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REGIONS

AMERICAS

RACE TO THE TOP: BRAZIL'S RACIAL QUOTAS FOR HIGHER EDUCATION

In a groundbreaking decision, the Supreme Federal Tribunal of Brazil, Brazil's highest court, unanimously ruled that the race quotas used in public universities are constitutional. The Tribunal issued its decision in April following a hotly contested debate that challenged the Brazilian ideal of "racial democracy." With this ruling, Brazilian lawmakers have ushered in affirmative action laws aimed at combating discrimination and educating the historically marginalized Afro-Brazilian population. Proponents view this expansive move as the foundation for the possibility to broaden opportunities for minorities in Brazil.

The ruling arose from *Ação do DEM vs. cotas da UNB e no Brasil* (Action of Brazil's Democratic Party v. Quotas of the UNB and in Brazil), the case brought by *Democratas* (Brazil's Democratic Party (DEM)) against the *Universidade de Brasilia* (University of Brasilia (UNB)), which reserves twenty percent of its enrollment spots for Afro-Brazilian, mixed-race, and indigenous students. The DEM argued that the policy was unconstitutional under Article 5 of the Brazilian Constitution, which protects equality for all citizens regardless of race. The Tribunal rejected DEM's claim, finding the quotas to be the best method to remedy racial inequalities that were never confronted after the abolition of slavery in 1888. The Tribunal held that racial quotas are the best transitory option to close the inequality gap in higher education. This gap is a major issue, as a majority of Afro-Brazilians continue to live in *favelas* and earn a fraction of the salaries enjoyed by the predominately Caucasian upper class.

On August 29, 2012, President Dilma Rousseff signed the *Lei de Cotas* (Law of Social Quotas). This law gives all federal universities four years to ensure that half of their incoming class comes from public schools. The spots reserved for marginalized students will be in accordance to

the percentage of the minority population in the state where each public university is located.

Proponents of the university policy hail the legal victory as one of the many steps needed to ensure that the marginalized populations, particularly Afro-Brazilians, gain access to adequate education and advanced job placement. Afro-Brazilians constitute around seventy percent of those that live below the poverty line and only 2.2% have access to higher education. Much of the Afro-Brazilian population remains in the lower echelons of the socio-economic sectors of the country and receive poor education in public primary schools.

Opponents of racial quotas view the policy as a racial remedy for a socio-economic issue. Critics believe that categorizing the population by race will create a fractionalization of Brazilians along racial lines and could result in officializing racial discrimination. Some see the quotas as reverse racism that directly violates the Brazilian Constitution by favoring Afro-Brazilian students in the highly competitive selection process for public universities, while others view the racial quotas as an imported solution from the United States that is incompatible with Brazilian race relations. These opponents maintain a staunch ideal of "racial democracy," or the idea that Brazil's racial classes were never clearly defined.

With the ruling of the Supreme Tribunal of Brazil and the subsequent Law of Social Quotas, Brazil has taken fundamental steps to adhere to its obligations under the 1960 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (Convention). Brazil's policy is in accordance with Article 1, Sections (a) and (b) of the Convention, which call on States to eliminate educational discrimination that deprives citizens of access to higher education. By implementing a national policy that promotes more equality in educational opportunities, Brazil has pursued an effective method of reform that is recommended in Article 4 of the Convention.

In accordance with its obligations under Article 1, Section 4 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), Brazil has a responsibility to secure the advancement of a racial group that may require protection to ensure a fundamental human right. The CERD protects Brazil's reforms because once the intended goals are achieved, they will not favor Afro-Brazilians as critics of the policy suggest. These measures can also be incorporated in social, educational and economic fields so that all marginalized populations can enjoy equal access to a fundamental human right.

Race will not be the primary factor in determining access to higher education but rather a factor taken into consideration, which complies with Article 13, Section 2(c) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Brazil's policy enables universities to serve the most vulnerable groups without discrimination. Rather than maintaining a status quo that harmed a massive segment of its population, Brazil's policy provides widespread access to the human right of education, which is required under the Covenant.

These efforts to expand higher education for marginalized Brazilians coincide with Brazil's international obligations. The race quota policy legitimately protects human rights afforded to all citizens, and will be crucial in ensuring Brazil's continued growth as a global power.

BEG THEIR PARDON: FUJIMORI'S POSSIBLE PARDON

Former Peruvian President Alberto Fujimori's 25-year prison sentence for severe human rights violations may be coming to a premature end as current President Ollanta Humala contemplates granting the Fujimori family's petition for a humanitarian pardon on behalf of the ex-president due to his health status.

During his time in office from 1990 to 2000, Fujimori was lauded by some for his economic reforms and anti-terrorist stance that eventually crippled the

“Shining Path,” a domestic terrorist organization. However, the Fujimori administration was also notorious for corruption, bribery, and human rights violations that ultimately led to the President’s imprisonment in 2009. The Peruvian population is divided between those who remember the former leader as moving the economy forward and eradicating domestic terrorism, and those who remember his authoritative rule that led to a self-imposed *coup d’état*, kidnapping, murders, and other human rights violations. On October 10, 2012, Fujimori’s family formally requested a humanitarian pardon to President Ollanta Humala. The family cited tongue cancer and other health issues as a humanitarian justification for his release. The Peruvian Constitution grants the President the power to pardon and to reduce a prison sentence if the prisoner has a terminal illness. A panel of medical examiners assesses the prisoner and informs the president of its recommendation, but the president makes the final decision.

Despite this constitutional power, many Peruvian politicians have pointed to Law 26478 as an argument against the pardon. This law denies pardon of anyone found guilty of aggravated kidnapping, a crime for which Fujimori was convicted. Other politicians have remained open to the possibility of a pardon if doctors, after their thorough investigation, confirm that Fujimori’s illness is terminal. A recent poll has shown that seventy percent of the Peruvian public supports a move to house arrest or a pardon for the former president. While some senators and other allies of Fujimori continue to advocate for his release on medical grounds, Dr. Juan Postigo of the Instituto Nacional de Enfermedades Neoplásicas (National Cancer Institute) recently issued a statement declaring that Fujimori’s treatments have been ongoing for twelve years and he remains in stable condition.

The Peruvian Constitution acknowledges that a pardon must comply with the international treaties that Peru has ratified. Human Rights Watch has pointed out that Peru’s duty to prosecute violators of human rights cannot be undermined by amnesties, pardons, and other domestic provisions that grant immunity for these crimes.

Peru has ratified the American Convention on Human Rights, which is dedicated to protecting the rights of all

citizens in the Western Hemisphere and is crucial in establishing the framework created domestically to determine the violations for which President Fujimori was convicted. The UN Human Rights Council, the Inter-American Court of Human Rights (IACtHR), and other international bodies of which Peru is a member have expressly condemned pardons for those who committed grave human rights violations. In *Gutiérrez-Soler v. Colombia* (2005), the IACtHR declared that “the State shall refrain from resorting to amnesty, pardon, and statute of limitations, and from enacting provisions to exclude liability, as well as measures aimed at preventing criminal prosecution or at voiding the effects of a conviction.” Similarly, in the *Barrios Altos* case of 2001, the Court overturned Peru’s amnesty laws protecting all civilians and members of the State’s security forces who had been “accused, investigated, prosecuted or convicted, or who were carrying out prison sentences, for human rights violations” associated with the Barrios Altos massacre.

If the medical examiners determine that Fujimori’s cancer is terminal, President Humala faces the difficult task of reconciling the powers given to him by the Peruvian Constitution to pardon a criminal due to terminal illness with the international legal restrictions that prohibit a pardon for violators of human rights in nearly all instances. Reducing the prison sentence for a violator of human rights for reasons outside of the “humanitarian” sphere would have deep implications for the relationship between Peru and the Inter-American Court, whose decisions are binding on the country. For now, the decision rests solely with President Humala and while some remain optimistic of a pardon, the domestic and international legal parameters are leaning toward President Alberto Fujimori completing his prison sentence.

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U.S. VOTER SUPPRESSION MAY THREATEN INTERNATIONALLY PROTECTED RIGHT TO VOTE

The right to participate in the political process of government and have one’s voice heard is fundamental to the authenticity of any democracy. The U.S. Constitution prohibits voting discrimination based on race,

sex, and age in the Fifteenth, Nineteenth, and Twenty-sixth Amendments, respectively, to guarantee equal protection of the right to vote. However, the U.S. Constitution does not enumerate an affirmative right to vote. Nonetheless, several international treaties protect the universality of the right to vote and prevent voter disenfranchisement of minorities. The United States is a signatory to the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, both of which protect the right to universal and equal suffrage, enumerated in Article Twenty-One, Article Twenty-Five, and Article Five of the documents, respectively.

Historically, U.S. laws and policies disenfranchised groups for the purpose of voter suppression. African Americans and other racial minorities, women, and convicted felons have struggled to realize their right to vote. In the Jim Crow era, literacy and poll tax laws discriminated against African Americans. Poll tax laws required citizens to pay a fee to participate in the election, which disenfranchised African Americans and poor white farmers in the South.

With the passage of the 1965 Voting Rights Act (VRA), most voting qualifications beyond citizenship were eliminated, including literacy tests and poll taxes that created barriers for African Americans to cast their ballot. The VRA guarantees that no person shall be denied the right to vote based on race or color. In 1975, the VRA expanded protections to other minorities that face discrimination based on ethnicity or national origin. In Section Five of the VRA, certain jurisdictions with segregationist histories are required to obtain preclearance from the U.S. Department of Justice for any changes to election laws, ensuring that minorities are not disenfranchised by discriminatory state and local laws.

Despite the aforementioned protections, there is a current resurgence of voter suppression in U.S. laws. Since 2008, a number of states have passed restrictive voting laws that will suppress the voter turnout of minorities. Measures to restrict votes include the following: requiring government-issued photo identification, reducing voting hours, placing restrictions on early or absentee voting, limiting voter registration drives, and gerrymandering districts. In 2011 alone, at least thirty-four

states introduced legislation that would create new voter identification requirements or strengthen existing requirements. Seventeen legislatures introduced strict photo identification bills, eleven of which became state laws. Jurisdictions not specified under the VRA successfully passed these laws without being blocked by the U.S. Department of Justice, regardless of their equally discriminatory effect on minority voters. Sixteen states have also either adopted or are currently pursuing citizenship-based purges of their voter rolls, which may disenfranchise eligible Latino voters. As the 2012 elections approached, many courts reviewed challenges to these laws to determine whether there was enough time to ensure access to newly required forms of identification before Election Day, or whether the implementation of the laws should be delayed until 2013.

By creating hurdles to the right to vote through inaccessibility and unaffordability, the voter ID laws will likely disproportionately impact African Americans, Latinos, and other minorities; seniors; working low-income persons; the disabled; and students. Attorney General Eric Holder compared Voter ID laws to a poll tax, imposing barriers for the already disadvantaged. According to the Brennan Center for Justice at the New York University School of Law, approximately eleven percent of adult citizens—more than twenty-one million people—lack a valid, government-issued identification as required by some Voter ID laws. Twenty-five percent of African Americans do not possess a valid photo ID as well as nineteen percent of Latinos, compared to only eight percent of Whites. The new requirements make it difficult for eligible voters to exercise their human and constitutional right by demanding documents, such as birth certificates that people do not have, or requiring trips to departments of motor vehicles that are nearly impossible for some.

Under the U.S. government's international responsibilities to human rights, the government is obligated to continue to investigate and prevent any laws that will discriminate against minorities regardless of whether a jurisdiction is subject to Section Five of the VRA. In accordance with the U.S. Constitution, the government is required to implement protective measures for minority voters to prevent discrimination. The right to vote is beyond partisanship; it is fundamental to

the survival of a democracy that equally protects all eligible voters' rights.

INDIGENOUS COMMUNITY CHALLENGES EDUCATIONAL DISPARITIES IN GUERRERO

Vast disparities in access to education persist across Mexico, impeding the full realization of every child's right to quality education guaranteed by the Mexican Constitution and the Convention on the Rights of the Child (CRC). Indigenous peoples are among the most disadvantaged and their rights are systematically violated. Consequently, indigenous children are often excluded from the Mexican education system or are unable to access quality education. Indigenous communities generally live in difficult-to-reach rural areas, which ultimately affects their access to education and other basic services. According to the United Nations Children's Fund (UNICEF), twenty-six percent of indigenous people aged fifteen or older are illiterate, compared to the national average of nearly seven percent.

Specifically, members of the Me'phaa Indigenous Community of Buena Vista in the state of Guerrero experience severe impediments to realizing their right to education. According to the Tlachinollan Center for Human Rights of the Montaña (Tlachinollan), a leading human rights organization in Mexico, the illiteracy rate of the indigenous population in Guerrero is forty-one percent, even higher than the national average for indigenous communities. Furthermore, estimates from Tlachinollan indicate that the average years of completed schooling among Community members fifteen and older is less than four years, compared to the national average of nearly nine years. Children of the Buena Vista Community between the ages of three and six years old must walk more than six kilometers per day in rugged terrain to a neighboring community to attend preschool. Over the past ten years, the Buena Vista Community has submitted multiple requests to the Ministry of Education of Guerrero for the development of a preschool center in their own community, but the government has repeatedly ignored these requests.

Article 3 of the Mexican Constitution guarantees individuals basic compulsory education consisting of preschool, primary, and secondary education through

ninth grade. Furthermore, Mexico is a State Party to the CRC, which provides for the right to education in Articles 28 and 29. Under its international human rights obligations, the State is responsible for guaranteeing all children free, quality primary education. Additionally, the State is required to ensure minorities the right to engage in their own educational practices as well as to adopt measures to protect the education of marginalized and minority groups. Accordingly, in indigenous communities such as Buena Vista, the government is obligated to take additional steps to ensure accessibility to quality education.

Under Mexican law, an aggrieved person may initiate a legal process known as a *juicio de amparo* if individual guarantees provided in the Mexican Constitution have been violated. To file a writ of *amparo*, the alleged injured party must demonstrate that a public official is responsible for the injury, the injury infringes upon a constitutional right, and the injury is not irreparable. In 2011, the Mexican government enacted constitutional reforms to the *amparo* system expanding protection to rights not only afforded in the Constitution but also those enshrined in international human rights treaties to which Mexico is a State Party. Thus, the Mexican government's domestication of international law further enforces its responsibility to prevent, investigate, punish, and remedy any human rights violation. To demand their constitutional right to education, members of the Buena Vista Community recently filed a writ of *amparo* based on the omissions of the educational authorities of Guerrero. The *amparo* addresses the key issues of non-discrimination and physical accessibility for the members of the community.

Despite recommendations from the United Nations, civil society organizations, and requests from the local community, the State is consistently falling short of its citizen's educational needs, particularly those located in the mountainous rural region of Guerrero. During his country visit to Mexico in 2010, the UN Special Rapporteur on Education, Vernor Muñoz, found that "exclusion from opportunities of education in Mexico has a very specific group of victims, a situation which can be summed up in a single sentence: poor people receive poor education." The government's violation of the right to education in poor and marginalized communities further exacerbates existing disparities

faced by the communities and hampers necessary development. The *amparo* lawsuit will challenge the recent constitutional reforms in protecting marginalized communities' access to social rights that have been systematically violated. Under its Constitution, the Mexican government is responsible for ensuring that indigenous communities have equal access to education compared with the rest of the population and for reducing the educational gap prevalent throughout the country.

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ASIA AND OCEANIA

COTTON PICKING IN UZBEKISTAN: A CHILD LABOR INDUSTRY

Every September, state-run institutions in Uzbekistan lock their doors and display the words *Hamma pahtada*, Uzbek for "Everybody's gone cotton-picking." As the world's third-largest exporter of raw cotton, Uzbekistan's cotton exports generate \$1 billion in annual revenue. From September to November, the entire country is immersed in what has been described as "cotton hysteria." The harvesting process, however, institutionalizes a tradition of forced child labor. The Uzbek government has not only failed to comply with the minimum standards of international law, it has also continued to promote child labor to ensure that rising harvesting quotas are met. As a member of the International Labor Organization (ILO), the government of Uzbekistan is legally obliged to bring harvesting practices in line with international standards and could strengthen its compliance with international child labor laws by allowing the ILO and the United Nations Children's Fund (UNICEF) to monitor future harvests.

During harvest season, rural schools are closed and students are sent directly to the fields, where they are forced to work thirteen-hour days. Harvesting under police guard, children as young as nine are forced to collect thirty to fifty pounds of cotton a day. Thousands of children between the ages of fifteen and eighteen are loaded onto buses and taken to the fields, where their teachers are held personally responsible for ensuring that quotas are met. Students who refuse to

participate are beaten or expelled; teachers who refuse to comply are fired. Young adults enrolling in Uzbek universities are required to sign pledges promising to participate in the harvest. Each year, the Uzbek government denies the ILO's requests to monitor the harvest, and officials in the Uzbek Prosecutor General's Office have rejected complaints filed by human rights organizations.

As a member of the ILO since July 13, 1992, Uzbekistan is required by Article 19 of the ILO Constitution to comply with annual reports and recommendations. In 2009, the ILO requested information about labor policies and measures that have been taken to implement Uzbekistan's legal obligations via international conventions. A year later, the ILO's Committee on Application of Standards requested to have an ILO supervisory board monitor the harvest. Uzbekistan has not complied with either request.

In addition to an obligation to comply with general ILO requests, Uzbekistan has also availed itself to the Minimum Age Convention (C183) and the Worst Forms of Child Labour Convention (C182). C183 requires the minimum employment age to be higher than the age of completion of compulsory schooling but no less than fifteen years. Children as young as nine are required to participate in the cotton harvest in Uzbekistan. Further, the convention sets the minimum age for any employment that poses a risk to health or safety at eighteen years, and children between the ages of thirteen and fifteen may only be permitted to obtain employment that does not negatively affect their attendance at school. By closing rural schools and requiring children to harvest cotton, Uzbekistan is failing to comply with these provisions. C182 expressly prohibits any form of forced or compulsory labor for children under the age of eighteen. Every Member State is bound, as a matter of top priority, to implement programs to eliminate the worst forms of child labor. Uzbekistan has failed to comply with its obligations by requiring children between the ages of nine and seventeen to participate in the harvest.

The Uzbek government is also bound by the recommendations of UNICEF and its commitments to the Convention on the Rights of the Child (CRC). Uzbekistan acceded to the CRC on June 29, 1994, thereby agreeing that no governing body

would act in a way contrary to the best interests of children. States Parties are specifically obliged to protect children from economic exploitation and hazardous work conditions. Uzbekistan has failed to uphold these standards by forcing children to work in dangerous conditions. According to the annual Human Rights Watch report, children working during the harvest are more susceptible to illness due to unsanitary working conditions, exhaustion, hunger, and the heat.

Uzbekistan is legally obliged to bring its harvesting policies in line with international standards dictated by the ILO and UNICEF. To ensure that harvesting policies are in compliance with international law, the Uzbek government must grant the ILO and UNICEF access to monitor future harvests. Until Uzbekistan begins to comply with its international obligations, Uzbek children will continue to be deprived of education, freedom, and childhood.

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CHINESE DRUG DETENTIONS FACILITIES RECEIVE CRITICISM DESPITE REFORM EFFORTS

Despite internal reforms in drug treatment facilities in the most drug-impacted regions of China, human rights groups continue to highlight complaints by detainees that facilities contravene international agreements and Chinese law by subjecting detainees to inhumane treatment and limiting access to judicial process. Until 2008, drug rehabilitation in China occurred in detention facilities called re-education through labor (RTL) centers. RTL centers, though required to administer medical treatment for drug dependency, were frequently criticized by watchdog groups for subjecting detainees to inhumane conditions including sexual abuse and forced labor. In 2008, the Anti-Drug Law took effect. The new law includes provisions that address criticisms of the previous system "in accordance with the human-centered principle," while defining addicts as patients and victims and guaranteeing drug treatment. Multiple sources claim that so far, the law has not had the desired impact. Human Rights Watch issued a report in 2008 citing numerous detainees who criticized the new law, noting that it

expands police power, increases minimum sentencing to two years, and provides no mechanisms for protecting the human rights it claims to defend.

According to reports from media outlets and human rights organizations, compulsory drug detention centers continue to force detainees to work, deny access to medical care, and provide no access to judicial process. These conditions would put the government in breach of both domestic and international law. The Chinese constitution guarantees the right to medical care for the ill (Article 45), requires oversight for arrests (Article 37), and guarantees public trial with the opportunity for defense (Article 125). The new Anti-Drug Law stipulates that drug users sent to compulsory treatment facilities must be detained in accordance with the constitution (Article 50, Anti-Drug Law). The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China in 2001, protects safe working conditions (Article 7) and the right to physical and mental health, including treatment of disease (Article 12). The United Nations Economic and Social Council elaborated on these articles, obligating States Parties to recognize the right to health of all people, including prisoners and detainees. States are bound to make acceptable health care accessible to all, "especially the most vulnerable or marginalized."

The Anti-Drug Law prohibits unpaid forced labor and physical abuse in Articles 43 and 69, yet Human Rights Watch reports that violations continue, perpetuated by the severe lack of oversight. The report cites former detainees, who reported they were forced to work eighteen-hour days and were subjected to electrocution, beatings, and other inhumane and degrading treatment. *The New York Times* reported the story of one inmate, who said that life in these compulsory rehabilitation centers "is an unrelenting gauntlet of physical abuse and forced labor without any drug treatment." The inmate's comments indicate the most striking of the alleged violations: Though the new measures are done under the guise of rehabilitation, neither medical nor therapeutic rehabilitation actually occur in many of the centers.

Though medical and therapeutic care is the purported intent of these facilities, many reportedly operate without sufficient

medical staff and supplies. Because of this, many users in detention facilities face withdrawal without the help of medication. This leads to relapse within the clinics, where unsterile conditions, specifically the sharing of used needles, exacerbate the already staggering problem of HIV/AIDS within the detention centers. Many centers, however, provide no medical care to persons with HIV/AIDS and often do not even inform inmates when they test positive. Access to antiretroviral drugs is routinely denied, even if the detainee was using the medication prior to incarceration. These policies suggest a conflict with China's obligations under Article 12 of the ICESCR, which requires respect for citizens' rights to mental and physical health, as well as "[t]he creation of conditions which would assure to all medical service and medical attention in the event of sickness."

Despite efforts at reform, the Chinese government continues to receive criticism for its handling of inmates. In October 2011, after several reported deaths in these centers, the Chinese government issued a regulation that affirmed the illegality of forced labor and restricted the conditions under which detainees could work. However, a May 2012 study by Human Rights Watch found that the regulation did not have the necessary impact on inmates. Human rights observers continue to call for the closure of compulsory drug rehabilitation centers in favor of a system where human rights abuses are vigilantly prevented. Such an effort would give China an opportunity to demonstrate its commitment to the ICESCR. Instead, many reforms continue to create systems where safeguards afforded by both domestic and international law are absent.

AGRICULTURAL REFORM IN NORTH KOREA: THE UNCERTAIN PROSPECT OF ECONOMIC GROWTH AND IMPROVED ACCESS TO FOOD

Though news outlets recently brought attention to a North Korean policy shift in favor of agricultural reform, human rights groups have since criticized the nation's leadership for the persistence of state-run economic policies that function at the expense of the welfare of its citizens. Such criticisms of economic management in North Korea draw attention to the large number of citizens who live in deep poverty and lack food security. Estimates,

though varying, suggest that deaths from starvation or malnutrition in the late 1990s numbered between 900,000 and 3.4 million people. The World Food Programme categorizes roughly 7.2 million, or thirty-seven percent of the total population, as chronically poor. Severe weather and famine exacerbate the problems of malnutrition and starvation, while insufficient pay for farmers raises concerns that a lack of motivation prohibits production and adds to the State's trouble with generating adequate food.

Following the death of Supreme Leader Kim Jong-Il in 2011, and the ascent of Kim Jong-Un, some saw an opportunity for economic development. The *Daily NK*, a South Korea-based pro-democracy newspaper that covers North Korea, reported that on June 28, 2012, Kim Jong-Un announced an agricultural-reform strategy, dubbed the 6.28 Policy, which has since gone into effect in 3 out of 144 counties. In the rest of the country, which is under the existing Public Distribution System, the government expropriates all output for redistribution. The 6.28 Policy, however, allows farmers who meet their quotas keep a higher percentage of their yield and bring that yield to market. The government's goal is to motivate farmers to produce more without abandoning a state-centered agricultural system. Such reforms could, in theory, create a boon to the North Korean public at large as increasing food production and allowing farmers to sell some crops on the open market could improve overall access to food.

The agriculture reforms are relevant to North Korea's adherence to its treaty obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which obligates states to recognize the right to free pursuit of economic development (Article 1) and provide working conditions that include fair pay and allow for a decent living standard. Historically, regardless of North Korea's ratification of the treaty, farmers have been forced to sell all crops to the state at a low price, after which the government distributes the crops.

The effect on the food markets also implicates both domestic and international obligations. The North Korean constitution provides that the state is responsible for affording workers with conditions for obtaining food. Article 25 of North Korea's

constitution asserts the need to continually promote and improve material wealth in an effort to promote well-being. Under the ICESCR, Article 11 obligates States Parties to recognize rights to standards of living, particularly protection of the right to be free from hunger. However, despite these legal frameworks, conditions of starvation and malnutrition continue to burden North Koreans. Further, chronically low levels of production are exacerbated by economic policies, including low compensation for farmers and over-production of land. The situation has not gone unnoticed. In a 2010 Resolution, the UN General Assembly expressed its concerns that violations of economic, social, and cultural rights have led to “severe malnutrition.” The following year, the UN Human Rights Council (UNHRC) reaffirmed this concern, particularly *vis-à-vis* other national spending priorities, specifically the government’s prioritizing of military capabilities over the needs of its citizens. Of the gross national income, estimated at \$25 billion, up to a third goes to military spending. The standing military consists of 1.2 million people, making it one of the largest in the world. The UNHRC, the United States government, and human rights groups have criticized this military-first strategy for its misallocation of resources, and for leaving many citizens suffering.

Although the agricultural reforms do not indicate an interest by North Korea to change its priorities, they do present an opportunity to make some improvements toward guaranteeing the rights and protections under international and domestic laws. It is too early, however, to determine whether these prospects will pan out and, thus far, the application has been inconclusive. Outlets such as the *Daily NK* have criticized the program for maintaining state-run strategies that focus on targeted production and agricultural collectives. Detractors believe the 6.28 Policy will be largely ineffective at remedying issues of food security. Instead, experts urge reprioritization of North Korea’s expenditures, shifting focus away from military spending and instead investing in the needs of the people.

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INDONESIA’S ACEH PROVINCE ADOPTS SHARIA LAW IN CONFLICT WITH HUMAN RIGHTS STANDARDS

Under Sharia law in the predominantly Islamic province of Aceh in Indonesia, adulterers face death by stoning—punishment that is dictated by the Qu’ran. Starting in 1999—when Islamic law was implemented in the province—Aceh began punishing those who breached Sharia law by acts that include adultery, homosexuality, gambling, consuming alcohol, and disobeying rules on attire. The nature of these punishments, which range from fines to the death penalty, conflict with both national and international human rights standards by impinging on the basic freedoms of all humans and imposing cruel and inhumane treatment.

Aceh is the only province in Indonesia that fully employs Sharia, and, as such, Acehese people are largely considered to be the most pious followers of Islam in the country. After Aceh’s numerous struggles to assert its Islamic identity through rebellions for independence, Aceh sought to unify and appease its citizens in 1999 by codifying Islamic law in the provincial legislation.

Sharia is the moral and religious code of Islam. It mandates the way all Muslims should live, as derived from the Qu’ran and the Prophet Muhammad. Aceh originally implemented Sharia law to promote egalitarianism, but, according to an International Crisis Group report, due to abuse and misuse of the laws, Aceh’s Islamic laws have encroached upon the Acehese people’s human rights. In 2009, Aceh’s legislature passed a law penalizing adultery between two married individuals, which, according to a 2010 Human Rights Watch report, carried the most stringent punishment—death by stoning. Authorities punish unmarried individuals with up to 100 lashes by cane for engaging privately with someone of the opposite sex. These Seclusion Laws allow the *wiyatuyal hisbah* (Aceh’s Islamic police) to seriously reprimand, through fines and corporal punishment, any two unmarried people of the opposite sex found alone together, disregarding evidence of physical contact.

Although there is no clause in the text of the Sharia law that specifically outlaws gay marriage, the Aceh province has held harsh punishment for homosexuality. The BBC reported that the *wiyatuyal hisbah* forced a married lesbian couple to annul

their marriage and separate, warning the couple that the punishment according to Islam was beheading.

Aceh’s Sharia law, as it stands, conflicts with the Indonesian Constitution, the 1999 legislation on human rights enacted by the Indonesian government, and the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). The Indonesian Constitution holds greater weight than provincial laws, and therefore must be followed in Aceh before the local Sharia law. Article 28G of the Constitution states the right of every person to be protected from the “threat of fear to do or not do something that is a human right.” Furthermore, Aceh’s corporal punishment under Sharia law breaks with Article 28G of the Constitution, which states that every person has the right to be free from “inhumane or degrading treatment” and Article 28I, which propounds the freedom of religion and freedom from discriminatory treatment. The 1999 Indonesian human rights legislation established the right to security and the freedom from degrading punishment, the right to justice and due process, and the right to freedom of the individual and the right to freedom of religion. As a member of the United Nations, Indonesia ratified the CAT in 1998, which echoes the same freedoms enshrined in the Indonesian Constitution and the 1999 human rights legislation, necessitating freedom from cruel, inhuman, or degrading punishment. Human Rights Watch and Amnesty International described the practices of caning and stoning as cruel punishment inconsistent with the principles of human rights established through international law, and thus Indonesia’s laws.

The conservative local community in Aceh has made matters worse by pressuring the *wiyatuyal hisbah* to apply its own punitive measures that extend beyond the scope of the Sharia law, even in cases of minor violations. Moreover, community members are often the first to discipline those who have violated Sharia law using their own form of condemnation.

The community represses any discussion to repeal or amend the laws. Officials and citizens fear backlash from more conservative community members for speaking out against the ill effects, abuse, and misuse of the laws. Aside from entirely repealing the law, if Aceh begins discussing

the law, it could move to a less literal interpretation, as some countries have adopted, by limiting the *wiyatuyal hisbah*'s role and power, while simultaneously ensuring due process for those accused of violating Sharia law. Yet, without a discussion underway, the province of Aceh will continue to violate domestic and international standards of human rights.

THE BANGLADESHI PRACTICE OF CHILD MARRIAGE CONTINUES TO DISREGARD DOMESTIC LAW AND UN CONVENTIONS

Bangladesh outlawed child marriage in 1929. Yet, according to the United Nations Children's Fund (UNICEF), sixty-six percent of girls in Bangladesh are married before they reach the age of eighteen. Bangladeshi communities that continue to practice the tradition of child marriage are not only violating Bangladeshi law, but are also violating United Nations conventions on Consent to Marriage and the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Bangladesh has acceded, and the UN Convention on the Rights of the Child (CRC), which Bangladesh has ratified. The practice of child marriage is rooted in social tradition and economic need, but it has adverse effects on the health and education of girls. According to a report by the International Center for Research on Women, child brides are prone to suffer domestic violence and abandon school, and as a result of early pregnancy are susceptible to health complications. When the Bangladesh government developed legislation that led to the Child Marriage Restraint Act of 1929, it considered various socio-cultural factors—such as poverty and societal values—that drive parents to marry off their young daughters. The law criminalizes marriages when either party is a minor, classified as girls under eighteen and boys under twenty-one, and penalizes those who permit or aid such a marriage, including parents, through a fine and up to one month's imprisonment.

Bangladesh's laws on the issue are encompassed by its obligations, including CEDAW, which the State ratified in 1984 and prohibits child marriage in Article 16(2). In 1998, Bangladesh acceded to the Convention on Consent to Marriage, which calls for the "full and free consent" of both parties in all legally binding marriages in Article 1. Article 2 requires states to set a minimum age for marriage.

However, Bangladesh reserved its right to apply Articles 1 and 2 of the Convention concerning the issue of child marriage "in accordance with the Personal Laws of different religious communities of the country." Allowing personal laws of religious communities to supersede international law sustains the practice of child marriage in Bangladesh.

Adherence to these principles can be complicated in Bangladesh, where many villagers believe that marriage protects a girl's chastity and is a divine command from God. As explained by Farah D. Chowdhury, a political science professor in Bangladesh, in a 2004 article in the *International Journal of Social Welfare*, all females are obligated to become wives and raise a family and the sooner they are married, the sooner the obligation is fulfilled. Additionally, the marriage of young, submissive, and obedient girls maintains the status quo of a patriarchal society. The older an unmarried girl becomes, the more her family will be shamed in the community. Beyond the religious and cultural influences, there is an economic advantage to child marriage. Girls are often considered a burden to families because of their financial dependence. Once a girl has been married, her husband's family must provide for her, thus liberating her parents of their financial duty. When a family is impoverished, there is consequently a greater desire to marry off daughters at a younger age. Further, the parents lessen the financial strain of their daughters' dowry since the younger the girl's age at marriage, the smaller the dowry can be.

Although young daughters' families might benefit from the arranged marriages, the effect on the child brides can be severe. Many young brides have not fully developed reproductively and are at great risk for maternal mortality and miscarriage. Marriage also limits a girl's possibility of schooling or further education. This is in direct violation of the right to education provided by Article 28 of the CRC. A young girl's submissiveness and obedience also makes her more vulnerable to domestic violence and abuse in her husband's home.

Despite the many laws that child marriage in Bangladesh continues to violate, Bangladesh has done little to enforce the laws and protect children's rights. Fortunately the government does

plan to register all marriages and births, which would provide greater oversight. However, Bangladesh's reservation to the Convention on Consent to Marriage indicates the country is not ready to confront the differing practices based on religious communities. Embracing the whole of the convention both by dismissing the reservation and implementing procedures to enforce all obligations would broaden protection for the Bangladeshi people. Regardless of the existence of legislation to combat the tradition of child marriage in Bangladesh, insufficient enforcement of the laws will preserve the practice of child marriage to the detriment of young girls in the country.

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WATER SCARCITY IN CENTRAL ASIA MAY LEAD TO CONFLICT

Water scarcity is a looming problem throughout the world, particularly affecting developing nations such as the Central Asian states. Approximately 884 million people do not have access to safe drinking water. In Central Asia, obtaining an equitable division of the region's major rivers, the Amu Darya and the Syr Darya, is a disputed issue that may lead to armed conflict. Tajikistan and Kyrgyzstan, the countries that control the rivers, both have plans to build hydroelectric dams, which will give them substantial influence over water resources in the region to the potential detriment of Uzbekistan and Kazakhstan. With increasing water scarcity in Central Asia and the vacuum left by a lack of binding international law, the dam plans will make achieving the seventh UN Millennium Development Goal (MDG), ensuring widespread access to clean water, and realizing the objective of UN Resolution 64/292 on the right to water, increasingly difficult and may send the region into armed conflict. The effects of such a conflict could be devastating, leading to the contravention of the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Historically, the Central Asian states developed a standard for water and electricity exchange due to stringent Soviet resource-allocation policies. In 1992, after

the fall of the Soviet Union, the newly independent Central Asian states signed the Almaty Agreement, maintaining the Soviet allocation of water, which favored Kazakhstan and Uzbekistan. Under the agreement, Tajikistan and Kyrgyzstan do not have enough water for their planned development activities and are desperately in need of the dam projects.

Because the right to water is not a self-standing right in international human rights law, dam projects by Tajikistan and Kyrgyzstan would not necessarily be in direct contravention to binding international obligations. The proposed dam projects will provide Tajikistan and Kyrgyzstan with urgently needed power. Despite this, Uzbek and Kazakh leadership oppose the dam projects, arguing that the projects will disrupt water supplies in the two countries, negatively affecting their agricultural exports and economies, and damaging the environment. If Tajikistan and Kyrgyzstan move forward with their dam projects, achieving the seventh MDG to halve the proportion of the population without sustainable access to safe drinking water and basic sanitation by 2015 will be nearly impossible. It will also challenge the goals set out in UN General Assembly Resolution 64/292, promising “to provide safe, clean, accessible and affordable drinking water and sanitation for all.” Though Tajikistan and Kyrgyzstan both agreed to the MDGs and voted for the General Assembly resolution, these declarations are not legally binding.

Despite the lack of binding international guarantees for the right to water, Tajikistan and Kyrgyzstan may reconsider moving forward with their dam projects because of the threat of war. Uzbekistan’s president, Islam Karimov, stated that the dam projects could lead to war because of water’s importance to Uzbekistan’s agricultural exports, which make up a large percentage of the country’s foreign earnings. Water conflicts, or “water wars,” occur when a country controls the water resources of another, water-scarce, country and uses water as leverage. Human rights laws guaranteeing the right to water are not strong enough to adequately deter countries that may consider engaging in water wars; however, the humanitarian effects of water wars may trigger international legal obligations. Women and children in Central Asia are particularly in danger

from water scarcity issues because much of the agricultural work falls on them. They are often responsible for transporting water to the home; thus, with increased water scarcity they will be spending much more time and energy transporting water. Additionally, there is clear gender inequality regarding access to water, with rural women facing critical problems in this area. Despite the lack of binding international law on the right to water, by instating policies that will exacerbate water scarcity and lead to war, the Central Asian states are ignoring Article 14 of CEDAW and Article 24 of the CRC, which specifically protect the rights of women and children and their access to water resources.

The countries of Central Asia are victims of a post-Soviet lack of a coordinated management system, but these actions could likely hamper the goals set out in human rights declarations. Without stronger human rights laws governing access to water, the region is highly susceptible to water wars, certain countries and minorities are disproportionately affected, and water scarcity will get exponentially worse due to climate change and mismanagement of resources.

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EUROPE

RUSSIAN OLYMPIC PREPARATION DISPLACES NEARBY RESIDENTS

Russia’s preparations for the 2014 Winter Olympics in Sochi have elicited concern from nearby residents and human rights advocates that the rights of private landowners are being compromised in preparation for the Games. While residents have actively protested and petitioned against appropriation of land for major Olympic infrastructure projects, a Human Rights Watch report from September 2012 presented significant evidence that the Russian government continues to forcibly expropriate private property without providing adequate compensation for displaced residents. Furthermore, those who remain in Sochi contend that they live with fears that noise pollution and emissions from the construction of a large-scale power plant being built near the residential area to strengthen infrastructure for the

Olympic Games will threaten their health and create an unsafe living environment.

Russia’s complicated history of transitioning from public to private land ownership has contributed to the confusion surrounding these expropriations. During the 1990s, the Russian government privatized and distributed land following the collapse of the Soviet Union. This distribution process was often informal, and did not always include official ownership documents. Additionally, contradictions in land registries often resulted in multiple claims to a property. A Human Rights Watch report notes that, due to deed registration issues, many Russians living in Sochi could not prove ownership of their land and have consequently lost property without compensation.

Dmitry Chernyshenko, President of the Russian Olympics Organizing Committee, said that confusion over Soviet-era housing assignments has caused difficulty with the relocation of some citizens, but responded to criticism by stating that some relocated residents experienced significant improvement in their housing. The government’s claims, however, are inconsistent with many reports from monitoring organizations, which have found that property valuations do not take into account residents’ improvements and are less than tax assessments. When residents refused to sign relocation agreements, a Human Rights Watch letter to the International Olympic Committee (IOC) from December 2010 found that authorities threatened to take property without consent and open bank accounts in residents’ names to deposit compensation money.

The Russian government’s expropriations present possible conflict with the Russian Constitution, which bars deprivation of property unless it is through a court order and provides mutually agreed upon, equal, compensation. However, the Russian government passed a law in preparation for the Olympics permitting expropriation of property and allowing the government to decide what it will pay, if anything, to former private property owners. Because property values in Sochi skyrocketed following the announcement that it will host the Olympics, critics of the government have argued that the law was enacted to allow Russia to avoid paying the current full property values.

Although the newly passed Olympic law may give Russia domestic justification for the expropriations, the country's actions are still subject to its treaty obligations. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the European Convention on Human Rights (ECHR) require protection from arbitrary interference in home and family lives. The ECHR is more explicit, providing in Article 1 of Protocol 1 that "[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Outside of pursuing claims with the European Court of Human Rights and the United Nations Human Rights Committee, residents and advocates could look to pressure from the International Olympic Committee (IOC). The IOC Charter states that it will "cooperate with the competent public or private organisations and authorities in the endeavor to place sport at the service of humanity and thereby to promote peace." The provision could provide an avenue—or at least a justification—for the IOC to exert pressure on Olympic countries to address human rights concerns, including concerns of expropriation.

The recent history of the IOC, however, raises questions about the mandate's strength. The Charter states that one of the goals of the IOC is to "promote a positive legacy from the host cities and host countries." Both leading up to and following the Beijing Olympics, Human Rights Watch and Amnesty International, among others, called attention to conditions in China, including imprisonment of activists during the games. Furthermore, Brazil's current demolition of the *favelas* (shantytowns) in Rio de Janeiro in preparation for the 2016 Olympics raises concerns over the IOC's willingness to intervene in Sochi. By declining to involve itself in the actions of host countries, the IOC weakens its ability to influence human rights issues. Without legal or IOC accountability, countries have fewer impediments to enacting legislation even more detrimental than Russia's Olympic law. The individuals would suffer while the world celebrates its shared humanity through sport.

AS THE EUROPEAN ECONOMY STRUGGLES, NATIONALIST PARTIES GROW

As the economic crisis in Europe deepens, regional extremist right-wing political parties, taboo after World War II, are becoming more common due to their policies promoting both nationalism and protectionism. As the movement expands beyond domestic politics and into the governing body of the Council of Europe (COE), it raises issues of negative treatment for minority groups.

In June 2012, the Greek political party Golden Dawn won nine percent of Parliamentary seats with its slogan "So we can rid the land of filth." A stark indication of the waning condemnation of such groups came on October 1, 2012, when the COE named one of the party's parliamentarians, Eleni Zaroulia, a member of the Parliamentary Assembly's Committee on Equality and Non-Discrimination. There was an outcry from organizations such as the Anti-Defamation League (ADL) against her membership. The ADL has complained of Golden Dawn's well-known xenophobic views and discriminatory practices. Party members have denied the Holocaust and publically shunned immigrants and other migrants, particularly Jewish religious groups and persons from Pakistan, India, Albania, and African countries. The party has advocated limiting full political rights to only persons of Greek descent and identity.

The rise of Golden Dawn has been largely attributed to the economic situation in Greece. Nicolas Papakostadanous, a spokesperson for the Greek Consulate in New York, said, "This Golden Dawn is a backlash, a byproduct of very austere, very severe economic problems." However, Golden Dawn is not alone; it is part of an emerging trend in Europe. Right-wing, nationalist parties have gained political exposure in France, the Netherlands, Hungary, Norway, Finland, and Denmark.

Extreme-right political parties tend to merge welfare aspirations of the center left with conservative themes of protectionism and nationalism. Their ideology emphasizes that the government should provide services, but those services should only be available to native citizens. This has proved an attractive combination for Europeans, many of whom have lost faith in current political leaders and seek alternative economic and political policies.

The rise of far-right elements has not gone unnoticed among human rights advocates. The ADL has urged the Committee on Equality and Non-Discrimination to reconsider Golden Dawn's membership. Alternatively, the ADL asked that Zaroulia be rebuked for any statements that promote what is often described as Golden Dawn's "neo-Nazi" ideology and that she be prevented from taking any committee leadership roles. Additionally, on October 16, 2012, the European Union of Jewish Students started a petition to remove Ms. Zaroulia from the Committee.

Although granting membership to an organization with a strong discriminatory message appears to run counter to the goals of a committee seeking to prevent discrimination, removing Golden Dawn from the committee would raise free speech issues. Curtailing Golden Dawn's ability to express its viewpoints would create a highly charged atmosphere in which the issue of immigrant rights and the danger of extremist ideals would be lost. A less controversial choice would be to urge the COE and other European bodies to adopt broader, more effective, anti-discrimination policies to prevent the nationalist groups from gaining further power while their actions go unchecked.

European regional institutions implemented two directives that have been carried out in relation to discrimination. The first was created in 2004 and promotes the principle of equal treatment between people, irrespective of racial or national origin. The second, created in 2008, establishes a general framework for equal treatment in employment settings. While these steps offer some anti-discriminatory protections to Europeans, the legal framework is incomplete. The Commission has proposed a directive to complete the legal framework and prohibit all forms of discrimination and harassment beyond the workplace and provide an appropriate redress system for victims through the EU.

Golden Dawn's participation in the COE's Committee on Equality and Non-Discrimination is, at the moment, a political anomaly, but without adequate recourse for those who experience discriminatory action, membership of groups with similar ideologies could become the norm and pose significant risk for domestic protection of minority groups. Greece and other countries in which right-wing parties

are gaining political clout must also take responsibility for implementing appropriate strategies to protect people who reside within their borders. It is only through cooperation between national governments and international governing bodies that minority groups can be protected from the negative treatment advocated by these right-wing organizations

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MIDDLE EAST AND NORTH AFRICA

PROTECTION OF THE AMAZIGH IDENTITY IN LIBYA'S NEW CONSTITUTION

Comprising ten percent of the Libyan population, the Berbers (who call themselves Amazigh, meaning "free man") celebrate a cultural heritage that pre-dates Arab expansion by thousands of years. Though they do not consider themselves to be a unified nation, the Amazigh have developed a culture distinct from the Arab identity. Under the Qaddafi regime, the Amazigh faced constant cultural repression from policies intended to eliminate any non-Arab influence on society. After playing a fundamental role in the overthrow of Qaddafi in November 2011, the Amazigh were not offered ministry positions within the National Transitional Council. In July 2012, a few Amazigh were elected to serve in the Libyan General National Congress (GNC), but the government has yet to offer substantive rights to the Amazigh peoples specifically, and to Libyan minorities generally. As the GNC begins to draft a new Libyan constitution, it is obligated, under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to provide comprehensive rights for all Libyan minorities, including the Amazigh.

The two hundred members of the GNC will attempt to eliminate the remnants of Qaddafi's Libya as they draft a new constitution. The attack on the American Consulate in Benghazi and assassination of U.S. Ambassador Christopher Stevens has highlighted the need for the rule of law and consolidation of Libya's central authority, a demand expressed by Libyans themselves. In the face of nearly insurmountable odds and increasing violence,

minority rights do not seem to be a priority for the GNC.

In order to undo the cultural repression perpetrated by the Qaddafi regime, the GNC must fulfill its international obligations by abandoning several articles of Libya's 1969 constitution aimed at marginalizing distinct cultural groups. The Qaddafi regime declared, "[T]he Libyan people are part of the Arab nation. Their goal is total Arab unity." Amazigh were expressly forbidden from practicing their historical customs, celebrating cultural holidays, and bestowing non-Arabic names upon their children. The constitution also mandated that, "Arabic is the official [l]anguage [of Libya]." Qaddafi's Revolutionary Council could officially approve other languages but even singing in the traditional Amazigh language of Tamazight was punishable by death.

The GNC is legally obligated to uphold the international treaties to which Libya is already a State Party, while considering using the existing international conventions and declarations as a rubric for its own constitution. In 1968, Libya acceded to the CERD, and thereby agreed to amend, rescind, or nullify any laws that perpetuate discrimination. The GNC therefore has an obligation to abolish laws that discriminate against Amazigh culture and replace them with structural protection of cultural identity. UN General Assembly resolutions can also serve as models. While these resolutions are not binding, they are a persuasive indication of international custom. For instance, Libya was among the 144 nations that voted for the Declaration on the Rights of Indigenous Peoples (Declaration), which grants the right of indigenous groups to practice and revitalize their cultural traditions and customs. Libya can uphold the principles set forth in the Declaration by incorporating protections for minorities in its constitution. Further, Article 22 of the Universal Declaration of Human Rights (UDHR) provides that the right to realize social and cultural rights is indispensable to free development of personality and creates a framework for protection of distinct social and cultural groups. A successful Libyan constitution could begin by recognizing Tamazight as an official language, thereby making a statement of inclusion by incorporating Amazigh culture into the new Libyan national identity.

The new Libyan constitution does not only have the potential to be revolutionary for the Amazigh; it may also serve to protect the rights of all of Libya's minority groups and will set a precedent for other countries in a similar transition after the Arab Spring. Libya could become a model for the successful integration of marginalized nations, while also serving as a springboard for further reform efforts. These possibilities demonstrate the importance of the GNC bringing the new Libyan constitution in line with the country's pre-existing international obligations.

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THE IMPLICATIONS OF LIMITS ON RELIGIOUS FREEDOM IN ISRAEL

Tension between Israel's secular and ultra-Orthodox populations represents one of the most difficult issues facing Israeli society today. When Israel was established, the country's founders made an agreement, referred to as the "status quo agreement," with the political leaders of the ultra-Orthodox community. The agreement gives ultra-Orthodox leaders authority over religious matters, a widely inclusive topic, as Israel has no separation of church and state. It has led to deep-rooted tensions between Israel's ultra-Orthodox citizens and the rest of the population, and has put the country at odds with human rights norms. Israel's policies regarding religion and state demonstrate a divergence from several human rights norms, including freedom of religion, women's rights, and minority rights. These rights are protected by the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The ultra-Orthodox leadership has authority over all personal status issues for Israeli Jews. This includes marriage, divorce, and religious conversion. The lack of civil marriage or divorce options in Israel forces all citizens to wed and divorce according to state-sanctioned religious authorities. Under this policy, many Israelis cannot get married in Israel, including anyone without an official religion, inter-faith couples, and same-sex

couples. Article 18 of the ICCPR defends “the right to freedom of thought, conscience and religion.” Israel’s lack of civil marriage and divorce violates Israeli citizens’ right to freedom of religion. The ICCPR also protects people against coercion. Even though Israel has signed and ratified the ICCPR, and is thus legally bound by it, Israeli citizens are not free to make their own choices regarding religion.

The status quo agreement has had far-reaching effects on women’s rights in Israel as well. In recent years, public spaces throughout the country have succumbed to illegal, forced gender segregation, with women increasingly forced from the public sphere in the name of modesty. Article 7 of CEDAW asserts that states must safeguard women’s rights as strongly as men’s, obliging states to “eliminate discrimination against women in the ... public life of the country.” Although Israel has ratified CEDAW, it is not upholding this Convention because it is not defending women’s rights against religious coercion. Article 7 also stipulates that the burden to protect women’s rights lies on the State to “take all appropriate measures.” Appropriate measures include stifling religiously motivated exclusion of women from the public sphere. Radhika Coomaraswamy, the former UN Special Rapporteur on violence against women, its causes and consequences, explained that States have a responsibility to protect women from religiously motivated violence. There is no reason why the States’ responsibility should not carry over to defend all aspects of women’s rights outlined in CEDAW against religiously motivated violations. Israel’s status quo agreement cannot be used as justification for ignoring the marginalization of women in society.

Israel’s practices also violate its obligations under CERD. Israel’s minority groups have recently been hit with a wave of racism and discrimination, inspired and perpetuated by public figures and religious leaders. Racist incitement is a criminal offense in Israel, but there is a trend of community leaders using religious law to justify racial discrimination. Throughout the past year, several state-employed rabbis have repeatedly referred to Israel’s Arab citizens as “the enemy” and have preached that all Arabs have a violent nature. These rabbis have also urged Jews not to rent or sell apartments to Arabs and not to employ Arabs or shop from stores that do employ Arabs. Article 2 of CERD states that countries must “condemn racial discrimination

and ... pursue ... a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.” As a country that has ratified CERD, Israel is legally bound to denounce and eradicate all forms of racial discrimination, while taking freedom of speech into account. By allowing racial discrimination and racist incitement to continue, Israel is not upholding its duties outlined in the CERD.

These examples demonstrate the tensions that exist between Israel’s status quo agreement and issues of religion and state. Through legal work in Israeli courts and advocacy in Israel’s parliament, several Israeli human rights organizations are striving to bring change in the area of religion and state in Israel, and to push the government to uphold its international legal obligations. The Israeli government has a legal obligation to make the necessary reforms to bring its policies into sync with the human rights treaties that the country has ratified.

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SUB-SAHARAN AFRICA

NEW SOMALI CONSTITUTION SEEKS TO PROTECT INDIVIDUAL RIGHTS

After over two decades of transitional governance, Somalia’s National Constituent Assembly adopted a provisional constitution, with 96 percent approval, that would introduce sweeping individual protections to a country that has struggled to form a legitimate government. The constitution went into effect on August 20, 2012, following the expiration of the Transitional Federal Government and the appointment of a new parliament. The event marks a momentous occasion for Somalia, a country often described as a “failed state.” Although the document enshrines some fundamental human rights, other provisions raise legal conflicts that could limit the effectiveness of the constitution’s mandates to protect the rights of individuals.

To gauge popular support for the constitution, Somalia originally planned to hold a national referendum, but logistical issues—partly attributable to the presence of the militant Islamic group al-Shabab—thwarted the government’s democratic

ambition. Instead, the current plan calls for the new parliament to vote on ratification, leaving the democratic nature of the process unclear. The disjointed nature of Somalia’s varying array of autonomous semi-states has led to a UN-sanctioned process where clan elders appoint the new parliament. This result—a product of Somalia’s fractured governmental and political system under which some regions have declared autonomy—further separates the people from the constitution.

Although aspirations of open democratic governance will not be met at present, the constitution’s guarantees of rights will immediately become law. The Somali Bill of Rights provides the primary framework for individual rights and explicitly guarantees the foundational concept of equality regardless of clan or religious affiliation—a shift that overcomes significant historical roadblocks to social equality. This guarantee reflects a foundational basic universal human right established in Article 2 of both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which Somalia is a party.

Expanding from this central concept, the new constitution provides for progressive protections of women and children’s rights in both social and political spheres. In matters related to health and personal security, the constitution bans the common local practice of female circumcision and provides for the right to an abortion when a woman’s life is at stake. Demonstrating progressive political policy, the Somali constitution also guarantees the right of women to hold elected office and stipulates that women must hold thirty percent of seats in parliament. On children’s rights, the Somali provisional constitution guarantees the right to education through secondary school and places an explicit ban on the use of children in armed conflict.

Nevertheless, the constitution does fall short of significant international norms by stipulating a religious preference. It specifies “no religion other than Islam can be propagated.” Further conflicting with the right to religious freedom—guaranteed by, among other documents, Article 18 of the ICCPR—the constitution sets forth that Sharia law forms the basis of the legal system. Aside from possibly restricting religious freedom, this leaves a constitution based on Islam to govern both non-Muslims

and Muslims alike. The provision could further restrict the effect of the guarantees of individual rights for vulnerable populations, as it explicitly states that all laws not in accordance with the general principles of Sharia are invalid. Some Somalis have already objected to these rights on the grounds that they are not in accordance with Sharia. The primary objections relate to the previously discussed guarantees of thirty-percent female representation in parliament and the right to abortions in cases where the mother's life is at risk. Similarly, opposition also exists to the ban on female circumcision, which is estimated to affect ninety-eight percent of Somali women.

Despite the possible conflicts, the provisions represent an express step by Somalia toward confronting the lack of individual protections in the country and overcoming the difficulties of the past—so much so that the constitution also establishes a Truth and Reconciliation Commission. The language of the constitution and the effort to revisit the effect of past human rights abuses and violence, similar to the approach made famous in post-Apartheid South Africa, conceptualizes the inviolability of the individual as a crucial element of the new government. To what extent justice and human rights are made accessible to the Somali people in practice, however, will hinge on whether and to what extent the new government is successful in implementing these innovations.

NIGERIAN RESPONSE TO INSURRECTION RAISES CONCERN OVER TORTURE AND CRIMES AGAINST HUMANITY

The Nigerian Islamic organization *ama'atu Ahlis Sunna Lidda'awati Wal-Jihad*, known as Boko Haram, and Nigerian security forces have engaged in a series of violent conflicts, culminating in a military attack on October 8, 2012, that killed an estimated thirty civilians in Maiduguri. Earlier that day, a bombing killed a Nigerian lieutenant, eliciting the military attack that utilized troops and armored personnel carriers. Observing human rights organizations have raised concerns that the instant violence is only the most recent conflict in a long series of attacks that have claimed the lives of more than 2,800 people.

Boko Haram is a militant jihadist organization in Northern Nigeria that seeks to establish Nigeria as an Islamic state. In 2009, Boko Haram began an armed

insurrection against the country using bombings and armed attacks. More than 690 people in 2012 have so far fallen victim to attacks targeting non-fundamentalist Muslims, Christians, and government facilities. Nigerian security forces, retaliating against Boko Haram's violent strikes, have launched their own counteroffensives, culminating in allegations of human rights abuses and crimes against humanity by both sides in the conflict.

Human Rights Watch (HRW) and Amnesty International (AI) reported that Nigerian security forces utilize torture, inhumane treatment, and extra-judicial killings of civilians. These acts are in conflict with binding provisions of the Convention Against Torture (CAT) and the International Convention on Civil and Political Rights (ICCPR), as well as general human rights principles encompassed in the Universal Declaration of Human Rights (UDHR), all of which Nigeria is party to without reservations.

The CAT bans the use of torture in all circumstances, specifically stating in Article 10 that "internal political instability or any other public emergency" cannot be used to justify torture. There are numerous reports of security forces removing suspected Boko Haram members and subjecting them to torture at secret government facilities. Although Article 10 of the CAT requires that Nigeria investigate and prosecute individuals accused of torture, the Nigerian government has denied both the existence of secret facilities and the torture of detainees. In addition, HRW reported that extra-judicial killings, including mass executions and execution of family members, are numerous and have increased since 2009. The extrajudicial killing of suspected Boko Haram members would implicate the rights to due process and life found in UDHR Articles 3 and 10 and codified in ICCPR Articles 6 and 9.

The reported actions of both Nigerian security forces and Boko Haram also raise allegations of crimes against humanity. The Rome Statute of the International Criminal Court, which Nigeria has ratified, codifies the substantive elements of crimes against humanity. Article 7 establishes that acts of murder, torture, rape, persecution, and enforced disappearances are crimes against humanity when committed as part of a widespread or systematic attack against civilian populations in furtherance

of a State or organizational policy or plan. The October 8 attack by Nigerian troops is reported to have targeted civilians—an action that would be encompassed under the Rome Statute. Furthermore, the widespread reports of disappearances, torture, and extra-judicial killings could implicate criminal charges. Nigeria's denial of enforced disappearances also satisfies Article 7(2) (i)'s requirement of the same. Boko Haram has carried out dozens of attacks targeting civilians, and there are reports of murder, rape, and inhuman acts causing serious injury to mental and physical health.

The question remains as to whether these reported actions were conducted in furtherance of a state or organizational policy. On November 22, 2012, the ICC's Office of the Prosecutor (OTP) released its annual Report on Preliminary Examinations. Preliminary examination, as distinct from preliminary investigation, is the OTP's first step of investigating situations for possible international crimes that could formally be brought before the Court. In this report, the OTP found that while Nigerian Security Forces' actions may be grave human rights violations, there was not a reasonable basis to believe that the Nigerian Security Force's actions against Boko Haram were in furtherance of a state policy or plan. However, the report explicitly stated that this determination was subject to change upon new information. In contrast, the OTP found that Boko Haram does have a stated policy and plan of attacking civilians in order to establish an Islamic state through Jihad.

As a party to the Rome Statute, Nigeria is subject to the jurisdiction of the ICC for international crimes committed within its territory. The OTP's report found that there is a reasonable basis to believe that Boko Haram had committed the crimes against humanity of murder and persecution. The ICC is a court of last resort to be accessed when States Parties will not or cannot prosecute those responsible. The OTP will next determine whether Nigerian authorities are conducting genuine legal proceedings against those suspected of responsibility for crimes against humanity within Nigeria.

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