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Updates from the Regional Human Rights Systems

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UPDATES FROM THE REGIONAL HUMAN RIGHTS SYSTEMS

Inter-American System

Inter-American Court of Human Rights Rules against Panama for Torture and Wrongful Detention of Ecuadorian Migrant

In November 2010, the Inter-American Court of Human Rights (Court) ruled against Panama in its first case addressing the vulnerability of irregular and undocumented migrants. The decision in *Vélez Loor v. Panama* came seven years after the Court issued an advisory opinion on the rights of undocumented migrants. The opinion concluded that all migrants, irrespective of migratory status, must be guaranteed due process of law and full "enjoyment and exercise of human rights." The advisory opinion also stipulated that states must affirmatively act to avoid limiting or infringing on the fundamental rights of migrants.

In November 2002, Panamanian police arrested Jesús Vélez Loor, an Ecuadorian national, for entering the country without appropriate documentation. He was subsequently transferred to a detention facility and sentenced, without legal representation or awareness of the proceedings against him, to two years imprisonment for entering Panama illegally multiple times. Vélez Loor testified to the Court that while imprisoned, he was subjected to tear gas, burns, sexual abuse, and beatings resulting in a cracked skull. Desperate to ameliorate his situation, Vélez Loor started a hunger strike and partially sewed his mouth shut. After Vélez Loor had endured deplorable conditions and abusive treatment for ten months, the Ecuadorian Consulate and Panamanian immigration authorities arranged his deportation, sending him back to Ecuador in September 2003. Although he reported his torture and the Panamanian Office of Foreign Affairs initiated an investigation, Panama made no further efforts to investigate Vélez Loor's abuse. Vélez Loor, still suffering medical and psychological trauma as a result of his torture and prolonged detention, continues to speak out about the severe violation of his rights in the hopes that what happened to him "never happens to anyone else again." More information on his story can be found on his blog at http://jessloor.wordpress.com/.

In *Vélez Loor*, the Court found that Panama violated the petitioner's rights to humane treatment (Article 5), personal liberty (Article 7), judicial protection (Article 25), and fair trial (Article 8) under the Inter-American Convention on Human Rights (Convention). It also found that Panama violated Vélez Loor's rights under the Inter-American Convention to Prevent and Punish Torture. Additionally, the Court ruled that Article 67 of Panama's 1960 Decree Law No. 16, which allows punitive sanctions for violations of migration laws, is incompatible with the Convention when used as a basis for arbitrary incarceration. Rather, the Court held that states should only detain migrants sparingly and on an exceptional basis, for the shortest time and least restrictive means possible. Moreover, if an administrative body orders detention, a judge or tribunal must be able to review the decision and the detained migrant must be able to contact and receive help from his country's consulate.

The decision indicates the Inter-American System's intolerance of discriminatory, abusive, and punitive treatment of undocumented migrants as part of states' broader attempts to curb illegal migration. With more than 214 million migrants worldwide and estimates of upwards of 400 million in the year 2050, increased attention to treatment of migrants and reform of broken immigration systems will be crucial. In *Vélez Loor*, the Court ordered Panama to pay monetary reparations to Vélez Loor, further investigate his allegations of torture, implement capacity-building measures for officials to enhance the investigation of torture claims, and provide appropriate detention facilities for those migrants it determines require state custody. Given that approximately one-third of Court judgments handed down since 2009 have involved claims of torture, the ruling is further evidence that torture is an issue of continuing concern for the Inter-American System. Additionally, the judgment recognizes the vulnerability of irregular and undocumented migrants and the unacceptability of deprivation of liberty and detention of undocumented migrants as a systematic practice, rather than an exceptional one exercised on a case-by-case basis. Finally, the decision reflects the Court's general preoccupation with poor prison conditions, particularly extensive overcrowding, inadequate sanitation facilities, and poor health care, which are incompatible with the Inter-American System's human rights framework.

Inter-American Court Receives Case about Military Jurisdiction in Human Rights Cases and Discrimination against Haitians and Dominicans of Haitian Descent

In February 2011, the Inter-American Commission on Human Rights (Commission) submitted the case of *Nadege Dorzema et al ("Guayubín Massacre") v. Dominican Republic* to the Inter-American Court of Human Rights (Court) for adjudication. The case involves the alleged murder of six Haitian migrants and one Dominican by members of the Dominican Border Intelligence Operations Department, which is part of the Armed Forces. The victims allege they were travelling by truck to Santiago de los Caballeros in the Dominican Republic on the day of the binational market when soldiers began firing on them with M16 rifles. The petitioners allege that, although the migrants' vehicle overturned because the driver had been shot and killed, the soldiers continued to fire at them as they attempted to flee by foot. The State claims that the soldiers shot at the truck's tires because it ran through a military checkpoint, and the soldiers believed they were transporting drugs.

Although the petitioners requested that the case be tried in the civilian court system, the soldiers were tried in military courts. The petitioners allege that the military court disallowed the presence of victims and their families at court proceedings. After several years, the military court acquitted the soldiers. The petitioners also allege that Dominican authorities arbitrarily detained and then expelled some of the victims from the Dominican

Republic without explaining the reason for their detention or investigating their migration status through judicial or administrative means. The petitioners allege that the Dominican Republic violated their rights protected by the American Convention on Human Rights, including the rights to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), fair trial (Article 8), equal protection (Article 24), and judicial protection (Article 25).

The Commission noted in its admissibility report that it "has repeatedly found that the military courts are not an appropriate forum" for investigating, prosecuting, and punishing potential human rights violations perpetrated by members of the military. The Commission's concern regarding this issue is further evidenced by the hearing it held during its 140th Period of Sessions on the application of military jurisdiction in cases of human rights violations in Colombia. Moreover, the Court recently ruled in two cases that Mexico improperly used its military courts to investigate and prosecute civilian rape allegations against Mexican military members. In another case against Mexico, the Court similarly found that the use of military jurisdiction in human rights cases is contrary to the American Convention on Human Rights. Furthermore, in cases against Colombia, Peru, and Chile, the Court has repeatedly held that military courts should only have jurisdiction over crimes or offenses impacting the military's legal interests, specifically the functions the law assigns to the military.

Aside from the recurring theme of the impropriety of military jurisdiction in human rights cases, the submission of this case to the Court additionally makes clear the Inter-American system's great concern with mistreatment of Haitians and Dominicans of Haitian descent in the Dominican Republic. Of the six petitions against the Dominican Republic submitted to the Commission, the last three involved the forced expulsion of and discrimination towards Haitians or Dominicans of Haitian descent. In its 141st Period of Sessions, the Commission heard from the Dominican Republic on modification of its Civil Register. Though the Civil Register system has received significant criticism for allegedly rendering stateless thousands of children of Haitian ancestry born in the Dominican Republic, the state emphatically stated that it does not have a policy of discrimination based on race or national origin. Moreover, the Commission heard from various civil society organizations at a similar hearing on the Dominican Constitution and right to nationality during its 140th Period of Sessions in October 2010.

Both hearings follow the 2005 ruling on *Yean and Bosico v. Dominican Republic*. In *Yean and Bosico,* the Court held that withholding birth certificates from two girls born in the Dominican Republic to Dominican women of Haitian descent, thereby leaving them stateless, was a violation of their rights under the American Convention. It also found that the withholding of birth certificates runs contrary to the Constitution of the Dominican Republic, which affords birthright citizenship to those born in the country, except the children of diplomats or individuals "in transit." Therefore the Court's decision on *Guayubín Massacre* will likely serve as further indication of Inter-American system pressure on the Dominican Republic to address the systemic discrimination towards those of Haitian ancestry.

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Commission Draws Attention to State-Sponsored Violence against Transgender Community

On January 20, 2011, the Inter-American Commission on Human Rights expressed concern over incomplete investigations of the deaths of seven transgender individuals in the last two months. Violence against the transgender community has increased in Honduras resulting in 34 deaths since June 2009. The increase in violence coincided with the Organization of American States General Assembly's unanimous adoption of the *Resolution on Human Rights, Sexual Orientation, and Gender Identity*, a resolution urging Member States to end violence based on gender identity. This obligation is also found in the guarantees to life, liberty, and security of the person within the American Declaration of the Rights and Duties of Man. Although the Commission has started addressing wide-spread discrimination against the transgender community through various means including the Resolution, there is not yet an admissibility decision finding the violence and discrimination to be a violation of State obligations.

Recent reports from the Commission and Human Rights Watch show widespread discrimination, violence, harassment, and beatings by state and private actors. The Commission observed heightened murder rates and greater threats to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community leaders following the *coup d'etat* in Honduras. In 2009, Human Rights Watch found that transgender people are often mistreated by family members and have trouble finding work. Human Rights Watch also documented a disproportionate amount of violence directed at male-to-female transgender individuals, a gender identity known as *travesti* in Latin America. The one female-to-male transgender individual interviewed for the report claimed to have no difficulties with the police.

As a means of addressing the violence, the Commission granted precautionary measures in 2008 and 2010 for Honduran transgender community leaders threatened with violence. In addition to threats and harassment directed at community leaders, the 2008 precautionary measures cited 27 deaths of transgender individuals as their justification. The 2010 precautionary measures indicated increased aggression towards community leaders. In one case, a police officer and two other men stabbed a transgender individual seventeen times after she refused to perform sexual services they had demanded at gunpoint.

In addition to precautionary measures, the Commission facilitated hearings to discuss systemic violence against transgender communities in other countries. In November 2009, the Commission granted several Colombian LGBTI NGOs a hearing to discuss discrimination the LGBTI community has experienced. This hearing represented one of the first times the Commission directly addressed issues of systemic discrimination against LGBTI individuals. The Commission acknowledged Colombia's progress, including the publication of documents highlighting resources for the LGBTI community, and educating youth on LGBTI rights. Civil society representatives indicated that the progress made was superficial and that they would only regard ending impunity through the admission of LGBTI cases in domestic courts as progress. In October

2010, Brazilian civil society groups reported to the Commission that murders of transgender individuals had increased 22 percent from the previous year, to 72 murders in 2009. In 2010, 74 transgender persons had been murdered as of October.

In the recent press release regarding Honduras, the Commission recommended that the Government of Honduras prevent crimes against the transgender community. In addition, the Commission urged Honduras to investigate and punish crimes committed against transgender individuals. Impunity not only creates a sense of defenselessness within a community, but is also contrary to state obligations under the American Declaration.

Several domestic laws within Honduras provide broad discretion to police. One example is Article 142(9) of the Police and Social Coexistence Law, which allows police to arrest anyone who "goes against modesty, proper conduct and public morals," terms that are not defined by statute or jurisprudence. According to Human Rights Watch, police use such laws to justify their harassment of transgender people.

Although the Commission has addressed discrimination against transgender individuals through precautionary measures and press releases, it has not yet issued an admissibility report on a case involving discrimination against a transgender individual or individuals. The European Court of Human Rights has decided several cases regarding the rights of transgender individuals, and in the recently resolved case *Foy v. An t-Ard Chláraitheoir*, the Court said that the failure of Ireland to recognize the post-operative sex of a transgender person was incompatible with privacy guarantees in Article 8 of the European Convention on Human Rights.

The Commission's decision in *Atala v. Chile* laid the framework for battling institutionalized discrimination within the Inter-American system. As the first LGBTI case that the Commission decided on the merits, the Commission held that a state cannot discriminate against individuals based on their sexual orientation. Most notably, the Commission found that the Chilean government's discrimination against Atala based on her sexual orientation was a violation of equal protection under the law, a fundamental standard enshrined in Article 24 of the American Convention on Human Rights. This decision paved the way for equal protection cases for all LGBTI issues including discrimination against transgender people.

Petitions submitted to the Commission must name individual victims, which makes it difficult and in some instances impossible to bring a collective action for an entire class of people. Individual cases of discrimination against transgender people, as they begin to receive greater attention from the Commission, may bring about reparations that benefit the community as a whole. Without receiving a petition, the Commission is limited to publicizing transgressions, holding hearings, and reporting on *in loco* visits.

Escalating Prison Violence in the Americas Draws Multi-Mechanism Focus

On March 16, 2011, the Inter-American Commission on Human Rights hosted a meeting of United Nations mechanisms to address prison conditions in the Americas. Participants included the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Chairperson of the UN Committee against Torture, the Vice-Chairperson of the UN Subcommittee on Prevention of Torture, and the head of the Americas Section of the UN Office of the High Commissioner for Human Rights. Their objective was to develop pathways for collaboration between the Inter-American system and the UN mechanisms to combat dire detention conditions and inhumane treatment in prisons. The meeting highlighted the magnitude of the prison crisis in the Americas.

Juan Mendez, who served as a Commissioner at the Inter-American Commission from 2000 to 2003, attended the meeting in his current capacity as the UN Special Rapporteur on Torture. He noted that the cycle of violence and brutality in prisons in the Americas stems, in part, from a prison culture that values prisoner privacy, which although positive in theory, opens the door for large-scale prisoner-led violence.

The Inter-American Commission prioritized addressing prison conditions in the Americas in 2004 when they established the Rapporteurship on Persons Deprived of Liberty in the Americas (Rapporteur). Despite the thematic Rapporteurship's focused attention, violent acts within prisons have necessitated a heightened focus on constructive solutions. Through targeted press releases, the Commission makes specific recommendations to improve prison systems. These publications empower civil society to mobilize for change.

The Commission published an unprecedented number of press releases in 2010, admonishing states for violence and deaths in their prisons. Press releases drew attention to particular violent incidents in the prison systems of Mexico, Uruguay, Brazil and Chile. The Rapporteur focused on El Salvador and Venezuela in recent years, using a combination of press releases, official request for information letters, and visits to detention centers, to combat the systemic practices and deficiencies that lead to prison violence.

Of the three recent Commission press releases regarding prison violence, two addressed violent clashes in Venezuelan prisons that resulted in the deaths of nine inmates. The first press release identified weapons, drug smuggling, and lax security as the underlying causes of prison violence. A practice known as "The Coliseum," a dispute-settling "fighting ring" organized by criminal gangs and observed by prison security, was the cause of the deaths cited in the second press release. In addition to demands that Venezuela comply with international standards of detention conditions, the Commission also recommended breaking up the criminal organizations in prisons that tend to be the cause of inter-prisoner violence.

Overcrowding also greatly contributes to prisoner-on-prisoner violence. In El Salvador, the Rapporteur found that the prison populations were more than 300 percent larger than prison capacity in 2010. In Venezuela in 2009, the overcrowding rate ranged from of 117.4 percent to 166.9 percent. Procedural delays and pre-trial incarceration contribute to overcrowding. In Venezuela, an estimated 14,144 of 20,947 of the 2008 population was still awaiting trial.

Cases of prison violence have also reached the Inter-American Court of Human Rights. The Court has ordered reparations including monetary awards and recommended investigation of crimes committed by state actors against prisoners. Reparations could result in changes to the overall structure of prison systems if implemented by states. However, as in *Miguel Castro-Castro Prison v. Perú*, the

most recent case related to prison violence before the Inter-American Court, most judgments address specific state-sanctioned incidents of violence. They do not, by contrast, undertake to correct the systemic and pervasive conditions that lead to prisoner-on-prisoner violence the Commission has observed.

In the Commission's 2010 report on Venezuela, it credited Venezuelan government with initiating several measures to combat overcrowding and procedural delays that result in the extended incarceration of those awaiting trial. Venezuela committed to create more prosecutor offices, build more prison facilities, establish a mechanism for pardoning offenders who meet certain criteria, and utilize extensive screening procedures to keep weapons from being smuggled into the prisons. However, many of these projects remain incomplete. By 2008, Venezuela had only opened one of the six proposed prisons and had only established two of the ten prosecutors' offices.

The Inter-American system and universal systems are paying much-needed attention to the prison crisis in 2011. Participants of the joint meeting between the Inter-American Commission and UN mechanisms proposed issuing a joint report on the subject. With continued attention on prison conditions through future Inter-American Commission country-reports and press releases, there is legitimate hope for curbing the most egregious offences in prisons.

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African Regional and Sub-Regional Human Rights Systems

Bringing Hissène Habré to Justice: Senegal to Create a Special Tribunal in Compliance with ECOWAS Court Judgment

Senegal has agreed to comply with a recent decision of the Court of Justice of the Economic Community of West African States (ECOWAS) by creating an *ad hoc* special tribunal to try former Chadian dictator Hissène Habré. This unforeseen move follows a meeting between the Senegalese Ministers of State and Justice and officials from the African Union (AU) to discuss the construction and operation of such a tribunal within the constraints of international funding. Habré faces charges of crimes against humanity, war crimes, and torture committed during his reign from 1982, when he seized power in Chad, until his 1990 overthrow and flight to Senegal, where he currently resides.

Senegal has encountered both political and legal obstacles to holding the former dictator accountable, and its posture has until recently suggested mounting frustration. Its current move is thus a positive development for survivors of the Habré regime, including the family members of more than 40,000 individuals who died in prison or were executed at the hands of Habré's feared Documentation and Security Directorate forces, as well as countless others who were systematically tortured in detention. Senegal's decision also seems to reflect increasing respect for the ECOWAS Court on human rights issues and the AU's insistence that the continent create its own avenues to justice rather than cede Habré's prosecution to the courts in Belgium, where survivors had filed similar charges.

In its November 2010 judgment, the ECOWAS Court held that Hissène Habré could only receive a fair trial in Senegal before a special *ad hoc* tribunal specializing in international criminal law, rather than before its national court system. According to the Court, prosecution in the national courts would violate the prohibition of retroactivity under Article 15 of the International Covenant on Civil and Political Rights (ICCPR) — to which Senegal is party — as well as Senegal's own constitution. The penal and constitutional amendments necessary to establish universal jurisdiction in Senegal's national courts were not part of Senegalese domestic law at the time of Habré's rule. However, because the crimes alleged were regarded as such under international law at the time, Habré may be prosecuted provided the presiding judicial body is a specialized international *ad hoc* tribunal.

Soon after the ECOWAS judgment, international donors pledged nearly U.S. $12 million to finance the trial, and the AU signaled its support in a corresponding Resolution. Yet, Senegalese President Abdoulaye Wade continued to resist, saying that he had "had enough" and was "handing the Habre dossier back to the African Union." Although Belgium remained prepared to prosecute Habré under its universal jurisdiction law, extradition to Belgium would have meant opportunity lost for Africa to take the lead in prosecuting one of its own.

Senegal's about-face decision to host an *ad hoc* tribunal keeps Habré's prosecution within Africa, rather than removing it to a forum so distant as to disrupt any real connection to survivors and their families. This is in contrast to the Special Court for Sierra Leone (SCSL), which lost some legitimacy when it opted to conduct its highest profile prosecution of Charles Taylor in The Hague rather than its normal location in Freetown. Instead, the tribunal presiding over Habré's trial will be regional: integrated within the Senegalese judicial system, in collaboration with ECOWAS and an *ad hoc* commission in Chad, and presided over by African magistrates.

For some, the ECOWAS Court's judgment might set the worse of two possible precedents. A ruling that permitted Senegal to proceed with a prosecution within its national court system would have affirmed the use of universal jurisdiction in Africa, perhaps facilitating future prosecutions within Africa for crimes of this nature. Such a ruling might have been possible had the ECOWAS Court given greater weight to the second paragraph of Article 15 of the ICCPR, which permits retroactivity when the alleged acts "are criminal according to the general principles of law recognized by the community of nations." Instead, the Court has set a precedent that at times would require African states to craft an entirely separate mechanism, albeit with international funding, even if only one individual is to stand trial.

The current precedent does at least affirm that Habré can be lawfully prosecuted within Africa. The AU's commitment to the ECOWAS Court's judgment also furthers the Court's authority on human rights issues and indicates a political will within the AU to force compliance with the Court's decisions.

Additional meetings between Senegal and the AU will elaborate the tribunal's structure, tentatively designed to include four chambers: accusation, instruction, sessions, and appeals. There is a sense of urgency, however, as the AU has asked that Senegal begin preparations so that a

trial can be held "within the shortest time." Over twenty years after the conclusion of Hissène Habré's brutal reign, it now appears that survivors may finally receive their day in court.

The African Court Issues Historic Decision Demanding an End to Libyan Aggression

On March 25, 2010, the African Court on Human and Peoples' Rights ordered the Libyan government to comply with provisional measures in response to reports of serious and widespread abuses of human rights enshrined in the African Charter on Human and Peoples' Rights (Banjul Charter). The allegations relate to maneuvers by Muammar Gaddafi's regime to violently suppress anti-government demonstrations by Libyan citizens. These demonstrations soon escalated, and Libya is now enmeshed in an ongoing armed conflict between forces loyal to Gaddafi and the opposing rebel movement.

The provisional measures — similar to an interim injunction — ordered the Gaddafi regime to "immediately refrain" from conduct in further breach of the Banjul Charter or any international human rights instruments to which Libya is also party. The Court additionally required that Libya report to the Court within fifteen days on the measures taken to implement the order.

It is now a near certainty that Libya has received and opted to defy the Court's order. The regime continues to ignore its obligations under the Banjul Charter in its efforts to suppress the conflict and regain its iron grip on power. Nonetheless, the order represents a historic step for the African Court, signaling that the African human rights system has embraced a proactive role in ending this conflict and holding the Gaddafi regime accountable for human rights violations committed against its own people.

The order responded to an application brought by the African Commission on Human and Peoples' Rights, alleging "serious and massive violations of human rights guaranteed under the [Banjul Charter]." Specifically, the application — itself based on successive complaints the Commission received about events in Libya — alleged breaches of Articles 1, 2, 4, 5, 9, 11, 12, 13, and 23 of the Charter, among them the rights to life and integrity, freedom of expression, assembly, participation in government, and national peace and security.

The African Court is governed by its constitutive document, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol), as well as its interim Rules of Court. Both Article 27(2) of the Protocol and Rule 51(1) of the Rules provide that in cases of "extreme gravity and urgency" involving imminent risk to human life, the Court may issue provisional measures *propio motu* (of its own accord) without first giving the State Party an opportunity to provide written pleadings or attend oral hearings. Here, the Court first made a *prima facie* determination of its jurisdiction, as required under Article 3(1) of the Protocol, based on Libya's ratification of both the Charter and the Protocol and the Commission's standing under Article 5(1)(a) of the Protocol to submit cases to the Court. Then, as permitted under Rule 51(2) for such urgent applications, the Court used what "reliable means" were available for its factual basis — in this instance, NGO communications contained in the application and the denunciations of other regional and universal human rights bodies.

Despite the fact that compliance remains unlikely, the Court's order bodes well for the future, particularly as it demonstrates a collaborative relationship between the Commission and the Court. Since the Court's formation, there has been some uncertainty regarding how the complementary relationship between the two organs, outlined in Article 2 of the Protocol, would function. In the Libyan context, the Commission received complaints of breach by a State Party and filed a timely application amid the first signs of civil unrest; the Court in turn responded decisively and was early to recognize the escalation toward conflict in Libya.

International responses have included praise for the Court's order. The British Foreign and Commonwealth Office, for one, hailed it as a "strong and welcome statement" from the African human rights system, which signals that the continent is invested in bringing stability and justice to citizens of a State Party. Such praise is, however, set against condemnation of the African Union (AU), despite its efforts to broker a peace deal in Libya, for failing to insist on compliance with the Court's binding order. Human Rights Watch has urged the AU to seize its responsibility under Article 29(2) of the Protocol to monitor and compel implementation of the Court's rulings. Article 23(2) of the AU's Constitutive Act, for example, authorizes it to subject noncompliant States Parties to sanctions or "other measures of a political or economic nature."

Since this is the Court's first decision issued against a State Party, it is an early indication of the Court's potential. Yet, to assist the Court, the AU must strike a proper balance between its dual roles as mediator and enforcer, lest it risk undermining the Court's still fledgling credibility as a mechanism for the promotion and protection of human rights in Africa.

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European Court of Human Rights

Right to Freedom of Expression Narrowed at European Court

Contracting States to the European Convention on Human Rights enjoy broad discretion when assessing emblems whose public display could incite tensions, the European Court of Human Rights (Court) found in *Donaldson v. the United Kingdom* on February 7, 2011.

The Court denied a claim from an imprisoned Irish Republican that the HMP Maghaberry prison violated his Article 10 right to freedom of expression when it asked him to remove an Easter lily from his clothing while outside of his cell. The Easter lily, a white, fragrant, trumpet-shaped flower, is commonly worn by Irish Republicans on Easter Sunday in remembrance of those who died or were executed after the 1916 Easter Rising. Christopher Donaldson, an Irish national serving a 12-year sentence, refused to remove his Easter lily on Easter Sunday in 2008 when confronted by prison guards. The prison found Donaldson guilty of disobeying a lawful order and punished him with a three-day confinement. Donaldson filed an application with the Court in 2009 after the High Court in Ireland refused to hear his application and an appellate court dismissed his appeal.

Although the Northern Ireland Prison Service Standing Orders stated prisoners were not permitted to wear emblems outside their cells or display emblems in their cells, the HMP Maghaberry made an exception for certain "non-political and non-sectarian" emblems, such as a shamrock or poppy. The Easter lily, conversely, has been inextricably linked to the conflict in Northern Ireland and is considered a political symbol across Ireland. As such, the Court justified the prison's stance that Donaldson remove the lily when outside his cell. "The Court accepted that the interference with Mr. Donaldson's freedom . . . to express a political view, conveyed by his decision to wear the Easter lily, was prescribed by law and pursued a legitimate aim, namely the prevention of disorder and crime."

Donaldson's additional complaints of discrimination (Article 14) and deprivation of a fair trial (Article 6 § 1) were also dismissed by the Court. To qualify for standing under Article 14, applicants must prove that they were in a "relevantly similar situations" when they were discriminated against. In its reasoning, the Court stated that the allowance of prisoners to wear a non-political poppy on Remembrance Sunday substantially differed from Donaldson's insistence that he be allowed to wear a political symbol that often incited other prisoners and therefore denied the claim. Lastly, the Court dismissed the Article 6 complaint because Donaldson did not exhaust all domestic remedies regarding his right to a fair trial.

If critics insist that the Court has more important business than distinguishing poppies from lilies and does not look at the present case with a careful eye, they will have missed an important doctrine established in *Donaldson v. the United Kingdom*. Central to the Court's holding is that States enjoy broad discretion when assessing potentially controversial emblems. "Cultural and political emblems could only be fully understood by those with complete knowledge of their historical background . . . ," the Court wrote in its press release. Put simply, the Court stated that it is the Irish government, not a seven-person panel of judges in Strasbourg, that can best distinguish a political emblem from an innocuous flower.

The deference shown to a Contracting State came three weeks prior to an accusation by British Prime Minister David Cameron that the Court micro-manages the legal systems of Europe. "International institutions which are set up by everyone become in practice answerable to no one, and courts have an age-old tendency to try to enlarge their jurisdictions," Cameron told The Daily Telegraph in response to the clash between the Court and the United Kingdom over prisoner voting rights.

But if anything, the holding in *Donaldson* is one small example that the Court understands its role vis-à-vis the judiciaries of Contracting States. While some may complain of its unchecked power, the Court has shown it understands when its involvement is necessary, and when it is best to step softly out of the way.

Turkey Under Scrutiny for Internet Censorship Laws

Several Turkish laws banning popular social media websites may face scrutiny if the European Court of Human Rights (Court) accepts an application from two Turkish nationals who say their rights have been violated.

Turkish authorities have until June 9 to answer three general questions posed by the Court relating to the expansive Internet ban. If the Court is not satisfied with Turkey's responses, it may hear the combined complaint filed recently by Yaman Akdeniz, a cyber-rights activist and law professor at Istanbul Bilgi University, and Ahmet Yildirim, a doctoral student at Bogazici University in Istanbul.

Many popular web sites have been banned in Turkey since the passage of Law No. 5651 — Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications — on copyright infringement in 2007. The social networking web site MySpace, and the Internet radio site, Last.fm, were banned in 2009 following a lawsuit by a music industry representative body. More recently, Turkey banned Blogger, a blog publishing tool operated by Google, after a complaint by a satellite television provider concerned with the illegal transmission of sporting events. Turkey also cited Law No. 5846 on artistic and intellectual works as reason for the ban.

Yildirim, who lost access to his personal blog because of the ban, wrote in his complaint that the law violated his freedom of expression guaranteed by Article 10 of the European Convention on Human Rights. The Court also asked in its query whether Turkey violated the Article 13 guarantee of an effective remedy before a national authority.

"I can understand that a company tries to protect its rights when they are violated. But I cannot make sense of the banning of all blogs for content illegally used on only a few blogs," said blogger Gülşen Çetin, as quoted by the Hürriyet Daily News. Cetin continues that "[t]he company that is involved says it couldn't handle the issue with Google. Of course, everybody is responsible for their own claims, but this is not an excuse for them to cause such a big censorship event."

While Akdeniz told the Hürriyet Daily News that the Court's review of the Internet ban could set an important precedent for Council of Europe members, several years may pass before he sees justice. The Court's recent priority policy could keep the application on the backburner indefinitely — unless the Court interprets the Internet ban as "an endemic situation the Court has not yet examined," which would earn the application the second-highest status on the hierarchy and substantially increase the likelihood that the case is heard within a reasonable timeframe.

Even so, the Internet ban in Turkey may not serve as the strongest test case for such an important issue regulating the current explosion of Internet usage around the globe. Although Turkey took an over-inclusive stance by blocking popular websites, it did so only — in this case — in response to specific alleged copyright infringements and requests from powerful organizations. The Court may be wise to defer judgment, at least until it finds cause in a more authoritarian ban on the Internet. In addition to Turkey, which has blocked more than 1,000 web sites since last year, France and Russia are currently being monitored by the watchdog organization Reporters Without Borders as Council of Europe members with suspect Internet policies.

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