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International Legal Updates

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INTERNATIONAL LEGAL UPDATES

ASIA

AFGHAN PARLIAMENTARY ELECTIONS DELAYED

Afghanistan's President Hamid Karzai recently announced that the much anticipated elections for the new National Assembly, originally scheduled for fall 2004, will not proceed until September 2005. The elections are the next major step for Afghanistan's emerging democracy.

Establishing a National Assembly will help to strengthen and legitimize the fledgling government. Regionally elected representatives will be able to garner greater support from their constituents. Additionally, under Afghanistan's new Constitution, the National Assembly is the highest legislative body in Afghanistan. The President does not have the constitutional power to pass legislation; therefore, once established, the Assembly will be able to further develop Afghanistan's legal system.

A strong central government may also help to curb Afghanistan's pressing problems with opium production and regional control by warlords. The current rise in opium production is a significant threat to Afghanistan's establishment of a stable democracy because it is a funding source for warlords and others in Afghanistan who seek to resist control by a central government. According to the United Nations, Afghanistan produces almost 90 percent of the world's opium, despite the fact that the cultivation and trade of opium is illegal under Afghan law and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which Afghanistan is party. The Assembly will have the power to further legislate against drug trade and production, thereby increasing the government's ability to fight against the illegal drug trade.

Experts have cited multiple reasons for the repeated delays of the elections. First, Afghan authorities and the UN are still trying to determine what type of voting system to use in the elections. The current system is likely to favor independent candidates, including warlords, whereas a new method would favor emerging political parties. This discussion is complicated

by the fact that politicians are still negotiating the role political parties will play in the new democracy. Second, under the new Constitution, the government is required to announce voting district boundaries for Assembly seats at least 120 days before the election, but Afghan authorities have yet to determine those boundaries. Finally, election authorities must finish collecting population figures and decide whether to allow the one million Afghan refugees living in Pakistan and Iran to vote, as well as determine how to provide representation for the Kuchi, who are Afghanistan's nomads.

KING GYANENDRA DECLARES A STATE OF EMERGENCY IN NEPAL

On February 1, 2005, Nepal's King Gyanendra took full control of state power in Nepal, overstepping his constitutional powers. He disposed of Prime Minister Sher Bahadur Deuba's government, declared an indefinite state of emergency, and appointed his own cabinet. The King also suspended constitutionally guaranteed fundamental rights.

King Gyanendra has claimed that the purpose of the coup was to strengthen the government's ability to combat the Maoist rebels and terrorism. He has justified the coup under Article 127 of the Constitution, which states that if any difficulty arises in implementing the Constitution, "His Majesty may issue necessary orders to remove such difficulty." Article 127 also provides, however, that "such orders shall be laid before parliament." King Gyanendra has further argued that the population supports his actions and opposes the Maoist rebellion—battles between Nepalese security forces and Maoists have left an estimated 11,000 Nepalese dead since 1996.

At the time of this writing, there is no planned end to the state of emergency, and the King has indefinitely suspended fundamental constitutional rights such as freedom of assembly, rights to information and privacy, and protection against arbitrary arrests. Additionally, Nepalese authorities banned independent media coverage of Maoist uprisings. The Information Ministry released a notice that prohibited media outlets from publishing news about the rebels unless security forces provided the information.

In addition to censoring the media, the King also detained or placed under house arrest a number of political leaders, activists, and journalists. A few of these activists, including former Prime Minister Deuba, were released without explanation. Two days after Deuba's release, however, security forces arrested at least 500 people in a protest against the coup.

Nepal's last stage of emergency, in 2001, was marked by a dramatic increase in forced disappearances, most of which have been attributed to government forces. Human rights monitors fear a similar increase during this state of emergency. According to the United Nations Working Group on Enforced and Involuntary Disappearances, in 2003 and 2004, Nepal had the highest number of recorded disappearances in the world.

The international community has strongly opposed the coup. India immediately suspended military aid to Nepal and cancelled its participation in a meeting of the South Asian Association for Regional Cooperation because King Gyanendra would be present. The United States and United Kingdom also condemned the King's actions.

INDIA'S NEW PATENT LAW MAY INCREASE THE PRICE OF AIDS DRUGS

India passed new patent legislation that will likely increase the price of AIDS drugs, making it difficult for developing countries that rely on Indian generics to afford desperately needed medicine. India wrote the legislation to comply with its 1995 ratification of the World Trade Organization's Trade Related Intellectual Property Rights Agreement (TRIPS). This agreement gave India a ten-year transition period in which to bring its legal code into compliance with TRIPS.

The TRIPS-related amendment will likely have significant international public health implications because approximately half of the 700,000 people who currently receive anti-retroviral treatment in the developing world receive generic medicines from India. *Medecins Sans Frontieres* (MSF) and other NGOs have expressed concern that newer AIDS drugs will become more expensive and less available to patients in poor countries as a result of this amendment. These NGOs have urged the

Indian Parliament to consider the significant ramifications of this amendment and to make careful decisions that will not deprive people of affordable drugs.

Another major criticism of the new legislation is that it fails to use the flexibilities available through the TRIPS Agreement. The amendment not only fails to reform the compulsory licensing process, which allows domestic manufacturers to make patented products within three years of their introduction, but also extends patent protection to new uses of known drugs. This additional level of protection is not required by the TRIPS Agreement and would allow pharmaceutical companies to maintain a monopoly over a drug, even after the original patent expires.

India's original patent law did not provide monopoly rights for drugs and agro-chemical discoveries. Pharmaceutical patents were allowed on manufacturing processes used to produce drugs but not on the end product itself. Under the old law, India encouraged companies to use low-cost manufacturing and rapidly developed its pharmaceutical industry, thus enabling it to provide low-cost HIV drugs to other developing countries.

The TRIPS negotiations resulted in two controversial new trade rules. The first makes intellectual property rights an integral part of world trade for the first time. The second permits cross-retaliation, which means that if a country fails to observe the patent rights of another country, that country could retaliate by imposing tariffs on trade from the offending country.

Under the new legislation, generic drugs already approved may still be sold, although there is an additional licensing fee. A few provisions in the new law allow companies that make generic drugs to copy drugs in the future, but the new procedure is complex and will likely increase the prices for new drugs. International AIDS groups remain concerned that once AIDS patients become resistant to current treatment, new drug treatments will not be affordable.

MIDDLE EAST

EGYPT

A Human Rights Watch (HRW) report released February 22, 2005, estimates that 2,400 suspects are being held in Egyptian prisons, detained in association with the October 2004 bombings of tourist resorts in Taba and the Sinai near the Egyptian-Israeli border.

Reports from the Egyptian Organization for Human Rights (EOHR) indicate that police arrested as many as 3,000 suspects in the northern Sinai between October 7 and November 4, 2004, despite the fact that all nine of the bombers and alleged accomplices identified by the Egyptian Ministry of Interior are either dead or already in custody.

Arrests included 19 owners of red cars, on account of police reports indicating that one of the suspects drove a red car; dozens of Bedouin men employed in Sinai rock quarries, on account of their access to explosives; and alleged "Islamists"—supporters of political Islam, who the Egyptian government perceives as threats to the regime. All of the interviewees in the HRW and EOHR reports claim they were arrested without warrants or justified explanation and held in State Security Investigations offices for three to seven days without charges. Interviewees further claim that the facilities were crowded and unhygienic, with "several hundred" detainees in custody at any given time. Many prisoners have been transferred to Tora prison in Cairo and Damanhur prison in the Nile Delta, though many of the detainees' whereabouts are unknown to their families. In addition, HRW alleges that several hundred persons are being detained and interrogated to secure the surrender of wanted family members.

The detentions violate provisions of Egypt's Emergency Law of 1958 and Article 4 of the International Covenant on Civil and Political Rights (ICCPR), which Egypt ratified in 1982. Egypt's Emergency Law of 1958 requires police to inform a suspect of the charges against him, permits contact between the suspect and his family, and gives him the right to appeal his case. The Emergency Law, however, and the 1992 Law to Combat Terrorism also authorize arbitrary arrest and indefinite detention of those suspected of certain crimes, such as endangering public order or security. Additionally, although Article 4 of the ICCPR permits derogation from some of its provisions in a "public emergency," such derogations are permitted only "to the extent strictly required by the situation." Even in a state of emergency, the Covenant protects the rights of detainees to be informed of the charges against them, to contact family and friends, to seek the aid of an attorney, and to appeal their detention if not released after 30 days. Egyptian detention practices also contravene the UN General Assembly's Body of Principles for the Protection of All Persons under Any Form of Detention or

Imprisonment, which protects the right of detainees to notify their families regarding their whereabouts. Principle 16 (4) indicates that government authorities cannot deny this right for longer than "a matter of days," even in an emergency situation.

In a meeting with HRW Middle East program director Joe Stork, a senior Interior Ministry official claimed that police detained only 200 suspects. The Ministry also claimed that 90 people were released on February 4, and that more releases will follow. An anonymous North Sinai security official told HRW that, despite extensive arrest estimates, only 800 suspects were presently in detention.

Many interviewees cited in the HRW and EOHR reports also claim to have witnessed or experienced torture by prison officials, including suspension by the wrists, beatings with hoses, and use of electrical shocks. Egypt acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1986, and is thereby prohibited from using torture and other forms of ill-treatment. The Egyptian Constitution, Penal Code, and Code of Criminal Procedure also include provisions prohibiting torture. HRW, however, recommends that Egypt amend relevant provisions of the Penal Code in a fashion consistent with the Convention against Torture and ratify the Optional Protocol to the Convention against Torture to permit independent experts to visit places of detention to assess conditions and make recommendations for improvements.

ISRAEL/PALESTINE

On February 1, 2005, Israeli Attorney-General Menahem Mazuz overturned an Israeli Cabinet decision to apply the 1950 Absentee Property Law to Palestinian-occupied East Jerusalem. In a public statement, he announced that the decision was only recently brought to his attention as the result of "questions directed at [him] on the subject." In the Cabinet decision, then Minister for Jerusalem Affairs, Natan Sharansky, and Minister of Social Welfare, Zevulun Orlev, authorized an application of the Absentee Property Law permitting seizure of Palestinian-owned land in East Jerusalem without reparations. The decision violated United Nations Security Council Resolution 465, which prohibits the extension of Israeli law to East Jerusalem. The authorization meeting did not include the other members of the Interministerial Committee on Jerusalem, a decision-making body established in 1967 to preside over mat-

ters concerning the city. Absent an appeal by its members, the decision was automatically approved when the Committee reconvened on July 8, 2004, and was not publicized until January 20, 2005, when the Israeli daily *Ha'aretz* published an article on the decision.

The 1950 Absentee Property Law, which authorized land confiscation by the Israeli government, originally pertained to land belonging to Palestinians who fled present-day Israel in 1948. Israel annexed Jordanian-controlled East Jerusalem in 1967, but an attorney general directive prohibited the Interministerial Committee on Jerusalem from applying the Absentee Property Law. UN resolutions 252 (1968), 267 and 271 (1969), and 298 (1971) further proscribed changes to the status of East Jerusalem. A 1977 modification to the Absentee Property Law required East Jerusalem Palestinian landowners to apply to the Custodian of Absentee Property to secure their ownership, which led to the seizure of unregistered properties in West Jerusalem. In 1997, the law was further modified to permit the Custodian of Absentee Property to seize unregistered property with the permission of the treasury legal advisor and to seize occupied "absentee" property with the additional permission of the Justice Ministry. The 2000 modification provided that no property in East Jerusalem would be subject to seizure without permission from the Interministerial Committee on Jerusalem.

The July 8 Cabinet decision to apply the Absentee Property law to Palestinian-occupied East Jerusalem undermined the provisions of the 2000 modification by asserting "that the Custodian of Absentee Property has . . . prerogatives which include the right to implement, transfer, sell or lease any real estate property to the Development Authority." The decision also violated the 1967 directive permitting landowners in East Jerusalem to prove their property claims in order to avoid "absentee" status. The Israeli government confiscated Palestinian records of landholdings when it closed down the Palestinian Authority headquarters in Jerusalem in 2001, making it difficult to determine how much land the Cabinet decision would affect. Palestinian geographer Khalil Tufakji estimates, however, that half of the 12.1 percent of East Jerusalem that is permitted for Palestinian use is owned by absentees and would be subject to seizure under the July 2004 decision.

In his statement overturning the decision, Attorney General Mazuz declared that the proposed application of the Absentee Property Law exceeded the authority of the Inter-

ministerial Committee, stressing that "grave international ramifications" could arise from enforcement of the decision.

IRAQ/JORDAN

A public statement by the United Nations High Commissioner for Refugees (UNHCR) on February 11, 2005, drew international attention to the situation of a group of Iranian Kurds stranded at the Jordan-Iraq border after the Jordanian government refused their admission. The refugees fled the al-Tash camp near Falluja, Iraq, established for refugees fleeing the 1979 Iranian Revolution. Prior to the 2003 conflict in Iraq, 10,000 to 12,000 refugees lived in al-Tash. Many left the camp in November 2004, following U.S. attacks on Iraqi insurgents. Presently, the camp houses around 5,000 Iranian Kurds. Although there are no reports of direct attacks on the refugees, Iraqi insurgents attacked the al-Tash police station in November 2004. The camp has also experienced cuts in water and electricity, and access to medical care and educational services has suffered.

The Jordanian government refused to permit the refugees to join another group of 660 Kurdish refugees from the al-Tash camp who have resided in a "no-man's-land" desert camp on the other side of the Jordan-Iraq border since April 2003. The Jordanian government established the camp in March 2003 for refugees fleeing Iraq who did not have legal residency in another country. Jordan's strict admittance policies for refugees are attributed to the sizeable refugee population already residing in the country, including 1.7 million Palestinians. According to government spokesperson Asma Khader, granting asylum to the al-Tash Kurds "may open the door to thousands of other refugees seeking entry into Jordan, and we cannot accept that." She encouraged UNHCR to find another country to admit the refugees. Jordan has denied responsibility for the welfare of refugees in the no-man's-land camp, citing security risks posed by the insurgency in Iraq. Neither Jordan nor Iraq is party to the 1950 Convention Relating to the Status of Refugees, which affords protection for refugees' legal status and general welfare. Jordan relies on the UNHCR for refugee status determination and resettlement to third countries outside of the Middle East.

The UNHCR has indicated that it will attempt to relocate the Kurdish refugees to northern Iraq or return them to al-Tash, where their personal security cannot be guaranteed. Last year, UNHCR relocated 3,120 refugees from al-Tash to Suleimaniyah, in northern

Iraq, and provided them with housing and economic assistance in the form of income-generation projects. UNHCR selected an additional 387 Iranian Kurdish refugees from the no-man's-land camp for resettlement in Sweden. There is a shortage of resettlement options, however, for refugees who are presently in al-Tash, the no-man's-land camp, or stranded in between.

At the time of the UNHCR announcement, the refugees at the Jordan-Iraq border were surviving on charity from passers-by. On February 12, 2005, the Jordanian Hashemite Charity Organization delivered food and supplies to the refugees on behalf of UNHCR. The UNHCR, however, still considers the group's situation to be tenuous, particularly given inclement weather, the presence of pregnant women and children among the refugees, and reports of an additional 115 refugees expected to join those already at the border.

HRB

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