

2014

Regions

Austin Shangraw

American University Washington College of Law

Ross Boone

American University Washington College of Law

Angela Chen

American University Washington College of Law

Shereen Kajouee

American University Washington College of Law

Jason Cowin

American University Washington College of Law

See next page for additional authors

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#)

Recommended Citation

Shangraw, Austin, Ross Boone, Angela Chen, Shereen Kajouee, Jason Cowin, Whitney-Ann Mulhauser, James Toliver, Min Jung Kim, and Ada Lacevic. "Regions." *Human Rights Brief* 21, no. 1 (2014): 47-59.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Human Rights Brief* by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Regions

Authors

Austin Shangraw, Ross Boone, Angela Chen, Shereen Kajouee, Jason Cowin, Whitney-Ann Mulhauser, James Toliver, Min Jung Kim, and Ada Lacevic

REGIONS

AMERICAS

U.S. MINIMUM WAGE: A LIVING WAGE?

In September, California's legislature passed a bill (AB 10) increasing the state's minimum wage to the highest in the country. Under the new law, the state's minimum wage will be incrementally increased to \$10 per hour by January 2016. The higher wages will impact an estimated three million Californians who are currently working minimum-wage jobs. Approval for AB 10 overcame great adversity from business groups, including the California Chamber of Commerce, which called the bill a "job killer" because it would force employers to cut jobs and reduce workers' hours.

The federal minimum wage, codified in the Fair Labor Standards Act, is often criticized because it is not indexed or adjusted annually for inflation, thus decreasing minimum wage workers' purchasing power over time. Since 1990, Congress has only increased the federal minimum wage seven times, with the current rate set in 2009. A full-time worker earning the federal minimum wage currently makes \$7.25 per hour, or \$15,080 annually. This salary places him or her above the poverty line for an individual (\$11,945 per year), as set by the U.S. Census Bureau, but significantly below the poverty line for a family of four (\$22,283 per year) if he or she were the sole provider for their family.

A state mandated minimum wage may, however, supersede the federally mandated minimum wage when the state hourly rate is higher. This has pushed some states, like California, to increase their minimum wage to better reflect the conditions in their state. Other states — including Alaska, South Dakota, and Idaho — may follow suit, as their citizens will vote on minimum wage increase ballot initiatives in 2014.

Recently, local governments and interest groups across the nation have led attempts to push for a higher minimum wage, as evinced by the fast food workers strikes. Fast food workers in at least sixty cities have been striking since August demanding a living wage of \$15 per hour and their right to unionize. The demand

for a living wage comes in direct response to the insufficiency of fast food workers' pay to meet their basic needs. According to the National Employment Law Project (NELP), the median hourly wage for a front-line fast food worker is \$8.94 per hour — or \$18,595 annually before taxes — a figure near the poverty line for a family of three.

Proponents of increasing the minimum wage assert that the current federal and state mandated wage floors do not provide a living wage for workers, thereby infringing on the workers' right to adequate pay. According to advocates, a living wage, as opposed to a statutory minimum wage, provides workers a salary that allows them and their family to fully participate in society and live with dignity. Moreover, a living wage impacts enjoyment of other fundamental human rights, including the human right to food, shelter, education, and healthcare.

Article 23(3) of the Universal Declaration of Human Rights (UDHR) establishes the right to a living wage in recognizing "[e]veryone who works has the right to just and [favorable] remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." Although the UDHR was originally aspirational in nature, several of the enumerated rights are considered customary international law and therefore binding on states, while a few enumerated rights, such as Article 23(3), constitute a clear legal commitment for states to strive towards. Thus, the United States, as a strong proponent of human rights, faces an obligation to ensure all workers have access to adequate compensation. Additionally, under Article 7 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the right to a living wage is reiterated, requiring that all workers receive, at a minimum, "fair wages and equal remuneration for work of equal value." A living wage contributes to the creation of "conditions whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights," a main

objective of the ICESCR. Even though the United States has not ratified the ICESCR, it has committed to refraining from acts that defeat the treaty's object and purpose as a signatory.

The current low-growth economic situation in the United States has created a significant increase in low-wage occupations. According to the Bureau of Labor Statistics, six of the ten top growth occupations constitute low-wage positions. Moreover, the U.S. Census Bureau reported that "46.5 million Americans were living in poverty last year," many of whom earned at or just above the minimum wage. In order to fulfill its international obligations, the U.S. Congress and the states may consider undertaking legislative measures to increase the minimum wage to better reflect current economic conditions throughout the country. In addition, an annual federal re-examination of the minimum wage would further ensure that workers are provided a living wage.

DISCONNECTED FROM THE WORLD — THE RIGHT TO INTERNET ACCESS IN CUBA

The Cuban government continues to maintain strict control over Internet access and content throughout the country. This past year, however, the government reportedly started to relax its control and adopted measures to permit greater Internet access for its citizens. In June 2013, the state-run telecom company Etecsa opened 118 Internet salons throughout the country, significantly increasing the number of public access points. In addition, during Cuba's UN Universal Periodic Review earlier this year, the government recognized the urgent need for the "democratization" of the country's Internet and the right to freedom of expression, possibly indicating fewer restrictions on the Internet in the future. Despite these promising steps, difficulties remain for Cubans trying to access an open Internet.

Freedom House's *Freedom on the Net 2013* report ranked Cuba fifty-ninth out of a sixty-country sample for its Internet freedom, falling below China and topping only Iran. The report, which examined Internet access based upon factors such as

access, limits on content, and violations of users' rights, highlights both the numerous obstacles Cubans face when trying to connect to the Internet, and the ongoing government monitoring that occurs once they are connected. One major issue is connectivity speed. Most Cubans connected to the Internet have limited or no broadband access, hindering their ability to utilize webpages and applications. Another issue is the high cost to access the Internet. The International Telecommunication Union's *Measuring the Information Society 2013* report lists Cuba as having the most expensive Internet in the world by percentage of average income. Cubans accessing the Internet through one of the 118 new Internet salons pay \$4.50 USD per hour, a high price considering salaries in Cuba average around \$20 USD per month. Additionally, the Cuban government continues its censorship of the Internet, blocking social media sites like Facebook and Twitter, and frequently threatening journalists and bloggers who create content critical of the regime.

The Cuban government's affirmative steps to prevent its citizens from accessing and utilizing a free Internet may contravene the recognized human right to freedom of expression. Although the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, declared in his 2011 report that "Internet is not *yet* a human right," he affirmed the positive obligation of States to "promote or to facilitate the enjoyment of the right to freedom of expression and the means necessary to exercise this right, which includes Internet." In June 2012, the UN Human Rights Council (HRC) adopted a groundbreaking resolution recognizing "the same rights that people have offline must also be protected online, in particular freedom of expression." Moreover, the HRC urged states to "promote and facilitate access to the Internet." Human rights and digital rights organizations emphasize that the right to unfettered Internet access is encompassed in Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR). Article 19(2) of the ICCPR specifies that the right to freedom of expression "shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in

writing or in print, in the form of art, or through any other media of his choice."

Vinton Cerf, one of the founders of the Internet, is among those who oppose the concept of Internet access as a human right. He contends that utilizing technology, including Internet access, is not a human right itself, but rather an enabler to enjoy human rights. Other critics claim Internet access has not yet ripened into a human right, as it would be infeasible to guarantee this right throughout the world due to the lack of Internet infrastructure in certain areas.

Although Cuba is gradually opening the Internet to its citizens, continued barriers exist. However, as the international human rights norm on the right to Internet access evolves and gains further recognition throughout the international community, the Cuban government will be under an increasing obligation to provide Internet access to its citizens. Internet access is imperative not only for Cubans to enjoy their fundamental human rights, but also for the transparency and accountability needed to protect other human rights as well.

Austin Shangraw, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

DEFORESTATION THREATENS INDIGENOUS LAND RIGHTS IN BOLIVIA

Nestled between the Andes to the west and the Amazon to the east, the farmlands of eastern Bolivia offer a unique opportunity for agriculture, with higher quality soil than other areas. In recent decades however, there has been a surge in deforestation, mostly a result of large landholding Brazilian migrants who arrived in the 1980s and 1990s. This has caused stress on the surrounding environment and threatened the ability of native communities to preserve their ways of life. International law protects indigenous property rights, both to the land itself and to the sustainability of the land, as a means of protecting local interests. Under both the American Convention and the American Declaration, state parties, including Bolivia, have an obligation to respect and protect these threatened native land interests.

Slightly over a third of Bolivia's population lives in rural areas, and the agricultural output from the country's eastern departments accounts for over a quarter

of the country's GDP. Therefore, issues affecting the frontiers have a tremendous effect on the country. The environmental effects of expanding cities and deforestation for cattle ranching have hit residents with warmer and drier weather from the farming and more flooding from the ranching. A report from the Regulatory Agency for the Social Control of Forests and Lands also found that 3.3 million hectares of land were illegally deforested between 1991 and 2009, largely for new agriculture. Indigenous farming communities downriver from the development have complained that they now have no water because of the ranching.

When Evo Morales was elected as president in 2006, he sought to remedy the situation by renegotiating the relationship between the state and the *latifundia*, the large landholding class. The 2006 agrarian reform law and the new constitution in 2009 aimed to limit the accumulation of land power by limiting purchase of land between private parties to 5,000 hectares. As a result, native Bolivian ownership of productive land in Santa Cruz increased by seventeen percent from the 1998–99 harvest to the 2008–09 harvest. However, the changes are largely forward-looking and therefore will only have limited effects on transfers already occurred.

While both the appropriation of land by collectives and the micro-climatic effects of deforestation threaten indigenous land rights, Article 21 of the American Convention on Human Rights and Article XXIII of the American Declaration protect property rights. The right to property goes beyond mere ownership or residence to recognize the role of land as a means of securing community and anchoring culture. In the *Case of the Yakye Axa Community v. Paraguay*, the Inter-American Court of Human Rights (IACtHR, Court) established that indigenous groups have an interest in preserving their habitat as a means of maintaining their cultural attachment to the land. This right extends specifically to water and mineral resources. Furthermore, the Court declared in the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* that "indigenous groups, by the fact of their very existence, have the right to live freely in their own territory."

The dramatic changes to the environment and reduction of water pose indirect challenges to indigenous property rights,

not by threatening to seize the land but rather by slowly pushing the native people off of their land. In the *Case of the Saramaka People v. Suriname*, the Inter-American Court of Human Rights required that neither governments nor third parties “affect the existence, value, use or enjoyment of the [indigenous] territory.” The changes in rainfall and access to water in eastern Bolivia are material problems may restrict the historical occupants’ use of the land.

The last several decades have seen remarkable liberalization of land ownership and use in eastern Bolivia, but these changes have also negatively affected the ability of indigenous groups to maintain their communities. Recent trends suggest that the Bolivian government’s attempts to reign in the use of land for large farming and ranching have had at least limited success. However, to the extent that deforestation for agricultural purposes continues to prevent the indigenous communities from using their land, the Bolivian government may not have fully complied with its obligation to protect indigenous interests in land ownership.

STATE OF EMERGENCY THREATENS HUMAN RIGHTS IN PARAGUAY

Recently inaugurated President Horacio Cartes promised that his administration would not allow frontier threats to dictate the agenda of his government. This dynamic has changed, however, following an attack on a cattle ranch that resulted in the deaths of five security officers in August 2013. The attack was presumably carried out by the Paraguayan People’s Army (EPP), a guerilla group in the country’s north that has provided protection to drug traffickers. In response to the attack, the Paraguayan Congress immediately amended the National Defense Law to allow the President to use the military anywhere in the country and at any time, as long as he informs the Congress within forty-eight hours. Paraguay’s Constitution only allows use of the military against foreign threats and to protect the government’s security and requires that the government first establish a “state of emergency.” Thus, the new amendment effectively establishes a permanent state of emergency at the President’s discretion, and allegations of torture and infringements on freedom of thought further heighten this concern.

For thirty-five years, Paraguay was ruled by General Alfredo Stroessner and

his governing Colorado Party. Coming to power in 1954 following a military coup, his regime brought an element of stability to a country in need of direction. However, security forces intimidated opposition to the point that “eventually fear itself . . . became one of his prime levers for staying in power.” After his removal, the divide between the people and the governors remained, even though civil rights were expanded in the succeeding years. Recent developments suggest a return to heavy-handed rule by the Colorado Party in Paraguay. To the extent that a disregard for human life returns, Paraguay may fall short of its international obligations to protect and respect the rights of all people to life and freedom of thought as well as the absolute prohibition on torture and other cruel, inhuman or degrading treatment.

Under the American Convention on Human Rights (Convention), State Parties may derogate some of their rights in times of emergency, but certain rights, such as the rights to life and the prohibition of torture, are non-derogable (Article 27). Article 5 Section 2 of the Convention provides that “[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.” This principle seeks to guide states in their necessary duties to maintain stability and law and order while respecting fundamental human rights. The new defense law also raises cause for concern due to its inconsistency with the country’s constitution and the Paraguayan Congress’s disregard of existing concerns within the judicial system. Recent reports of the use of torture in Paraguayan jails and prisons suggest that the shortcomings of the Paraguayan judicial system, coupled with militarization under the new defense law, could lead to further weakening of due process rights.

Although the militarization of northern Paraguay has largely been aimed at the EPP, some citizens are concerned that, given the country’s relatively recent history, other groups may be targeted for political reasons. This concern is further heightened by findings that state officials may have used excessive force and perhaps even torture against the EPP and that some rural land rights activists have been jailed for alleged ties to the group. For instance, in January 2010, six rural leaders were arrested for alleged ties to the EPP, and, in April, soldiers were subsequently deployed to the area. The tenuousness of the ties suggests that the motivations are political

rather than the result of security concerns, an attempt to quiet opposition rather than to quell instability.

The inability of those detained to access both medical and judicial aid raises further procedural issues. Despite the requirement of Paraguayan law to inform a judge within six hours of a person’s arrest, people are typically kept much longer before a judicial body is informed. Coupled with a lack of medical supervision, this lack of judicial oversight defeats a vital safeguard against mistreatment of detainees.

Paraguay’s history suggests a strong inclination toward military rule and the abuses that often come with it. To the extent that the government’s actions in fighting the EPP and other narco-traffickers employ torture or impinge on the rights of citizens to life and freedom of thought, the government may be held responsible for failing to comply with its obligations under the Convention and well-established human rights norms. Given the potential for abuse under the new law enacted in August, the situation in Paraguay should be closely monitored.

Ross Boone, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

ASIA AND OCEANIA

REFORMED AUSTRALIAN IMMIGRATION POLICY TURNS REFUGEES AWAY

On July 19, 2013, the Australian government introduced a reformed immigration policy designed to discourage refugees from attempting the dangerous sea voyage from Indonesia to Australia. Indonesia is a common transit point for refugees from Asia and the Middle East who hope to settle in Australia. Under the new policy, refugees who arrive by boat will be barred from obtaining a visa and settling in Australia. Under the new law, refugees will be sent to Papua New Guinea (PNG) or Nauru for detention and processing while they await possible settlement in those countries. Boats that are intercepted or rescued en route to Australia will be towed back to their origin, which generally means they will travel back through international waters to Indonesia. The Australian Human Rights Commission criticized these legislative changes as threatening the safeguards of the UN Convention and Protocol Relating to the Status of

Refugees (Refugee Convention) and risking arbitrary detention. The Australia-based Human Rights Law Centre warned that the changes set an “alarming global precedent.”

The Refugee Convention defines a refugee as any person who is outside the country of nationality and cannot return because of a well-founded fear of being persecuted for his or her race, religion, nationality, or membership of a particular social or political group. Refugees generally apply for asylum once they reach a country in which they can settle. In the last fiscal year, 25,541 people arrived illegally in Australia by boat. The majority of refugees who enter Australia by boat are men who are eighteen to thirty years old, with more than half from Afghanistan or Iran. Using Indonesia as a transit point, refugees pay smugglers to ferry them into Australian territory. The boats are often rickety fishing boats, and nearly 1,500 refugees have drowned in the passage since late 2001. Since 2007, Australia has implemented reforms to its asylum and refugee policies, but the new policy is the most restrictive approach thus far. Prime Minister Kevin Rudd stated that, “no one who arrives by boat without a visa will ever be granted permission to settle in Australia.”

As a State Party to the Refugee Convention, Australia is legally obligated to accord “refugees the same treatment as is accorded to aliens generally” under Article 7(1) and to refrain from “impos[ing] penalties on account of their illegal entry or presence” under Article 31(1). The Refugee Convention recognizes that refugees often violate immigration laws when fleeing dangerous situations, and thus, offers them protection from criminalization or discrimination for their status as refugees or their mode of arrival into a third country. Although the new Australian policy does not directly criminalize refugees arriving by boat, it punishes them for violating immigration laws while seeking safety in Australia. The no advantage principle bars asylum seekers who arrive illegally by boat from ever applying for asylum or settling in Australia. The policy employs potentially punitive measures by forcibly transferring refugees who arrive by boat to PNG or Nauru for regional processing. Even if they would otherwise qualify for refugee protection under Australian law or the UN Refugee Convention, the no advantage principle ensures they never settle in Australia.

Transferring refugees to a third country could put refugees at risk of arbitrary detention in Australian-run detention

centers in PNG. The new policy provides for “discretionary immigration detention” without specific limits on the duration of detention. The United Nations High Commissioner for Refugees (UNHCR) declared that the legal framework in PNG suffers significant challenges, including a lack of capacity and expertise in processing, and poor physical conditions in detention facilities. For example, the Australian Special Broadcasting Service reported incidents of rape and torture among inmates at the PNG Manus Island processing center, and guards at the center have said that self-harm and attempted suicide occur on an almost daily basis.

Australia’s new policy punishing refugees who illegally enter the country risks violating international human rights standards against arbitrary and indefinite detentions. As a State Party to the Refugee Convention, Australia has a legal obligation to protect refugees and recognize the vulnerability of who are fleeing dangerous situations. By statutorily preventing asylum seekers arriving by boat protection, the country risks failing to meet its obligations to respect and uphold the human rights of refugees.

MALAYSIA’S PREVENTION CRIME AMENDMENTS REINTRODUCE DETENTION WITHOUT TRIAL

On October 3, 2013, the Malaysian parliament passed amendments to the Prevention of Crime Act that will thereby permit renewable two-year detentions without trial. Prime Minister Najib Razak claims the legislation combats organized crime and insists that no one will be victimized. Opponents of the amendment and human rights groups compare the act to recently abolished laws, expressing fear the amendments will similarly be used for political purposes. The changes in the legislation may deny detainees the right to a fair trial and pose the risk for arbitrary detention. The international community values norms and human rights laws that promote the freedom from arbitrary detention and the right to fair trial. The new amendments put Malaysia at risk of reversing on its commitments to international norms.

Under the Prevention of Crime Act amendments, individuals can be detained for up to two years without trial if appointed members of the Board on the Prevention of Crimes deem the detention is in the interest

of “public order,” “public security,” or the “prevention of crime.” The Board hinges its decision on whether the suspect is guilty of at least two serious offenses and whether the suspect was previously under “supervision” for committing at least two non-serious offenses. The two-year detention orders are renewable, and suspects have no right to legal representation after they have been detained.

Critics fear the new laws will lead to arbitrary arrests and detentions without trial. Human Rights Watch compares these changes to the recently abolished Internal Security Act (ISA), which Malaysian judges frequently used to hold political dissents for prolonged periods without charge. The ISA was one of Malaysia’s four preventive laws designed to counteract subversion by allowing officials to hold detainees without providing evidence of any crime. Malaysia repealed ISA in 2011 following a recommendation from the UN Working Group on Arbitrary Detention, which found that the laws impeded detainees’ right to fair trial as provided in the Universal Declaration of Human Rights (UDHR).

This new legislative change may indicate a backwards trend, reversing the positive changes Malaysia made as a result of political pressure to better conform with international human rights standards. Under Article 9 of the International Covenant on Civil and Political Rights (ICCPR), states are prohibited from subjecting persons to arbitrary arrest or detention. In addition, “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge.” The ICCPR considers “prompt” to mean within a few days of detention. Although Malaysia is not legally bound to the ICCPR, is committed to well-established customary international law also set forth in the UDHR and the UN General Assembly Resolution. The UDHR entitles everyone facing a criminal charge to a fair hearing by an impartial tribunal, in addition to prohibiting arbitrary arrest. The UN General Assembly Resolution, “Body of Principles for the Protection of All Persons Under Any Form of Imprisonment,” states that a detained person shall be given an effective opportunity to be promptly heard by a judge or other authority, thus granting any detainee the right to defend himself.

If arrested, an individual’s right to a prompt and fair trial provides the accused

an opportunity to challenge charges before an impartial tribunal and access to other safeguards against arbitrary detention. These rights are enshrined in the UDHR and, according to the Malaysian government, incorporated into domestic law. However, Malaysia's new law denies those detainees determined a threat to public order the right to trial, thereby eliminating a crucial safeguard against arbitrary detention. The ICCPR considers "prompt" time for trial to be within a few days, yet under the Malaysian amendments detentions can last for a two-year renewable period without trial, exceeding beyond what is considered a "prompt" time for trial.

In an effort to conform to international human rights norms, Malaysia has committed itself to the principles set forth in General Assembly Resolutions and the UDHR. However, these amendments, including provisions that individuals can be detained if it is deemed in the interest of "public order," "public security," or the "prevention of crime," invite the potential for abuse and arbitrary arrest based on political motivations because none of those terms are defined in the amendments. Prime Minister Razak's assurance that the act will not be used for political means is ineffective unless incorporated into law and policy. In allowing prolonged detentions without trial, the Prevention of Crime Act reverses Malaysia's previous commitment to conform with international human rights standards.

Angela Chen, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

PAKISTANI SENATE CONSIDERS LEGISLATION ON ENFORCED DISAPPEARANCE

In June 2013, Pakistan's Prime Minister, Nawaz Sharif, appointed Munir Malik as the new Attorney General. One month into his appointment, Malik reported to the Pakistani Supreme Court that over 500 disappeared persons are being held in security agency custody. This information came after years of Pakistan's denial that security agencies were involved in cases of enforced disappearances. For years, organizations such as Human Rights Watch have called upon the government to investigate and address the patterns of enforced disappearances throughout the country. However, estimates detailing the exact

number of enforced disappearances vary greatly, and reports identify the number of disappeared as ranging between a few hundred and 23,000. Though enforced disappearances occur throughout Pakistan, these events occur most frequently in Pakistan's southernmost region of Balochistan, which neighbors Afghanistan to the north and Iran to the West. According to a recent publication by the Asian Human Rights Commission, over 400 disappearances occurred in Balochistan between July 2010 and the end of 2012.

Human rights concerns in Balochistan are often rooted in the region's continuing desire for independence from Pakistan. Pro-independence rebels claim that for decades, Balochistan has been treated as a colony rather than a part of Pakistan. Many of the disappeared are linked with the independence movement or have links to the local media. Efforts by the Pakistani Senate and statements of Malik and Baloch suggest that Pakistani decision makers may soon take action to address these enforced disappearances. On August 30, 2013, Human Rights Watch, the Human Rights Commission of Pakistan, and other nongovernmental organizations called on Pakistan to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Disappearance Convention) in honor of the third annual United Nations International Day of Victims of Enforced Disappearances (Day of Victims). Last year, Pakistan deferred ratification of the convention, which was drafted in 2006 and states that "[n]o one shall be subjected to enforced disappearance."

The Convention supplements the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Enforced disappearances raise concerns about the right to life, which Pakistan is obliged to promote and protect under both of these fundamental human rights instruments. The ICCPR defines the right to life as "the ideal of free human beings enjoying civil and political freedom and freedom from fear and want [that] can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights." The Office of the High Commissioner for Human Rights' General Comment 6 also calls upon state parties to prevent enforced disappearances

that frequently result in "arbitrary deprivation of life." General Comment 6 also identifies states' obligation to "establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life."

Both the Pakistani Senate and Balochistan's new Chief Minister are now starting to take action to address enforced disappearances. In early September 2013, the Senate Standing Committee on Human Rights requested information from the Pakistani government related to enforced disappearances and powers given to paramilitary forces. The Senate Committee also discussed proposing a bill related to these disappearances in the Senate's next session, and Chairman Afrasiab Khattak stated, "legislation on enforced disappearances would be in the interest of the security agencies as it would save them from accusations." While Chief Minister Baloch has yet to announce concrete steps towards battling these disappearances, he may begin by addressing Pakistan's counterterrorism laws, including the Anti-Terrorism Act of 1997 and the FATA/PATA Action (that aids civil powers) that the UN Working Group on Enforced Disappearances found to allow arbitrary deprivations of liberty, enabling enforced disappearances. For now, Baloch has called on the Pakistani military to end human rights violations as a prelude to government talks on the issue of Balochistan.

During her 2012 mission to Pakistan, United Nations High Commissioner for Human Rights Navi Pillay said that, "[t]he issue of disappearances in Balochistan has become a focus for national debate, international attention and local despair, and I encourage a really determined effort by the Government and judiciary to investigate and resolve these cases." Balochistan's new Chief Minister Dr. Abdul Malik Baloch, who took office in June 2013, is an ethnic Baloch, who has claimed "the issue of missing persons is the number one problem of Balochistan."

INDIA UPHOLDS LEGAL RIGHT TO FOOD

On September 12, 2013, India's President, Pranab Mukherjee, assented to Congressional President Sonia Gandhi's bill, the National Food Security Ordinance (Ordinance). Passing the Ordinance into law enforces a legal right to food for approximately two-thirds of India's growing population of 1.2 billion people. The opening

lines of the Ordinance “ensur[e] access to [an] adequate quantity of quality food at affordable prices to people to live a life with dignity,” and allot each eligible participant up to five kilograms of subsidized grains per month. The Ordinance raises questions about whether India has an obligation under international human rights law to ensure food security for its citizens.

The Preamble of the Universal Declaration of Human Rights (UDHR) articulates a freedom from want, and Article 25 specifies a “right to a standard of living adequate for the health and well-being of himself and of his family, including food.” Subsequent human rights instruments also support the concept of a right to food. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which India ratified in 1979, addresses freedom from hunger by calling for rights to an adequate standard of living, including an adequate supply of food. Specifically, Article 11 calls on state parties to not just recognize these rights, but to “take appropriate steps to ensure the realization of this right” and “to improve methods of production, conservation and distribution of food.” Supplementing Article 11, the United Nations Economic and Social Council released General Comment 12 on the right to adequate food, identifying this right as recognized in international law. General Comment 12 further suggests that “[e]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.” However, India is not yet a signatory to the recent Food Assistance Convention that came into force this past January. The purpose of the Convention is “to save lives, reduce hunger, improve food security, and improve the nutritional status of the most vulnerable populations.”

Under the Ordinance, qualified households are entitled to five kilograms of grain per person per month at subsidized prices that do not exceed three rupees per kilogram for rice, two rupees per kilogram for wheat, and one rupee per kilogram for coarse grains. These prices are set for a three year period after which the prices may be altered by the Central Government depending on minimum support prices for the respective grains. In addition, special supplements exist for pregnant women, nursing mothers (during the first six months after childbirth), and for children up to the age of fourteen.

The Ordinance, however, has been subject to both praise and criticism. It seems to address the right to food, which former member of the Advisory Committee of the UN Human Rights Council Jean Zeigler notes is clearly defined in General Comment 12 as the situation “when every man, woman and child, alone and in community with others, has physical and economic access at all times to adequate food or means for its procurement.” However, some critics see the Ordinance as not doing enough to address this right. Environmental activist Dr. Vandana Shiva claims that the Ordinance reorganizes preexisting systems that spend more than India’s former Public Distribution System, which lasted until 1991 and spanned the entire country. Nobel laureate Amartya Sen has also advocated for the public distribution model adopted by India’s Chhattisgarh state – a model supported by both the Supreme Court and the World Bank.

Perhaps in response to criticism of the Ordinance, President Mukherjee expressed his desire that the right to food to become universal in the future. India’s Food Minister, KV Thomas, further noted the importance of the Ordinance during its first month of existence as a law, stating that the Ordinance “marks a paradigm shift in approach to food security in India – from being a welfare measure to a rights-based approach.” Despite mixed reactions to the Ordinance and existing flaws within the Public Distribution System, evidence shows that the Ordinance does significantly contribute to famine alleviation.

Shereen Kajouee, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

EUROPE AND CENTRAL ASIA

A HURDLE IN SHEEP’S CLOTHING: IRELAND’S NEW ABORTION LAW

Nearly three years after the European Court of Human Rights (ECtHR) ruled that Ireland violated its human rights obligation to provide women access to lawful abortions, the Irish government has enacted legislation that may bring the country into compliance. The death of Savita Halappanavar, who succumbed to an infection following a miscarriage after being refused an abortion, provided impetus for government action. On July

30, 2013, the Protection of Life During Pregnancy Act (“Act”) was signed into law enabling women to receive access to abortions in medical emergencies or when there is a risk of suicide. However, criticisms of the law and questions regarding its implications have been leveled from both sides of the abortion debate.

In *A, B, and C v. Ireland*, the ECtHR declined to establish a right to abortion, but held that where Irish law allowed for abortion, the State must provide access. In 1992, the Supreme Court of Ireland ruled that a constitutional right to abortion exists in cases where a woman’s life is at risk from the pregnancy, including from a credible risk of suicide. The newly enacted legislation creates procedures to determine when these risks exist and specifies which hospitals are qualified to provide abortions. Additionally, the Act criminalizes anyone seeking or procuring an abortion that falls outside the narrow criteria, punishable up to 14 years imprisonment. At least one Catholic hospital, the Mater hospital, has announced it will comply with the law, and the National Maternity hospital in Dublin performed the first legal termination in September.

Advocates of legalized abortion, however, argue the Act still presents substantial barriers to Irish women. Human Rights Watch advocate Guari van Gulik argues that “requiring women to seek multiple approvals from health professionals may delay or defeat access to legal abortions.” Others have characterized the process requiring the approval of three doctors for the suicide exception as “debasement” and an “intrusion on the autonomy of women.” Further, the law does not add additional grounds for legal abortion in cases of pregnancy from rape, fatal fetal anomalies, serious but nonfatal threats to a woman’s health, or for women who are simply unable to support a child. Human rights advocates argue that these limitations will lead to abortion access for only a small percentage of women and will do little to curb the number of women travelling to Britain to receive abortions.

According to the Committee on the Elimination of Discrimination against Women, the criminalization of a medical procedure specific to women, such as abortion, is a form of discrimination and a barrier limiting women’s access to appropriate healthcare. Simon Mills, a Barrister

with the Law Library in Dublin, called the criminal offence created by the law “overbroad” and was concerned it would result in the imprisonment of poor and vulnerable women. Furthermore, activists contend that the law is mostly intended to restrict access to abortion and that the risk of a 14 year prison sentence will have a “chilling effect” for women and doctors who contemplate the procedure.

On the other side of the debate, anti-abortion activists argue that the right to life guaranteed by the UN Declaration of Human Rights and the European Covenant on Human Rights extends to fetuses. Furthermore, these opponents contend the Act is unconstitutional under the Irish constitution’s strict prohibitions on the taking of life. However, pro-choice advocates counter that none of the treaties binding Ireland explicitly include a fetal right to life. They further argue that, in several treaties, such provisions were proposed and rejected, creating a consensus that life is defined as at birth. Finally, even where a right to life for a fetus is recognized, some advocates argue that the mother’s rights outweigh those of the fetus.

The contentious debate over abortion in Ireland will continue for some time. Both proponents and opponents of legalized abortion are expected to challenge the law within the next few years. Although the Act was tailored to fit the previous ruling of the Irish Supreme Court, it is unclear if the Court will follow its own decision. Equally unclear is whether the new Act will sufficiently meet the obligations laid out in *A, B, and C* by the ECtHR. If the pro-choice movement succeeds in its challenge to the Irish Supreme Court, it could mean broader, less restricted access to abortion or decriminalization. If the anti-abortion movement prevails, it could mean Ireland will fail to meet the requirements of the European Court. In the meantime, it appears likely that only a few women will ultimately be able to legally terminate pregnancy in Ireland.

FORCED DISAPPEARANCE IN DAGESTAN AND THE SOCHI WINTER OLYMPICS

A growing number of abductions and forced disappearances in the North Caucasus republic of Dagestan, presumably linked to Russia’s efforts to improve security before the 2014 Sochi Winter Olympics, have raised concerns among

human rights groups. Between January and October 2013, men in unmarked cars abducted fifty-eight people in Dagestan, nineteen of whom have yet to resurface. Russian security forces have abducted suspected militants in the region for decades. In fact, the European Court of Human Rights (ECtHR, Court) issued two separate judgments finding violations of both the people who disappear and their families’ human rights.

According to a 2013 report released by the International Crisis Group, the North Caucasus is currently home to the most violent armed conflict in Europe. In 2012, an estimated 1,225 people were killed or wounded, and the first half of 2013 indicates a continuation of that trend. Disputes over boundaries and resources are exacerbated by ethnic and religious tensions and the region’s lack of integration with the rest of the Russian Federation. Further, the report indicates that law enforcement personnel have committed years of abuses in connection with recent electoral violations, which has led to distrust of the Russian government and undercut counter-terrorism efforts. Contributing to the dangerous atmosphere, the main Islamist terrorist group in the region, the Caucasus Emirate, publicly called for attacks at the upcoming Winter Games in Sochi. In response to the threat of terrorism, the military and Interior Ministry began a harsh crackdown on suspected militants in January, according to human rights groups. Regional analysts contend that security forces employ tactics such as forced disappearances and torture as part of these efforts.

Numerous relatives of young men abducted between the late 1990s and 2005 filed applications to the ECtHR, alleging Russian security forces were responsible for the disappearances and that the Russian government failed to properly investigate. In response to the high volume of applications, the ECtHR began jointly hearing cases in *Aslakhanova and others v. Russia*, which was decided in December 2012. Two additional judgments on joint applications were decided in October 2013, and more cases are pending. In all of the decided cases, the Court found that Russia violated the right to life, guaranteed by Article 2 of the European Convention on Human Rights (“ECHR”), of all the disappeared men. In addition, the Court also found Russia violated the rights of the applicant family members by causing

them to suffer inhuman and degrading treatment (Article 3 of the ECHR) and by failing to afford them access to an effective remedy for the violations (Article 13 in combination with Article 2 of the ECHR). As a result of these violations, the ECtHR awarded the applicants both pecuniary and non-pecuniary damages.

Despite the ECtHR’s judgment against Russia, rights groups contend that these disappearances, and a systematic failure to investigate them, persist. Gagzhimurad Omarov, a former member of parliament from Dagestan, argues that the government has not provided independent courts to effectively prosecute those responsible for the disappearances. Omarov claims that, instead, Putin has relied on appointing local officials and charging them with a zero-tolerance policy toward militants in Dagestan. When young men go missing or are abducted, family members claim that these officials rebuff inquiries and refer to the victims as rebel fighters. Further, rights groups allege many of the disappearances are the work of local officials and the police—a charge which Ramazan Jafarov, deputy premier for security in Dagestan, denies. According to Jafarov, the police forces enforce a strict federal enforcement policy against abusive policemen and officials and do not secretly detain suspects. Human rights advocates, however, reject Jafarov’s claims, pointing to a history of abuses by corrupt officials that have plagued the region. In addition, advocates allege that evidence implicating government security forces has been left at the recent abductions.

While it is unclear whether Russia’s crackdown on the Caucasus will ultimately mitigate the threat of terrorism at the Winter Games, Russian security forces’ legal obligation to respect the right to life under the Convention is unequivocal. Whether the recent abductions are part of this campaign or the work of corrupt local officials, the efficacy of the Russian government’s enforcement policies will be tested, consequently affecting the government’s credibility in the region. Regardless of who is responsible for the disappearances, without proper and thorough investigations by the government, the backlog of complaints against Russia before the ECtHR will grow.

Jason Cowin, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

MIDDLE EAST AND NORTH AFRICA

YEMEN'S NEW CONSTITUTION IS AN OPPORTUNITY TO PROMOTE GENDER EQUALITY AND BAN CHILD-MARRIAGE

As Yemen prepares to draft a new constitution, the government has the opportunity to incorporate human rights obligations by legislating the principles it has already agreed to under international treaties. Yemen does not currently have any domestic laws regarding the minimum age for marriage or ensuring a woman's right to choose her spouse. Additionally, adult women must get permission from their male guardians before marrying and many are told when and whom to marry. According to international treaties, children are incapable of consenting to marriage and therefore all child-marriages are considered forced marriages. Drafting a new constitution provides Yemen with the unique opportunity to ensure domestic compliance with international obligations to protect the rights of women and children enshrined in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR).

The story of an eight-year-old Yemeni girl named Rawan made international headlines in September 2013. She reportedly died from internal injuries sustained after intercourse with her forty-year-old husband on their wedding night, an act that constitutes rape in many countries. Details of the case remain unclear with some officials denying the story's credibility. However, although questions remain regarding Rawan's situation, her story is not unique. United Nations and Yemeni government data from 2006 demonstrates that child-brides are not uncommon in Yemen; reportedly 52 percent of girls are married before they reach eighteen years, and fourteen percent are married before they reach fifteen.

The rate of maternal mortality in Yemen is one of the highest in the region; studies have shown that due to their less-developed bodies, young women and girls face greater risks during pregnancy. Additionally, young girls often have limited information on family planning and lack power within their marriage to personally determine whether to have children.

Human Rights Brief, Vol. 21, Iss. 1 [2014], Art. 12

In 1999, the Yemeni parliament abolished Article 15 of its Personal Status Law, which set the minimum age for marriage at fifteen years old. In 2009, parliament voted on a draft law that would set the minimum age for marriage at seventeen years old, but the proposal has been stalled indefinitely. In both cases religious reasons were cited. *Sharia*, or Islamic law, became the basis of all legislation in Yemen in the mid-1990s. Under *Sharia*, there is no minimum age for marriage. However, most other countries in the Middle East and North Africa that recognize *Sharia* as a source of their laws have established a minimum age for marriage.

Yemen has ratified several international treaties that protect women and girls from forced marriage. Article 10 of the ICESCR, Article 16 of the CEDAW, and Article 23 of the ICCPR require that marriage be entered into freely and with the full consent of both parties. Article 2 of the CEDAW establishes that states are responsible for taking measures, including passing legislation, to modify or abolish customs, regulations, or practices that are discriminatory against women. The practice of child-marriage predominately affects young girls in Yemen and is therefore considered a type of gender-based discrimination. Under Article 16 of the CEDAW, marriage or betrothal of a child has no legal effect. Accordingly, states should establish laws to ensure a minimum age for marriage. Article 1 of the Convention on the Rights of the Child (CRC) establishes the age of a child as less than eighteen years old. Under Article 24 of the CRC, states are responsible for abolishing traditional practices that are prejudicial to a child's health.

Hooria Mashhour, Yemeni Minister for Human Rights, has asked parliament to pass a law establishing eighteen years old as the minimum age for marriage. Although past attempts to set a minimum age for marriage have been unsuccessful, the combination of political transition and international attention may provide a more hospitable environment for change.

Yemen has ratified the ICCPR, ICESCR, CEDAW, and CRC, therefore, it has an obligation to protect women and children from forced marriage. As the committee forms to draft a new constitution in the coming months, Yemen has the chance to pass legislation that would bring

it closer in line with its obligations under international treaties. Passing legislation that sets a minimum age for marriage and protects a woman's right to choose her spouse would promote gender equality in Yemen and incorporate human rights principles at a domestic level.

IRAN'S 2013 PRESIDENTIAL ELECTION: THE MEASURE OF FREE AND FAIR

In May 2013, 686 individuals, including approximately thirty women, registered as presidential candidates in Iran. On June 14, 2013, Hassan Rouhani was elected President, receiving just over fifty percent of the votes. Although some have applauded the 2013 presidential election as "free and fair," especially in contrast to the contested 2009 re-election of President Mahmoud Ahmadinejad, human rights organizations are questioning the candidate selection process and restrictions imposed on the media. Leading up to the June election, women were once again barred from running for president and the country witnessed a major silencing of independent media. The government therefore failed to ensure the equal treatment of genders and freedom of expression in the media during the 2013 Iranian presidential election, as required under the International Covenant on Civil and Political Rights (ICCPR), the Iranian Constitution (Constitution), and the Universal Declaration of Human Rights (UDHR).

Iran's Guardian Council (Council) selects presidential candidates. As described in Article 91 of the Constitution, the Council is a twelve-member body composed of six *Adil Fuqaha* (experts in Islamic law), appointed by the Supreme Leader, Ayatollah Ali Khamenei, and six jurists who are elected by the Islamic Consultative Assembly (Assembly). The Assembly is comprised of Muslim jurists nominated by the Head of the Judicial Power, who also reports to the Supreme Leader. Khamenei therefore has significant influence over the member body in charge of presidential candidate selection.

Article 115 of the Constitution states that the candidates must have "the following qualifications: Iranian origin; Iranian nationality; administrative capacity and resourcefulness; a good past-record; trustworthiness and piety; convinced belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab [religious jurisprudence] of the country." Since 1979, Iran has

not permitted women to run for president and in May 2013, Mohammad Yazdi, a member of the Council, was quoted as saying that the law does “not allow women to become presidents.” In 2013, the Council approved eight candidates to run for president, all of whom were men.

The Council’s practice of barring female candidates is contrary to the values embodied in domestic and international law. Article 20 of the Constitution states that “[a]ll citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.” Article 2 of the ICCPR, which Iran ratified in 1975, ensures that all Iranians have equal rights without distinction as to race, sex, religion, language, or political opinion. Moreover, Article 25 of the ICCPR ensures that all citizens have “the right and opportunity, without any of the distinctions mentioned in article 2 . . . to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” The ICCPR and Constitution protect the rights of women not only to vote, but also to run for elected office.

Leading up to the 2013 election, Iranians saw increased media censorship. Although the government allowed presidential candidates equal access to state broadcast media, in early 2013, many reform newspapers were shut down and journalists were detained. Iran, however, is obligated under international and domestic law to protect freedom of expression in different forms, including the media. Article 19 of the ICCPR protects the right of individuals to “hold opinions without interference” and the right to freely express those opinions orally, in print, art, or other form. Article 24 of the Constitution protects the freedom of expression of publications and press in Iran as long as it is in keeping with the “fundamental principles of Islam or the rights of the public.” Thus, censorship and silencing of independent media in Iran leading up to the 2013 election was not in line with Iran’s obligations to protect freedom of expression in the media.

Rouhani’s presidency has been marked by increased communication and diplomacy with the West, a willingness to discuss Iran’s nuclear program, and the

release of political prisoners, many of whom were arrested after the 2009 re-election of Ahmadinejad. Though some view the 2013 presidential election as free, fair, and an improvement over the 2009 election, the process leading up to the June 14 vote could have more fully complied with international and domestic law by allowing women to run for president and ensuring free expression in the media.

Whitney-Ann Mulhauser, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

WOMEN’S RIGHTS FAIL TO BLOOM IN EGYPT’S DEMOCRATIC SPRING

Two years after the fall of Hosni Mubarak, the Arab Republic of Egypt is still struggling to develop into a more liberalized and democratic state. With the ouster of President Mohamed Morsi and the return to *de facto* military rule on July 3, 2013, Egypt has again fallen into a transitional phase. Increasingly vocal women’s rights groups are among the various interests and factions vying for a place in Egypt’s future political design. Recently, these groups are seeing their chances at full democratic participation come under threat, and organizations such as the Egyptian Center for Women’s Rights are expressing concern over the mechanisms shaping Egypt’s forthcoming constitution. As a party to both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), Egypt’s government is obligated to make the advancement of women’s rights a governmental goal. Despite Egypt’s ratification of the CEDAW and the ICCPR, the state tends to demur when it comes to the actual participation of women in government. During Mohammed Morsi’s brief tenure as president, women comprised less than two percent of Egypt’s legislature after the 2011 parliamentary elections. These figures are drastically lower than other post-revolution states in the region. Seventeen percent of Libya’s elected Members of Parliament are women and Tunisia leads both states with women winning twenty-three percent of its parliament’s seats.

Since the provisional military junta’s suspension of the constitution and dissolution of parliament in July 2013, Egypt is

once again operating under its Emergency Laws. Not wishing to revisit the constitutional limbo of the Mubarak era, a fifty-member Constituent Assembly was appointed in September 2013 to amend the now defunct 2012 Constitution. Despite the Assembly’s expressed democratic intentions, the under-representation of women is apparent. Only five women sit on the Constituent Assembly and some comment that this gender imbalance contradicts basic norms regarding gender equality affirmed by international law.

Adding to the controversy, Egypt’s 2012 Constitution contained articles stating that a traditional interpretation of Islamic law, or *Sharia*, would serve as the guide for the country’s legislation. The final language of the revised articles is another source of concern for women’s rights groups. Some note a connection between traditional interpretations of *Sharia* and the rejection of gender equality. These controversies generate concern that if Egypt does take steps to reverse these inequalities in its government, it may violate its obligations under the CEDAW and ICCPR.

The CEDAW requires governments to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.” Specifically, Articles 2, 7, 9, and 16 of the Convention require states to (1) enshrine gender equality in their constitutions and public laws, (2) allow for equitable inclusion of women in drafting government policy, and (3) ensure equality in marriage and family law. Similarly, Article 2 of the ICCPR requires protection of civil and political rights regardless of gender. Article 3 of the ICCPR guarantees equal protection for men and women in all rights set out in the Covenant. These two conventions form the critical nexus of human rights law requiring Egypt to be proactive in the face of gender discrimination in public life.

Many hope that the Committee will make the changes advocated by women’s rights groups with some calling for the restoration of a quota system to ensure fair representation in parliament. During the Mubarak era, a quota system maintained women’s representation in the legislature, which reached a peak of fourteen percent

in 2010. This debate over the articles' controversial language and gender-based parliamentary apportionment is expected to continue into the near future with the Assembly starting the second phase of voting on the completed articles on October 21, 2013.

As the work of the Assembly continues, human rights advocates are focused once again on the moves of the Egyptian government. As the Arab world's largest country, the development of gender equality laws in Egypt may serve as a model in the post-Arab Spring Middle East. Whatever form the new Constitution takes, Egypt's lawmakers should ensure that it provides for gender equality and encourages women's participation in government, such as with the quota system's proposed renewal. If the Assembly completes this task, it will be bringing Egypt more into line with its treaty obligations under the CEDAW and the ICCPR.

FREEDOM OF THE PRESS IN THE KINGDOM OF MOROCCO: THE GOVERNMENT'S USE OF ANTI-TERROR LAWS TO MUTE THE PRESS

On September 17, 2013 Moroccan police arrested journalist Ali Anouzla for inciting terrorist acts in the Kingdom of Morocco, a move that some human rights law advocates see as a violation of international law. While the 2011 Moroccan Constitution protects the right to a free press, reported cases of intimidation and outright detention of journalists give the impression that Morocco may be violating its international obligations. Morocco is a party to the International Covenant on Civil and Political Rights (ICCPR) and as such, is obligated to protect certain civil liberties including the freedom of the press. Human rights groups, such as Reporters Without Borders and Human Rights Watch, expressed concern that Anouzla's imprisonment is yet another example of the restriction laid on civil and political rights in the region and a violation of Morocco's obligations under the ICCPR.

Morocco is often considered one of the more moderate countries in the region in terms of civil and political rights. The government however, lacks the same positive rating for freedom of the press, and human rights groups consider the Moroccan press as either partly free or not free at all.

While binding treaties such as the ICCPR grant the right to a free press, the practices of the Moroccan government (in some cases under the aegis of the law) are seen as running contrary to the principals of an independent press. Freedom House, a group that ranks press freedom around the world, reports that journalists and websites that are critical of the Monarchy, its interests, or its allies find themselves subject to intimidation or criminal sanction. Anouzla's case is the most recent iteration of this activity. Police arrested Anouzla under Morocco's 2003 anti-terrorism law for reporting on a video generated by Al-Qaeda in the Maghreb (AQIM). The General Prosecutor for the Crown alleges that Anouzla is "materially assisting", "advocating terrorism" and "initiating terrorists acts." However groups such as Freedom House view these charges as a punishment for Anouzla's criticism of the government, particularly his criticism of the King Mohammed VI. After being held in prison for five weeks, Anouzla was released on bail on October 25, 2013; however, the charges against him still stand.

Article 19 of the ICCPR requires states to respect the right of people to enjoy a free press. The treaty specifically states that all people "have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." States may reasonably curtail this right under two exceptions: either "for respect of the rights or reputations of others" or for purposes of protecting national security and public order, health, or morals. A joint statement issued by regional human rights bodies (including the Organization of American States and the African Commission on Human and Peoples' Rights) in 2008 defined what constitutes speech advocating for terrorism. The statement clarified that the only speech that should be considered incitement to terrorism is that which is a "direct call to engage in terrorism." Moreover, in light of the clutter of definitions of terrorism internationally, the UN Special Rapporteur on Terrorism and Human Rights has three criteria for what constitutes a public incitement to terrorism. First, it must be a distributed message of some kind. Second, it must be the meaningful intent of the distributor to

incite or otherwise support an act of terror. Third, there must be an actual risk that the distributor's actions will lead to a terrorist act occurring.

Reporters Without Borders and 60 other human rights groups are concerned that Anouzla's detention and arraignment does not conform to the established language and interpretation of Article 19 of the ICCPR. The controversy lies in the distance between the language of Morocco's anti-terrorism statutes and Anouzla's actual activities. If Anouzla's reporting on the AQIM's video does not fall under the ICCPR's two exceptions for limiting or criminalizing speech, then the actions of the Crown run contrary to Morocco's obligations under the ICCPR. Anouzla's only activity related to the video was reporting that for the first time, AQIM was directly condemning the Monarchy, and he did not personally circulate the offending video (though he did provide a link to a Spanish publication, which directed viewers to the video). According to Amnesty International, Anouzla's activities "cannot be seen as endorsing [AQIM's] calls." Despite Anouzla's provisional release from prison on October 25, 2013, his detention for five weeks and possible 20-year prison sentence highlight the potential break between adherence to the ICCPR and Morocco's activities.

James Toliver, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

SUB-SAHARAN AFRICA

ALLEGATIONS OF ILLICIT CHILD LABOR DRAWS SCRUTINY IN TANZANIA'S MINING SECTORS

Criticism continues to mount over Tanzania's compliance with obligations to prevent and monitor child labor in the mining sector, a country that is the fourth largest gold producer. Working conditions and the ages of children employed in mining sites has raised concerns that the Tanzanian government is not adhering to national and international child labor regulations. According to a report by the Tanzania Ministry of Energy and Minerals, there are more than 800,000 small-scale gold miners in the country, including an estimated 2,279 child miners. Monitoring

child labor in small-scale mining sites is difficult because the operations are transient and often forego bureaucratic channels to obtain mining licenses.

Tanzanian mines frequently employ the use of mercury to extract gold ore, as it is cheaper, easier, and more portable than alternatives. However, direct exposure to mercury causes well-documented neurological problems, particularly affecting the physical and mental development of children. Acute or chronic levels of mercury exposure affects the central nervous system cardiovascular system, reproductive and gastrointestinal tracts and kidneys, oral cavity, lungs, eyes and skin. Additionally, from the age of five, child workers are subjected to physically demanding activities such as digging and drilling in deep, unstable pits; working underground for up to twenty-four hours; and transporting and crushing heavy bags of gold ore. Miners are often killed or injured from pit collapses.

Ostensibly, Tanzania has sufficient national legal basis to monitor, prevent, and sanction child labor within its borders. Several laws prohibit employment of children in hazardous formal and informal work settings, including the 2004 Employment and Labor Relations Act No.6, 2009 National Action Plan for the Elimination of Child Labor, and the Law of the Child Act. Tanzania's Law of the Child Act and Labor Institutions Act authorizes labor officers to inspect any "premises" including unlicensed mines and informal businesses and issue non-compliance orders if he or she finds violation of any child labor law. If there have been no subsequent remedial measures, employers can be subject to fines, imprisonment, or both. Such enforcement procedures have aided in the withdrawal of 29,000 child laborers from 2001 to 2010.

In addition to national laws, Tanzania has obligations under its ratified international and regional treaties including the Convention on the Rights of the Child, International Labor Organization (ILO) Convention No. 182 on the Worst Forms of Child Labor, and the African Charter on the Rights and Welfare of the Child. Under these treaties, state parties should protect every child from economic exploitation by work hazardous to the health, and moral and physical development of the child. However, human rights organizations have

had a difficult time enforcing compliance in Tanzania.

Despite a number of programs, Human Rights Watch notes that Tanzania has minimal staffing and budgets for small-scale mining site inspections and furthermore notes that Tanzanian officers and inspectors lack of knowledge of child labor law. According to the Tanzanian Ministry of Labor Principal Labor Officer, Employment and Youth Development the country currently has only 81 labor inspectors. A January 2013 report to the U.S. Department of Labor revealed that Tanzania's Ministry of Labor and Employment had initiated only three criminal cases against alleged violators of child labor. According to the Ministry's 2012 Annual Labor Administration and Inspection Report, only two compliance orders have been issued to mining sites—orders that do not specifically address child labor.

Although the international community has acknowledged Tanzania's effort to enact strong laws against child labor in mining, the state's capacity or willingness to remedy the use of child labor appears to be insufficient to address the problem. Tanzania's 2009 National Action Plan to rectify child mining practices has been underfunded and unimplemented. Additionally, the Ministry of Labor and Employment, Tanzania's main instrument working against child labor, has taken limited action to counter child labor. Labor inspections and remedial measures specifically addressing child labor are rare. The inspectors do not assess the ages of the children they pull out of mining sites and do not provide subsequent support, and the use of mercury—despite its prohibition—is not monitored.

Under the authority of the conventions, international bodies' action against Tanzania are limited to pressure and recommendations for remedial measures. Furthermore Tanzania has the ability to uphold its international obligations merely by directing its current legislative and administrative measures into practice. These preexisting policy mechanisms could be utilized to prohibit and prevent small-scale mining sites from employing children. However, due to minimal staffing and limited operating capacity in labor inspections targeting child labor, Tanzania has been unable to protect children exposed

to the hazardous conditions of mining sites. To be effective, feasible monitoring and enforcement of national and international labor and children's rights laws should remain a priority for Tanzania to combat child labor in the country's small-scale mining sites.

FORCED EVICTIONS SEIZE KENYANS' RIGHT TO ADEQUATE HOUSING

Approximately two million people living in Nairobi's informal settlements face forced evictions without notice or adequate housing alternatives. Evicted persons lose access to basic rights that not only include housing but also water, food, and sanitation. In the City Carton settlement in Nairobi, private companies who claimed ownership over certain lands demolished the homes of four hundred families with the alleged cooperation of over one hundred and seventy police officers. Amnesty International expressed concerns that the Kenyan government has neither provided enough protection for these families nor thoroughly investigated the situation.

Forced eviction is not a recent phenomenon in Nairobi. In July 2010, the Nairobi City Council demolished the homes of residents living in Kabete NITD (Native Industrial Training Department). Authorities allegedly demolished houses without official notice and without discussing relocation strategies with the community. The experience was especially difficult for the residents of Kabete because they were forcibly evicted in the winter when nights are unbearably cold. A sixty-one-year-old evictee recalling her experience noted that, "my relatives and I were sleeping inside my house. I woke up suddenly and heard the tractor as it was demolishing everything . . . I have nowhere to go, nowhere to run to."

As a State Party of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), Kenya has accepted obligations to protect the right to housing and rights to human dignity. Under Article 11(1) of the ICESCR and Article 9(1) and 17(1) of the ICCPR, Kenya should guarantee the right to adequate housing and protection against arbitrary interference with privacy, family, and home. Additionally, in its concluding observations of Kenya's periodic report, the Human Rights Committee emphasized

that forced evictions interfere with privacy rights as guaranteed under Article 17 of the ICCPR. Furthermore, under the African Charter on Human and Peoples' Rights, Kenya is also obligated to respect basic human rights including life and dignity, liberty and security, and the right to property.

The UN Special Rapporteur on Adequate Housing provided countries with procedural guidelines on forced evictions. Before evictions, all development project processes must involve all of those who may be affected by the change, and "must demonstrate that the eviction is unavoidable and consistent with international human rights commitments." Whoever will be affected by the eviction must be notified in a timely matter and given an opportunity to voice their concerns to authorities. Additionally, evictions must be carried out in a manner that does not violate "the dignity and human rights to life and security of those affected." Immediately after the eviction, evictees must be provided with restitutions including compensation and alternative housing as necessary.

At the regional level, the African Commission on Human and Peoples' Rights (ACHPR) affirmed that forced evictions contravene the right to health, property, and state protection of the family under the African Charter on Human and Peoples' Rights. In its 2012 resolution, the ACHPR urged States Parties to use eviction only as a last resort for purposes of development projects, to provide adequate eviction notices, and to supply housing in accordance with international and regional standards.

Article 43(1)(b) of Kenya's Constitution guarantees the right to adequate housing and reasonable standards of living. In a recent High Court case on forced eviction, the Court ordered remedies for eviction by relying on international standards of fundamental rights reflected in the Constitution that provides victims with an adequate legal framework to promote public participation in securing tenure. To uphold constitutional rights, Kenya has made legislative efforts in the last two years to outline the state's role in housing, urban development, and civic participation.

Although Kenya adopted a national housing policy in 2005, non-profit organizations such as the Centre on Housing

Rights and Evictions (COHRE) have criticized the housing policy for its use of outdated institutional and legal frameworks along with its inability to provide persons with safe housing options. The government has yet to provide legal frameworks and guidelines on how to handle activities in informal settlements. Currently, the Kenyan Land Commission and civil society organizations are drafting an Evictions and Resettlement Bill, while the Ministry of Lands, Housing, and Urban Development is pursuing a Slum Upgrading Policy in the Parliament. In light of such policy efforts, improvement in management of informal settlements may be attainable as long as the Kenyan government acknowledges and attempts to resolve human rights violations resulting from forced evictions and horrific conditions in the slums.

Min Jung Kim, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief.

ARRESTS UNDER ETHIOPIA'S ANTI-TERRORISM PROCLAMATION DRAWS SCRUTINY FOR INHIBITING FREEDOM OF POLITICAL ASSOCIATION

The broad scope of the Ethiopian Anti-Terrorism Proclamation — accompanied with a sharp increase in the arrests of journalists and students — has raised concerns that the law has effectively circumvented constitutional rights to freedom of press and speech. Ethiopia enacted the 2009 Proclamation in the aftermath of a number of Somali militia-group attacks on civilians and a growing discontent among domestic political opposition groups. Ethiopia has seen regional discontent from the Semayawi as well as those in the Oromia region, who have sought autonomy for over fifty years. However, when the Oromo Liberation Front was labeled a terrorist group by the government under the Anti-Terrorism Proclamation many students were also arrested for providing "moral support" to terrorist organizations. In October 2012, hundreds of protestors were arrested after demanding elected representation in the Ethiopian Islamic Affairs Supreme Council on charges of intent to advance an ideological cause and planning to induce a terrorist act.

Articles 5 and 6 of the Proclamation also affect journalists covering issues regarding public discontent with the

government because they stipulate that anyone who writes or disseminates promotional statements encouraging, supporting, or advancing terrorism could be punished with imprisonment from ten to twenty years. The moral support provision under Article 5b "Rendering support to Terrorism" states that "whoever, knowingly or having reason to know that his deed has the effect of supporting the commission of a terrorist act or a terrorist organization [or] provides a skill, expertise or moral support or gives advise" is punishable under the Anti-Terrorist Proclamation. As a result of this Proclamation, two journalists, Mesfin Negash and Abiye Tekle Mariam, were arrested under the provision for inciting "moral support" for protestors. Additionally, in July 2012, outspoken journalist Eskinder Nega, was convicted under the Proclamation and sentenced to eighteen years imprisonment for supporting the Arab Spring movements in northern Africa and creating parallels to the situation in Ethiopia; a conviction that drew international condemnation.

Ethiopia's Constitution protects freedom of speech and political association. Under Article 29, journalists may publicize and disseminate material regarding the government, whether fact or opinion. Articles 29 and 30 of the Constitution protect expression not only through speech but also through assembly, which includes public demonstration and petition. Individuals may gather and present their views in public regardless of the topic so long as it is done peacefully and does not violate public morals, peace, and democratic rights. Peaceful demonstrations are allowed provided that public activities are not disrupted. Finally, the right to association under Article 31 allows for the creation of groups or associations for whatever purpose.

The wide scope of the Anti-Terrorism Proclamation leads to concerns that its prohibitions broadly contradict rights enumerated under the Constitution. Patrick Griffith, an attorney with Freedom Now, noted that the unwillingness of the Ethiopian government to limit the scope of the language used in the Proclamation raises concerns that the application of the law will also remain unbridled. By criminalizing citizens' ability to write, publish, or disseminate information about certain opposition groups, the Proclamation equates many journalistic activities with the

encouragement of terrorism. Under Article 30 of the Constitution, organizations such as the Semayawi and Oromo Liberation Front have the right to assembly, public demonstration, and petition. The expression of this right, however, seems to create criminal liability under Articles 1, 5, 6, and 7 of the Anti-Terrorism Proclamation. In this sense, the constitutional right to association (Article 31) is limited by the implementation of the Proclamation since association could lead to the “moral support” of a terrorist group or the participating in a terrorist organization.

The U.N. Working Group on Arbitrary Detention has reiterated that arrests as a consequence of free expression render the detention arbitrary under international human rights standards. Yet Ethiopian political opposition leaders as well as their supporters have been arrested under the Anti-Terrorism Proclamation for committing acts of terrorism. Journalists reporting on these politicians have also been jailed under the broadly stated provision for encouraging or supporting terrorism. The detentions have raised constitutional concerns since the Anti-Terrorism Proclamation seems to run counter to freedom of expression rights enumerated in the Constitution. Apart from Ethiopia’s domestic duty to uphold human rights, the government has ratified various international treaties and covenants, which uphold freedom of speech and expression such as the International Covenant on Civil and Political Rights (ICCPR), Freedom of Association and Protection of the Right to Organise Convention, and the African [Banjul] Charter on Human and Peoples’ Rights.

ZIMBABWE’S LAND REFORM: FROM REDISTRIBUTION OF WEALTH TO A LOOMING FOOD SHORTAGE

After independence in 1980, Zimbabwe began distributing land from white to black farmers, marking a shift from colonial to independent rule. The implementation of the government’s Fast Track Land Reform Programme, however, has led to fresh outbursts of violence and land seizure due to a food shortage crisis, which threatens to imperil its constitutional duty to citizens.

The government imposed Fast Track Land Reform has led to a decentralized system of agricultural production and a shift towards small-scale farming. Zimbabwe

has additionally imposed price controls which have oftentimes forced the small agricultural sector to market its goods below production cost. On top of losing value on goods, the current system has not been able to match the levels of production sustained by large-scale commercial agricultural activity prior to land reform. As a result, Zimbabwe currently suffers from a wide-scale food shortage crisis.

Access to food is a basic and foundational right from which many other privileges stem from, and is protected by international law. Article 25 of the Universal Declaration of Human Rights states that everyone has the right to a standard of living adequate for health and well-being, including food. The General Comment 12 by the Committee on Economic, Social, and Cultural Rights additionally provides that states have the duty to ensure that their citizens are not arbitrarily deprived of food. Governments are to uphold their duties under international law by engaging in activities that strengthen access to resources and enforce laws that prevent the derogation of the right to food. According to Jean Ziegler, the first U.N. Special Rapporteur on the Right to Food, governments must not take actions that result in increasing levels of hunger, food insecurity, and malnutrition.

The Zimbabwean government has shifted blame for the food crisis onto sanctions that were first imposed on the country in 2000 by the European Union and followed by U.S. sanctions. In a campaign letter, Zeigler and others denounced U.S. encouragement of European sanctions, stating that such sanctions violate Article 98 of the Cotonou Agreement signed in 2000 between the European Union and the ACP (African, Caribbean and Pacific) countries. For Zeigler, the sanctions were driven by politics and policy and did not consider the needs of the Zimbabwean people.

U.S. sanctions nevertheless remain in place and seem here to stay after President Mugabe’s victory on July 31, 2013. According to the Zimbabwe African National Union–Patriotic Front (ZANU-PF), the sanctions imposed by the U.S. are responsible for depriving citizens of prosperity. However, Deputy Secretary Smith from the Bureau of African Affairs claims that such allegations are a “misperception.” The U.S. and E.U. imposed

sanctions against 113 individuals, including President Mugabe and Finance Minister Patrick Chinamasa, and seventy entities, including the Infrastructure Development Bank of Zimbabwe but not the entire country. President Mugabe stated that the sanctions violated the fundamental principles of the Charter of the United Nations on state sovereignty and non-interference in the domestic affairs of a sovereign state. The Charter states that “[n]o state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind.”

Despite sovereignty issues delineated in the Charter, the United States maintains that the sanctions do not target Zimbabwe as country, but rather, specific individuals who have participated in human rights abuses related to political repression or against senior government officials tainted by public corruption. Further, although the sanctions prohibit the United States from supporting assistance from international financial institutions, the United States may assist programs targeting basic human needs or promote democracy. Aid, moreover, has not been cut off through U.S. sanctions—Zimbabwe has received over 1.4 billion dollars since 2001. The U.S. sanctions do not seem to be at odds with international law, as their objective serves the intended purpose of restoring international peace and security as delineated in Article 41 of the U.N. Charter.

At the general debate of the 68th Session of the U.N. General Assembly, President Mugabe stated that the United States should be ashamed of its policies towards Zimbabwe. Despite the potential effects of the sanctions, the stipulations of the sanctions are based on human rights violations in Zimbabwe. Others in Zimbabwe such as Vince Musewe, an economist in Harare, indicated that international sanctions may not be to blame for the pending food crisis rather that “most of the smallholder farmers have changed to farming tobacco. ... We need to get back to producing food. What was the purpose of land reform? It’s to feed ourselves.”

Ada Lacevic, a J.D. candidate at the American University Washington College of Law, is a staff writer for the Human Rights Brief. HRB