolerance, developed over 10 years by the government-funded Council for Aboriginal Reconciliation.

International recognition of the general and specific human rights of the world's indigenous peoples is a great step forward. However, until governments take concerted action to ensure the promotion and protection of those rights, indigenous peoples will continue to suffer human rights abuses including discrimination.

7: Foreigners, including migrants, asylum-seekers and refugees

Yusef Barzan, an Iraqi Kurd seeking asylum in Germany, was attacked in Magdeburg in May 1994 by a group of youths wielding baseball bats. They chased him through the streets chanting, "Germany for the Germans, foreigners out." Yusef Barzan recalls: "Suddenly I saw two police cars arrive and three

officers got out. I thought, 'Thank God, I'll be OK now'." He was wrong. Instead of offering him assistance, one of the officers allegedly threw him to the ground, struck him with a baton and kicked him in the testicles. He was thrown into a police car and beaten again. After being taken to a nearby police station, he was made to undress without being told why. Nor was he told at any stage, he alleges, of the reason for his arrest. He was released early the next day after he had been forced to sign a piece of paper, the significance of which he did not understand as his German was not good enough. One police officer was charged with causing bodily harm to Yusef Barzan, but in June 1995 a Magdeburg court acquitted the officer, reportedly because the case could not be proven beyond reasonable doubt.

Around the world, foreigners, including migrant workers, asylum-seekers and refugees, as well as nationals of immigrant background, are facing xenophobic environments, sometimes stirred up by the authorities and almost always reflected in the administration of justice. Many face hostility in the communities in which they live and may be seen as an easy and populist target for politicians and police forces when dealing with crime. Such a climate leaves people seen as "foreign" vulnerable to racist attacks by members of the public and to racist abuses of their rights within the criminal justice system. In December 1999 the UN General Assembly recognized this trend, expressing its deep concern that racism and racial discrimination against migrant workers continue to increase.

In many countries, people who do not speak the language of the country where they are, whether they are migrant workers, asylum-seekers or holiday-makers, find they are not informed of their rights – and in a language they understand – once apprehended by the police, as required by international human rights law.¹⁰¹ In some countries, people who do not speak the official language of the courts face additional unfair and discriminatory treatment because of lack of access to translations and interpreters. In addition, foreign nationals may suffer other violations of their rights as justice officials know the victims will lack the confidence and knowledge to pursue complaints, and are unlikely to be able to make contact with local people or organizations that might help them.

Racist attitudes also appear to be having a negative impact on asylum-seekers around the world. Large numbers of people who have been forced to flee their homes because of persecution and try to reach a place of safety are being denied the opportunity to gain sanctuary. They are often stopped at frontiers by measures aimed at keeping them out rather than identifying those in need of protection. For those who manage to enter "host countries", there is often an inhospitable environment awaiting them. Increasingly, asylum-seekers are being detained, sometimes for months or even years, while their claims for protection are examined. Others languish in refugee camps, where they are at continued risk of human rights violations, for many years on end.

Some politicians in relatively rich countries have pandered to anti-immigrant and racist rhetoric to justify restricting the protection and assistance offered to refugees. The perception that asylum systems are being abused by "undeserving" claimants has been deliberately fostered and attempts made to develop criteria for automatic rejection without looking at the individual case. In some parts of the developing world too, governments have looked to scapegoat refugees and asylum-seekers for political, social and economic problems at home.

In Japan, foreigners are at a particularly high risk of ill-treatment by state officials and security staff at immigration centres.¹⁰² Among the most frequently reported victims are people of Korean descent and foreign workers from other South-East and East Asian countries.¹⁰³ A significant number of complaints also come from migrant workers from the Middle East, South America and Africa.

According to the Japan Federation of Bar Associations, problems of foreigners in Japan that lead to human rights violations include: their lack of general political and social rights; the duty to carry the Certificate of Alien Registration at all times; the system of re-entry permits; procedures governing deportation of foreigners; and treatment in immigration detention facilities.

Foreign workers who remain in the country after the expiry of their visas and other alleged illegal immigrants detained pending deportation suffer arbitrary punishments, humiliation and beatings by Immigration Bureau officials. They are also detained and sometimes beaten on the mere suspicion of holding illegal travel documents. In many cases, foreign detainees have reported overtly racist statements by police and detention officials.

Foreign nationals held in police custody on suspicion of having committed a criminal offence face the risk of being detained in the daiyo kangoku system (a substitute prison system where suspects – both Japanese and foreign – are detained for up to 23 days in cells in police stations).¹⁰⁴ There, they are questioned for long periods with no access to lawyers and inadequate access to interpreters, intimidated, forced to sign statements in a language they do not understand, and punished for attempting to seek judicial redress for alleged human rights violations. Under the daiyo kangoku system, detainees are held by the same police responsible for interrogation. This increases the possibility that criminal suspects will be intimidated into confessing to crimes they have not committed, a risk that is particularly high for foreigners. Some migrant workers have reportedly been arrested and charged with minor crimes, such as violating the immigration law, only to be interrogated for more serious crimes, even murder. This violates Japanese law, which stipulates that detainees may not be arrested on one charge and then interrogated for an unrelated crime.

Prisoners serving sentences are sometimes severely punished and held in solitary confinement under rules giving guards wide powers of discretion to apply punishments for relatively minor breaches of regulations. While all inmates can fall victim to the secret web of prison rules, foreign prisoners are at a particular disadvantage if they cannot speak, understand or read Japanese. Four of the five people known by AI to have died in custody in Japan since mid-1994 were foreign nationals. To AI's knowledge, there has been no full, impartial and independent investigation into any of these deaths.

The inadequate complaints procedure makes it almost impossible to win cases and gain compensation, particularly for foreign nationals who may have to initiate proceedings outside Japan. Moreover, foreign prisoners who have attempted to bring lawsuits alleging ill-treatment have been placed in solitary confinement, sometimes for months at a time. Forms of solitary detention ostensibly aimed at "protecting" detainees have also been used to punish recalcitrant foreign inmates.

As well as suffering ill-treatment, many foreign detainees have said that police and immigration officials make no attempt to inform them of their rights or to provide them with legal representation or interpreters. When interpreters are provided, foreign detainees have frequently reported that the interpreter appeared to be biased towards the authorities. Since all official documents are provided only in Japanese, detainees have no alternative but to trust an interpreter's oral translation before they sign a document. In addition, foreign detainees in Japan do not always have an early opportunity to communicate with consular officials from their own country.¹⁰⁵

Those who apply for asylum in Japan are often detained in immigration centres while their application is considered. The process can last for months or even years. The conditions of detention are often poor. Asylum-seekers detained at ports of entry are frequently denied access to lawyers and ill-treated.

AI has received many reports of serious abuses during the interrogation and deportation of people who are denied entry to Japan. Such people are sent to the Landing Prevention Facility (LPF), a detention centre at Narita airport run by private security companies. Abuses reported as routine there include extortion of money, with detainees strip-searched for money and their clothes taken away if they refuse to pay, and beatings. There is no government mechanism for checking the activities of the staff, and there have been inadequate investigations into individual allegations of ill-treatment or into reports that torture and ill-treatment at the facility are routine. Detainees awaiting deportation at the LPF have been deprived of adequate access to the outside world, including medical doctors of their choice, lawyers, friends and human rights activists. Some have died in custody at Immigration Detention Centres.

Saudi Arabia also graphically illustrates some of the problems faced by migrant workers. There, a secret and arbitrary criminal justice system confronts everyone who comes into contact with the law, but foreign nationals have much less chance of escaping gross violations of their human rights than Saudi Arabian nationals. This is particularly true in relation to the death penalty and corporal judicial punishments.

Foreign nationals make up between 60 and 80 per cent of the Saudi Arabian workforce. The discrimination they face in Saudi Arabia in general, especially those from Africa and Asia, is exacerbated by a criminal justice system which has virtually no safeguards against ill-treatment and miscarriages of justice.

Once arrested, foreign nationals may be coerced into signing a statement in Arabic, which they may not understand. They are not informed of their rights, nor of the judicial process that awaits them. They have no access to a lawyer and are often denied contact with their consulate. Some foreign workers have told AI that they were never told in their own language the reason for their detention and therefore were not sure what, if any, charges they faced.

Held in isolation from the outside world, they are vulnerable to ill-treatment, torture and coercion. They face secret and summary trials, with limited right of appeal, and may be convicted solely on the basis of confessions extracted under duress. This is particularly disturbing given the wide range of offences punishable by death in the country and the frequency with which courts resort to the ultimate punishment.

In some cases, foreign nationals are not even aware that they have been sentenced to death, and neither they nor their families are warned of the date of execution. They are rarely if ever allowed to see their relatives or friends before they are executed. Relatives of those executed, as well as the appropriate government, often receive no formal notification that the execution has taken place.

AI's records of prisoners sentenced to death for murder and subsequently pardoned by the heirs of the murder victim show that Saudi Arabian nationals have a better chance of escaping execution than foreign nationals. Under Saudi Arabian law, victims or their nearest relatives or heirs may decide whether the convicted offender should be subjected to punishment equal to the physical harm caused by the crime, or ask for compensation instead, or pardon the offender. The nearest relatives may also ask for blood money instead of the execution.

Of the 12 cases of pardoned prisoners monitored by AI between 1991 and 1999, nine were Saudi Arabian nationals. In most of the nine cases, the pardon seems to have been obtained following persistent lobbying by tribal leaders and officials. Foreign nationals, particularly those from poorer countries in the Middle East, Asia and Africa, are usually unable to pursue effectively this path to a pardon, as both influence and money are often beyond their reach.

It also appears that for some crimes, such as drug-related offences, the only possible way to obtain a pardon is to seek one from the King, again an avenue that offers little hope to foreign nationals.

The unfair trial procedures, coupled with the lack of access of migrant workers to money or influential members of Saudi Arabian society to intercede on their behalf, mean that they are more likely to be executed or flogged or to suffer judicial amputations than Saudi Arabians. Of 889 executions recorded by AI between 1990 and 2000, over half were of migrant workers. Between 1999 and 2000, AI recorded 36 amputations. At least 24 of the victims were foreign nationals.

In December 2000 Ma'an Nayef Kalif al-Ghalibi, a 31-year-old Iraqi national, committed suicide in the al-Rafha refugee camp in the northern desert of Saudi Arabia where he had been living as a virtual prisoner since the early 1990s. Saudi Arabian media reported that he hanged himself because "he fell into a severe state of despair after his request to seek resettlement abroad was turned down". He left behind more than 5,000 other refugees living in the same condition that drove him to end his life. The despair of these people is brought on primarily by the denial of their right to seek asylum and the severe and discriminatory restrictions on their daily life.

The ordeal of these people started a decade ago, at the end of the Gulf war of 1991 when they were among 33,000 men, women and children settled in al-Rafha camp after fleeing persecution by the Iraqi forces. From the outset, the Saudi Arabian authorities referred to them as "guests", refusing to consider them as refugees or provide them with the opportunity of challenging the legality of this decision. Although Saudi Arabia is not a signatory to the 1951 UN Convention relating to the Status of Refugees, Article 42 of its Constitution stipulates that, "The state shall grant political asylum, if so required by the public interest..."

This left two options for the refugees, resettlement abroad or for some return to Iraq. The United Nations High Commission for Refugees (UNHCR) has since resettled more than 24,000 of these refugees in Europe, North America and Australia. Others have returned to Iraq, and Saudi Arabia is offering financial incentives for refugees who take this option. For the 5,000 or so who remain in the camp there is no end in sight to their suffering and despair.

The camp is situated about five kilometres from the Saudi Arabia-Iraq borders where temperatures reach 50°C in the summer-time and can drop to freezing point in winter. It is isolated by

its geographical location and military control. The camp is strictly guarded and supervised by military security forces. The refugees are subject to nightly curfew and are strictly prohibited from venturing beyond the perimeter fences of the camp except in accordance with the wishes of the administration and its supervision.

Around the world, asylum-seekers and refugees are facing increasingly racist and xenophobic climates in the countries to which they have fled. Salim, an Afghan asylum-seeker, was stopped by police in Mosco, Russian Federation in April 1996.

He showed an AI representative the top of his thumb, which had been cut off half-way across the nail. ***“They told me to get out of Russia and said, ‘there’s no place for blacks here’. I tried to explain that I was an asylum-seeker, and that I had no money – but they would not listen. One of the policemen held my hand and used the knife [bayonet] attached to his rifle to cut my hand. They tore my passport up and then they left.”***

In the Russian Federation, there is a clear pattern of racial discrimination against asylum-seekers, both against those coming from outside the former states of the Soviet Union and against dark-skinned people of non-Slavic appearance who come from the Caucasus and Central Asia.¹⁰⁶ Such people are routinely denied access to asylum procedures, are at constant risk of being detained, and are often harassed and ill-treated by law enforcement officers as they are forced to live in limbo, often for years, without protective identity documents. For example, official statistics of April 2001 stated that there were more than 200,000 people from Afghanistan in the Russian Federation, most of whom were living in the country illegally without official refugee status. In January 1997 there were more than 1.2 million asylum-seekers from the territory of the former Soviet Union registered as refugees or forced migrants, compared with only 77 from outside the same territory.

Many people who have fled to the Russian Federation from countries notorious for high levels of human rights violations, including Afghanistan, Angola, Iran and Iraq, are simply told they cannot apply for asylum. One of many examples recorded by AI involved Yonan, an asylum-seeker from Iraq. He arrived in Moscow and was registered by the UNHCR in July 1993. He says that when he tried to lodge a claim for asylum with the Moscow Migration Service in November 1995, he was told: “We don’t have that kind of law.” AI was subsequently told by a government official that no asylum-seekers had been allowed to register in Moscow since mid-1996.

On 15 March 2001, an Iranian asylum-seeker was denied admittance into the Russian asylum procedure at the Point of Immigration control at Moscow’s main international airport and detained at a deportation facility close to the airport. A private lawyer representing the asylum-seeker appealed against the decision. However, while the appeal was pending in court the asylum-seeker was forcibly returned to Iran. He was arrested by the Iranian authorities on his return and was reportedly facing further human rights violations, including the death penalty, for his involvement in political opposition activities in Iran.

Countless people have been forcibly returned home from Moscow Airport without being allowed to present their application for asylum and without being given contact numbers for the migration service or UNHCR. Others have been arrested at their homes and then forcibly deported.

Asylum-seekers from outside the territory of the former Soviet Union who are living in the Russian Federation typically face destruction by police of official identity papers, including UNHCR identity cards, as well as police harassment in the form of extortion, beatings and general intimidation. Many have been harassed into leaving their homes by police and had their homes raided at night by police. Asylum-seekers of non-Slavic origin from countries of the former Soviet Union, especially from the Caucasus and Central Asia, are often targeted by police because of their dark skin and other physical features.

In Western Europe, politicians in several countries have helped to stir up xenophobia either directly through racist and anti-immigrant rhetoric, or indirectly through policies that seek to restrict immigration and asylum applications.

A report on the UK published by the European Commission against Racism and Intolerance (ECRI) in April 2001 concluded that racism against asylum-seekers and refugees was “particularly acute” in the UK and criticized the government for adopting and enforcing “increasingly restrictive asylum and immigration laws”.¹⁰⁷ The previous month the European Union (EU) racism and xenophobia monitoring centre in Vienna issued a report which concluded that the UK was the most

hostile of all 15 EU members to refugees. It said that frequent changes to immigration and asylum policies had played a fundamental and negative role in this hostility. The report added, “Many politicians have contributed to, or at least not adequately prevented, public debate taking on an increasingly intolerant line with at times racist and xenophobic overtones.” An ECRI report on Austria also released in April 2001 noted ECRI’s deep concern about “the use of racist and xenophobic propaganda in politics”, and stated that racism, xenophobia and discrimination particularly affect immigrants, asylum-seekers and refugees.¹⁰⁸

Once an intolerant climate is created, it becomes much more likely that asylum-seekers will be denied their rights or subjected to physical and mental abuses. For example, asylum-seekers often fall victim to abuse and ill-treatment during deportations. An eyewitness to a particularly disturbing case gave a harrowing account of what he saw.

“The black man was thrashing around wildly and trying over and over to get air. But the officials did nothing... The man appeared to be really fighting for his life.”

These were the reported words of a crew member on board the flight in which Marcus Omofuma was being forcibly deported from Austria’s Vienna airport following a failed asylum claim. A 25-year-old Nigerian, he died in May 1999. He apparently suffocated on the aeroplane in the presence of three Austrian police officers. He had allegedly resisted the attempt to deport him, so police officers bound his arms and legs and gagged him. Police then carried him on to the aeroplane. He was put in an empty row of seats at the back. Witnesses said he was gagged with adhesive tape and strapped to the seat with tape. One witness stated: “They wrapped the entire upper part of his body and arms with adhesive tape like a mummy stuck to the seat.” When Marcus Omofuma continued to protest, the police officers allegedly applied more adhesive tape to his chin and used a plastic belt to tie him more securely to the seat. When the plane landed, the officers noticed that Marcus Omofuma had lost consciousness. By the time a doctor arrived, he was dead.

After Marcus Omofuma’s death, the then Austrian Interior Minister said, “Gagging of the mouth was neither permitted nor prohibited, it was a failure in the system.” Later he stated that he had therefore prohibited the use of adhesive tape or similar materials.

In commenting on the case, the UN Committee against Torture expressed concern in November 1999 about “insufficient measures of protection in cases of individuals under an order of deportation” and recommended that provisions for the protection of asylum-seekers should fully conform with relevant international standards.¹⁰⁹

Several other people in Western Europe have suffered similar fates to that of Marcus Omofuma. Such cases show that it is imperative that the authorities issue clear guidelines and initiate improved training with regard to the use of force and type of restraints permissible during forced expulsions.¹¹⁰

Khaled Abu Zarifa, a Palestinian, died of suffocation during an attempt to forcibly deport him from Zurich-Kloten Airport in Switzerland in March 1999.¹¹¹ This case was one of a number of reports received by AI in recent years of ill-treatment immediately prior to and during forcible deportations via the airport. Khaled Abu Zarifa was given a sedative, had his mouth sealed with adhesive tape, and was bound hand and foot and strapped into a wheelchair. The post-mortem concluded that he died of suffocation as a result of the restraining methods used. In January 2001, three police officers and a doctor involved in the deportation were charged with causing death through negligence. The trial is scheduled for June 2001.

In August 1999, the Zurich authorities announced that adhesive tape would no longer be used to cover the mouth during forcible deportations, but would be replaced by another form of restraint – a specially modified boxing helmet. This, too, could restrict respiration. The helmet has a chin-cup attached, forcing the jaws closed, and a cover which can be placed across the mouth with a small aperture for a breathing tube. According to the Zurich authorities, the helmet has not been used since September 1999. However, AI has continued to receive reports from Switzerland of abuses during forcible deportations, including racial abuse, physical assaults, abusive use of sedative drugs, deprivation of food and drink, and denial of access to toilets during long flights. There have also been claims that forms of mouth restraint are still being used in isolated cases, endangering life.

Nigerian national Semira Adamu died as a result of asphyxiation within hours of an attempt to deport her forcibly from Belgium in September 1998. During deportation, gendarmes subjected her to

the “cushion technique”, a dangerous method of restraint that allowed a cushion to be pressed against the mouth and has since been banned.

Other cases involving excessive use of force during deportation have also been reported in Belgium.¹¹² Reports received by AI in 1999 claimed that gendarmes were using heavily padded gloves to cover the mouths of deportees, thus blocking the airway, and that some deportees were placed face-down on the floor in restraints, with the hands and ankles bound together from behind. They were then sometimes carried by the restraints, a highly dangerous procedure which can restrict breathing and lead to death.

Many asylum-seekers in Europe have also suffered ill-treatment in detention. In Hungary, for example, there have been several reports of ill-treatment of asylum-seekers and migrants in special detention facilities for asylum-seekers and foreigners without a residence permit, awaiting deportation.¹¹³ In 1998 Hungary instituted a detention regime for a significant proportion of migrants and asylum-seekers to prevent them from crossing the borders illegally into the countries of the European Union (EU). The commander of one of the detention centres told AI that he considered Hungary’s policy of detaining up to a third of asylum-seekers, “the price of our acceptance into the EU”.

In March 2000 AI visited Nyirbátor and Szombathely detention centres on which it had received several reports of ill-treatment in 1999. Among such cases was that of an Afghan brother and sister, aged 16 and 17 respectively, who were reportedly beaten and handcuffed after trying to escape. Other detained Afghans shouted at the guards, outraged by their treatment particularly of the girl. More guards arrived, sprayed CS gas into the Afghans’ room, then allegedly entered with dogs and beat the detainees. One woman was knocked out by a blow to the forehead. Her husband was also beaten.

Conditions at the Szombathely centre appeared to have improved when AI visited. However, relations between detainees and guards at Nyirbátor remained tense. Despite numerous reports of ill-treatment and arbitrary use of CS gas by guards, the commander initially stated that he had no knowledge of such incidents. He later said there had been two reports of ill-treatment the previous day. AI remained concerned that detainees who are ill-treated have little opportunity to file a complaint.

Racist and xenophobic attitudes towards refugees, asylum-seekers and migrant workers, often combined with racist abuses by state officials, also appear to be on the rise in some parts of Africa. On occasion, such sentiments have been expressed by government officials. For example, in September 2000 Guinean President Lansana Conté accused refugees of harbouring rebels responsible for cross-border attacks into Guinea from Liberia and Sierra Leone, and declared that the refugees “should go home”. He added, “I am giving orders that we bring together all foreigners in [Guinean] neighbourhoods, so that we know what they are doing, and that we search and arrest suspects... Civilians and soldiers, let’s defend our country together. Crush the invaders.”

In South Africa, refugees and asylum-seekers from other parts of Africa have been the targets of violent attacks by members of the public, as well as victims of unlawfully prolonged detention, poor conditions and beatings at Lindela Repatriation Centre and at police stations. Suspected illegal immigrants have also experienced assaults and unlawful shootings by police officers and arbitrary and verbally abusive conduct by government immigration officials.¹¹⁴ Citizens and others with the right of legal residence in South Africa have also at times been arrested as suspected illegal immigrants, solely, it seems, on the basis of their physical and other features.

In one such incident, a Ghanaian academic researcher, Dr Frank Nyame, working at a university in the Johannesburg area, was apprehended in April 1999 by two white police officers outside his home and accused of being an illegal immigrant. One of the officers allegedly verbally abused him, attempted to push him into their vehicle and threatened him with violence. He managed to escape and lodged a complaint with Brixton police station. While making his statement to the duty officer, the police officer who had earlier abused him allegedly pushed him forcefully and knocked him unconscious by headbutting him. When Dr Nyame had recovered consciousness the same police officer continued to physically assault and verbally abuse him. Another white officer also allegedly ridiculed him about his country of origin and spat a mouthful of soft drink into his eyes and face. Despite the lack of any grounds, the police detained Dr Nyame in the cells for several hours. The intervention of university colleagues and a human rights lawyer led to Dr Nyame’s release without

charge.¹¹⁵ A civil action for damages was later lodged against the police and a complaint filed with the police oversight body, the Independent Complaints Directorate.

The public hostility increasingly shown in South Africa towards asylum-seekers, refugees and undocumented migrants, particularly from other African countries, has been condemned by the statutory Human Rights Commission, NGOs and some government officials. In a joint declaration issued in October 1998, the “Braamfontein Statement”, they denounced the belief that foreigners were “fair game to all manner of exploitation or violence or to criminal, arbitrary or inhuman treatment”. The participants at the Braamfontein gathering identified urgent steps which needed to be taken, including in law reform, public awareness raising, the training of officials and ratification of international standards. Nearly two years later, at the National Conference on Racism held in Johannesburg at the end of August 2000, delegates confirmed that the newly democratic South Africa has the “duty and responsibility to provide sanctuary for and express solidarity with the plight of refugees and asylum-seekers”.

In the Great Lakes Region, refugees and the internally displaced have suffered grave violations of their rights. Examples include the mass refoulement (forcible return) of hundreds of thousands of Rwandese refugees from the DRC and Tanzania, and the forcible mass expulsion of thousands of Burundian refugees from the DRC in late 1996.

The presence of up to 500,000 Burundian refugees, most of them Hutu, in Tanzania has caused tensions with the local communities, apparently encouraged by government and local authorities. In late 1997 and early 1998 the Tanzanian authorities forced hundreds of Burundians who had integrated into local communities to move into large overcrowded camps.¹¹⁶ During 2000 the authorities again ordered Burundian refugees to move into the camps. More than 600 Burundians living in border villages who failed to respond to the order, some of whom had been living in Tanzania for over two decades, were arrested and forcibly returned to Burundi. (At least 80 Rwandese were also forcibly returned to Rwanda.) The majority of the refugees were denied the opportunity to contact their families or collect their belongings.

In Kenya, many asylum-seekers have been arbitrarily arrested and sometimes deported because of their ethnic or national origin.¹¹⁷ In July 1997, for example, more than 600 foreign nationals living in Kenya were arbitrarily arrested by police. They included Rwandese, Burundians, Somalis, Ugandans, Nigerians and Congolese (from the DRC). They were finally released by the authorities and most were sent to a remote refugee camp. In July 1996, over 900 Somali refugees were forcibly returned to Somalia six days after seeking asylum in Kenya.

The politics and economics of the modern globalized world mean that every year levels of migration are increasing, as people leave their countries to escape terror or to find economic and political security. All governments have an obligation, whatever their economic or political situation, to ensure that the human rights of those who arrive from abroad are respected, that they are treated with dignity and fairness, and that they are protected from racial discrimination at all times.

8: Women and race

“Many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees.”

Beijing Platform for Action, Strategic Objective 1, para 222

Racial discrimination does not always affect women and men equally or in the same way. Sometimes, racism primarily affects women – such as the forced sterilization of indigenous women. Sometimes, it affects women in a particular way – such as when security forces rape and sexually abuse women to intimidate whole communities. Sometimes, the consequences are different for women – such as when rape leads to pregnancy or social ostracism. Moreover, women who have suffered racist abuses may be

additionally hindered in their attempts to gain justice by factors such as gender-bias in the legal system and discrimination against women in society at large.

The Committee on the Elimination of Discrimination against Women makes it clear that states should bear in mind when reviewing their laws and policies that gender-based violence falls clearly within the definition of discrimination – and should be responded to by the authorities accordingly.¹¹⁸ In many countries, however, including some that have ratified the Convention on the Elimination of All Forms of Discrimination against Women, neither the law nor the practice of officials meet this standard.

All over the world, women held in custody are vulnerable to rape and other sexual abuse. Often held alone, sometimes without access to lawyers or family, and guarded by male officers, they are seen as easy targets for abuse. They may be even more vulnerable if they belong to a racial or ethnic minority whose rights are routinely violated by officials. The torture may be inflicted for a number of reasons, such as to extract confessions, to intimidate the community, to humiliate or punish the victims, or to get at male relatives.

The consequences of rape are devastating. In addition to the obvious emotional and physical trauma, rape victims may face social isolation, sexually transmitted diseases and a resulting pregnancy.

Kurdish women in Turkey are vulnerable not just to the wide range of human rights violations suffered by many Kurds. They are also targeted for rape, sexual abuse and other torture directed at them as women by the police and security forces. Between mid-1997 and November 2000, 132 women sought the help of a legal aid project in Istanbul for women raped and sexually abused in custody, 45 of them reporting rape. Ninety-seven of the women are Kurds. The alleged perpetrators are mainly police officers (98 cases), but also include gendarmes, soldiers and village guards, and in one case, prison guards. Perpetrators are rarely brought to justice.

For example, Fatma Tokmak, a Kurdish woman who does not speak Turkish, and her two-year-old son, Azat, were detained on 9 December 1996. They spent 11 days in detention at the Anti-Terror Department of the police headquarters in Istanbul. Fatma Tokmak was sexually abused and threatened with rape. Police officers violently undressed her, forced her to lie naked on the floor and threatened to rape her. She was hung by her arms and was sexually abused. Her naked body was touched and grabbed by police officers. According to reports, police officers also tortured Azat in order to elicit confessions from Fatma Tokmak. Fatma Tokmak saw police officers burn her infant son's hands with cigarettes and administer electric shocks on his back.

Police officers entered Fatma Tokmak's cell one night and took away Azat, reportedly saying: "You won't see him again because we are going to kill him now." After a bureaucratic struggle lasting two and a half months, Azat was eventually found in an orphanage. The staff reported that he had been in a very bad state when he was brought to them.

With the help of a legal aid project, Fatma Tokmak filed a formal complaint in 1997 against the police officers who tortured her and her son. The public prosecutor in Fatih decided in July 1998 not to initiate proceedings. The prosecutor's office had not considered the report given by the Istanbul Medical Chamber on 21 April 1998, which corroborated the torture allegations. This report stated that Azat Tokmak suffered from Post-Traumatic Stress Disorder, was reportedly especially disturbed by cigarettes and covered his face with his hands when he saw police officers. The prosecutor had also not taken statements from Fatma Tokmak or the police officers. The lawyers appealed against the decision not to initiate proceedings, and a medical examination of Azat Tokmak at the Forensic Institute 3rd Committee was requested by a local court in order to determine when the alleged cigarette burns were inflicted on his body. The Forensic Institute examined Azat Tokmak on 29 December 1999 and found a scar, but stated that it was medically impossible to identify when the wound was caused. Referring to the Institute's report, the lawyers' appeal was rejected in June 2000.

While all attempts to bring the suspected torturers to justice have failed, Fatma Tokmak is still in Gebze prison, charged with PKK membership, and faces a trial in which the death penalty is being sought. She has yet to receive a comprehensive medical or psychiatric examination.

Rape of women as a tool of terror is used by security forces around the world who are engaged in programs of persecution and intimidation of particular communities. In Indonesia, for example, during widespread violence against ethnic Chinese in May 1998 that preceded the fall of then President Suharto, many ethnic Chinese women were reportedly gang-raped, allegedly with the help of the

military.¹¹⁹ In the run-up to the general violence, political and military leaders had made statements contributing to a growing climate of hatred directed towards the ethnic Chinese community.

The country's seven million ethnic Chinese, less than four per cent of the population, have long suffered discrimination, many aspects of which remain written into law despite some recent relaxation of restrictions. Anti-Chinese racism was institutionalized in 1965 when the authorities accused the Chinese of backing a failed coup attempt. Chinese schools and lettering were banned, as was media using Chinese, and the use of Chinese names discouraged. Since then, the authorities have frequently resorted to anti-Chinese propaganda to divert attention away from the government in times of political or economic crisis. Each time, the ethnic Chinese community has suffered the consequences.

After the May 1998 attacks, the authorities initially denied any military involvement in the rapes, and the military claimed its investigations failed to trace any victims. A government fact-finding team, established in July 1998, concluded that at least 66 women had been raped and that elements within the military rather than the institution itself were partially responsible. Independent investigations into the violence also indicated that the authorities had failed to offer ethnic Chinese any protection.

Despite the large number of alleged rapes, police investigations have been lack-lustre. There have been no arrests, and the police claim that they have received no direct reports of rape. Local NGOs say that many victims have been reluctant to go to the police because of a lack of trust, the failure of police to follow up complaints, and threats against witnesses.

In addition, rape has been used as an instrument of torture and intimidation by elements of the Indonesian army in their campaign against independence movements in Aceh, Irian Jaya and East Timor. A report on a mission to Indonesia and East Timor in late 1988 by the Special Rapporteur on violence against women stated:¹²⁰

“Before May 1998, rape was used as an instrument of torture and intimidation by certain elements in Aceh, Irian Jaya and East Timor. Since May 1998, the policy appears to be different... It is still too early to assess whether assurances of army officials [that rape by soldiers will not be tolerated and that perpetrators will be prosecuted] will be implemented and rapists brought to trial...”

Since May 1998 AI has continued to receive evidence of rape being carried out by members of the Indonesian security forces, including in East Timor during 1999 and in Aceh during 2001. No one has been brought to justice for these or other rapes that have been carried out over the years by members of the Indonesian security forces.

The lack of investigations and prosecutions in rape and sexual abuse cases, coupled with state indifference to the suffering of the victims, have serious consequences for women. The resulting climate of impunity means that such abuses are likely to continue, and the victims are often left with no compensation or help to recover from their ordeals.

In Guatemala, for example, mass rape of indigenous women was a component of the government's counter-insurgency strategy during the civil conflict (see Chapter 3). Despite widespread calls for help to be offered to the victims, including via the UN-sponsored Commission on Historical Clarification (Guatemala's "Truth Commission"), no such programs have yet been initiated. This has left the women and their communities on their own to face the continuing effects of the trauma they suffered.

In Colombia, women have suffered disproportionately because of the forced displacement of indigenous and peasant communities. Tens of thousands of families, many headed by women, have been driven from their homes, some by fear, others by deliberate strategies employed by paramilitary forces. Those who have returned to their land and declared themselves "peace communities" continue to be attacked by paramilitary forces and armed opposition groups. The government has failed to fulfil its commitment to protect the peace communities.

In some countries, women are offered little or no protection by the state from abuses inflicted on them because of both their race and gender. The lack of protection in some cases is so extreme that it amounts to state complicity in the patterns of abuse. Women in India, for example, suffer a wide range of human rights violations based on gender discrimination, and women of certain castes or ethnic backgrounds are doubly vulnerable to such abuses. The failure of the state to ensure that these women are protected against grave abuses points to a discriminatory attitude towards women by sections of the

state machinery. Moreover, barriers are placed in the way of women attempting to gain justice after they have suffered discrimination or violence.

Dalit women face the triple discrimination of caste, class and gender. Atrocities against them are widespread – often carried out to teach “political lessons” to the *Dalit* community and crush dissent. In addition, many of those who stand up to landlords or support inter-caste marriages are punished by being paraded naked.

In many cases, *Dalit* women approaching the police for redress risk further ill-treatment, ranging from physical beatings to sexual insults and verbal insults about their caste. The refusal of police to register complaints by *Dalit* women and the failure to protect women victims from threats and harassment, coupled with the extreme social pressure that women are under to keep quiet about abuses, means that a large proportion of crimes go unpunished.

Lebra, an agricultural worker from Ram Nagar village in Pratapgarh district of Uttar Pradesh, says that she and her 12-year-old daughter were taken to the Anatu police station on a false complaint by an upper-caste member of the community on 20 September 1998. There, they were raped and sexually abused by the Station House Officer. The following day Lebra made a complaint to the District Police Office in Pratapgarh and an investigation appeared to begin. Lebra also lodged a complaint with the Director-General of Police in Lucknow and the National Human Rights Commission. In the following months she sent her complaint to other officials, including to the Chief Minister of Uttar Pradesh in November 1998, in which she threatened to go on hunger strike unless she was listened to. To date, however, no action has been taken against the accused police officer. Moreover, Lebra’s family has faced numerous threats from the local police and others. As a last resort Lebra has petitioned the National Human Rights Commission.

The Indian government has introduced laws, in particular the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which is designed to protect *Dalits* and tribal people, including women, but has failed to implement them adequately. One study of 50 rape cases of *Dalit* women found that many sections of the Act had been ignored.¹²¹ Legal aid was not available, there was no provision for travelling expenses, and there was no economic or social rehabilitation for the victims. The study also pointed to excessive delays by police in filing charge sheets against those allegedly responsible for the violations. The failures have led to a widespread feeling of impunity among those committing abuses against tribal and *Dalit* women.

In many other parts of the world, basic minimum safeguards designed to protect women in custody are widely ignored. The UN Standard Minimum Rules for the Treatment of Prisoners, for instance, state that female prisoners should be attended and supervised only by female officers, and that male staff, such as doctors, should always be accompanied by female officers. Yet this simple principle is often not implemented.

In the USA male officers are allowed to supervise female inmates. Many of their duties greatly distress female inmates, such as body searches and surveillance while they are undressed. Such conditions make more likely serious abuses of human rights. Many women in US prisons and jails, particularly black and ethnic minority women, have been victims of rape and other sexual abuse, including sexually offensive and racist language, and the touching of breasts and genitals.

Elsewhere, migrant women workers are offered minimal protection by the state against abuses committed by their employers or police. In several Gulf states, such women work in slave-like conditions, suffering deprivation of liberty as well as verbal and physical abuse. Those who seek help from the police usually receive no help and on occasion suffer further abuses by officials.

Karsini binti Sandi, a 19-year-old Indonesian domestic worker in Saudi Arabia, told AI that she was assaulted by her employers and then abused and threatened with execution by police officers when she asked them for help. She eventually escaped and returned to Indonesia in January 2000. AI knows of no case where a proper investigation has been initiated by police in Saudi Arabia in response to the many allegations made by foreign domestic workers of assault or violence in the home. Such inaction amounts to state complicity in the abuse of foreign women.

In some countries that apply interpretations of Islamic law (*Shari’a*), women who belong to non-Muslim ethnic groups are at high risk of unfair trials and judicial corporal punishments for acts considered “immoral” by the state but not by their own culture or religion, such as drinking alcohol.

For example, 24 Nubian students in Khartoum, Sudan, were arrested on 13 June 1999 by security officials and public order police while attending a picnic, an annual event organized by the Nubian Students Association. They were held at the Moghran detention centre in Khartoum for eight hours. Several of the women reported being sexually harassed and abused by officials during detention. The following morning the group appeared in court charged with “committing indecent or immoral acts and wearing uniform which gave annoyances to public feelings”. The prosecution did not allege that the picnic was unauthorized, but based the charges on the fact that the women were wearing shirts, trousers and T-shirts (women’s dress is strictly defined in law) and that the traditional Nubian dance the students performed involved men and women holding hands. All 24 students were convicted and sentenced to between 15 and 40 lashes and a fine.

The examples above show how women from communities facing racial discrimination can find themselves doubly vulnerable to human rights abuses. Urgent action should be taken by governments to introduce special measures to protect such women from the wide range of abuses they continue to suffer.

Recommendations

AI calls on all governments to adopt national strategies and plans of action to combat all forms of racism and to include specific measures relating to the administration of justice. Representatives of affected groups, relevant NGOs and experts working on the issue of racism and the administration of justice, as well as relevant officials, should be involved in the process of designing such strategies and plans, which should contain measurable goals and monitoring mechanisms. AI calls on governments to take the following action:¹²²

- Ratify without reservations international human rights treaties, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, and cooperate fully with relevant international monitoring bodies on the implementation of measures taken against racism.
- Ensure that national laws prohibit all forms of discrimination and provide effective protection against racism.
- Identify and eliminate all forms of institutionalized racism, that is racism which resides overtly or covertly in policies, procedures, practices and culture of private or public institutions.
- Introduce recruitment policies and practices of state agencies that aim to reflect the diversity of their societies at all organizational levels.
- Offer protection against racist attacks and practices in society, such as by ensuring that law enforcement agencies act promptly and decisively to prevent and respond to all forms of racist attacks, and by bringing anyone responsible for racist abuses to justice.
- Racist behaviour by public officials should not be tolerated. The use of racist language by officials should be addressed with disciplinary and criminal measures.
- Programs for the selection, training and monitoring of justice officials involved in the administration of justice should include specific measures to ensure that in the performance of their duties their conduct is not in any way racist or discriminatory, either directly or indirectly. For this purpose cross-cultural awareness and anti-racism programs should be an essential element in the training of justice officials.
- Policing operations should be reviewed to ensure that they are not targeted in a discriminatory fashion.
- Allegations of racist abuses by justice officials should be effectively investigated, the complainants given protection against any form of intimidation, and any perpetrator brought to justice. Victims should receive full reparation.
- Trial procedures should ensure that members of minority groups are not discriminated against. Detainees should be informed in a language they understand of the reason for their detention, any charges against them, and be informed of their rights. They should receive an explanation of their rights, and how to exercise them. They should also receive effective legal assistance and, where appropriate, the assistance of a competent interpreter, free of charge, at all stages of their detention and trial proceedings, particularly during interrogation. Foreign nationals who so wish should have prompt and regular access to their diplomatic representatives.

- In countries where the death penalty is still imposed, a commission of inquiry should investigate any disproportionate impact on racial groups. In the absence of immediate measures to abolish the death penalty or commute the sentences of those condemned to death, a moratorium on executions should be imposed pending the outcome of such inquiries into racism in the application of the death penalty.
- Special instructions and training should be provided to public officials to recognize the specific protection needs of indigenous peoples. Authorities at all levels should ensure that any private bodies, such as commercial enterprises and international corporations, fully respect the rights of indigenous peoples, in particular by ensuring that they are not victims of discrimination.
- All countries should accede to and fully implement in a non-discriminatory manner the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The principle of *non-refoulement* must be scrupulously observed. Asylum-seekers should be informed of their rights, including the right to receive effective legal assistance and competent interpretation during questioning and throughout all stages of the asylum proceedings. Appropriate instructions and training should be given to officials involved in the determination of asylum claims to ensure they fully respect the rights of asylum-seekers and refugees.
- Governments should act promptly and decisively to prevent and respond to all forms of racist attacks and threats against the rights and security of asylum-seekers and refugees.
- Governments should recognize the special vulnerability of women who are members of indigenous communities or national, ethnic or racial minorities and take appropriate steps to protect them against human rights violations.
- Governments should ensure that children are protected from racial and other discrimination, including by implementing all the relevant international instruments regulating the treatment of children, particularly the Convention on the Rights of the Child.
- Governments should initiate and support campaigns aimed at mobilizing national public opinion against racism through effective programs in the mass media, publishing activities and research projects. Curricula and teaching methods should be reviewed in order to eliminate prejudices and racist attitudes, and negative stereotyping.
- Governments should initiate programs to celebrate and promote cultural and racial diversity.

ENDNOTES

- 1 UN Charter, Article 1, para 3.
- 2 In AI's definition, prisoners of conscience are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence. People who are imprisoned for having advocated national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, are not considered as prisoners of conscience by AI.
- 3 This report deals primarily with law enforcement agencies, referring to the military only when it is exercising a policing function, although noting that racist abuses are committed by military forces as well as armed opposition groups in situations of armed conflict.
- 4 For more details see Using the *international human rights system to combat racial discrimination: A handbook* (AI Index: IOR 80/001/2001).
- 5 *Barcelona Traction, Light and Power Ltd (Belgium v. Spain)*, 1970, ICJ Reports p.32.
- 6 Because this report is about racism and the administration of justice, this section deals only with discriminatory practices against Palestinians by the Israeli authorities. AI has produced many documents about human rights violations by the Palestinian authorities against both Israelis and Palestinians, but these fall outside the remit of this report.
- 7 *Justice For All? Jews and Arabs in the Israeli Criminal Justice System*, Arye Rattner and Gideon Fishman, Praeger Publishers, 1998, p.99.
- 8 *Legal Violations of Arab Minority Rights in Israel*, Adalah, Legal Centre for Arab Minority Rights in Israel, Israel.
- 9 *Justice For All?* op. cit. p. 120.
- 10 *Burundi: Acting on a deteriorating situation* (AI Index: AFR 16/31/99).

11 *Burundi: No respite without justice* (AI Index: AFR 16/12/99).

12 While agreeing that there should be a strong commitment to achieving a balanced representation of candidates from all ethnic groups and genders, AI expressed concern that accelerated training could lead to new officials not being adequately trained and that weaknesses within the judiciary could be perpetuated.

13 For example, a US Department of Justice review released in September 2000 found significant evidence of racial disparities in the application of the federal death penalty nationwide (The federal death penalty system: a statistical survey (1988-2000), US Department of Justice).

14 *University of Louisville, Race and the Death Penalty in Kentucky Murder Trials: 1975-1991*, Thomas J. Keil and Gennaro F. Vito, American Journal of Criminal Justice, Vol. 20, No. 1, 1995.

15 *Equal justice and the Death Penalty*, Baldus, Woodworth and Pulaski, Northeastern University Press, 1990.

16 Study by Professor David Baldus and George Woodworth, made public in June 1998.

17 *The Death Penalty in Black and White, Who Lives, Who Dies, Who Decides*, Death Penalty Information Center, USA.

18 AI Index: AMR 51/52/99.

19 USA: “*Not part of my sentence*” — *violations of the human rights of women in custody* (AI Index: AMR 51/19/99).

20 “*And Justice for Some*”, Eileen Poe-Yamagata and Michael A. Jones, National Council on Crime and Delinquency, San Francisco, April 2000.

21 UN Doc. CERD/C/351/Add.1 10 September 2000 (para 7 (j)).

22 *Punishment and Prejudice: Racial Disparities in the War on Drugs*, Human Rights Watch report, May 2000.

23 “*And Justice for Some*” op. cit.

24 *Equatorial Guinea: A country subject to terror and harassment* (AI Index: AFR 24/01/99).

25 In December 2000 the President pardoned 14 of the prisoners. AI considers most of those still in prison to be prisoners of conscience – held solely because of their ethnic origin.

26 Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

27 *Federal Republic of Germany: Failed by the system – police ill-treatment of foreigners* (AI Index: EUR 23/06/95), and *Federal Republic of Germany: Continuing pattern of police ill-treatment* (AI Index: EUR 23/04/97).

28 UN Doc. CERD/C/304/Add.24, 23 April 1997 (para 15).

29 UN Doc. A/53/44, 11 May 1998 (para 188).

30 UN Doc. A/53/44, 11 May 1998 (para 192).

31 UN Doc. CERD/C/58/Misc.21/Rev.4, March 2001 (para 11).

32 *Polizeiübergrieffe: Polizeigewalt als Ausnahme und Regel, in Bürgerrechte & Polizei* *Cilip* 67 Norbert Pütter, March 2000 p.7.

33 Visar’s full name is known to AI but held back upon request.

34 *Switzerland: Alleged Ill-Treatment by Geneva Police – the cases of “Visar” and Clement Nwankwo* (AI Index: EUR 43/03/99).

35 *Concerns in Europe: January to June 2000* (AI Index: EUR 01/03/00).

36 *Brazil: Indigenous leaders marked for death* (AI Index: AMR 19/15/98).

37 *Guatemala: Breaking the wall of impunity — prosecution for crimes against humanity* (AI Index: AMR 34/20/00).

38 *The Stephen Lawrence Inquiry*, Sir William Macpherson, February 1999, The Stationery Office.

39 *Concerns in Europe: January to June 2000* (AI Index: EUR 01/03/00)

40 CERD/C/57/CRP.3/Add.9.

41 UN Doc. CERD/54/Misc.32/Rev.3.

42 Statement by the Libyan representative at the 28th Ordinary Session of the African Commission on Human and Peoples’ Rights in October 2000.

43 The ICTR Prosecution has recently indicated that it is actively investigating some RPF soldiers who are alleged to have committed crimes within the Tribunal's jurisdiction.

44 *Kenya: Political violence spirals*, June 1998 (AI Index: AFR 32/19/98).

45 *Sudan: The tears of orphans – no future without human rights* (AI Index: AFR 54/02/95).

46 *Russian Federation: Chechnya – for the motherland* (AI Index: EUR 46/46/99).

47 UN Doc. CCPR/C/79/Add.54, para 23, 26 July 1995.

48 *Federal Republic of Yugoslavia (Kosovo): Update from the field* (AI Index: EUR 70/02/00).

49 *Turkey: The colours of their clothes* (AI Index: EUR 44/85/97).

50 Articles 38 and 39 of the Lausanne Treaty (agreed on 24 July 1923 subsequent to Turkey's War of Independence and prior to the proclamation of the Republic on 29 October 1923) introduced minority rights. Yet the Turkish authorities have interpreted these rights as solely pertaining to the Christian and Jewish minorities and not encompassing ethnic groups of Islamic belief. The concept of the Turkish nation since the foundation of the Republic was described by the then Secretary General of the state party CHP Pecep Peker: "We consider as ours all those of our citizens who live among us, who belong politically and socially to the Turkish nation and among whom ideas and feelings such as 'Kurdism', 'Circassianism' and even 'Lazism' and 'Pomakism' have been implanted. We deem it our duty to banish, by sincere efforts, those false conceptions... The scientific truth of today does not allow an independent existence for a nation of several hundred thousand, or even a million individuals."

51 Turkey is upholding its reservation to Articles 17, 29 and 30 of the Convention on the Rights of the Child which contain references to rights of minorities.

52 *Turkey: Dissident voices jailed again* (AI Index: EUR 44/45/94).

53 *Turkey: "Creating a silent society" – Turkish government prepares to imprison leading human rights defender* (AI Index: EUR 44/05/99).

54 *Turkey: Death sentence after unfair trial – the case of Abdullah Öcalan* (AI Index: EUR 44/40/99).

55 *Turkey: Torture – a major concern in 1999* (AI Index: EUR 44/18/00).

56 *Israel and the Occupied Territories: Excessive use of lethal force* (AI Index: MDE 15/41/00).

57 More than 70 Israelis were killed and about 800 injured in the same period by bombs, drive-by shootings and other targeted or random killings.

58 There are an estimated 1 million Palestinians in the Gaza Strip, 1.5 million in the West Bank and Jerusalem, and 920,000 inside Israel.

59 Principle 15 of the UN Body of Principles states that the communication of a detainee with the outside world, in particular their family and counsel, should not be delayed for more than a matter of days. The UN Special Rapporteur on torture has emphasized the role of incommunicado detention in facilitating torture (E/CN.4/1995/34 pg 173, para 926(d)).

60 UN Doc. CERD/C/304/Add.45, para 16.

61 *Escaping Responsibility: The Response of the Israeli Military Justice System to Complaints against Soldiers by Palestinians*, November 1997, HaMoked.

62 *Iraq: The need for further UN action to protect human rights* (AI Index: MDE 14/06/91).

63 *Ethnicity and nationality: Refugees in Asia, October 1997* (AI Index: ASA 01/01/97).

64 UN Doc. CERD/C/304/Add.15, 27 September 1996.

65 Institute of Race Relations United Kingdom.

66 *Concerns in Europe: January to June 2000* (AI Index: EUR 01/03/00).

67 *Austria before the UN Committee against Torture: Allegations of police ill-treatment* (AI Index: EUR 13/01/00).

68 *Switzerland: Alleged ill-treatment of a 17-year-old Angolan by Geneva Police* (AI Index: EUR 43/04/00).

69 The real name of "Didier" is known to AI and has been held back upon request.

70 UN Doc. CERD/C/304/Add.4.

71 ECRI Doc. CRI (2000) 6. Second Report on Switzerland.

72 *Belgium: The alleged ill-treatment of Charles Otu by law enforcement officers* (AI Index: EUR 14/06/00).

73. *égaux & reconnus, bilan 1993-1999 et perspectives de la politique des immigrés et de la lutte contre le racisme*, centre pour l'égalité des chances et la lutte contre racisme.
74. ECRI Doc. CRI (2000) 2. Second report on Belgium.
75. The information on the situation of Roma in various countries in Europe is not meant to be a comprehensive review. The examples included here are intended to illustrate the widespread discrimination faced by Roma in the region, and certain patterns of human rights abuse and lack of protection by the state that they suffer.
76. According to Minority Rights Group (MRG), the official Roma populations are as follows, with MRG figures in brackets: Albania 1,261 (90,000-100,000); Bulgaria 313,396 (700,000-800,000); Bosnia-Herzegovina 9,092 (40,000-50,000); Czech Republic 33,489 (250,000-300,000); Hungary 143,000 (550,000-600,000); Macedonia 44,000 (220,000-260,000); Romania 409,700 (1.8m-2.5m); Russian Federation 152,939 (220,000-400,000); Slovakia 83,988 (480,000-520,000); Federal Republic of Yugoslavia 143,519 (400,000-450,000). The total figures across Europe are officially around 2.5m, unofficially between 6m and 8.5m.
77. See past AI reports on Bulgaria, including *Torture and ill-treatment of Roma* (AI Index: EUR 15/04/94) and *Turning a blind eye to racism* (AI Index: EUR 15/04/94).
78. *Romania: Continuing violations of human rights* (AI Index: EUR 39/07/93).
79. *Romania: Broken commitments to human rights* (AI Index: EUR 39/01/95).
80. *Concerns in Europe: July to December 1999* (AI Index EUR 01/01/00)
81. *Amnesty International Report 2000* (AI Index: POL 10/01/00).
82. *Concerns in Europe: July to December 1999* (AI Index: EUR 01/01/00).
83. *ibid.*
84. *Slovak Republic: Reported ill-treatment of Roma by police officers* (AI Index: EUR 72/01/99).
85. *Concerns in Europe: January to June 2000* (AI Index: EUR 01/03/00).
86. *ibid.*
87. *ibid.*
88. *The Chicago Reporter*, March 1999.
89. The Constitution of the Republic of South Africa, 1996, Section 9 (1), (3) and (4).
90. Act No. 4 of 2000.
91. Christian Solidarity International, the NGO which became controversial for buying back slaves from their owners, claims that they have helped to "redeem" more than 30,000 slaves since 1995. See CSI press release, "4,968 Sudanese Slaves Freed by CSI", 21 March 2000.
92. According to official estimations by CEAWC.
93. According to Christian Solidarity International and Christian Solidarity Worldwide.
94. *World Directory of Minorities*, Ed. Minority Rights Group International, 1997.
95. UN Doc. CERD/C/298/Add.1.
96. *Honduras: Justice fails indigenous people* (AI Index: AMR 37/10/99).
97. *Brazil: Fear for safety* (AI Index: AMR 19/09/00).
98. Human Rights and Equal Opportunities Commission, *Social Justice Reports for 1999 and 2000* of the Aboriginal and Torres Strait Islander Social Justice Commissioner.
99. UN Doc. CERD/C/304/Add 101.
100. "Deaths in Custody: 10 Years on from the Royal Commission"
101. Principle 14 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
102. *Japan: Ill-treatment of foreigners in detention* (AI Index: ASA 22/09/97).
103. In 1952 the Japanese nationality was taken away from people of Korean origin. Hundreds of thousands of Koreans had been transported to Japan during the Japanese colonization of Korea (1910-1945). Today, there are more than 600,000 such people in Japan and they are still considered as legal aliens.
104. For more details on this system, see *Japan: Ill-treatment of foreigners* (AI Index: ASA 22/09/97)

- 105 This violates Japan's commitments as a state party to the UN Vienna Convention on Consular Relations.
- 106 *Russian Federation: Failure to protect asylum seekers* (AI Index: EUR 46/03/97).
- 107 ECRI Doc. CRI (2001) 6. Second Report on the United Kingdom.
- 108 ECRI Doc. CRI (2001) 3. Second Report on Austria.
- 109 UN Doc. A/55/44, 12 November 1999 (paras 49-50).
- 110 The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in its 7th General Report published in 1997, "recognises that it will often be a difficult task to enforce an expulsion order in respect of a foreign national who is determined to stay on a State's territory. Law enforcement officials may on occasion have to use force in order to effect such a removal. However, the force used should be no more than is reasonably necessary. It would, in particular, be entirely unacceptable for a person subject to an expulsion order to be physically assaulted as a form of persuasion to board a means of transport or as a punishment for not having done so. Further, the Committee must emphasise that to gag a person is a highly dangerous measure."
- 111 *Concerns in Europe: January to June 2000* (AI Index: EUR 01/03/00)
- 112 *ibid.*
- 113 *ibid.*
- 114 *Lindela at the Crossroads for Detention and Repatriation*, South African Human Rights Commission, December 2000; *Illegal? Report on the Arrest and Detention of Persons in Terms of the Aliens Control Act*, South African Human Rights Commission, March 1999; *Xenophobia – the new racism*, Human Rights Committee of South Africa, August 2000; *Amnesty International Reports 2000 and 2001*; "Prohibited Persons" – *Abuse of Undocumented Migrants, Asylum-seekers, and Refugees in South Africa*, Human Rights Watch, March 1998.
- 115 Lawyers for Human Rights, *Botshabelo*, April-June 1999, vol 2 (2), p7.
- 116 *Great Lakes Region: Refugees denied protection* (AI Index: AFR 02/02/00).
- 117 *Kenya: Violations of human rights* (AI Index: AFR 32/27/97).
- 118 General Recommendation No. 19.
- 119 *Indonesia: Paying the price for stability* (AI Index: ASA 21/12/98).
- 120 UN Doc. E/CN.4 1999/68/Add.3.
- 121 A report prepared for the Scheduled Caste Development Wing of the Ministry of Welfare, Government of India, by the Multiple Action Research Group, 1995.
- 122 For more extensive and detailed recommendations, see *Amnesty International's recommendations to governments for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance* (AI Index: IOR 41/002/2001).

WHAT YOU CAN DO

- Add your voice to Amnesty International's work against racism in the administration of justice. Contact your national Amnesty International office to find out how to get involved.
- Urge your government to take the following action:
 - adopt national strategies and plans of action to combat all forms of racism, including specific measures relating to the administration of justice
 - ratify without reservations international human rights treaties, particularly the International Convention on the Elimination of All forms of Racial Discrimination, and cooperate fully with relevant monitoring bodies
 - implement the recommendations spelt out in the concluding chapter of this report
- Join our campaign against torture – **Take a step to stamp out torture** – and help us to make difference. Register at www.stop torture.org and campaign online.

- Become a member of Amnesty International
- Make a donation to support Amnesty International's work
- * I would like to join your campaign against torture. Please send me more information.
- * I would like to join Amnesty International. Please send me details.
- * I would like to donate to Amnesty International's campaign to stamp out torture.

Credit card number:

Expiry date / £ [amount]

Signature

Name

Address

Please photocopy this coupon and send it to:
 Amnesty International, International Secretariat, Campaign against Torture,
 1 Easton Street, London WC1X 0DW, United Kingdom

[Captions]

Cover: Vigil held in Vienna, Austria, May 2000, on the first anniversary of the death of Marcus Omofuma, a Nigerian national who died on board a plane while being forcibly deported from Austria.
 © Semotan

Massacre at Rukara Church, eastern Rwanda, during the genocide in 1994. © Stephen Dupont

Many people around the world suffer from a combination of different forms of discrimination. Frederick Mason, pictured above, a 31-year-old nurse's assistant, was arrested in Chicago, USA, in July 2000 and taken to a police station. He testified that he was subjected to abuse — including racist and anti-gay insults such as “nigger fag” — from the moment he was arrested. By the time he was released, blood was streaming from his rectum. He said that two unidentified police officers had taken him to the interrogation room where he was handcuffed by the elbows, and pinned to a wall. The arresting officer then reportedly pulled down Frederick Mason's pants and sprayed blue cleaning liquid on a baton before ramming it into his rectum. As he sodomized Frederick Mason, the officer is alleged have hurled homophobic insults at him. © Windy City Times/www.wctimes.com

The last photograph taken of Asil 'Asleh, a 17-year-old Palestinian citizen of Israel, seen here with his cousin's daughter. Asil 'Asleh was killed along with another young man in his village of Arrabeh in Israel on 2 October 2000 when Israeli police, army and special forces fired rubber-coated metal bullets and live ammunition to break up a demonstration. The demonstrators were protesting at recent killings by Israeli security services of more than 20 Palestinians at demonstrations and riots throughout Israel and the Occupied Territories. Witnesses said they saw Asil 'Asleh being chased and beaten to the ground by security forces and then shot in the neck at close range.

Asil 'Asleh was an active member of “Seeds of Peace”, an international group which worked for Jewish-Arab friendship. © www.slider17.com

[BOX PIC CAPTION]

An elderly Indo-Fijian couple outside their home in Fiji, which had been attacked and ransacked during violence targeted at Indo-Fijians that followed an attempted coup attempt on 19 May 2000. During and after the coup crisis, there were reports of police complicity in some of the many attacks on Indo-Fijians and of widespread beatings, rapes and hostage-taking by indigenous Fijians. The authorities subsequently failed to cooperate with the new Fiji Human Rights Commission which investigated more than 120 complaints received following the coup attempt.

At least a thousand Indo-Fijians were internally displaced or made homeless as a result of the violence, and thousands were forced to leave leased properties. By November 2000 all indigenous Fijians arrested for violence against Indo-Fijians had been released and no one was known to have been convicted of any coup-related human rights violations. © Private

[end box]

One of the members of the Bubi ethnic group from Bioko Island, Equatorial Guinea, who appeared in court with visible signs of torture — part of his ear had been cut off. © Gervasio Sanchez

Francisco de Assis Araújo, an indigenous leader known as “Chicão”, who was killed in Pernambuco state, Brazil, in May 1998, by a gunman. © Private

February 1999: white paint covers part of the memorial plaque for black teenager Stephen Lawrence, who was killed in a racist attack on 22 April 1993 in southeast London. The plaque was defaced only hours after the release of the Lawrence report which accused the police of institutional racism and incompetence in handling the murder inquiry. © Russell Boyce/Reuters

Women fleeing conflict around oilfields in southern Sudan. © Video still from Damien Lewis. Oil 1999

Leyla Zana © AI

Six of the young Kurds who appeared in court (see following page) © AI

[Box text]

Kurdish children on trial

Twenty-nine young people, among them 24 children, were arrested in Turkey on 8 January, accused of chanting slogans for the Kurdistan Workers’ Party (PKK). They were allegedly beaten and ill-treated, detained in cruel, inhuman or degrading conditions, and remanded to an adult prison. Thirteen of them have been put on trial.

According to reports, Anti-Terror Branch police arrived in Viranehir in the southeastern province of Urfa at around 7.30pm. They arrested a group of children, beating them as they did so. Police raided other homes in the town the next morning, beating and arresting more children and their parents. The parents were released after a few hours, but a total of 29 children and young men were detained at Police Headquarters. The children later told lawyers that they were ill-treated, threatened and verbally abused.

The police reportedly made them sign documents, which none of them fully understood and at least some could not read. None of the detainees was given access to a lawyer.

The 29 were brought before a prosecutor and a judge on 9 January. Twenty-eight of them were remanded to Viranehir Closed Prison where some of them were held with adults. On 15 January they were transferred to Urfa Prison. After appeals by their lawyers and international campaigning, 22 were released, but six remained in prison. They were only freed on 15 February 2001.

Thirteen children, one of them reportedly only nine years old*, are being tried on charges of having “supported the illegal organization PKK and facilitating their activities by participating in an unpermitted demonstration in protest against the F-type prisons [prisons with isolation cells] and applauding and shouting slogans in favour of the PKK”.

The only evidence against them are “confessions” which might have been elicited under ill-treatment or coercion. In the trial the children did not accept the statements they had given immediately after their arrest, saying that these had been taken under duress.

It appears that the children may have been arrested and prosecuted solely on the basis of their Kurdish identity. All the charges against them should be dropped immediately. Their trial is an indication of the discriminatory judicial practices suffered by Kurds in Turkey. If they are convicted, they should be immediately released as they would be prisoners of conscience.

*According to official documents, the youngest boy was 11 years old, but his actual birth date was reported as 1991.

Karen refugee and child from Myanmar © Ben Bohane

[box pic text]

Ethnic Nepalese in Bhutan

Around 100,000 people from the south of Bhutan, all members of one ethnic group, have left or been forced to leave their country as a result of human rights violations and a policy of denying them citizenship and promoting “national integration” on the basis of the northern Bhutanese traditions and culture.

The persecution of ethnic Nepalese in Bhutan intensified in the late 1980s after they started protesting against measures such as new citizenship rules drawn up to exclude many of the Nepali-speaking population and the imposition of measures such as the wearing of Bhutanese national dress. One of the tactics used to force people to leave the country was to arrest and torture or ill-treat prominent members of the community, apparently to intimidate them and others in their family and community into fleeing abroad. Torture methods frequently reported included beatings with bamboo canes, wooden sticks, iron rods, electric wire, rifle butts, bayonets and thorn branches. Prisoners were suspended upside down and had the soles and sides of their feet beaten. Several women were raped.

Today, the remaining ethnic Nepalese in Bhutan are still discriminated against. They are often refused a “security clearance certificate” — a document required to apply for work, business licences, travel abroad or access to education — on the basis that the applicant had contact with the people from southern Bhutan living in the refugee camps in Nepal, who are called “anti-nationals” by the Bhutanese authorities.

[end box]

A painting by Janga Bahadur Tamang, a young Nepali-speaking man from southern Bhutan who has been living in Timai refugee camp, Nepal. © Private

[box pic text]

Tsvetalin Perov, a 16-year-old Roma boy, is recovering from severe burns. It appears that his horrific injuries were deliberately inflicted by police in Bulgaria. He was arrested in Vidin on 29 April 2000 on suspicion of theft, taken to the police station and interrogated. Less than two hours later he was taken to hospital. He had third-degree burns to 15 per cent of his body, some so deep he needed skin grafts.

After his release from hospital, Tsvetalin told the non-governmental organization “Drom” that he had been locked in a room at the police station with a police officer who punched and kicked him, knocking him unconscious. The next thing he remembers is being woken up by the pain of burning.

The police only initiated an investigation when Drom and a local journalist publicized the case. Police subsequently claimed that Tsvetalin set fire to himself, yet inconsistencies in their account and the unexplained disappearance of material evidence, including the charred clothes, leave this claim open to question.

Tsvetalin had been repeatedly arrested by police over the previous six or seven years. On several occasions he was allegedly ill-treated, sometimes returning home, according to relatives, with his clothes covered in blood. In October 1998 Drom filed a complaint to the district prosecutor’s office

about alleged ill-treatment of Tsvetalin by police. Tsvetalin is illiterate, an epileptic and has frequently needed hospital treatment after suffering fits. © AI photo courtesy of Vanya Stavre

[end box]

[box pic text]

Laxman Singh, a *Dalit*, seen recovering in hospital. He was attacked on 23 October 2000 in the village of Guthakar in Rajasthan, India, by six men. His assailants left him for dead and then told the police they had killed him. The police found him and took him to hospital, where his attackers reportedly gave money to a doctor to falsify the medical records and told him that it did not matter if Laxman Singh died. Laxman Singh was later transferred to another hospital, where doctors said that because of the poor treatment he had received his legs had developed gangrene and would have to be amputated.

The attack followed a long dispute in the village. In June 2000 Gujjar villagers began to put pressure on Laxman Singh's family to build them a house. Since they had received no payment for previous work, they refused. Several violent confrontations followed. Local police officials — of a similar caste to the Gujjars — ignored the family's complaints and verbally abused the *Dalits* for daring to file a complaint. Even after a complaint was finally filed in early October, through the intervention of a local *Dalit* representative, no protection was offered to the family.

After the 23 October attack, three Gujjar men were arrested and charged with offences including murder, despite several failings in the police investigation. When the accused were brought before a magistrate, they warned villagers that if Laxman Singh and his family did not compromise they would be killed. The three accused were released on bail in January 2001. On 13 December 2000 the authorities had reportedly promised to pay compensation to Laxman Singh and his family. The family continued to receive threats, forcing them to leave the village. The harassment has been extended to other members of the family and those defending Laxman Singh. © AI

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Cándido Amador Recinos, General Secretary of the Advisory Committee to Honduran Indigenous Groups, was killed on 12 April 1997 in Copán Ruinas, Department of Copán, Honduras. He was a member of the Chortis and had been involved for many years in the struggle to obtain lands for indigenous groups and improve living conditions.

His body was found on the side of a road riddled with bullet wounds and injuries from a knife or machete. There were reports that many cigarette butts had been found near where he was killed, suggesting his attackers had been waiting for him.

Cándido Amador Recinos had received many threats, including one shortly before his death. Indigenous peoples' organizations claimed that those responsible for his murder were landowners attempting to stop his efforts to recover lands for indigenous people. Family members strongly rejected the suggestion by the Public Security Force that he had been killed during a robbery, saying the only thing stolen from him was a rucksack containing documents relating to his campaigning.

An investigation into the killing was initiated by the Directorate of Criminal Investigations and the Public Security Force. However, no one has yet been held to account for the killing of Cándido Amador Recinos. © Private

[end box]

A meeting on indigenous rights held in Santiago Xanica, Oaxaca state, Mexico, February 2000.

© Private

Aboriginal prisoners in Australia, 1988 © Private

Marcus Omofuma © Private

Karsini binti Sandi © AI

1 According to official documents, the youngest boy is 11 years old, but his actual birth date was reported as 1991.

