

## REGIONS

### AMERICAS

#### FIGHTING TERROR WITH TERROR: CHILE'S TARGETING OF THE MAPUCHE

An arson attack on a home in Chile's southern Araucanía region, allegedly carried out by members of the Mapuche tribe, has led to the reimplementa-tion of a tough anti-terrorism law. After meeting with his cabinet ministers following the attack, which took the lives of the homeowners, Chilean President Sebastián Piñera stated that the anti-terrorism law is the country's best option to combat the attacks of the indigenous population on local landowners. The aim of the law is to impose harsh penalties on domestic terrorists, but leaders of the Mapuche tribe claim that the government is using the law to target their population in a discriminatory fashion.

The tension between the Mapuche and the Chilean government has continued to rise over the dispossession of land by state officials to expand the forestry industry, hydroelectric dams, and other corporations. The Mapuche tribe bases its claim to the territory on ancestral connections to the land. The Piñera administration has refused to expropriate land to the indigenous population, and some members of the tribe have resorted to targeting forestry companies through arson attacks, land occupations, seizures of timber stands, and roadblocks. In response to these tactics, the Chilean government imposed heavy punishments on the Mapuche population pursuant to the anti-terrorism law.

Law 18.314 was enacted in 1984 by the Pinochet regime to suppress domestic acts of terrorism and violent acts of armed political groups. The law defines illegal land occupation and attacks on equipment or personnel of multinational corporations as acts of terrorism that can be adjudicated in civilian and military trials. It also allows the state to rely on unidentified prosecution witnesses and indefinite detention for suspected terrorists, along with the power to tap telephones and intercept correspondence such as e-mails and other communications. The anti-terrorism law has been invoked

on numerous occasions as a result of acts of arson in southern Chile, including incidents in 2002 and 2010.

The use of the anti-terrorism law has faced scrutiny for a number of reasons by the Mapuche tribe and international human rights groups, such as Minority Rights Group International and Human Rights Watch. The due process rights of Mapuche detainees have been threatened by the measures allowed under the anti-terrorism law. Pre-trial detention is typically longer for a suspect under the anti-terrorism law than those charged with other crimes in Chile, and sometimes spans up until the beginning of trial. By allowing courts to hold Mapuche suspects in custody until trial under Law 18.314, Chile is violating Article 9, Section 3 of the United Nations International Covenant on Civil and Political Rights (ICCPR), which states, "It shall not be the general rule that persons awaiting trial shall be detained in custody." In *Giménez v. Argentina*, the Inter-American Commission on Human Rights (IACHR) noted that holding a defendant in indefinite or prolonged pre-trial detention is a severe measure that should only be employed as punishment to those convicted of a crime or to repeat offenders.

The ability to use unidentified witnesses by the prosecution is a violation of Article 14(3)(e) of the ICCPR which guarantees the right of defendants to confront witnesses. Under the anti-terrorism law, the prosecution is allowed to keep the identity of its witnesses secret. The police tactics used in implementing the anti-terrorism law gave rise to many claims against the police force, but because the military tribunals maintain jurisdiction over all cases dealing with on-duty incidents, the Mapuche argue they have little chance of recovering damages. The IACHR has also rejected military tribunals as a way of trying civilians in its 1998 Annual Report. The use of military tribunals in these cases is a violation of the Fair Trial Guarantees of Article 14 that Chile adhered to in its ratification of the ICCPR. Chile is also acting contrary to the Inter-American Court of Human Rights' determination in *Palamara-Iribarne v.*

*Chile* that military jurisdiction over civilian cases was inadequate to provide the basic right to a fair trial.

The Mapuche have continued to be inhibited by the Chilean state's lack of recognition for their ancestral lands. As Mapuche and other indigenous communities take increasingly desperate measures to reclaim or maintain control over their territory, the Chilean government has continued to use the anti-terrorism law as a way to quell social movements in the Araucanía region. While the law aims to crack down on violence against landowners in the region, Chile's implementation of its anti-terrorism law has led to multiple violations of due process and human rights abuses against the Mapuche people. The Chilean government must address these issues if it plans to reach a successful agreement over the territorial disputes.

#### MATCH MADE IN RUBBLE? IRAN AND ARGENTINA SEEK THE TRUTH IN THE AMIA BOMBING

Argentine and Iranian officials recently reached an agreement that will establish an international committee aimed at investigating the long-standing dispute over the deadly terrorist attack on the Asociación Mutual Israelita Argentina (Argentine Israeli Mutual Association, AMIA) building. The July 18, 1994, attack left 85 people dead and hundreds more injured, constituting the deadliest bombing in Argentine history. The violence was aimed at members of the country's Jewish population, one of the largest in Latin America with nearly 200,000 Jewish citizens, and demands for justice were swift. Crippling inefficiency and allegations of cover-ups have hampered the investigation of the attack and complicated the identification of suspects.

As the search for culprits continued into 2006, Argentine prosecutor Alberto Nisman formally charged the Lebanon-based Islamic militant group Hezbollah as the organization responsible for the attack and implicated the Iranian government as assisting in carrying out the attack. This came after Argentine intelligence and the U.S. Federal Bureau of

Investigation identified Ibrahim Hussein Berro as the suicide bomber in the attack. His connections with Hezbollah, a Shi'ite political and militant organization, were also uncovered during the investigation. Although the prosecutor argued that Iran's motive in supporting the attack was based on Argentina's suspension of transferring technological information regarding nuclear material, Iran continuously denies any involvement in the AMIA bombing.

The Argentine government recently approved a memorandum of understanding with Iran to establish a truth commission for the AMIA bombing. President Cristina Kirchner announced that the two governments would establish an international commission—with no Iranian or Argentine nationals as members—that will recommend a way to proceed with the investigation in Argentina as well as allow Argentine officials to investigate in Iran.

President of the Argentine Foreign Relations Committee Guillermo Carmona noted that the memorandum is the only way for Argentine legal officials to question Iranians such as Gen Vahidi, the current defense minister. The truth commission aims to reexamine evidence from the bombing to develop a due process model for the accused in Iran, while also allowing Argentine investigators into Tehran to conduct interrogations. The Argentine government has continually experienced difficulties in extraditing Iranian suspects with Interpol warrants for their alleged involvement in the bombing.

The creation of the truth commission follows an emerging norm in the international community of prosecuting massive and systematic human rights violations. As noted by UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Juan E. Méndez, states have an obligation to respond to crimes against humanity, such as the bombing in Argentina. These obligations include investigating, prosecuting, and punishing perpetrators; disclosing to victims, their families and societies all information about the events; offering victims adequate reparations; and separating the known perpetrators from positions of authority. Argentina's push for collaboration adheres to its responsibility of diligently meeting these four requirements of accountability.

Argentina also views the truth commission as a way to ensure that individual rights are properly protected. By moving toward a new investigation, Argentina follows the four steps that Special Rapporteur Méndez highlights by seeking that justice is achieved for the victims, finding and disseminating the truth once the commission completes its work, and compensating the victims through monetary and non-monetary means.

AMIA and critics of the memorandum argue that Argentine judges can already travel to Iran to interview the suspects without an agreement. Jewish groups also argue that it is unconstitutional for President Kirchner to be involved in a judicial matter. Religious and social leaders of the Argentine Jewish community have criticized the idea of allowing a truth commission created by Iran, which they suspect played a major role in the bombing, to develop recommendations for the domestic legal framework to follow. Critics note that allowing Iran to establish a truth commission undermines Argentine jurisprudence if it finds that those charged with the crime are not required to be questioned or investigated by the international judges selected by the memorandum.

President Kirchner has argued that the agreement is the only way to gain needed access to Iranian officials. She has some support from groups like Amnesty International Argentina, which hailed the agreement as a way to move forward toward justice and reparations. However, members of the political opposition have asserted that the Iranian-created commission will function as a way to grant impunity to Iranian officials.

By attempting to work with Iran, Argentina seeks to meet its obligations of means and not results. Special Rapporteur Méndez explained that these obligations are subject to conditions of legitimacy in their performance, so even if the officials who are investigated are acquitted, as long as the judicial process was committed in good faith, then Argentine officials have met their obligation. This justice must coincide with not only the truth being presented to victims, but also effective measures to prosecute those responsible. Argentina's shift toward the creation of an instrument of accountability moves them away from a "forgive and forget" mindset that has resulted in amnesty for violators of

human rights that were found responsible for atrocities. The effectiveness of the truth commission will ultimately depend not only on its ability to find the truth, but to also use it to find justice.

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## **ABUSE IN GUATEMALAN PSYCHIATRIC HOSPITAL MAY AMOUNT TO TORTURE**

Psychiatric patients are often considered among the most vulnerable populations, largely as a result of a psychiatric patient's powerlessness once placed under the control of another person. This vulnerability can be illustrated through a recent investigation of a Guatemalan psychiatric facility that produced alarming results. Human rights groups—including Disability Rights International—conducted a month-long study of psychiatric hospital conditions across Latin America in November 2012. Conclusions indicated that, of a dozen hospitals examined, the Federico Mora Hospital in Guatemala City exhibited the most deplorable conditions. The Federico Mora Hospital is the only national, public psychiatric hospital in Guatemala. The investigation revealed incidents of severe neglect, abuse, and outright denial of medical treatment for many patients. Moreover, approximately 300 children were held in solitary confinement, a practice the international community condemns, especially when used for young children. Patients also reported incidents of sexual and physical abuse, identifying that the perpetrators include hospital staff and inmates from an adjacent prison. Although some hospital staff members are aware of the abuse committed against patients, the perpetuated climate of fear has resulted in unreported crimes that inevitably encourage further abuse.

The Guatemalan government ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2009. Article 15 of the CRPD provides that persons with disabilities shall not be subjected to torture or cruel, inhuman, or degrading treatment or punishment. Furthermore, Article 16 states that persons with disabilities shall be free from exploitation, violence, and abuse. As a State Party to the CRPD, the Guatemalan government's adherence to both of these provisions is suspect,

especially in light of the reported grave conditions at Federico Mora hospital.

The Guatemalan government has also ratified the UN Convention Against Torture (CAT). The treaty enforcement body of the CAT, the UN Committee Against Torture, has established that “each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, [and] institutions that engage in the care of children, the aged, the mentally ill or disabled.” The obligation to prevent torture extends to doctors, health-care professionals, and social workers, including those working in private hospitals, detention centers, and other institutions. UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment Juan E. Méndez, concluded in a recent report on abuses in health-care settings that “[m]edical care that causes severe suffering for no justifiable reason can be considered cruel, inhuman or degrading treatment or punishment, and if there is State involvement and specific intent, it is torture.” Furthermore, the Special Rapporteur determined that prolonged seclusion may constitute torture and ill-treatment.

In response to the allegations of rampant human rights violations in Federico Mora Hospital, the Inter-American Commission on Human Rights (IACHR, Commission) requested precautionary measures for the patients of the Federico Mora hospital in November 2009. The Commission urged the Guatemalan government to take “[i]mmediate preventive measures aimed at protecting all patients, particularly women and children, from physical, psychological and sexual violence by other inmates, guards and hospital staff.” Further, the Commission called on the government to relocate patients to community-based facilities in hopes that such facilities will respect disabled persons’ right to physical and mental integrity. Community-based alternatives also prevent segregation and exclusion from society, decreasing the likelihood of the vulnerability experienced in psychiatric hospitals like Federico Mora.

Dr. Miguel Alejandro De León, Federico Mora’s Head of Forensic Psychiatry, acknowledged some of the hospital’s problems, yet denied the extensive findings of the human rights groups. According to Dr. De León, a proposed solution is to create

a separate facility for patients who have been criminally charged and who allegedly commit most of the abuses. However, such a solution inadequately addresses the deplorable conditions and practices employed by hospital staff.

As a State Party to both the CRPD and the CAT, the Guatemalan government is legally obligated to ensure the mental and physical integrity of all its citizens, including the patients of Federico Mora Hospital. The Commission has requested that the government take several immediate steps to address the situation, including providing appropriate medical care, adopting measures to prevent abuse against patients, and separating children from adults. A failure to address known abuse and neglect may be further evidence of abuse that amounts to torture, thus placing the government at even greater risk of falling short of its international obligations.

#### **KEYSTONE XL PIPELINE POSES SIGNIFICANT THREAT TO HEALTH OF ALREADY VULNERABLE COMMUNITIES**

The proposed TransCanada Keystone XL Pipeline risks endangering U.S. fresh water sources and the public health of surrounding communities due to probable “dirty” oil spills and the environmental impacts of transporting oil that produces three to four more times greenhouse gas emissions than conventional oil. These adverse consequences will reportedly disproportionately affect the health and safety of minority and low-income communities, including a predominately black and Latino neighborhood in Port Arthur, Texas. The pipeline will transport some of the dirtiest oil, linking tar sands oil of western Canada to refineries and ports in Texas along the Gulf Coast. Tar sands oil is highly acidic and corrosive and is considered the most toxic fossil fuel on the planet.

Indigenous people living in Fort Chipewyan in Northern Alberta, Canada, where tar sands oil is extracted, report the oil is linked to staggering hikes in cancer rates as a result of living downstream from tar sands production. In response to ongoing serious health concerns, Cora Voyageur, a sociology professor from the University of Calgary, recently launched an independent study to assess the health effects of these oil sands on nearby

communities, including other health issues like autism.

The proposed Keystone XL Pipeline will cross key sources of drinking and agricultural water, including the Ogallala Aquifer that supplies fresh water for two million people in eight U.S. states. Environmental activists warn that the pipeline will pose a threat to the aquifer, which is considered one of the world’s largest underground sources of fresh water. Due to the close proximity of the pipeline with some parts of the aquifer, coupled with the high risks of oil spills, many are concerned about the likelihood of water contamination.

TransCanada’s first tar sands pipeline, Keystone I, commenced operations in 2010 and experienced fourteen leaks within its first year. Shortly thereafter, the U.S. government issued a Corrective Action Order to temporarily shut down pipeline operations, finding that “the continued operation of the pipeline without corrective measures would be hazardous to life, property and the environment.” Although operations restarted, the pipeline has repeatedly been shut down due to the frequency of oil spills. Despite TransCanada’s projections of only five spills over a fifty-year span, as of October 2012, at least thirty-five spills have occurred. Thus, initial projections were grossly underestimated, a fact which increases concerns as the U.S. government considers approval of the XL pipeline.

The proposed pipeline is currently pending a federal permit from the U.S. Department of State (DOS). In March 2013, the DOS released a draft Supplemental Environmental Impact Statement for the proposed pipeline that, according to the Sierra Club, understates the adverse risks to Americans’ water and air, as well as the human health of nearby communities. Rather, the report focuses largely on prospective job creation and American energy independence, minimizing potential adverse impacts the pipeline will have on the climate or the health of U.S. residents.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) provides in Article 5(d)(iv) that a State Party must guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equal enjoyment to the right to public health. Both Canada and the United States have ratified the ICERD,



thereby obligating the countries to protect their citizens from significant public health risks. Article 25(1) of the Universal Declaration of Human Rights (UDHR) also provides that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family.” Although the UDHR initially was not viewed as a legally binding document, it has gained an authoritative force encompassing international human rights norms. Moreover, in 2010, a resolution of the UN Human Rights Council (HRC) recognized the right to water and sanitation as legally binding for all Member States.

Despite growing concerns about public health and safety, coupled with the poor track record of TransCanada’s first tar sands pipeline, the U.S. government continues to consider approving the pipeline. In light of the various negative impacts from construction, potential oil spills, climate change, and health risks, the government is legally obligated to ensure that all persons have access to clean and safe water and do not face adverse health conditions as a result of the project. Approval of the Keystone XL Project will likely jeopardize both the United States and Canada’s compliance with ICERD and the HRC’s resolution, posing a significant threat to some of America’s already vulnerable communities. Health risks of nearby low-income neighborhoods heighten concerns about the project’s disproportionate effect on minorities. Moreover, access to safe drinking water is further endangered due to the environmental impacts of transporting dirty oil.

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## ASIA AND OCEANIA

### CENTRAL ASIA: BALANCING NATIONAL SECURITY WITH FREEDOM OF RELIGION

Since September 11, 2001 all five Central Asian countries have enacted legislation restricting religious freedoms in an attempt to curb the rise of radical Islamic terrorism. The new laws have had a damaging effect on the free practice of religion. In 2004, the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, stated that freedom of religion “is a fundamental right that

is not susceptible to derogation, even in time of emergency.” Despite a legitimate interest in promoting national security, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan also maintain a set of obligations to protect this basic right as States Parties to the International Covenant on Civil and Political Rights (ICCPR).

The threat of terrorism in Central Asia is well-founded. In 1999 and 2004 a series of bombings killed dozens in the Uzbek capital Tashkent. Immediately after the September 11 attacks in the United States, Tajikistan initiated a ban on certain groups, including Hizbut-Tahir, al-Qaeda, Bay-at, the Islamic Movement of Uzbekistan, and Harakati Tablighot. In 2006, Kyrgyzstan labeled extremist group Hizbut-Tahrir as the largest religious challenge in the country. Kazakhstan has eliminated 42 extremist groups and prevented 35 terrorist attacks since 2010 alone. However, many of the new Religion Laws have broad applications that affect religious activities with no relation to terrorism.

Kyrgyzstan’s Administrative Code and Turkmenistan’s Religious Organization Law require any religious organization operating within the state to register with the government. Kyrgyzstan also bans prayers and religious rituals not approved by the state. Kazakhstan, Tajikistan, and Uzbekistan have made creating, promoting, and distributing religious materials an offense subject to criminal penalties or high fines. The Administrative Code of Kyrgyzstan and the Criminal Code of Tajikistan make it an offense to participate in a religious organization that contradicts the aims of the state. And Tajikistan’s new Religion Law requires children to receive all religious education from state-licensed institutions. As previously reported in the *Human Rights Brief*, the Tajik government also enacted a Parental Responsibility Law that requires parents to prevent children from participating in religious activities that are not sanctioned by the state.

The effects of these laws have been present throughout Central Asia. According to a Human Rights Watch report, hundreds of religious organizations were forced to close in 2012 after failing to receive official registration from the Kazakh government. In the Kostanai Region of Kazakhstan, which has a population of 900,300, only two bookshops are allowed to sell religious

materials. The report also indicated that during the same timeframe, over 200 people in Uzbekistan were arrested or convicted for religious extremism. At the beginning of the year, 1,823 Tajiks began their studies in foreign religious institutions; 1,621 were required to return to Tajikistan. The government of Kyrgyzstan is currently holding 83 religious extremists in detention facilities, amid fears that prisons have become breeding grounds for terror recruitment.

Because every country in Central Asia is a party to the ICCPR, each has an obligation to promote the freedom of thought, conscience, and religion as outlined in Article 18. The rights include the “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” The Central Asian countries claim they have not impinged upon these rights because Article 18 also allows for “such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” The General Assembly has affirmed that the Central Asian countries have read this exception for national security too broadly. In Resolution 66/168, the General Assembly expressed concern with the growing number of restrictive laws and intolerance motivated by Islamophobia. The Special Rapporteur on the freedom of religion or belief then affirmed that “states should avoid equating certain religions with terrorism as this may have adverse consequences on the right to freedom of religion or belief of all members of the concerned religious communities or communities of belief.” Despite the sentiments by the General Assembly and Special Rapporteur, the Central Asian laws restricting the practice of religion have not been amended or repealed.

While the Central Asian countries may believe that the restrictions on religion are justified in the face of rising threats of terrorism, the ICCPR obliges member states to respect religion as a fundamental right. If the application of the Religion Laws continues to create a substantial burden on those not associated with terrorist activities, the United Nations, although it has not articulated further steps, could

begin to place more pressure on the Central Asian governments.

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#### **SOUTH KOREAN LAW MAY BE INFRINGING UPON THE RIGHT TO FREEDOM OF EXPRESSION ON THE INTERNET**

South Korea, frequently considered a regional leader in human rights and democracy, and a State Party to the International Covenant on Civil and Political Rights (ICCPR), has come under recent UN scrutiny for its treatment of freedom of expression on the Internet. The ICCPR enumerates the universal right to freedom of expression in Article 19, which protects the ability to “receive and impart information and ideas of all kinds” and limits this only with regard to protection of the rights of other individuals, national security, public order, public health, or morals. Similarly, the South Korean Constitution provides the right to freedom of speech, press, assembly, and association, but it limits these protections to the extent that they neither interfere with “honor or rights of other persons nor undermine public morals or social ethics.” However, reports indicate that this constitutional exception has been exploited to regulate discourse on the Internet.

In 2007, in an effort to allay mounting concerns over malicious and defamatory posts online, the government of South Korea instituted a real name identification system, which forced websites with the highest viewership to require all posters of online content to use their real name and risk prosecution. The South Korean Constitutional Court (Court) overturned the law in 2012.

Reports from watchdog groups defending media rights indicate that South Koreans continue to face pressure on their exercise of freedom of expression, even after the Court struck down the real name system. In 2008, after protests erupted when the government ended a five-year ban on U.S. beef imports, the government responded by passing much broader legislation than the real name law: the Comprehensive Measures for Information Protection on the Internet. The law limits defamation, obscenity, and broadly defined

threats to national security, and it forces website operators to remove any content if a third party claims it has been defamed, with sanctions for operators who do not immediately comply. The government also established the Korea Communications Standards Commission (KCSC) to help pursue these ends; the organization is empowered to monitor content on the Web, issue recommendations to remove defamatory content or content violative of public morals that may lead to fines in the case of noncompliance. Criticism of the KCSC is often focused on its lack of transparency, broad-reaching powers, and the lack of reviewability. Furthermore, censored website operators or posters are generally not given the opportunity to defend their content. There are some indications that the measures are defended under the exceptions for government regulation in the national interest in both the Constitution and the ICCPR, as South Korea seeks to ensure public morality and social ethics.

The exceptions for national interest may not be broad enough to encompass South Korea’s regulation of expression. In the Constitutional Court opinion that overturned the real name identification system, the Court held that the law violated the South Korean Constitution, specifically with regard to citizens’ freedom of expression. The Court ruled that such restrictions are unjustifiable unless supported by clear public interests, applying constitutional principles that echo obligations under the ICCPR. The UN Human Rights Council (UNHRC) clarified the ICCPR’s freedom of expression provisions in General Comment 10, which provided that the protection is not limited in regard to specific media—all media is protected. The UNHRC recently reaffirmed the importance of free expression on the Internet, citing it as a force for development and an integral, protected component of the already enumerated freedom of expression. The UNHRC further emphasized that all rights that are protected offline should be protected online.

Though the Constitutional Court struck down the real name identification law, reports indicate that South Korea may no longer be the beacon of free press in Asia that it was once considered. The Comprehensive Measures for Information Protection on the Internet law, coupled with the KCSC, continue to burden free expression. The UN Special Rapporteur

for Freedom of Expression, Frank La Rue, warned last year that defamation suits are being used to censor expression that informs the public interest. La Rue pointed out the structural burden on freedom of expression caused by these laws. To maintain its reputation for protecting human rights, South Korea could go far by heeding the advice of La Rue and demonstrating commitment to freedom of expression on the Internet.

#### **MONGOLIA SEEKS TO CAPITALIZE ON POTENTIAL FOR POVERTY REDUCTION THROUGH ITS HUMAN DEVELOPMENT FUND**

When Mongolia transitioned from a centrally planned economy to a free market economy in the early 1990s, many of the country’s poorest were left without access to essential services, but the state is making a renewed effort to alleviate that disparity. As the state adapted to its new economic structure, the discovery of extensive mineral resources facilitated privatization and growth, and though much of the population benefited, many did not. Estimates place the value of Mongolia’s untapped resources as high as one trillion U.S. dollars, and the per capita gross domestic product tripled from 2004 to 2010, but concern remains over whether these resources will benefit the poor, who make up roughly 35 percent of the overall population. Furthermore, watchdog groups like Freedom House have brought attention to corruption and lack of transparency in the awarding of lucrative mineral-extraction contracts to foreign enterprises, which often limits the domestic impact of national resource wealth. To allay these fears, Mongolia’s parliament passed laws in 2008 aimed at wealth distribution. These laws, the National Development Strategy and the Human Development Fund (HDF), purported to make citizens eligible for access to the nation’s vast mineral wealth. The planned scope of HDF was immense; it was hoped that the fund would provide financial resources to pay for social services including pensions, health care, housing, and education, as well as provide cash payouts to citizens. Though data to quantify the early impact of the HDF is not yet readily available, distribution of funds recently became entangled in Mongolia’s electoral politicking.

Despite concerns over the implementation of the HDF, the program has potential

to have tremendous impact on Mongolia's efforts to comply with its obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to which Mongolia is a State Party. The program would align the state's goals with objectives of the ICESCR insofar as the HDF would expand citizens' access to national wealth and facilitate the protection of several ICESCR enumerated rights. The ICESCR obliges States Parties to recognize the rights to work (Article 6), social security (Article 9), adequate standards of living and freedom from hunger (Article 11), and the highest attainable standards of health and accessible healthcare (Article 12).

Mongolia's efforts to achieve the Millennium Development Goals (MDGs) reflect the national need to address issues of poverty and poor health and education standards. The MDGs specifically focus on eradication of poverty and hunger, universalization of primary education, gender equality and participation, and several health-care-based initiatives. The report on implementation of the MDGs in Mongolia indicates a need to focus social services for the poorest and the historically marginalized. This imperative is echoed by Magdalena Sepúlveda Carmona, the UN Special Rapporteur on extreme poverty and human rights, who asserted: "Mongolia has established a robust legal framework, recognizing that everyone must enjoy the rights to education, health, housing, food, etc. However, the laws do not necessarily translate into the everyday reality for many Mongolians."

The government has plans to go beyond the HDF: draft versions of The Package Law on Social Welfare and The Mongolian Law on Employment Promotion were recently submitted to the country's parliament. Each of the laws targets the most vulnerable groups and the poorest in an effort to extend the availability of social security programs and increase job creation. General Comment No. 18 to ICESCR, issued by the Committee on Economic, Social and Cultural Rights, explains that the right to work under Article 6 encompasses state programs supporting the availability of employment, the accessibility of the labor market to all, and the acceptability and quality of that employment.

It is unclear whether Mongolia's efforts will be effective to meet national goals that align with the ICESCR and the MDGs. The government's comprehensive attack on poverty is still young, but the apparent intent to distribute wealth and ensure the provision of social programming could go far in aiding Mongolia's poor. Haruhiko Kuroda, the President of the Asian Development Bank pointed to the proper management of the country's mineral resources as integral to the country's successful development, hinging this success on good governance and a policy of economic inclusion that trickles down to the poorest and sees benefits broadly distributed. Though Mongolia's poverty rate continues to be high, commenters seem optimistic that, properly managed, Mongolia's mineral wealth has the ability to elevate the country's most need-stricken.

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#### **ANTI-ACID VIOLENCE LEGISLATION IN PAKISTAN NOT MITIGATING GROWING OCCURRENCE OF ACID ATTACKS ON WOMEN**

Although recent legislation aims to reduce acid violence in Pakistan, acid attacks are on the rise. Acid violence—the throwing of corrosive acid on a person's face or body—is an intentional act used as a form of violence against women, often in Pakistan, but it is also prevalent in other South Asian countries. The acid causes extreme damage to flesh and can even reach and harm the bone, permanently disfiguring victims of the attacks or even killing them. Since many cases of acid attacks go unreported, a true estimate of such attacks is difficult to determine. However, Pakistani non-governmental organizations (NGOs) estimate the number to be 150-200 cases per year. In many situations, husbands, in-laws, or other family members throw acid on the (generally) female victim for revenge or because of a perceived wrongdoing on her part. Other reasons for targeting a woman are her refusal of a marriage proposal, rejection of a sexual advance, or for a dispute involving dowry or property. Acid attacks are an inexpensive method of violence, since bottles of corrosive acid are widely available for about twenty rupees, or less than fifty U.S. cents. Despite the passage

of Pakistan's Acid Control and Acid Crime Prevention Act, which brings the country in line with its international obligations to curb violence toward women, the Act has not produced desired conviction rates.

No explicit mention of acid attacks has been made in international law, but the United Nations (UN) Declaration on the Elimination of Violence Against Women (Declaration) and the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), apply to acid attack cases and domestic violence. In a 2003 Resolution, the UN General Assembly further reaffirmed "the call for the elimination of violence against women and girls, especially all forms of . . . crimes committed in the name of passion . . . dowry-related violence and deaths, [and] acid attacks."

The Declaration states that it serves to complement CEDAW, which, if effectively implemented could "contribute to the elimination of violence against women." Article 1 of the Declaration defines violence against women as "any act of gender-based violence that results in, or is likely to result in physical, sexual, or psychological harm or suffering to women." Acid attacks fall under the category of gender-based violence because of the physical and psychological suffering women endure.

Pakistan acceded to CEDAW in 1996 and Article 5 of the Convention calls for States Parties to "take all appropriate measures" to "modify the social and cultural patterns of conduct of men and women, with a view of achieving the elimination of prejudices . . . [and] practices which are based on the idea of inferiority or the superiority of either of the sexes . . . ." Since acid violence perpetuates the idea of inferiority of women, Pakistan is obligated to take measures to counter such violence from continuing.

Pakistan did enact the Acid Control and Acid Crime Prevention Act in 2011 that made significant changes to the country's Penal Code, explicitly outlawing acid attacks and punishing perpetrators of acid violence. The Act expanded the definition to include "disfigures or defaces" in the original definition of "Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables, [disfigures, or defaces] or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause



hurt.” The Act adds two new sections into the Penal Code for *Voluntarily causing hurt by dangerous means or substances*, which states, “[W]hoever voluntarily causes hurt by means of . . . corrosive substance or acid . . . shall be called to have caused hurt by dangerous means or substances.” The other new section for the *Punishment for causing hurt by dangerous means or substances* punishes whomever intends to hurt or likely hurt any person “by dangerous means or substances . . . with imprisonment for a term which may extend to the whole of life, or with fine which may not be less than five hundred thousand rupees, or with both.” The Act also calls for the accused to pay for the loss of earning and medical expense of the victim and tackles the procurement of acid, only allowing licensed individuals to manufacture and sell acid.

Despite this law, an annual report published by the Aurat Foundation reported a 37.5% increase in acid attacks since 2011, suggesting the ineffectiveness of this new act. One reason for the continued acid violence is the “very low conviction” rate because of “discriminatory societal attitudes.” Pakistan is obligated under CEDAW to eliminate these cultural notions that preserve violence toward women. The Progressive Women’s Association investigated only 600 cases out of the 9,000 reports of acid violence from 1994 to 2011. Of those 600 cases, only two percent of perpetrators were convicted. A low conviction rate suggests that the majority of acid attackers have been immune from punishment and have not yet been deterred from continuing acid violence.

#### **SRI LANKAN OFFICIALS HAVE DISMISSED ALLEGATIONS OF TORTURE ON LTTE DETAINEES**

Four years after the end of Sri Lanka’s civil war, suspected members and supporters of the Liberation Tigers of Tamil Eelam (LTTE)—the force opposing the Sri Lankan government during the armed conflict—are reportedly still subjected to various forms of torture, including physical and sexual violence, at the hands of government agents. Sri Lankan security forces continue to face allegations that they torture detainees in detention centers, prisons, police stations, or in unofficial facilities in order to coerce the LTTE members and supporters into confessing to their participation. Torture is prohibited by the

Sri Lankan Constitution as well as international instruments to which Sri Lanka has acceded, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Sri Lankan officials have so far dismissed the torture claims, thus preventing a serious investigation into these allegations.

The LTTE, a Tamil militant group, emerged in the 1980s in response to what they perceived as growing discrimination against the minority Tamil population in Sri Lanka. Desiring to separate from Sri Lanka, the Tamil militants often forcibly recruited members from the Tamil minority population to join in the efforts as soldiers or supporters. The Sri Lankan government defeated the LTTE in May 2009, but the war resulted in a high civilian death toll and detention for the LTTE members who were captured at the end.

Two reports, one from the NGO Freedom from Torture and another from Human Rights Watch, documented incidents of torture against LTTE detainees. Many of these suspected LTTE members and supporters were arrested after the end of the war under authority granted by the country’s Prevention of Terrorism Act. Under Section 6 of the Act, senior police officers would have the authority to arrest, without a warrant, any individuals they reasonably suspected of offenses such as murder, kidnapping, robbery of public property, and firearm possession in security areas, among others. Since the law does not define reasonable suspicion, there is potential danger of arbitrary arrest of individuals. Many of those detained are placed in detention for up to six months without “effective due process”—the right to a fair trial and legal representation.

Once in this custody, Human Rights Watch reported that detainees are frequently victims of sexual violence, including the rape of both men and women, sexual assault, forced nudity, and sexual humiliation. According to the report, the situation is more dire because the Prevention of Terrorism Act provides such deference to security forces that they are “effectively [immune]” from punishment for inflicting torture.

Echoing the language of Article 7 of the ICCPR—to which Sri Lanka acceded in 1980—Article 11 of the Sri Lankan

Constitution calls for freedom from torture for all persons. Sexual violence and physical abuse reportedly committed by the Sri Lankan security forces toward LTTE detainees would constitute torture under Article 1 of the CAT—to which Sri Lanka acceded in 1994—which prohibits “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining . . . a confession.”

The torture reportedly inflicted on LTTE detainees also implicates domestic protections. Article 11 of the Sri Lankan Constitution forbids the use of torture or “cruel, inhuman or degrading treatment” on any person. In a Sri Lankan Supreme Court case, *Fernando v. Chrishantha*, where the plaintiff was found to be tortured in a Sri Lankan prison, the court held that the prisoner’s “standing in the society” is not a consideration in determining whether his right to be free from torture under Article 11 of the Constitution was violated. However, Sri Lankan High Commissioner to New Delhi Prasad Kariyawasam, speaking on behalf of the Sri Lankan government, did not accept the allegations of torture from Human Rights Watch as true, and said that there is a lack of evidence to substantiate said allegations. He stated that these allegations are most likely “sob stories for the sake of obtaining asylum or refugee status in a developed country.” This refusal to accept the validity of the allegations has prevented proper investigation into the detainees’ claims of torture. Without impartial investigation into these allegations, the detainees’ confessions are of questionable validity since it cannot be determined whether the evidence of their terrorist affiliation was forced by means of torture.

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#### **CENTRAL ASIAN STATES DISREGARD LGBT RIGHTS**

Throughout Central Asia, lesbian, gay, bisexual, and transgender (LGBT) people must hide their sexual orientation for fear of violence, extortion by the authorities, and even arrest. The lack of protections for this population creates a human rights issue. In the Soviet era, homosexuality was criminalized and could lead to several

years in prison. Since the dissolution of the Soviet Union in 1991, the situation for LGBT people in Central Asia remains precarious, with homosexuality still criminalized in Uzbekistan and Turkmenistan and discrimination and marginalization throughout the region. The Central Asian countries can come into line with international law, enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and emerging norms by decriminalizing homosexuality and combatting social norms stigmatizing people based on their sexual orientation.

Article 9 of the ICCPR defends against arbitrary arrest and protects everyone's rights to liberty and security of person while Article 17 protects people from unlawful interference with privacy. Article 26 of the ICCPR and Article 2 of the ICESCR both guarantee protection against discrimination on any grounds. In 2012, the UN Office of the High Commissioner for Human Rights (OHCHR) explained that although the non-discrimination guarantees listed in the ICCPR and the ICESCR do not explicitly include "sexual orientation," they all include the words "other status." The OHCHR explained that the inclusion of the words "other status" affirms that the lists of discriminations were intentionally left open to include future grounds for discrimination, such as sexual orientation, which were not considered when the documents were written.

In 2009, the Committee on Economic, Social and Cultural Rights (CESCR) confirmed that the non-discrimination guarantee of the ICESCR includes sexual orientation. The CESCR explained that states should ensure that a person's sexual orientation is not a barrier to realizing ICESCR rights. In June 2011, the Human Rights Council adopted the first UN resolution on sexual orientation and gender identity, expressing "grave concern" at violence and discrimination against individuals based on their sexual orientation and gender identity, leading to the first UN report on this issue.

Discrimination against LGBT people is the prevailing standard throughout the Central Asian states. Article 120 of Uzbekistan's criminal code outlaws sexual intercourse between two men, as does Article 135 of Turkmenistan's criminal code.

Since 1998, homosexuality is no longer outlawed in Kazakhstan, Kyrgyzstan, and Tajikistan. Despite this legal change, the lack of specific protections for LGBT people and an environment where LGBT individuals cannot approach authorities for fear of blackmail or violence has led to societal discrimination, which functions as if it is institutionalized by law. In Kyrgyzstan, lesbian and bisexual women are often subjected to forced marriages and rape in an effort to "cure" them. Homophobia is widespread in Tajikistan, where many view homosexuality as a sin or a disease and the general population is intolerant of homosexuality because of traditional attitudes and Islam's strong influence on the population. This discrimination implicates the rights to privacy and expression because LGBT people are forced to hide their identities for fear of government and societal reprisal.

According to the organization Civil Rights Defenders, "[T]here are no legal safeguards against discrimination based on sexual orientation or gender identity in any of the Central Asian countries." The organization also claims that human rights organizations in the region have been unwilling to defend LGBT rights and that if LGBT issues are addressed, it is usually in a manner that creates further stigmatization, such as in conjunction with HIV prevention initiatives. These initiatives, in and of themselves often carry their own cultural stigma, further marginalizing LGBT issues. In 2009, an Uzbek HIV rights activist was sentenced to seven years in prison for seducing minors; the court used the activist's safe sex campaign as evidence that his activities contradicted the national traditions and culture of Uzbekistan. In Kazakhstan, Kyrgyzstan, and Tajikistan, however, there are initiatives and organizations working openly for LGBT rights and HIV prevention. As a marginalized population, LGBT people in Central Asia need government protections to ensure that they enjoy the rights offered to all persons under international law.

By arbitrarily arresting, blackmailing, criminalizing, physically and verbally abusing, and engaging in general discrimination against LGBT people, the Central Asian countries are not upholding the ICCPR and the ICESCR. These documents are both binding on the Central Asian countries because Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan are all

States Parties. The only way for the Central Asian states to come into line with the ICCPR and the ICESCR is to decriminalize homosexuality and to establish laws protecting their LGBT communities from discrimination. Even where homosexuality is decriminalized, societal discrimination and marginalization deprive LGBT people of their basic rights, which are guaranteed by the ICCPR and ICESCR.

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## EUROPE

### ITALY'S RETURN OF ASYLUM SEEKERS TO GREECE RAISES HUMAN RIGHTS CONCERNS

The Italian government has recently instituted a policy of returning asylum-seekers back to abusive conditions in Greece without reviewing their claims, an approach in conflict with both national and international obligations. Italy has continued to pursue this policy of summary return of both Greek asylum-seekers and persons from northern Africa who originally were seeking asylum in Greece despite requests from observers, including Council of Europe Commissioner for Human Rights Nils Muižnieks and the UN Special Rapporteur on rights of migrants François Crépeau, that the state discontinue the practice. As immigration law is currently enforced, both adults and children are generally deported via commercial ferries and confined in makeshift holding cells or engine rooms under the custody of the ship's captain. According to media reports, asylum-seekers are sometimes denied adequate food and, upon return, Greece has been unable to provide the individuals with basic requirements of safety and shelter. This maltreatment is attributable to Greece's overburdened asylum system—a system which leaves little chance that asylum-seekers will receive adequate support within Greece and has led to numerous reports of human rights violations perpetrated by Greek authorities.

The Dublin Regulation (Dublin II), to which both nations are bound, governs the interaction between Italy and Greece regarding which state should process claims by asylum-seekers. The European Union (EU) regulation requires that



asylum claims be dealt with by the first Member State in which the asylum-seeker arrives. Should the individual leave that first state, the individual can be returned to the state of entry in the EU. The assumption under Dublin II is that EU Member States will comply with their international obligations toward asylum-seekers under the 1951 Refugee Convention and its 1967 Protocol, the European Convention on Human Rights (ECHR), the Qualification Directive, and the EU Charter. The stated goal of Dublin II is to ensure that one Member State is responsible for the examination of individual asylum claims in a manner that respects the fundamental rights of asylum-seekers. Additionally, it is meant to promote judicial efficiency of the asylum process and to deter individuals from filing multiple asylum claims. In practice, however, refugee rights advocates note that Dublin II often acts as a roadblock to refugees by causing extensive delays in the examination of asylum claims by sending asylum-seekers back to their point of entry and increasing pressure on EU border countries that receive a disproportionate number of asylum-seekers compared to northern European countries.

The use of Dublin II in relation to the Greece and Italy situation has drawn concern. In December 2009, the UN High Commissioner for Refugees recommended that governments stop sending asylum-seekers back to Greece and stop applying Dublin II provisions until further notice, a request with which many nations complied. In 2011, the European Court of Human Rights in *M.S.S. v. Belgium & Greece* held that Belgium had violated Articles 3 and 13 of the ECHR by sending asylum-seekers back to Greece under Dublin II. Also in 2011, the EU Court of Justice held in *NS v. ME* that Member States have an obligation not to transfer asylum seekers to Member States where they would face inhuman or degrading treatment in violation of Article 4 of the EU Charter.

By returning asylum seekers to Greece without fully examining individual asylum requests, Italy has failed to address the concerns raised by the courts and intergovernmental organizations. Further economic issues, especially in Greece but throughout Europe, continue to impede states' abilities to provide integration services for migrants in the continent. Although movement has been made to standardize EU practices

through implementation of a Common European Asylum System, as the states negotiate the asylum-seekers continue to face hardships.

Such hardships are not made easier by the economic hardship faced by the southern European countries that is exacerbated by their proximity to northern Africa, currently the source of a high number of asylum-seekers. Many such individuals enter via undocumented transportation, making it exceedingly difficult to regulate the numbers of people entering the European countries. Without assistance from northern European countries, it is difficult for the migrant-receiving countries in the south to process asylum claims under Dublin II. In 2011, the Italian Minister of the Interior appealed explicitly for this kind of additional support from fellow European states. Italy may be violating its responsibilities under Dublin II and various human rights documents, but without support from other European states, Italy's economic burdens make it difficult for them to meet these obligations. Nevertheless, continent-wide cooperation could create a viable path to adequately process asylum requests under Dublin II that respects the individuals seeking protection.

#### **BELGIUM MULLS ALLOWING CHILDREN TO CHOOSE DEATH**

Belgium is currently considering expanding a 2002 euthanasia law so that chronically ill children would be granted the right to choose to die. This proposed legislation has raised concerns from many groups about its implications on the quality of care available to children and the potential exploitation of chronically ill children for their organs. Current legislation allows adults over age eighteen to exercise the right to choose to die. The practice has been on the rise in Belgium; between 2011 and 2012, there was a 25 percent increase in reported physician-assisted deaths, accounting for two percent of the total deaths in the country. Some doctors administering euthanasia procedures said they feel that part of caring for their patients is providing conditions in which a person can die with dignity. Before adults can access the right to die through euthanasia, they must show that they are suffering from a "hopeless medical situation," though this standard includes non-terminal conditions. Potentially extending the right

to die to children has led critics to express a renewed sense of concern about the implications of such legislation.

Religious and anti-euthanasia advocacy groups point to a number of informed consent issues arising out of the practice of child euthanasia. One particular area of concerns is the use of organ donation in cases where children, whose organs are in high demand, did not consent. More generally, a 2010 report in the Canadian Medical Association Journal (CMAJ) revealed that nearly half of the interviewed Belgian nurses, who are not legally permitted to administer euthanasia drugs, admitted to participating in physician-assisted deaths. Another study published in CMAJ found that nurses perform 32 percent of assisted deaths without an explicit request or consent, and 1.8 percent of cases classified as assisted death occurred without the consent of the patient. It also found that nearly half of physician-assisted suicides in the Flanders region were unreported, which hinders oversight.

Consistent with the Universal Declaration of Human Rights, states codified and extended the rights of life, liberty, and security of persons to children in Article 3 of the Convention on the Rights of the Child (CRC), to which Belgium is a party. This article mandates that the "best interest of the child" should be the guiding principle for all matters concerning children. Additionally, Belgium faces certain obligations surrounding a child's right to express her desires in relation to medical treatment. Article 12 of the CRC states that children must be allowed to express their views freely in accordance with their age and maturity. The article's meaning is explained in the Committee on the Rights of the Child's General Comment No. 12, which states that children must be allowed to express their views on their individual healthcare decisions. However, the Committee recognized that the child's right to be heard must recognize the role a child's maturity plays.

In the United Kingdom, a fourteen-year-old girl stated that she did not want to continue with her life-saving cancer treatments, but later changed her mind and decided to undergo chemotherapy after receiving a text message from a friend. These apparently impulsive decisions are what critics of the law wish to avoid. Conversely, many people argue that children with serious and incurable diseases should have the same rights as

adults to choose the appropriate form of treatment. Studies have shown that children often display greater lucidity than adults on the issue of death and often have skill, understanding, and maturity to make decisions about their personal medical situation. Parents of an eighteen-year-old who chose to exercise her right to die in the Netherlands said that their daughter's decision allowed her to retain some dignity as her quality of life declined. Belgium faces the difficult task of balancing its obligations under the CRC to ensure that children's voices are heard with its mandate to protect the child's best interest.

Belgium is not the only country pursuing this type of legislation. A proposed law in the Netherlands would similarly expand euthanasia to children. As a child's right to choose to die gains legislative ground, protection from potential abuses of euthanasia will become particularly relevant for suffering children, one of the continent's most fragile groups. Because children are not always able to speak for themselves, the CRC requires that children's rights be viewed through a different framework than that used for comparable rights afforded to adults. Consequently, simply expanding the current Belgian legislation to children may not take into account the complexities and vulnerabilities of youth. With the proper safeguards in place, Belgium may be able to successfully implement its proposed legislation and provide children with appropriate autonomy in decisions involving the right to choose to die.

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## MIDDLE EAST AND NORTH AFRICA

### STATE SOVEREIGNTY OR DEMOCRACY: WHICH WILL WIN IN IRAN'S ELECTION?

After widespread protests following the disputed 2009 election results, the ruling elite led by Ayatollah Ali Khamenei have chosen to ensure a consolidation of power before the June 2013 election. In August 2012, the UN Secretary-General expressed deep concern about "reports of the increasing number of . . . arbitrary arrest and detention, unfair trials, torture and ill treatment; and the severe restrictions targeting media professionals, human

rights defenders, lawyers and opposition activists." Since the release of the Secretary-General's report, the arbitrary arrests have increased, creating an urgent need for Iran to comply with its binding obligations under the International Covenant on Civil and Political Rights (ICCPR).

The ICCPR grants all peoples the ability to freely determine their political status, the right to hold opinions without interference, and the right to self-determination. In February, UN Special Rapporteur on the rights and freedom of peaceful assembly and of association, Maina Kiai, publically reminded Iran of its obligations to protect civil liberties. In early 2012, Iran's Guardian Council disqualified more than 2,000 potential candidates for the parliamentary election, citing a lack of adherence to Islam and the Constitution. No opposition parties or candidates have been allowed to propose alternative presidential candidates. Iran also appears to be increasing its media censorship by criminalizing any action that purports to organize a protest, expresses a "disturbing political opinion," or insults the presidential candidates. In January 2011, the Iranian government created the Iranian Cyber Police (FATA) to secure the country from cyber crimes. In recent months, FATA has been monitoring online bloggers, activists, and citizen groups that are critical of President Ahmadinejad. Many fear that as the election nears, FATA may attempt to block campaign blogs and social networking sites that rally support for opposition leaders, repeating the government blockade of websites in 2009. These actions would stand in direct conflict with Iran's obligations under Article 19 of the ICCPR, which provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds."

The ICCPR also obligates States Parties, including Iran, which ratified the Covenant in 1975, to protect against arbitrary arrests and ensure fair trials. In 2011, former presidential candidates Mir Hossein Mousavi and Mehdi Karroubi, and Mousavi's wife, Zahra Rahnava, were placed under house arrest and banned from participating in parliamentary elections. The Iranian government condemned these opposition leaders for inciting the 2009 riots. Because formal charges were never filed, the United Nations Working Group on Arbitrary Detention condemned

the arrests in 2012. In February 2013, the UN Special Rapporteur on Iran, Ahmed Shaheed, called for the immediate release of hundreds of Iranian political prisoners, including Mousavi and Karroubi, who remain under house arrest.

Shaheed's requests came on the heels of a wave of arbitrary arrests and harassment of political activists, human rights lawyers, and media workers. A report by the Committee to Protect Journalists indicated that Iran is a close second for having the highest number of journalists imprisoned. In January, security forces arrested sixteen journalists in a single week. A recent Human Rights Watch Report documents the mass exodus of Iranian lawyers and activists to neighboring Iraq and Turkey. The report indicates that the UN High Commissioner for Refugees received 11,537 asylum applications in 2009; 15,185 in 2010; and 18,128 in 2011. In response to Shaheed's call for the end of arbitrary imprisonment, the Iranian government labeled the scrutiny of Iran by the UN Special Rapporteurs as an attempt at political sabotage. As one of only a handful of countries with a UN Special Rapporteur assigned to it, Iran feels that it has been unjustly singled out. Yet, the Iranian government has repeatedly ignored its obligations under the ICCPR to ensure that "no one shall be subjected to arbitrary arrest or detention." As the election nears, the international community will be analyzing Iran's compliance with its ICCPR obligations. Specifically, it will scrutinize Iran's commitment to ensure a free election by universal suffrage, "held by secret ballot, guaranteeing the free expression of the will of the electors."

Since this analysis was written in April 2013, the Iranian elections took place with relatively few security incidents and the victory of a moderate candidate, Hassan Rouhani. The ruling clerics, under Ayatollah Khamenei's leadership, successfully averted a repeat of the 2009 widespread protests by continuing the house arrest of reformist leaders, intimidation activists, and stifling journalists. Iran's obligation to uphold the rule of law and protect basic freedoms continues far beyond the comparatively quiet election period.

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## THE PLIGHT OF SYRIAN REFUGEES IN LEBANON

Almost one million Syrian citizens have fled their country since peaceful protests, beginning in March 2011, transformed into a violent civil war. Fighting between Bashar al-Assad's regime and opposition militias has ravaged cities and towns throughout Syria. Lebanon, which has an official policy of dissociation with the Syrian conflict to prevent hostilities from spilling over the border, is absorbing a large portion of the Syrian refugees who are fleeing the war-torn country. As of May 2013, the United Nations High Commissioner for Refugees (UNHCR) estimates that the number of Syrian refugees in Lebanon exceeds 430,000. The country of four million, however, is not legally obligated to care for the refugees because it is not a party to the 1951 Convention Relating to the Status of Refugees (Refugee Convention). Due to the large influx of refugees into the tiny country, Lebanon is faced with a predicament seen in many conflicts that international law provides an insufficient framework for solving.

According to the Statute of the Office of the UNHCR, which was adopted by the UN General Assembly, all governments should cooperate with the High Commissioner in the performance of his functions. Article 23 of the Refugee Convention promises refugees the same treatment, with respect to public relief and assistance, as is accorded to a country's own citizens. Article 14 of the Universal Declaration of Human Rights (UDHR) enshrines the right of persons to enjoy asylum from persecution in other countries. However, this framework may not be enough to safeguard the rights of Syrian refugees in Lebanon.

Syrian refugees in Lebanon that have yet to register with the UNHCR cannot receive necessities such as food, blankets, and rental assistance. In a February interview with National Public Radio, the UNHCR representative in Lebanon said that the agency simply cannot keep up with the growing number of refugees—4,200 people per day currently approaching the agency, as compared to 1,700 people per day in December 2012. Aid workers have indicated that the registration process is hindering refugees from receiving necessary aid in a timely manner.

Lebanon absorbed over 400,000 Palestinian refugees since 1948, many of whom are still living in refugee camps run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Because of this history, Lebanon has forbidden the construction of formal refugee camps for Syrian refugees. The UNHCR says that Lebanon does not have the legal or administrative procedures in place to address the specific needs of refugees, leaving them vulnerable to arrest, detention, and deportation. The agency notes that improving protections for refugees in Lebanon is a priority and that it is working toward a more stable understanding with the Lebanese government.

Lebanon's fragile political balance and its history with Palestinian refugees certainly provide reason for caution, but these are not an excuse to escape the steps that need to be taken. According to the UNHCR Syria Regional Response Plan, refugees are scattered across Lebanon in over 540 locations, in some of the poorest areas of the country, because Lebanon has not established refugee camps. Without centralized locations for refugees to live, they are forced to find shelter throughout Lebanese communities, making aid more difficult to distribute.

The UNHCR emphasizes that burden-sharing is key to maintaining the protection of refugees. In furtherance of this theory, the UNHCR assists refugees so that the cost of their welcome is not borne by the countries of refuge alone. Turkey and Egypt are the only countries, of the five formally accepting Syrian refugees, that are bound by the Refugee Convention. They are better equipped to deal with the refugee situation because they are bound by international law to provide additional protections. If Lebanon were a party to the Convention, the refugees would be afforded automatic protections, such as the right to receive identification documents and the right not to be deported back to Syria.

The UNHCR Statute, the Refugee Convention, and the UDHR all highlight the rights that should be afforded to Syrian refugees in Lebanon. Improving the situation for these refugees falls on the UNHCR, the Lebanese government, and other developed countries to provide sufficient aid. Without binding international guidance, Syrian refugees depend on the

good will of the international community for survival. The UNHCR can be better prepared to deal with the influx of refugees in Lebanon by making the registration process more efficient and reinforcing the staff and resources available for registering refugees. Since the key players dealing with this refugee situation lack necessary resources and there is an insufficient binding legal structure, it remains an insurmountable challenge to provide the Syrian refugees with their UDHR rights to asylum and for them to be treated equal to Lebanon's own citizens.

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## SUB-SAHARAN AFRICA

### SUPPRESSION OF CIVIL SOCIETY RAISES CONCERN OVER ZIMBABWE'S CONSTITUTIONAL REFERENDUM

Zimbabwe's constitutional referendum may signal a new future for Zimbabwean governance and human rights, but arrests and raids of several human rights organizations have cast doubt on the legitimacy of the process. The constitutional referendum was passed with 94.5 percent of the vote, and political elections are scheduled for the summer. The motivation for the reform traces back to the country's 2008 elections and the power-sharing agreement between the political parties of President Robert Mugabe and Prime Minister Morgan Tsvangirai. Observers questioned the validity of the elections, which were colored by allegations of vote suppression and fraud. Tsvangirai's party narrowly won a majority in parliament, and his assertion that Mugabe could not remain president without a majority in parliament led to an extensive power-sharing agreement under which Mugabe became president and Tsvangirai became Prime Minister. Events leading up to the referendum vote, however, indicated a suppression of the involvement of the Zimbabwean people, instead of the empowerment that the power-sharing agreement purports to reinforce.

Article VI of the power-sharing agreement established the constitutional referendum and acknowledged the "fundamental right and duty of the Zimbabwean people to make a constitution by themselves and for



themselves.” In referencing the referendum before the UN General Assembly in 2009, Mugabe expressed his “unwavering commitment to chart a new vision for the country and to improve the lives of the people in peace and harmony.”

However, the government engaged in arrests of members of civil society throughout the reform process and such efforts increased in the months leading up to the vote. In August 2012, Zimbabwean riot police described by witnesses as “visibly drunk” raided the headquarters of the Gay and Lesbian Alliance of Zimbabwe (GALZ). Employees stated that they were assaulted as the officers seized documents based on charges of running an “unregistered organization,” an allegation also used to authorize the arrest of the director of the Zimbabwe Human Rights NGO Forum. Authorities have also apprehended several members of the Counseling Service Unit (CSU), a torture and political violence support organization, for possession of “offensive and subversive material.”

The weeks leading up to the vote have been particularly intense for what activists call suppression of civil society. Police officers on February 11 twice raided the offices of the Zimbabwean Police Project, which has been a target of antagonism dating back to the arrest and alleged torture of its director in 2008. On the recent occasion, officers entered the offices both times brandishing warrants for “subversive material.” On February 13, when the date for the referendum was announced, eight members of Women of Zimbabwe Arise (WOZA) were arrested following what reports have described as police beatings and tear gas deployment against activists handing out roses and teddy bears during a Valentine’s Day demonstration outside the Zimbabwean Parliament.

Civil society organizations’ activities related to voting in the referendum have also led to raids on several organizations and arrests on charges of voter registration fraud. ZimRights, a human rights organization, has seen its director and secretary, among other employees, arrested for “voter registration fraud.” Officials charged the employees with “publishing falsehoods, fraud and forgery after . . . conducting illegal voter registration.” Similarly, following an initial arrest of forty members, officials charged two leaders of the National Youth Development Trust with voter registration

fraud for possessing voter registration receipts. This has also extended to the arrest of two officials from the Zimbabwe Electoral Support Network for holding an “unsanctioned public meeting.”

Targeting civil society with violence and arrest based on political activity are violations not only of the professed purpose of the constitutional referendum, but also with the inclusion of state authorities in the reported situations, the actions implicate Zimbabwe’s obligations under international human rights law. The charges and the circumstances of the arrests are indicative of arbitrary arrest due to their broad nature and also suggest a pattern of suppression based on political activities without cause, in violation of Article 9 of both the Universal Declaration of Human Rights (UDHR) and the binding International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is a State Party. The police actions, which the civil society organizations have said was aimed at suppression of information, targeted the dissolution of the organizations and seizure of documents and publications. This implicates ICCPR obligations under Articles 19 and 21, which protect the rights of freedom of association, expression through the dissemination of opinion and information, and assembly, and constitutes political discrimination contrary to Article 1 of the same.

In a process aimed at increasing peace, democratization, and broader political involvement, Zimbabwe’s laudable goal of a constitutional referendum has resulted in increased suppression of civil society. These allegations of human rights violations by Zimbabwean authorities put into question the legitimacy of the constitutional referendum and whether this alone could solve the institutional defects that lead to rights violations in Zimbabwe.

#### **ELECTION REFORM SHIFTS 2013 VOTE IN KENYA FROM 2008 VIOLENCE**

Kenyan voters returned to the polls on March 4, 2013, for the country’s first general election since a 2008 vote marred by widespread political violence and claims of voter fraud and rigged tabulations. Since that election, Kenya revised its constitution in 2010 and this was the first test of its provisions intended as a response to the aforementioned electoral violence.

Kenyans voted for the new constitution in a referendum following a power-sharing agreement between now outgoing president Mwai Kibaki and career politician Raila Odinga. In an effort to end post-election violence, Kofi Annan brokered the agreement, which saw Odinga assuming the position of prime minister while Kibaki retained the presidency.

Deputy Prime Minister Uhuru Kenyatta—the ultimate winner of the 2013 vote—is alleged to have had control over the attacks against Odinga’s political supporters during the violence that followed the 2008 election. Kenyatta is one of the wealthiest men in Kenya, and was charged in the International Criminal Court (ICC) with financing and directing murder, forced deportation, sexual violence, and other inhumane acts—charges that the pre-trial chamber confirmed in January 2012. Kenyan politics centers around ethnicities and ethnic alliances, and violence was directed at opposing ethnic groups primarily between Kibaki’s Kikuyu supporters—of which Kenyatta is also a member—and Odinga’s Luo supporters.

With this history, one primary domestic and international concern leading up to the March vote was the validity of the election results. To this end, the constitution created the Independent Electoral and Boundaries Commission (IEBC). The IEBC oversaw the entire electoral process, and adjudicated any claims of voter fraud. In this endeavor, the IEBC primarily was tasked with enforcing regulations of Electoral Act of 2011. The IEBC decisions and petitions are then subject to judicial review in the Supreme Court of Kenya.

The 2013 vote pronounced Kenyatta the victor with 50.07 percent of the vote to Odinga’s 43.7 percent. This result avoided an automatic recount that would be triggered if no candidate received a majority. Due to the close nature of this result, however, Odinga and civil society allies challenged the election results, asserting that they were again marred by technical problems. The IEBC did direct some recounts in areas that had been affected by technical issues; however, these small-scale recounts did not change the initial results and the IEBC certified the election on March 9; on March 31 the Supreme Court upheld the election results.

While some observers have questioned the IEBC recount process, the functioning

of the 2013 election and post-election stands in stark contrast to what occurred in 2008. On Election Day, there were a few instances of violence and clashes with police in Mombasa. The attacks, however, were perpetrated by a separatist organization—in contrast to the 2008 violence, which was politically motivated targeting ethnic groups. The 2013 elections also saw a concerted effort by Kenyan police and security forces to increase security presence at polling stations and in possible areas of violence. Likewise, no widespread violence broke out post-election.

Yet the result of the election drew international attention because it resulted in victory for a president who is indicted

on charges of international crimes. This places him in the exclusive company of Omar al-Bashir of Sudan as ICC-indicted heads of state. In fact, much of Kenyatta's campaign addressed this indictment, and he rallied support around claims that it was part of western control of Kenya. While this has raised some issues around foreign assistance and diplomatic ties, much of the possible outcomes will rest on ICC decisions and possible trials later this year.

While Kenya's election still revolved around ethnic identity and alliances with the candidates, it did mark a turning point in a country struggling for political legitimacy following the 2008 election violence. Although the issue of a major western ally

having an ICC-indicted head of state has yet to be resolved, the functioning of the election was for the most part violence-free. The election reaffirmed human rights obligations of Kenya in both preventing violence and elections. Kenya fulfilled its duties to protect citizens from violence under the Universal Declaration of Human Rights (UDHR) Articles 3 and 5. This allowed for Kenya to maintain its citizens' rights to universal suffrage and having a voice in governance under UDHR Article 21(1) and (3).

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