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International Legal Updates

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INTERNATIONAL LEGAL UPDATES

NORTH AMERICA

CANADA LEAVES UNITED STATES AND NEW ZEALAND BEHIND: PLEDGES TO ADOPT UN DECLARATION ON RIGHTS OF INDIGENOUS PEOPLES

After almost 22 years of debate, and nearly a quarter century after the formation of the Working Group on Indigenous Populations (WGIP), the General Assembly of the United Nations adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007. As the UN explains, the Declaration was intended to emphasize “the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions and to pursue their development in keeping with their own needs and aspirations.” Even though UN declarations are generally not legally binding, four Member States with sizeable indigenous populations — New Zealand, Australia, Canada, and the United States — initially voted against the Declaration. The turbulent relationships between these states’ governments and indigenous populations provide a possible explanation for their decisions not to adopt the Declaration, but their votes pitted them against 143 other UN Member States that voted for the Declaration.

In an apparent reversal of policy, on March 3, 2010, the Governor General of Canada, Michaëlle Jean, delivered the annual “Speech from the Throne” before the Canadian parliament and announced that Canada would soon adopt the Declaration. While the Governor General’s statement is not a formal adoption, the “Speech from the Throne” is used to “outline the broad agenda” of the Canadian government, much like the “State of the Union” address given by the U.S. President, and can indicate top governmental priorities. Once Canada formally adopts the Declaration, it will join Australia, which in April 2009 announced that it would change its stance on the Declaration. Australia’s formal adoption of the Declaration has been part of a general shift in that country’s policy towards its indigenous population, culminating in a controversial review of its policy towards aboriginal customary law. Both Australia

and now Canada have taken broad, discrete steps towards recognizing fundamental rights of indigenous communities.

Canada’s move towards adopting the Declaration leaves the United States and New Zealand as the only remaining UN Member States that still stand against it. Both countries have significant indigenous populations, to whom the adoption of the Declaration would likely be a meaningful gesture. While adopting the Declaration is only symbolic because it does not include any binding provisions, the very lack of binding elements makes the United States’ and New Zealand’s opposition significant — New Zealand cited fundamental conflicts with its constitution and laws as the primary reasons for opposing the Declaration and the United States said that the Declaration itself was not clear enough to warrant support and that it failed even as an aspirational document. Neither of these criticisms seems to take into account the non-binding nature of the Declaration. The Obama administration in the United States has deflected criticism about its position on the Declaration by saying that its position on the issue is “under review.” New Zealand Prime Minister John Key made a similar statement when asked about his government’s position in mid-2009. However, with such global consensus on the issue of indigenous rights and several years of real-life application to dispel concerns that the Declaration could be used in unforeseen ways, excuses for delaying the adoption of the Declaration are running short for both the United States and New Zealand.

REPEALING “DON’T ASK, DON’T TELL”

In his first State of the Union address on January 27, 2010, President Barack Obama explicitly stated his plans to end the military’s “Don’t Ask, Don’t Tell” (DADT) policy on gays and lesbians serving in the armed forces: “This year, I will work with Congress and our military to finally repeal the law that denies gay Americans the right to serve the country they love because of who they are.” The President is not alone in his belief that the policy should come to an end. Nearly two out of

three Americans believe the policy constitutes discrimination and 57 percent believe that gays and lesbians should be allowed to serve openly in the military, according to a February 2010 Quinnipiac University poll. Still, the policy has persisted well into the President’s term and no concrete action has yet been taken while DADT discharges continue. In fiscal year 2009 alone, 428 service members were discharged despite continued U.S. involvement in two wars. With public opinion supporting the repeal of the policy, the continued gap between the President’s rhetoric and his actions risks squandering the apparent momentum toward the abolition of DADT.

There are several different legal avenues available by which to repeal DADT. Because the policy was enacted under the Fiscal Year 1994 National Defense Authorization Act, any actual repeal of the law would have to come from either Congress or the courts. So far, President Obama has advocated against attempts in Congress to introduce legislation repealing the law or suspending discharges. In June 2009, the Supreme Court declined to hear an appeal challenging the constitutionality of the policy, indicating the Court is not currently interested in addressing the issue. The latest Congressional development came when Senator Joe Lieberman (I-CT) introduced a bill to repeal DADT, but sources have suggested that the President supports including the measure in the 2011 appropriations bill for the Department of Defense, at the earliest. The President continues to decline to take immediate action, though the recent DADT modification by Defense Secretary Gates, making it more difficult to discharge under the policy, is a step in the right direction.

While economic and health care issues have been at the forefront of political debate during President Obama’s first year in office, all other issues need not be ignored. Concerns about momentum, in addition to the continued loss of valuable military time, resources, and personnel to a discriminatory policy, only strengthen the case for immediate action. If President Obama is committed to repealing DADT, he should use his own power

as commander-in-chief to strengthen the military by halting discharges under the policy and he should not stand in the way of Congress's efforts to take action. Using U.S. involvement in two war zones as justification to continue to discharge soldiers willing to fight for their country is arguably not the best way to support the U.S. military. In fact, many scholars have argued quite the opposite.

A STEP FORWARD FOR IMMIGRANTS' RIGHTS IN THE UNITED STATES?

Until March 31, 2010, Jose Padilla awaited deportation from the United States, where he has lived for forty years. A Vietnam veteran and a commercial truck driver, Padilla was convicted in 2001 of possession and transportation of marijuana, which made his deportation mandatory under the current immigration laws. However, on March 31, the U.S. Supreme Court held in *Padilla v. Kentucky* that Padilla had received ineffective assistance of counsel because his criminal defense attorney failed to inform him that he could be deported if found guilty of the drug charges. In so holding, the Supreme Court has fortified the barrier against attorneys' failure to advise their clients of the consequences of pleading guilty, first established by *Strickland v. Washington*. *Padilla* explicitly recognizes that *Strickland* protects non-citizens facing the possibility of deportation, if convicted. *Padilla* is a much-needed check on the ongoing attempts to narrow constitutional protections afforded to non-citizens.

In the context of cases like Padilla's, the enforcement arm of the U.S. immigration system, Immigration and Customs Enforcement (ICE), has stated that its goal is to "identify and remove criminal aliens from the United States" with an emphasis on violent or "Level 1" offenders who are considered "dangerous criminal aliens." However, isolating "dangerous criminal aliens" solely by classes of crimes, especially individual, non-violent narcotics crimes, is unlikely to achieve this goal. Indeed, the Supreme Court acknowledged in *Padilla* that immigration policy has shifted from discretion to dogma, resulting in questionable deportations. The ruling takes a step towards restoring some "discretionary authority" for judges by allowing them to determine if non-citizens have been apprised of the possibility, or in

some cases, probability of deportation as a result of pleading guilty to a crime. As the Court concluded, deportation must be considered a direct consequence of conviction — rather than merely "collateral" — of which attorneys have an affirmative duty to inform their clients.

While the Supreme Court's holding in *Padilla* does offer some protection for non-citizens with respect to adequacy of legal counsel in criminal proceedings, it does nothing to alter immigration laws in the United States. Padilla still faces possible deportation because, on remand, he may still be convicted of the crimes to which he originally pleaded guilty. His deportation is likely inevitable under current immigration law, given the thousand pounds of marijuana that he was caught trying to transport. Others, however, like Jerry Lemaine, who faces deportation after being caught with one marijuana cigarette even though he has been a legal non-citizen resident since he left Haiti at age three, could benefit from increased judicial discretionary authority in deportation proceedings. Lemaine's case, which is before the Supreme Court now and was argued on the same day that the *Padilla* decision was issued, has the potential to protect legalized non-citizens from deportation if they are convicted of more than one minor drug offense (such as possession of small quantities of marijuana). This is not to say that non-citizens should always be protected from deportation due to drug charges. As Justice Stevens noted in *Padilla*, the major change in immigration law over the past ninety years, and the likely source of much injustice, is the lack of discretionary power on the part of judges — both immigration and criminal. This is the policy that begs review.

Evan Wilson, a J.D. candidate at the American University Washington College of Law, covers North America for the Human Rights Brief.

LATIN AMERICA

BRAZILIAN MILITARY REJECTS LULA'S TRUTH COMMISSION

Hours after President Luiz Inácio ("Lula") da Silva of Brazil announced plans in December 2009 to set up a truth commission that would investigate crimes committed during the military dictator-

ships, Brazil's top military officials threatened their resignations if Lula did not retract the proposal. Lula, however, told the UN Human Rights Council in Geneva in early March 2010 that the country had created a National Truth Commission. Military officials are concerned about opening military archives to the commission because hundreds of Brazilians are alleged to have been tortured, kidnapped, disappeared, and murdered by the military government between 1964 and 1985. To assuage his officials' concerns, Lula has set up a working group of representatives from the justice department, homeland affairs, the human rights department, the military, and civil society. The group will have to agree on the workings of the truth commission, as Lula promised that the commission will not judge people, but will seek to understand the truth of what happened from 1964 to 1985.

The Brazilian government has been hesitant to create a truth commission because of its 1979 law providing amnesty to military and political officials who committed political or electoral crimes from 1961 to 1979. The amnesty law, however, may violate the American Convention of Human Rights (ACHR), which Brazil ratified in 1979, because it prevents judicial proceedings for and investigations of serious violations of non-derogable human rights such as the right to life. In 2001, the Inter-American Court on Human Rights (IACtHR), a body whose jurisdiction Brazil recognized when it ratified the ACHR, held that Peru's failure to investigate and punish crimes relating to the military's massacre of alleged *Sendero Luminoso* members violated the Convention. The Peruvian government refused to investigate the crime because of its law providing amnesty to police and military officials who committed crimes during the period from 1980 to 1995. In *Barrios Altos v. Peru*, the IACtHR found that the Peruvian amnesty law violated the government's duties under international human rights law, and held that "all amnesty provisions . . . for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, [are] prohibited because they violate non-derogable rights recognized by international human rights law."

Because the Brazilian amnesty law has been interpreted to protect people who

have committed torture, and because freedom from torture is a non-derogable right under the ACHR, the law is incompatible with the Court's decision under *Barrios Altos*. Brazil's amnesty law should therefore be repealed and should not bar the creation of a truth commission.

Truth commissions are meant to be non-judicial investigations into past periods of violence during which human rights violations were systematically committed. They are part of a process to end impunity for serious rights violations and can lead to justice and reparations for victims and their families. Some truth commissions are granted subpoena power from the legislature, while others rely specifically on voluntary participation. It is unclear what type of powers the Brazilian truth commission would have, but it would certainly need access to military archives and testimony to have a clear picture of what transpired. But since the 1979 law provides amnesty for political crimes and politically motivated crimes, the commission might have difficulty accessing information.

By assisting in the investigation of crimes, truth commissions help uphold citizens' right to know about the past. The IACtHR's decision in *Barrios Altos* recognized and protected the right to know by declaring the non-investigation of abuses a violation of the ACHR. Despite Brazil's national laws, it too has the obligation to end the impunity for crimes committed during the dictatorships and ensure its citizens know about past crimes. Brazil cannot use its amnesty law as an excuse not to create a truth commission.

Most of Brazil's neighbors with similar histories have gone beyond the creation of truth commissions and have begun prosecuting individuals who committed serious violations of international human rights law. Although a small group of six representatives is currently discussing how the Brazilian truth commission will function, it is important for victims to participate in the process to ensure the commission addresses their needs. Furthermore, the government should create a truth commission through the legislature to ensure that the commission has the appropriate authority and funding to investigate crimes and preserve evidence for later prosecution. Given the evolution of international law over the past ten years, Brazil can no longer hide behind its amnesty law as an

excuse for perpetuating the state of impunity. It must follow its neighbors in creating a truth commission that will investigate past human rights abuses and eventually prosecute those responsible for serious violations of international law.

ANTI-TERRORISM CASE AGAINST CHIQUITA MOVES AHEAD

A suit against Chiquita Brands International filed by families of Americans kidnapped and killed by the FARC guerrilla force of Colombia will continue in federal courts after U.S. Judge Kenneth Marra of the Southern District of Florida rejected Chiquita's motion to dismiss on February 4, 2010. The plaintiffs are family members of five men who worked as missionaries in Panama across the border from Colombia in the 1990s. FARC kidnapped the men separately, demanded ransom, and then killed them. The plaintiffs are most likely suing Chiquita in U.S. court, rather than filing suit against FARC in either U.S. or Colombian courts because Chiquita is a large, identifiable corporation with high profits, whereas it would be difficult to find the members of FARC who committed the crimes and prosecute them in any forum. Therefore, the plaintiffs are likely to have more success at recovering damages against Chiquita than against individual members of FARC.

The U.S. Secretary of State declared FARC, a group that controls vast areas of Colombia, a foreign terrorist organization in 1997 because of its violent acts, kidnappings, and bombings. Plaintiffs allege that Chiquita gave FARC money, which supported the organization's violent actions and resulted in their family members' death. Chiquita, however, claims it was forced to pay the guerrillas in order to work in remote areas of the country. Judge Marra's decision to allow the suit to proceed sends a message to U.S. corporations that they may face liability if they finance international terrorist organizations. Plaintiffs' attorney Greg Hansel told the *Human Rights Brief* that "the families intend to hold Chiquita accountable for supporting Colombian terrorists to make a buck selling bananas."

The case was filed under the Anti-Terrorism Act of 1991 (18 U.S.C. § 2331), a statute allowing U.S. citizens and their heirs to sue for injuries resulting from acts of international terrorism. Although the

statute broadly states that a plaintiff may sue for "an act of international terrorism" without specifying *who* the plaintiffs may sue, the *Chiquita* case stands with other case law to include organizations supporting terrorist groups as possible defendants. Under the plaintiffs' theory of recovery, Chiquita violated the Anti-Terrorism Act when it aided and abetted FARC's terrorist activities by providing the guerrillas with money. Chiquita's motion to dismiss for failure to state a claim upon which relief can be granted asserted that mere payments to FARC are not covered by the statute because they did not constitute violent acts dangerous to human life so as to meet the statute's partial definition of "acts of international terrorism."

While Chiquita's payments to FARC by themselves may not have been acts of international terrorism, the court noted that under the Anti-Terrorism Act, the plaintiffs did not need to show that Chiquita committed acts of terrorism in order to hold Chiquita liable. The plaintiffs simply had to be injured by acts of international terrorism, which they were. Furthermore, the court found that plaintiffs provided sufficient evidence that Chiquita provided resources for FARC, which subsequently killed the missionaries.

Senator Charles Grassley (R-IA), the co-sponsor of the bill that became the Anti-Terrorism Act, said that the Act sought to ensure that "American victims [of terrorism would] be able to bring a claim against a terrorist group for money damages." Judge Marra noted, however, that the case law construing the statute shows that the Anti-Terrorist Act also extends secondary liability to aiders and abettors who provide money to international terrorist groups.

According to the U.S. Department of Justice, in 2007 Chiquita admitted to paying another Colombian group considered a terrorist organization. The company paid Colombian paramilitary group, the *Autodefensas Unidas de Colombia* (AUC), from about 1997 to 2004, even after Chiquita knew that the U.S. government considered them a foreign terrorist organization. In that case, Chiquita entered a plea agreement with the U.S. government in which it paid U.S. \$25 million and admitted to paying an international terrorist group while hiding the information in its records.

That Chiquita admitted to paying the AUC leads to a reasonable inference that the company was also paying FARC. As such, Judge Marra agreed that there was sufficient evidence to prove that Chiquita knew that FARC was a foreign terrorist organization, but nevertheless continued supporting the group.

The lawsuit has sparked two similar suits against Chiquita: one brought under the Alien Torts Statute by hundreds of Colombians whose family members were killed by FARC and another suit by shareholders of Chiquita against the corporation. The Alien Torts Statute grants jurisdiction to U.S. federal courts to hear civil cases brought by non-U.S. citizens. The Colombian plaintiffs' case follows similar reasoning as the cause brought by the missionaries' family members: that Chiquita's payments to FARC helped the group continue its acts of violence, resulting in their family members deaths. Both the case brought by the Colombians and the one brought by shareholders are pending in federal courts, and the case under the Anti-Terrorism Act is the first case to reach a judgment thus far.

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SUB-SAHARAN AFRICA

BURUNDIANS RESORT TO MOB VIOLENCE TO ADDRESS CRIME

On March 26, 2010, Human Rights Watch and the Association for the Protection of Human Rights and Detained Persons reported that many Burundian citizens do not trust in the state police force and have instead resorted to vigilantism and mob violence to respond to crimes. In 2008, at least 88 people were killed or injured by mobs. In 2009, at least 74 suspected criminals were killed and 59 were injured by civilian mobs, without repercussions by the police and sometimes with their explicit consent or encouragement.

In one of the poorest nations in the world that has only recently emerged from civil war, the position of frustrated mobs is understandable. Citizens have commented that when they rely on the police, suspected criminals are freed a few days after arrest. Moreover, considering that as of February

2010 no one in Burundi has been convicted for participating in a mob, people have few disincentives from resorting to mob justice.

However, the position of thieves is also sympathetic. In August 2009, a 54-year-old HIV-positive man who was unable to work stole bananas from a neighbor's field. When discovered, the man was caught by a mob, covered in dry grass, and burned to death. While mobs are desperate because thieves who steal their valuable property go unpunished by official forces, such extreme violence against equally sympathetic people is excessive and unjust.

Not even law enforcement is protected from the anger and frustration of mobs, due in part to the violent past of some members of the force, the tendency for police to be involved in criminal activity, and their perceived impunity. Since 2005, when many former civil war rebels were integrated into the police force, 100 policemen have been imprisoned for violent offenses. While the violence in the police force is disturbing, the imprisonment of at least some officers demonstrates that there is not complete impunity. However, many villagers have a different perception. In the province of Ruyigi, two policemen were stoned to death by a mob after they went into a village with weapons and two grenades in order to steal. In February 2008, six armed policemen were attacked and beaten when they entered a local village. Because of rising crime, the crowd assumed the men were robbers, and two of the officers were beaten to death.

In March 2006, the United Nations released an interim report on the human rights situation in Burundi that concluded that Burundi was not meeting its Arusha Peace and Reconciliation Agreement obligations to reform its justice system and provide trained law enforcement with proper equipment. Also, Articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR), to which Burundi is a signatory, require all people to be informed of charges against them and have those charges investigated. By allowing mobs to respond to crimes, the government is undermining the rule of law and permitting repeated violations of the Burundi Code of Criminal Procedure, which requires all crimes to be openly investigated by the police. While Burundi's poverty and transition from civil war have made it difficult for the government to cre-

ate an effective law enforcement system, it is unacceptable for public officials to quietly allow civilian mobs to respond to criminal activity, denying suspects access to the legal system and denying them due process or the rule of law.

WOMEN IN SWAZILAND STILL HAVE LIMITED PROPERTY RIGHTS

The High Court in Swaziland ruled on February 23, 2010 that some married women will be allowed to own property in their own names for the first time. This decision comes five years after the adoption of Swaziland's 2005 constitution, which guarantees women equal rights and protections under Sections 20 and 28, and declares any contrary laws void under Section 2. Yet since 2005, the legislature has not amended or repealed any laws to meet this requirement.

In 2009, female attorney and women's rights advocate Doo Aphane filed a lawsuit in the High Court, challenging Section 16(3) of the Deeds Registry Act as contrary to the Constitution. The law treats women as minors and prohibits them from registering property. This allows men to buy or sell property without consulting their wives, but prevents women from doing the same without their husbands' consent.

This law's discriminatory impact is exacerbated if a woman chooses to leave her husband. One Swazi woman paid for property solely with her earnings, but registered it in her husband's name. Ten years later, her husband chased her away from her home and brought a mistress to live on the property. Under Swazi law, the woman had no right to the property, despite having paid for it in full. Swaziland also has the highest HIV/AIDS rate in the world, leading to greater numbers of younger widows. Because a woman cannot own property, Swazi law transfers the land back to the husband's family upon his death, leaving many widows with no legal protections.

The February 2010 judgment that some married women can register property will affect between twenty and thirty percent of marriages, because it applies only to civil ceremony marriages and most Swazi people are married under customary law. However, Aphane is hopeful that the ruling will educate people about women's rights and encourage further reforms. Ideally, the legislature would enact sweeping reforms

to adhere to the Constitution, since challenging laws in the courts is slow and expensive for litigants.

Beyond being bound by its Constitution, Swaziland is subject to Articles 3 and 14 of the Banjul Charter on Human and Peoples' Rights, which guarantee all people rights to equal protection and to own property. Articles 6 and 15 of the Convention on the Elimination of all Forms of Discrimination against Women, to which Swaziland is a signatory, give women equal rights to enter into contracts and own property and require all states to eliminate any discriminatory laws. The recent judgment was a small step towards giving women equal protection, but the legislature must take more proactive steps to prevent continued discrimination against women.

HUMAN RIGHTS GROUP CHALLENGES UGANDA'S POLYGAMY LAWS

The women's rights organization MIFUMI filed a petition at the Ugandan Constitutional Court on January 28, 2010, asking the court to outlaw polygamy. MIFUMI claims that polygamy violates equality between men and women and leads to violence, abandonment, neglect, and an increased risk of HIV and AIDS. The Ugandan Attorney General filed a response to the petition, arguing that polygamy is protected under Article 37 of the Constitution of the Republic of Uganda, which guarantees the right to culture, tradition, and religion.

Current polygamy laws in Uganda apply to people differently because Uganda recognizes four types of marriage: customary, church and civil, Muslim, and Hindu. Section 12 of the Customary Marriages Registration Act and Section 2 of the Mohammedans Act validate polygamy. In contrast, Section 42 of the Marriage Act states that a person who knowingly enters into a marriage with someone who is already married commits an offense punishable with a maximum five-year prison sentence.

MIFUMI contends that polygamy is the most significant factor perpetuating violence against women and children. Patriarchal hierarchy in polygamous unions creates familial unrest, which leads to violence when men attempt to dominate and control their wives. Additionally, if husbands divide property and assets unequally, it leads to intense competition

Wilson et al.: International Legal Updates

between wives. For example, on February 18, 2010, one woman stabbed and killed her fellow wife in a domestic dispute over fetching water.

The Domestic Relations Bill Coalition (DRBC) is a group of over forty women's and human rights organizations that has advocated for a uniform domestic relations law that conforms to the constitutional right to gender equality. In a 2003 report, DRBC noted that children often suffer from neglect in polygamous families. Since each wife often has her own house and the husband rotates to each house, many children do not receive regular attention from their fathers and are not able to live with them. This violates Article 34(1) of the Constitution, which gives children the right "to know and be cared for by" their fathers, and the African Charter on the Rights and Welfare of the Child, which stipulates the child's right to reside with her father and not to be separated from him against the child's will.

Further, MIFUMI argues that polygamy contributes to the spread of HIV/AIDS, violating constitutional health protections. Each time a man marries, all his wives are exposed to an increased risk of contracting HIV. Additionally, men sometimes inherit widows from other men or a relative who died from AIDS, making the spread of infection even more likely.

In response to allegations that polygamy violates Sections 33(4) and (6) of the Constitution, which prohibit any laws, traditions, or customs that violate women's rights, the Attorney General claims that polygamy is protected by Section 27 of the Constitution, which guarantees a person's right to culture. Since women can choose what type of marriage to enter, he argues that the current legal system protects the right to culture and religion, while respecting a woman's right to elect the type of marriage she wishes.

MIFUMI claims that the Attorney General's position is unfounded. While culture is important, it cannot be used to oppress women or deny them equality. Additionally, polygamy violates equal protection because women cannot marry more than one man. Because Section 33 of the Constitution says that customs that violate equal protection are illegal, the Constitutional Court should take advantage of the opportunity to clarify the nation's laws and to declare polygamy unconstitutional.

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MIDDLE EAST AND NORTH AFRICA

SAUDI WOMEN LAWYERS FREE TO PRACTICE LAW

Thirty years after earning her law degree, Fatma Kabil, Saudi Arabia's first qualified female lawyer, may finally get the chance to argue in a courtroom. On February 20, 2010, Justice Minister of Saudi Arabia Mohammad al-Issa announced that Saudi Arabia would soon issue a new draft law, confirming rumors circulating since last fall that the government may reform its laws relating to female lawyers. The law, which will come into force once the Justice Minister sets specific guidelines, would permit Saudi women lawyers to set up their own legal practices and represent their clients in court on cases relating to familial relations.

The Justice Minister's announcement is widely heralded as progressive in a country that is well known for harshly restricting women's rights. Saudi Arabia has yet to comply with recommendations to end its male guardianship system from the UN Human Rights Council in 2009. The system treats women as minors and forbids women from undertaking basic activities like studying, traveling, marrying, accessing health care, or filing a court case without first obtaining permission from a male guardian.

In this environment, the Justice Minister's announcement came as a shock to many. While women are currently permitted to obtain a law degree and work in segregated offices, this right is curtailed by their inability to represent their clients in courts or to open their own practices. Under the new draft law, if and when it comes into force, women will be able to bring family law-related cases to court. As a result, women will be able to secure more jobs, and female clients may be more likely to bring sensitive cases when they have access to a trusted female attorney. Since this can all be accomplished without violating Islamic Sharia law, which is strictly observed and integrated into the official governmental law in Saudi Arabia, the decision has garnered support from both social activists and Saudi government

officials. Social activists hope that the draft law will pave the way for more reforms that would grant Saudi women more rights.

However, in the midst of high expectations for positive reforms, a recent case sentencing a woman to 300 lashes serves as a bitter reminder of the reality for women in Saudi Arabia. In January 2010, Sawsan Salim was charged with “making spurious complaints against government officials” and “visiting government offices without a male guardian” when she filed a complaint claiming that a judge had sexually harassed her. While the new draft law should be lauded by the international community and human rights activists world-wide, Saudi Arabia still has to undergo substantial institutional changes before women will be equal members of society.

ALGERIAN CIVIL SOCIETY DEMANDS ACCOUNTABILITY FOR SYSTEMATIC DISAPPEARANCES

Families of the disappeared in Jijel, Algeria are calling on the Working Group on Enforced and Involuntary Disappearances (WGEID) to address the nearly 300 disappearances between 1994 and 1997 and to provide some means of reconciliation. Abductions and subsequent disappearances of civilians, especially supporters of the Islamic Salvation Front (FIS), were very common during that time. Groups like the Mich'al Association for the Missing Children of Jijel, Association of the Families of Disappeared of Jijel (AFDJ), and the Algerian League for the Defense of Human Rights assert that the Algerian government was responsible for this program of systematic disappearances and executions.

The FIS, which was banned in 1992, was a key actor in Algeria's descent into civil war from 1991 to 2002. Characterized by its free-market and Islamic agendas, the party quickly gained popularity. After the FIS won 55 percent of the vote in Algeria's first round of elections in 1990, the government responded quickly and redrew district lines to prevent FIS from winning the second round of elections. FIS's protests of gerrymandering triggered a shockingly violent eleven-year civil war. During this time, there were many disappearances in the Jijel governorate, near the Benni Khettab mountains where the FIS's Islamic Salvation Army was based, allegedly conducted by secret service operations

and militias the government dispatched to quell opposition.

Victims and families of the disappeared have been unable to solicit substantive assistance from the domestic government or the international community and the Algerian government has yet to reply to calls for investigation. Although Algeria signed the International Convention for the Protection of All Persons from Enforced Disappearances, it has yet to ratify the instrument. Article 24 of the Convention requires States Parties provide reparations to victims of disappearances and any individual who has suffered harm as a direct result of disappearances. Moreover, while Algeria is not a party to the Rome Statute of the International Criminal Court, it demonstrates a consensus in the international community as to the gravity of forced disappearances, which are listed as a crime against humanity under Article 7.

After exhausting efforts to compel a governmental response, Algerian human rights NGOs turned to the United Nations. The AFDJ, which has been reporting the Jijel disappearances to the WGEID for years, made its latest appeal together with Mich'al Association, reporting 104 additional cases on December 31, 2009. Despite their efforts, these NGOs still have not received any response from the WGEID.

The story of the Jijel governorate is indicative of a problem that plagues most Algerians. In 2007, the International Center for Transitional Justice went to Algiers to participate in a national conference on creating a truth commission in Algeria, but Algerian authorities prevented the meeting from taking place. Though the African Commission on Human and Peoples' Rights could provide an appropriate venue for victims to express their grievances, it did not respond to complaints brought by the Collective of Families of the Disappeared in Algeria in 2007.

Some Algerians have received monetary compensation through the Algerian Charter for Peace and National Reconciliation, but victims say that it is not enough and demand to be told what happened to their loved ones. Moreover, the Charter granted amnesty to individuals who fought in the National Popular Army, security forces, and state sponsored groups — individuals against whom families of the disappeared will want to seek action when given the opportunity. In order to ensure a stable, democratic future, the government and the

international community need to ensure that the perpetrators of these grave human rights violations are held accountable to ensure justice for the families of the disappeared and broader societal reconciliation.

SUDANESE ELECTIONS: ON THE ROAD TO INDEPENDENCE OR TO HUMANITARIAN CRISIS?

On April 11, Sudanese went to the polls for the first time in more than twenty years in a highly anticipated election. The activity leading up to the vote has been arguably more controversial than the election itself. In early April, Yasir Arman, the presidential candidate for the Sudan Peoples' Liberation Movement (SPLM), announced his intention to boycott the presidential elections, protesting against alleged fraud and instability undermining the elections. The SPLM, which is rooted in Southern Sudan and is the country's main opposition party, still ran candidates in the parliamentary and municipal elections in the south and in two northern states. Following Arman's lead, Sudan's other main opposition parties also withdrew, leaving only smaller party candidates to contest the National Congress Party (NCP) candidate, President Omar Hassan al-Bashir.

While some observers warned that the candidates' would foster a violent political environment, experts speculated that the implications of the withdrawal were not as far-reaching as they may have first appeared. Rather, the SPLM and residents of Southern Sudan may have understood the elections to be a formality and, instead, remained invested in the 2011 referendum on independence. Still, the elections carried high stakes. Some argued that a boycott of the national elections could be a breach of the Comprehensive Peace Agreement, executed between the SPLM and the Government of Sudan in 2005, jeopardizing the 2011 referendum for Southern Sudanese independence. The elections are pivotal in determining whether Southern Sudan will attain independence in 2011, and the severity of the accompanying political climate.

With the SPLM vigorously vying for independence, the partitioning of Sudan may very well be inevitable. Regardless of the outcome, the international community will need to prepare itself for an escalating humanitarian crisis in Southern Sudan and the country as a whole. Although President

Bashir has been scaling back his criticism against independence, there remains a strong possibility that the NCP will try to delay the independence referendum. The south contains two-thirds of Sudan's oil reserves, with which the government of Sudan is not likely to part without a fight. As the current government has already overseen genocide in Darfur, their potential for violent repression is not to be underestimated.

The international community will have to be just as prepared, if not more so, if Southern Sudan votes for independence in 2011. As representatives from Khartoum have inflicted violence upon Southern Sudan, so too has the SPLM. Southern Sudan is rife with corruption, exploitation, disappearances, rape, kidnapping, and murder, often at the hands of the SPLM. In the event of southern independence, the governing authority's practices will need to be monitored to ensure respect for the individual and collective rights of the people of Southern Sudan. Further, the international community may need to assist the southern government with capacity building to help it cope with health, food, and governance issues.

Operating under the responsibility to protect principle, current humanitarian efforts in Sudan have been sharply criticized for implementing oversimplified Western ideals without considering the political and social realities in Sudan. These efforts have been deemed unprepared, focusing their efforts on the day-to-day, rather than on the possibility of an impending humanitarian crisis. Whatever the criticisms, it is vital that the international community prepare, whether by adjusting or by broadening its practices, for the instability and humanitarian repercussions that will likely follow the elections.

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EUROPE

ALBANIA'S NEW ANTI-DISCRIMINATION LAW PROTECTS LGBT RIGHTS

Human Rights advocacy groups worldwide hailed Albania's inclusive anti-discrimination law as a victory for equal protection from all forms of discrimina-

tion, including discrimination based on sexual orientation and gender identity. A unanimous Legislative Assembly passed and Prime Minister Sali Berisha signed off on the broad anti-discrimination bill on February 4, 2010. The law, which took effect in March, expressly protects lesbian, gay, bisexual, and transgender (LGBT) Albanians, but also extends protection on the grounds of disability, race, ethnicity, and religion. If properly enforced, the anti-discrimination law will be the most progressive in the region, since it bans discrimination not only in employment, but also in other areas of life.

Human Rights Watch (HRW) played a vital role in bringing this law to fruition through over a year of campaigning on the issue. In February 2009, HRW organized a roundtable discussion in Tirana with the participation of ten Albanian human rights organizations, including *Aleanca Kunder Diskriminimit LGBT* (Alliance against LGBT Discrimination), to discuss anti-discrimination protections. These ten organizations prepared and submitted the first draft of the bill to the Albanian government for discussion.

This law comes in response to high levels of homophobia documented in Albania and the previous absence of legal protections for LGBT communities. While human rights groups hail the bill as a major victory, there are concerns that religious groups will try to slow down its adoption into civil society. Few modern Albanians are actively religious; however, three strong religions continue to dominate the country's value system: Catholicism, Orthodox Christianity, and Islam. Due to lobbying by these religious groups, a same sex marriage-equality provision, included in the proposed draft of the bill, was omitted from the text of the final law.

LGBT communities are frequently subjected to intolerance, physical and psychological violence, and police mistreatment. Thus, human rights groups actively encourage the Office of the Commissioner for the Protection of Equality and the Ministry of Labor to implement an adequate enforcement mechanism, with the staff and expertise needed to fight discrimination and ensure that homosexuality and gender identity are no longer taboo.

Some view this law as an attempt by the Albanian government to fulfill part

of the human rights requirements placed on it as a candidate for ascension to the EU. EU membership requires all country-candidates to adopt comprehensive anti-discrimination legislation in accordance with the European Convention on Human Rights, which prohibits discrimination against LGBT persons. Albania's initiative in civil rights provides a strong example for other EU-membership candidates, such as Macedonia, which recently removed sexual orientation from one of the banned grounds for discrimination in an anti-discrimination bill. Although homophobia remains prevalent in Albanian society and discrimination based on sexual orientation is widespread in the Balkans, this law is the first step to building a more open society founded on equal protection for all, and gives human rights activists a strong legal platform to battle discrimination.

IRELAND'S ANTI-ABORTION LAW COMES UNDER CRITICISM

The Republic of Ireland, a deeply Catholic country, is the only remaining Member State of the European Union that allows abortions only where there is a *substantial* risk to the life of the mother. In 1983, Ireland amended its constitution to include a "Pro-Life Amendment," which asserts that the unborn child has an explicit right to life from the moment of conception. As a result, under the current law, it is illegal to have an abortion in Ireland even if the woman's health is at risk, the pregnancy is the result of rape or incest, the fetus would not survive outside of the womb, or the continuation of the pregnancy would not be in the best interest of the mother. In contrast, 44 of the 47 Council of Europe Member States allow abortions in the majority of these circumstances, especially to save the mother's life or where the pregnancy is the result of incest or rape.

In many cases, Irish women seeking abortions travel to other European countries to have the procedure. From 1980 to 2008, 137,618 Irish women traveled to the UK to have an abortion. However, the Republic of Ireland has started to use injunctions to prevent women from traveling abroad for abortions. According to Human Rights Watch, a seventeen-year-old girl in the custody of a Health Services Executive had to get court permission to travel to the UK for an abortion. The government also places restrictions on when and how organizations

can provide information regarding access to abortion services abroad. Moreover, due to unclear legal and policy guidelines about legal abortions, even women who may qualify for legal abortions in Ireland cannot obtain them for fear of severe penalties, which may include penal servitude for life for both women undergoing and doctors performing abortions. As a result, some doctors are reluctant to provide prenatal screening for severe fetal abnormalities, and very few women have access to domestic legal abortions.

The international legal community has taken notice. Last year, the UN Human Rights Committee criticized Ireland's laws on abortion during the country's Universal Periodic Review and recommended that the country harmonize its domestic litigation with the International Covenant on Civil and Political Rights (ICCPR). On December 9, 2009, the Grand Chamber of the European Court of Human Rights (ECtHR) heard *ABC v. Ireland*, the first case in the ECtHR to challenge Ireland's anti-abortion laws in more than fifteen years. The case involves three women who are challenging the ban on grounds that it forces women to travel abroad to procure abortions, jeopardizing their health and well-being in violation of their rights under the European Convention on Human Rights (ECHR). The specific ECHR provisions cited are Article 2 (right to life); Article 3 (prohibition of torture); Article 8 (right to respect for family and private life); and Article 14 (prohibition of discrimination). Pro-choice advocacy groups argue that *ABC v. Ireland* has a better chance for success than its predecessor, *D v. Ireland*, because it directly challenges Ireland's general prohibition on abortion rather than make an inroad through a particular exception. In *D v. Ireland*, a pregnant woman challenged the lack of abortion services in Ireland in the case of a lethal fetal abnormality.

This case has significant consequences for both Ireland and the entire European community. As suggested by Johanna Higgins, co-founder of the Association of Catholic Lawyers of Ireland, a ruling in favor of the three women might signal to EU Member States that they are no longer free to make certain decisions concerning their own domestic law, which is often rooted in unique historical, religious, and cultural principles.

JUDGE BALTASAR GARZÓN FACES CRIMINAL CHARGES FOR PROBING INTO THE FATE OF SPAIN'S DISAPPEARED

Nearly thirty years after the end of the Francisco Franco regime, a lawyer visited ninety-year-old Teofila Gonzalez at her retirement home in 2008 and told her that one of the eleven bodies found in the exhumation of a mass grave, ordered by Judge Baltasar Garzón, was identified as her brother, Severiano. Severiano had been a left-wing Republican who was captured, held at the village church, and then dragged away in a cart, never to be seen again.

Garzón is currently under criminal investigation by *Audiencia Nacional*, Spain's highest criminal court, for breaching his duties as a judge and launching an inquiry on October 16, 2008 into 22 alleged cases of illegal detention and forced disappearances, involving more than 100,000 victims, committed during the country's civil war (1936-1939) and General Franco's dictatorship (1939-1975).

In October 2008, Garzón ordered the exhumation of mass graves in response to a petition filed by thirteen associations of the victims' families. For the first time in Spanish history, someone was attempting to establish accountability for the killings of thousands of left-wingers, union members, and other opponents of the regime who were disappeared over seventy years earlier. Aside from political opposition by the Popular Party and the Catholic Church, Garzón faced several legal obstacles, including a 1977 amnesty law that granted immunity for all political crimes committed prior to December 1976 as part of a national reconciliation program. In a 68-page report presented to the court, Garzón alleged that the illegal detention and disappearance of victims are not subject to the 1977 amnesty law because they can be characterized as crimes against humanity, therefore subject to universal jurisdiction. Garzón also rejected any statute of limitations, reasoning that the crimes are ongoing since Franco waged a systematic campaign to eliminate opponents and hide their bodies, and the bodies are still missing. Contrary to the Prosecutor's objections, a Law on Historical Memory, passed in 2007 to bar victims' potential legal claims, does not prevent investigations on crimes against humanity.

According to Amnesty International, blocking Garzón's war crimes investiga-

tions would violate Spain's obligations under international law. A country's refusal to acknowledge the detention or whereabouts of victims of persecution is an enforced disappearance and a violation of the 2006 Convention for the Protection of All Persons from Enforced Disappearance (Convention against Enforced Disappearance), passed by the UN General Assembly and ratified by Spain in 2009. This convention has not yet entered into force. The ICCPR, which Spain ratified in 1977, obligates governments "to ensure that any person whose rights or freedoms . . . are violated shall have an effective remedy." In addition, Garzón urged the court to apply *ex post facto* law (law created after the fact), specifically Article 5 of the Convention against Enforced Disappearance, as had been done during the Nuremberg trials. Most recently, the ECtHR held in 2009 that an amnesty law contradicts a state's duty to investigate acts of torture or barbarity. It is ironic that the Spanish government and especially the Prosecutor's Office are challenging Garzón's efforts, since they extended their support when Garzón issued an indictment against Chilean General Augusto Pinochet for the murder and torture of thousands and when he led Mexico to extradite Ricardo Miguel Cavallo, a former military official from Argentina implicated in atrocities during the country's military dictatorship.

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SOUTH AND CENTRAL ASIA

TAJIKISTAN: FEARS OF REFUGEE INFLUX MAY LEAD TO LEGAL REFORM

Since 2001, Tajikistan has seen an influx of refugees over its southern border with Afghanistan. Amid new NATO offensives and resurgent Taliban forces, it is feared that the number of refugees from Afghanistan may become unmanageable.

The number of Afghan refugees in Tajikistan has tripled since 2008, with a reported 100 to 200 refugees entering the country every month. According to the United Nations High Commissioner for Refugees (UNHCR), 5,000 Afghan refugees are currently residing in Tajikistan. As NATO and Afghan forces intervene in the southern region of Afghanistan,

and Taliban forces continue attacks in the north, the number of refugees is expected to continue to increase, reaching an estimated 7,000 refugees in 2010.

Although there is peace on the Tajikistan side of the border, life is continually difficult for Afghan refugees. There are limited services established for refugees in Tajikistan, which according to International Crisis Group, is on the fringe of becoming a failed state ten years after its own civil war. UNHCR provides refugee households with less than U.S. \$10 a month; meanwhile, the refugees face language barriers, discrimination, and massive unemployment. Creating further problems, many Tajik citizens see the influx of refugees as a threat to an already scarce job market. Though the budget for UNHCR programs in Central Asia is at its highest level in recent years, new influxes of refugees will require even greater costs.

Tajikistan has ratified both the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees, but has yet to bring its Refugee Status Determination (RSD) process and refugee legislation up to international standards. The imminent influx of refugees has facilitated increased collaboration between UNHCR and the government of Tajikistan, providing UNHCR with a major opportunity to push for reform of refugee policies in the region.

In the past, UNHCR has sought to train government officials, institutions dealing with refugees, and Tajik border guards regarding refugee protection; it also implemented a resettlement program, which ended in 2006. While some of these older programs may continue, there is a significant need to improve documentation provided to refugees. A recently established Refugee Department under Tajikistan's Ministry of the Interior could facilitate domestic RSD legislation. According to the UNHCR 2010 Regional Operations Profile for Central Asia, comprehensive plans to reduce statelessness and to increase integration and resettlement programs are also top priorities. There are plans to attempt local integration of refugees who have been in Tajikistan for longer periods and repatriation of willing refugees. Additionally, through assistance from NGOs and the Tajikistan government, UNHCR hopes to implement programs to address children's education, health care

needs, and women's empowerment among refugee populations.

Though Tajikistan may be on the brink of failure itself, the threat of an immense increase in refugees could be the needed catalyst for overdue reform of refugee laws in the region.

REPORTS OF SRI LANKAN HIT-LIST STIR FEARS OF ACTIVIST AND JOURNALIST PERSECUTION

In early March 2010, a Sri Lankan government document was leaked, which as reported by Amnesty International, contained a list of 35 of the foremost journalists and NGO officers who were under surveillance by the Sri Lankan secret service. Each name was followed by a grade, denoting those with the highest significance to the secret service.

Amnesty International fears for the safety of the activists named on the list. Ranking at the top of the list and of chief concern to Amnesty International are Dr. Paikiasothy Saravanamuttu, Executive Director of the Center for Policy Alternatives (CPA), and J.C. Weliamuna, Director of Transparency International Sri Lanka (TISL). Both CPA and TISL monitored the January 2010 presidential elections in Sri Lanka, and both reported on the misuse of resources and electoral violations.

When news of the list reached the two executive directors in March 2010, they wrote a joint letter to President Mahinda Rajapaksa, protesting the list's necessity. The activists were not completely caught off guard, however, as both have endured numerous threats to their safety in the two years prior. In September 2008, a grenade was launched at Weliamuna's property, but no one was injured; the investigation that followed the incident was inadequate. More recently, in February 2010, a Sri Lankan newspaper reported that President Rajapaksa stated "something must be done" about Weliamuna during a meeting with Freedom Party lawyers. Likewise, in August 2009, Saravanamuttu received an anonymous death threat, which was not investigated.

Amnesty International has also voiced concern for 56 Sri Lankan journalists who are thought to face threats. According to Amnesty International, since 2006, journalists have been killed, detained, tor-

mented, and forced to leave the country after receiving death threats. None of the allegations have been thoroughly investigated.

The "hit-list" is the latest in a wave of anti-journalist and -activist actions by the government since the January 2010 elections. An ongoing media campaign strives to discredit NGOs with claims that the organizations are attempting to undermine Sri Lankan democracy. The government stated that it has begun investigating and is seeking to take legal action against NGOs. Additionally, four reporters who were in hiding since the January elections were arrested in early March by the Terrorism Investigation Division, due to their connection to opposition leader General Sarath Fonseka.

After allegations of the hit-list became public, Amnesty International, Human Rights Watch, Transparency International, the Asian Human Rights Commission, the International Federation of Journalists, the Asian Legal Resource Center, and Reporters without Borders all called for a halt of the persecution of journalists, NGOs, and activists in Sri Lanka. Transparency International has asked the government to ensure the safety of Transparency International staff and reaffirm freedom of expression. In a letter to President Rajapaksa, the International Federation of Journalists expressed its concern over the list's purpose and called for protection of those listed.

Despite the outcry from international and Sri Lankan organizations over the hit-list, the Sri Lankan government denies, and some media outlets remain unconvinced of, its existence. The government accused Amnesty International of bias, challenging the organization to prove the document's existence. News of the list reportedly appeared on a Sri Lankan website, Lanka News Web, whose editor was also named. According to the International Federation of Journalists, the list is also being held by diplomatic missions in Sri Lanka, giving the list's existence more credibility. Nevertheless, the Sri Lankan government assured civil society and its critics that there was no reason to fear for their physical safety.

If these allegations are confirmed, they may further tarnish the Sri Lankan government's reputation as a democracy. The United Nations Convention against Corruption obligates States Parties to pro-

mote NGO and civil society involvement in raising public awareness of governmental corruption. Threats to the safety of activists and journalists severely undermine this goal. Sri Lanka has signed and ratified the Convention, which entered into force in March 2004. The continuing state of emergency in Sri Lanka, declared after the defeat of the Tamil Tigers in May 2009, assists the government by providing it with an excuse to ignore its international obligations and continue the trend of silencing those who speak out.

BANGLADESHI WAR CRIMES TRIBUNAL IN THE WORKS

In March 2010, almost forty years after the 1971 fight for independence from Pakistan, the Bangladeshi government created a war crimes tribunal to prosecute those who committed atrocities during the bloody nine-month conflict. The government estimates three million people were killed during the war by Pakistani soldiers and Bangladeshi collaborators. An estimated 200,000 women were raped, and the numbers of displaced persons reached the millions.

According to the Law Minister of Bangladesh, Shafique Ahmed, the government named three high court judges, led by Justice Nizamul Haque Nasim, to carry out trials for rape, murder, arson, torture, and genocide. A panel of retired Bangladeshi officials and lawyers will be prosecuting those suspected of forming auxiliary forces to aid Pakistan in 1971.

The Law Ministry stated that the tribunal will be conducted according to a 1973 act that sets guidelines for the prosecution of those accused of breaking international law and committing crimes against humanity. The government has prohibited fifty suspects from leaving the country, most of whom are members of *Jamaat-e-Islami*, the largest Islamic party in Bangladesh, which sided with Pakistan during the war. Allegedly, members of the party identified victims for the Pakistani military and may have assisted in killings. An estimated 1,600 people took part in the atrocities, but those who were members of the Pakistani army will not be subject to the tribunal's jurisdiction. The government has provided no explanation for this decision, bringing criticism that the proceedings are victor's justice and the tribunal is a vehicle to persecute political opposition. After the

war, collaborators who were not direct perpetrators of heinous crimes were given amnesty and will not be prosecuted in the tribunal. Those with evidence or charges against them for direct participation were not given amnesty.

The creation of the tribunal is promising, though the undertaking has been delayed since Bangladesh gained independence. Sheik Mujibur Rahman, founder and leader of Bangladesh, began trials of war criminals in 1973, but was assassinated before they could be completed. Since then, political turmoil has hindered the progress of the tribunal despite outcries from victims' families and veterans of the war. The current Prime Minister, Sheik Hasina, campaigned to prosecute war criminals, and Parliament passed a resolution for swift trials in 2009, finally allowing for the creation of the tribunal.

The renewed promise became action two days after Bangladesh's ratification of the Rome Statute for the International Criminal Court (ICC), which defines the crime of genocide, crimes against humanity, and war crimes. Bangladesh is the 111th nation in the world, but the first in South Asia, to become a State Party to the ICC. Bangladesh may now need to reexamine the implementation of its tribunal to ensure consistency with the standards set forth in the Rome Statute, which will enter into force June 2010. In one notable example, the 1973 act creating the Bangladesh Tribunal allows for the death penalty, a punishment that is not permitted under the Rome Statute. Though the time lapse since the war may make it more difficult to produce evidence and fair trials, the United Nations has expressed its hope that the trials operate according to international standards for which it is considering sending observers.

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EAST ASIA

MONGOLIA: EXTREME COLD RESULTING IN MALNUTRITION AND RISK OF DISEASE

Recently, the United Nations Children's Fund, with the cooperation of the government of Mongolia, airlifted essential emergency supplies to children living in rural areas of Mongolia severely hit by extreme

cold. Supplies included blankets, warm clothing, fuel for heating and cooking, and hygiene kits. Due to weeks of heavy snowfall, sixty percent of Mongolia was covered by between eight to sixteen inches of snow, with temperatures as low as negative fifty degrees Celsius. At least six million livestock died of starvation, threatening the lives of nomadic herders — third of the population of Mongolia — who rely heavily on agriculture and herding.

With average winter temperatures reaching as low as negative thirty degrees Celsius, Mongolians are accustomed to cold weather, however, this winter was the harshest in thirty years. The government of Mongolia declared a disaster in more than half of the country's 21 provinces, which are in urgent need of humanitarian assistance. Mongolians call the harsh weather a *dzud*, Mongolian for a severe winter with heavy snow, strong winds, and extremely low temperatures, preceded by a summer drought. A *dzud* typically results in livestock deaths, because the prolonged dry summer leaves insufficient feed for the following winter, and the extreme cold hardens the snow and ice, impeding grazing.

The fierce winter and loss of livestock threatens herder families with serious food shortages and poverty. Isolated by snow, villagers do not have access to food, medical care, or other emergency services, and at least eleven people, including nine children, have been reported dead. Since herding and agriculture are the backbone of the rural economy in Mongolia, livestock deaths means loss of income for many. In addition to food shortages, potential spread of disease caused by rotting animal carcasses is a growing problem. The risk of illness, including anthrax and salmonella infection, is anticipated to rise once the snow begins to melt.

Another possible effect of the extreme weather is overpopulation of Mongolian cities. After previous *dzuds*, many nomads abandoned the grassland and moved to capital, Ulaanbaatar, to seek jobs. Many are forced to live in shantytowns without access to water and heat because the cities cannot support the influx.

In order to alleviate the consequences of this *dzud*, international organizations and NGOs have responded with humanitarian assistance. The United Nations Population Fund furnished medical and hygiene equipment to 6,000 pregnant mothers who were

unable to go to health facilities. Moreover, in order to prevent soil contamination and the outbreak of disease, the United Nations Development Program adopted a cash-for-work program to pay about 60,000 herders to collect and bury the carcasses of the dead livestock. The program is an effective approach since it produces income for nomads who have lost their livestock and reduces health risks to public at the same time.

While emergency needs are being addressed, Mongolia's heavy reliance on livestock herding has become controversial. To prevent future losses of livestock, experts urge Mongolia to restrict the use of grasslands, as overgrazing has depleted the useable pasture with the number of herds increasing by half over the last twenty years. Though the current focus should be on humanitarian assistance, the government of Mongolia should also address the long-term effects of the extreme weather disaster and adopt policies to support the nomadic herders.

SHOULD A CRIMINAL SUSPECT'S FACE BE REVEALED? THE CURRENT DEBATE IN SOUTH KOREA

On March 6, 2010, a thirteen-year-old girl who had been missing since February 24, 2010, was found dead in a rooftop water tank near her house in Busan, South Korea. The naked body was covered with plastic bags and calcium carbonate, and showed signs of rape before suffocation. Based on evidence, including a DNA sample from the teenager's body and a sweater dumped near the water tank, police identified Kim Kil-tae as the main suspect. After hiding successfully for fifteen days after the girl's disappearance, Kim was arrested four days after the body was discovered. Charged with rape and murder, Kim initially denied all charges against him, but ultimately confessed to involvement in the crime.

In response to subsequent public outrage, police took unprecedented action and revealed Kim's face when he was taken to the police station following his arrest. Korean law and National Police Agency guidelines require that police protect criminal suspects' privacy by limiting media access and refraining from releasing their identities during ongoing investigations. Under normal arrest procedures, police conceal a suspect's face with baseball caps and masks in public. In other countries, including the United States, France, and Japan, it

is very rare to find such police practices or laws that specifically regulate the conduct of law enforcement authorities regarding the publicity of suspects' identities.

The controversy over whether to disclose the identity of a criminal suspect under investigation is not new in South Korea. In 2009, when police arrested serial killer Kang Ho-soon, the media exposed his face, claiming the people had a right to know his identity. The media and some members of the public argue that full disclosure of a criminal suspect's identity, especially when there is a strong evidence of guilt, ensures public safety and deters crime. Opponents, relying on the principle that suspects are innocent until proven guilty, stress that exposing the identity of a criminal suspect violates basic human rights. They also argue that such exposure inflicts emotional distress on the suspect's family members and makes reassimilation into society upon release more difficult, which in turn contributes to recidivism.

A petition was filed on March 12, 2010, to the National Human Rights Commission of Korea, alleging police wrongfully exposed Kim's face to the public. However, there are indications that official police procedure may change in South Korea. The governing Grand National Party of South Korea moved to amend the law last year, adding a Release of Identities Exception Provision to the Special Act on Punishment of Violent Crimes. The provision would allow disclosure of the name, age, and face of criminal suspects charged with serious crimes, such as murder, rape, or kidnapping, if police obtained a confession or strong evidence of guilt. The provision passed the Cabinet last July, but is currently pending at the Legislation and Judiciary Committee of the National Assembly.

Different standards should apply for those suspected of heinous crimes because the safety of society is at higher risk. Although there is no current rule classifying "heinous crimes," a consistent and clear standard could provide guidelines to law enforcement authorities to protect both societal interests and individual rights. Because of the high likelihood of a conviction, when police have obtained a confession or have strong evidence of guilt, serving the public interest becomes more important than preventing the possible negative consequences of disclosure.

ZERO UPR RECOMMENDATIONS ACCEPTED BY NORTH KOREA

One of the duties of the UN Human Rights Council, established by UN General Assembly Resolution 60/251 in 2006, is to review human rights conditions of each UN Member State. Composed of 47 elected representatives from Member States, the Universal Periodic Review (UPR) Working Group reviews each state's human rights record and makes recommendations as to actions it should take to improve human rights conditions. In addition to the Working Group, any Member State can participate during the interactive dialogue with the states under review. Each Member State is reviewed once every four years; by 2011, all 192 Members will have completed a UPR.

North Korea is a State Party to major international human rights instruments: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC). North Korea underwent its first UPR in December 2009, attracting special interests from the international community.

North Korea filed its National Report, which explained the state's basic positions on human rights, described its institutions and laws promoting human rights, and illustrated current obstacles in protecting its citizens' rights. The Office of the High Commissioner for Human Rights (OHCHR) filed a compilation of recommendations from other UN committees and offices and the Special Rapporteur on the situation of human rights in North Korea NGOs, including Human Rights Watch, Amnesty International, and the Asia Centre for Human Rights, reported human rights violations in North Korea through the OHCHR Summary of stakeholders' information.

During the country's review on December 7, 2009, Ri Tcheul, the Ambassador of North Korea to the United Nations, and twelve members of the North Korean delegation engaged in discussions with 52 countries. Member States expressed grave concerns about North Korean political prison camps, the use of torture, public executions, and forced labor. The participant countries also listed 117 recommendations

SOUTHEAST ASIA AND OCEANIA

SOLIDARITY THROUGH FOOD

for North Korea. They advised North Korea to take measures to fully comply with international human rights instruments to which it is a State Party, including the ICCPR, the ICESCR, the CEDAW, and the CRC, which together demand respect for the rights of freedom of expression, association and movement, and ensuring that its citizens have adequate access to food.

Two days after the review, however, Ri Tcheul announced that North Korea rejected fifty of the recommendations outright, and that it would soon examine the others. At the closing session of North Korea's UPR on March 18, 2010, Ri Tcheul, without providing any additional explanation, reaffirmed North Korea's previous statement that it rejected fifty of the proposals.

UN Member States, including South Korea, the United States, Japan, and France, expressed their disappointment about North Korea's vague response and failure to elaborate on which recommendations it would accept or reject. Although some countries considered North Korea's participation in the UPR an important indication of its willingness to discuss and review human rights issues, the significance of the review is meaningless if North Korea disregards the recommendations.

North Korea is obligated to respect, protect, and fulfill the rights enumerated in the treaties to which the country is a State Party. Unfortunately, there is no direct enforcement mechanism to compel North Korea to comply with these obligations; however, the UPR process is politically influential. If North Korea does not sincerely consider the Member States' recommendations, it will jeopardize the country's position on the international stage and bring increased scrutiny and criticism for lack of commitment to international collaboration. The importance of international political pressure for the enforcement of human rights underscores that the UN Member States and international organizations must not give up on North Korea. Until North Korea's second UPR in 2013, they should continue to pressure one of the world's most defiant countries to comply with its treaty obligations and improve human rights.

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In response to a recent spike in racially motivated attacks against Indian students in Australia, one citizen has taken it upon herself to show support for the Indian community in her city. Mia Northrop, a digital media designer and resident of Melbourne, created an event called Vindaloo Against Violence and advertised it through Facebook, a social networking website. The concept behind Northrop's campaign was simple. Participants should eat out at, or order in from, Indian restaurants throughout Melbourne. According to the Vindaloo Against Violence website, the event would allow Melbournians to "express their anger and disappointment that racially motivated violence is occurring in their city, embrace and show solidarity with the local Indian community, [and] mount a show of force against the perpetrators of violence."

Over the last year, tensions have risen both between Australia and India, and between Australian and Indian communities within Australia, over racially motivated attacks against Indian students. The first of these highly publicized attacks occurred in May 2009 when a 25-year-old Indian student was repeatedly stabbed in the head with a screwdriver at a birthday party in Melbourne. Some authorities in Australia claim that the attacks occur because the perpetrators see Indian students as "soft targets." The Australian government, in an attempt to improve its image and assure potential students that the country is safe, has created a taskforce to look into accusations of racially motivated violence and inadequate police response. Tensions, however, remain high, as many Indian student leaders say certain issues still need to be resolved.

Vindaloo Against Violence started with only 100 registered supporters. On February 24, 2010, however, over 17,000 Australians participated in the event, eating at over 400 Indian restaurants. Many Melbourne police officers and politicians dined out in support of the movement, and local parliaments across Australia served Indian foods in their cafeterias. People in Tokyo, New York, Amsterdam, and Stockholm also connected through Facebook and hosted their own events in solidarity with Australians.

Many Indian newspapers, including the *Bangalore Mirror* and the *Times of India*, covered the event in a positive light, a dramatic change from the consistently negative coverage of the attacks and accusations of racism previously appearing in such papers. According to John Brumby, Premier of Victoria, the province in which Melbourne is located, the "Vindaloo Against Violence initiative is a unique opportunity for Victorian[s] to unite and send a message that the actions of an ignorant few will not be allowed to undermine the reputation of Melbourne as a peaceful and friendly city." Brumby himself participated in the campaign by dining at a local Indian restaurant with several Indian students.

Social media sites like Facebook are playing a growing role in human rights activism by helping to organize grassroots action and educate a global audience about human rights abuses. These sites make it relatively easy to publicize issues, organize activism events, and gather and publish evidence of abuses. For example in February 2008, a Colombian engineer and five of his friends started a Facebook group called "No More FARC," in protest of the practices and tactics of the Colombian guerilla movement. The group, now called "A Million Voices Against FARC," has over 430,000 members. The group's members organized a protest in early 2008, which quickly spread to millions of protesters in 140 cities worldwide. Social media also played a critical role in the protests following the 2009 presidential elections in Iran, many of which were coordinated in part through Facebook and Twitter, the microblogging service. Videos of the protest were also uploaded to YouTube, where they have been viewed by millions of people worldwide.

TRUTH AND RECONCILIATION IN THE SOLOMON ISLANDS

The Solomon Islands Truth and Reconciliation Commission (TRC) launched its first public hearings on March 10, marking an important step forward in the national quest for reconciliation following the five-year ethnic conflict that ended in 2003. Nineteen victims testified over two days, publicly recounting experiences they have rarely spoken about, even in private. One woman, Edith Padavisu, told of an attack on her husband in Guadalcanal in April 1999. She described how militants used bush knives, spears and guns in their assault, after which they left her husband to die.

Ethnic tensions on Guadalcanal, the largest of the Solomon Islands, have roots back to independence in 1978. Guadalcanal natives believed ethnic Malaita settlers from other islands had acquired a disproportionate amount of jobs and land on Guadalcanal. These tensions escalated to violence in December 1998, when the Guadalcanal Revolutionary Army (also known as the Istantu Freedom Fighters) began a campaign to force Malaitan settlers to leave Guadalcanal. Malaitans formed their own competing militia, the Malaita Eagle Force. Fighting continued until 2003, when a regional coalition of troops from Australia and other Pacific islands arrived to restore stability. During the conflict, more than 100 people were killed and 20,000 displaced. Many others suffered various human rights abuses, including torture.

Although the armed conflict has ended, the Solomon Islands continue to experience political instability and ethnic tensions, due in large part to unaddressed issues and unanswered questions. The current Prime Minister Derek Sikua, who took office in 2007, made reconciliation an official top priority. This included the establishment, in 2008, of the TRC, tasked with investigating the causes of the conflict and the nature and extent of human rights abuses during that period; evaluating the impact of the conflict on the educational, health and other sectors; and making recommendations on how to prevent future conflict.

Borrowing from the South African model, the TRC is composed of five members, three nationals and two non-nationals, who lead public hearings in which victims, witnesses, and perpetrators can testify. The TRC was officially launched in April 2009, with an appearance by Archbishop Desmond Tutu. Over the next year, the TRC held workshops around the country to inform citizens about its work and the opportunities available to them. The TRC plans to hold seven more hearings this year, the next on the island of Malaita. Many witnesses have already volunteered to testify at future hearings.

One crucial component has been absent from the hearings: testimony from the perpetrators. Witnesses and victims have called for the perpetrators to testify, so that the whole community can benefit from the TRC and begin to move forward. Selwyn Kei, a victim testifying before the TRC, asked for the chance to forgive his

perpetrators. He said, "I am asking you, my perpetrators, to come forward to reconcile with me. Together we can carry our nation forward." Father Samuel Ata, the Chair of the TRC, supported these calls for perpetrators to step forward, not for judgment but for reconciliation, pronouncing "We definitely encourage them to testify. It is very important, because the perpetrators do also need healing."

INDIGENOUS MALAYSIANS INSIST ON ENFORCEMENT OF CUSTOMARY LAND RIGHTS

More than 1,000 indigenous Orang Asli people gathered in Putrajaya, Malaysia on March 17 to protest a land bill, which, under the guise of granting land, refuses to adhere to judicially recognized indigenous land rights and severely limits the amount of Orang Asli land. Elders of the three main Orang Asli communities led members of various tribes in what the Center for Orang Asli Concerns claims to have been the largest gathering of Orang Asli in history. Although the elders planned for the protest to lead to the Prime Minister's offices, police diverted most to the Rural and Regional Development Ministry, where the leaders submitted a memorandum explaining their complaints against the land bill. After receiving the memorandum, the Rural and Regional Development Minister assured those gathered that the government would look into their complaints and attempt to reconcile them with the proposed bill.

Orang Asli is the name given to all eighteen non-Malay indigenous tribes on the Malay Peninsula, which total around 150,000 people. Orang Asli land rights are governed by the Aboriginal People's Act of 1954. Under this Act, the state may declare an area customarily and currently inhabited by Orang Asli to be an "aboriginal area." Orang Asli have exclusive rights of occupancy of this customary land and use of its natural resources, but have no rights of ownership. They cannot sell, lease, or grant this land without permission from the Commissioner of Aboriginal Affairs, a post which has never been held by an Orang Asli. The government may take the land at any time, and must only pay compensation for the value of the crops and dwelling on the land, not the land itself.

Nevertheless, in the 2002 case *Sagong bin Tasi v. Selangor State Government*, the

Malaysian High Court declared that the Orang Asli have a proprietary interest in their customary lands, including the right to use and derive profit from the land. The Court further declared that Orang Asli land fell under the Land Acquisition Act, which governs all land acquisition in Malaysia, and that the government taking of the land required compensation in the same manner as non-Orang Asli land. The Court of Appeal affirmed the decision.

The proposed bill, which the Orang Asli oppose, is an amendment to the Aboriginal People's Act. The amendment would offer each Orang Asli family two to six acres of land, but once they accept that land, they lose all future claims to any other customary land. Furthermore, the amendment would limit the total Orang Asli land to fifty thousand hectares, an amount substantially less than the 129,000 hectares they claim. Orang Asli groups assert that the amendment also imposes conditions on the land, such as prohibiting rental without state permission and mandating that the planting of certain crops be managed by private developers.

Many civil society groups, including the Malaysian Bar Association, have strongly supported Orang Asli rights. The Bar Association issued a press release urging the government to "formally recognise, protect and guarantee [Orang Asli] rights to all their ancestral lands," and to withdraw any proposed legislation that would limit these rights. Commentators also insist that the government uphold its commitments under the UN Declaration on the Rights of Indigenous Peoples, which states that indigenous peoples have "the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."

The Malaysian government must move forward in the area of indigenous rights, and live up to international standards if it wishes to gain the respect of the international community. The government must fulfill its obligations under its domestic legal system, as decided by the High Court in *Sagong bin Tasi*, and not attempt to appease the Orang Asli community by granting them, with significant conditions, part of the land that they already own in full.

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