

2014

Regions

Austin Shangraw

American University Washington College of Law

Ross Boone

American University Washington College of Law

Shereen Kajouee

American University Washington College of Law

Angela Chen

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, Shereen Kajouee, Angela Chen, Jason Cowin, Whitney-Ann Mulhauser, James Toliver, Ada Lecevic, and Min Jung Kim. "Regions." *Human Rights Brief* 21, no. 2 (2014): 49-62.

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, Shereen Kajouee, Angela Chen, Jason Cowin, Whitney-Ann Mulhauser, James Toliver, Ada Lecevic, and Min Jung Kim

REGIONS

AMERICAS

WORLD BANK FUNDING FUELS INSTABILITY AND HUMAN RIGHTS ABUSES IN HONDURAS

In January 2014, the World Bank's Compliance Advisor Ombudsman (CAO) released a report criticizing the International Finance Corporation's (IFC) loan agreement with a Honduran corporation implicated in human rights violations in the country's Bajo Aguán Valley. The CAO found that the IFC — the World Bank's private investment arm — ignored its own policies and procedures when it entered into a \$30 million agreement with Corporación Dinant (Dinant), a large Honduran agribusiness focusing on African palm oil production. Most notably, the IFC failed to address the ongoing conflict between Dinant and local indigenous groups over land disputes in the Bajo Aguán Valley. This conflict, which began in the early 1990s, has intensified in the last five years after the 2009 coup d'état halted land reform efforts by former President Zelaya. Honduran non-governmental organizations report that over one hundred indigenous activists and campesino movement members were killed in the region since 2010. Forty of these deaths are linked to Dinant security guards and private security companies.

The ongoing land conflicts in the Bajo Aguán Valley began in 1992 when Honduras passed agrarian reform measures that removed restrictions on reselling land previously acquired by indigenous farmers. Dinant, through its owner Miguel Facussé, acquired vast tracts of African palm plantations using fraud, force, and intimidation. In 1998, twenty-eight indigenous cooperatives, whose lands were taken by Dinant, organized and initiated civil actions to nullify transfers of their property. These civil suits failed, as the indigenous cooperatives had difficulty maintaining the suits and finding legal representation. Instead, the indigenous cooperatives, through two main campesino groups — the Unified Campesino Movement of the Aguán (MUCA) and the Campesino Movement of the Aguán (MCA) — petitioned the Honduran government to allow them to buy back their land based on the 1992 agrarian reform laws. Under the agrarian reform laws, limits were placed on the amount of land one person could own in a particular region. Miguel Facussé, after acquiring large amounts of land in the Bajo Aguán Valley, owned more than the statutory limit, allowing the campesino groups to petition to buy back their land. Although these petitions brought the campesino groups marginal success in retrieving some of their property, they did not lead to real stability due to a lack of implementation, as land was frequently retaken or the government failed to enforce the petitions' verdicts.

The land conflicts took a violent turn in 2009 when state security forces and private security companies employed by Dinant began to respond aggressively to nearly all of the organized indigenous cooperatives and groups attempting to reclaim their land. Since then, protests by indigenous activists and local campesino groups have frequently been met with violence and

assassination attempts. A 2013 Rights Action report, which documented over ninety killings in the Bajo Aguán Valley since 2009, highlighted the close cooperation between state security forces and private security companies employed by Dinant and the relative impunity these groups enjoy when protecting large businesses in the region.

Despite the historical land conflict in the Bajo Aguán Valley and the documented violence perpetuated by Dinant, the IFC entered into a \$30 million loan agreement with Dinant and proceeded with the first \$15 million installment of the loan in 2009. The CAO's report found that the IFC did not follow its environmental and social assessment policies, and likely ignored the allegations and evidence implicating Dinant in violence in the region. Moreover, the report determined that the "communities living most proximate to Dinant's properties" were never consulted during the IFC's pre-loan assessment, calling into question the World Bank's compliance with customary international law pertaining to indigenous land rights. Both the United Nations Declaration on the Rights of Indigenous People and the International Labor Organization Indigenous and Tribal Peoples Convention provide strong evidence of the existence of the international custom against the removal of indigenous peoples from their lands without free and informed consent. While the IFC has suspended additional payments to Dinant pending internal review of the corporation's community engagement and security practices, the IFC's loan agreement and business relationship with Dinant raise concerns with the enforcement of the World Bank's own policies and compliance with customary international law protecting indigenous peoples.

FAVORABLE COURT RULING SHEDS LIGHT ON SITUATION OF LGBT YOUTH IN JAMAICA

On March 7, 2014, a New Kingston, Jamaica court handed down an unusual two-part ruling in a case involving a group of lesbian, gay, bisexual, and transgender (LGBT) youth. The judge convicted the LGBT youth of breaking the country's "bad word" law after the group used profanity toward police during their arrest, and, in addition, declared the city's sewers a "public space," an important ruling for the youth as they were living in the city's sewers at the time of their arrest. While these two rulings may seem unrelated, in reality, they are closely connected as both highlight the difficulties LGBT youth face in Jamaica.

This case emerged from the not so unique situation in New Kingston where groups of LGBT youth have been found living in the city's sewer system. In a culture that is highly homophobic and unsupportive of LGBT persons, Jamaica's LGBT youth are frequently expelled by their families and left homeless. According to Dwayne's House, a Jamaican NGO that assists homeless LGBT youth, there have been cases of LGBT youth as young twelve and thirteen years old kicked out of their families. Homeless LGBT youth typically live in various locations, including safe houses established by friendly NGOs, private

properties, and abandoned homes; however, police recently have been evicting homeless LGBT youth from these locations with more frequency. The increasing number of evictions has forced homeless LGBT youth to seek shelter wherever possible, leading many in New Kingston to take refuge in the city's sewer system. In fact, the ruling by the New Kingston court declaring the city's sewer system a "public space" is considered a victory for homeless LGBT youth, as it will allow them to legally continue living in the sewer system. Adherence to this ruling has been called into question, though, as police reportedly continue to remove groups of LGBT youth from the sewers.

In addition to finding safe and adequate shelter, homeless LGBT youth in Jamaica face numerous other challenges. Homeless LGBT youth occasionally resort to criminal activity to survive by stealing food and other necessities and by working in prostitution as a means of earning money. These occasional criminal acts, however, have led many, including politicians and law enforcement, to label homeless LGBT youth as criminals, thereby perpetuating the stigma against these youth and providing the government with justifications for any otherwise questionable actions taken by the police. Homeless LGBT youth also face constant threats of violence. The Jamaican Forum for Lesbians, All-Sexuals, and Gays (J-FLAG), a Jamaican pro-LGBT advocacy group, found that there were 231 reports of violence and discrimination against LGBT Jamaicans between 2009 and 2012. Furthermore, the Inter-American Commission on Human Rights, in its 2012 Jamaica country report, found that there was frequent complicity with police officers and community members in engaging in violence against LGBT Jamaicans.

Many of the underlying reasons for Jamaica's homophobic culture and backlash against the LGBT population are reinforced by the fact that Jamaica is one of more than eighty countries that still criminalizes homosexuality. Jamaica's Offenses Against the Person Act, commonly referred to as the "anti-buggery" law, was passed in 1864 and *de facto* criminalizes homosexuality, imposing a possible punishment of ten years imprisonment along with hard labor. While the Jamaican government argues that the law does not outlaw being homosexual, but rather only prohibits certain acts, the true impact of this law is criminalizing homosexuality.

Jamaica's failure to adequately address the issues facing homeless LGBT youth calls into question its compliance with its human rights commitments under international law. The Covenant on the Rights of the Child (CRC), which Jamaica ratified in 1991 without reservation, provides in Article 2 that States Parties should "respect and ensure" the rights of each child "without discrimination of any kind." Moreover, Article 8 of the Convention requires States Parties to "respect the right of the child to preserve his or her identity." In addition to the Convention, Jamaica has also ratified the International Covenant on Civil and Political Rights (ICCPR), which provides in Article 7 the right to be free from torture or other cruel, inhuman, or degrading treatment and in Article 9 the right to liberty and security of persons.

As a State Party to both the CRC and ICCPR, Jamaica has a binding obligation to ensure that police respect and ensure the human rights of LGBT youth. In light of the frequent violence against LGBT youth, the Jamaican government should take

steps to prevent future violent attacks and remedy those of the past. In addition, the government should consider legislation that protects the LGBT community as a whole from discrimination.

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

NEW PRESIDENT PROMISES CONSTITUTIONAL REFORMS IN CHILE

"We need a constitution born in democracy. The one we have now is illegitimate," Michelle Bachelet stated before the December 2013 Chilean presidential election, which she went on to win with sixty-two percent of the vote. The original version of Chile's current constitution was approved in a controversial 1980 election through General Augusto Pinochet's attempt to validate his rule. Even after the country's transition to democracy, Chile's Congress has remained divided between the same two coalitions, with reforms largely led by the elite with little citizen participation. President Bachelet, who served a previous term as president from 2006 to 2010, will need to address issues of inclusivity and flexibility in her proposed redrafting of the country's constitution to satisfy democratic concerns, as detailed by Elkins, Ginsburg, and Melton in *The Endurance of National Constitutions*.

Article 23 of the American Convention, to which Chile is a State Party, provides for the right of every citizen to participate in government either "directly or through freely chosen representatives." It also guarantees the right to vote in elections that will reflect "the free expression of the will of the voters." Notwithstanding successful reform efforts in 1989 and 2005, the Pinochet-era constitution denies Chileans participation in the government and stymies popular reform.

Several articles of the Constitution of Chile serve as formidable barriers to change, effectively ensuring that those in power will remain in power. Article 32 Section 6 grants the president the power to designate members for the Senate. Further, Articles 90 to 94 grant a high degree of autonomy to the military and police forces, which has led to an over-representation of right-wing groups in Chile's government. Articles 95 and 96 still provide for direct participation of the armed forces in the political process, including veto power. Acting as an additional hurdle to change, Articles 116 to 119 detail the amendment process, which requires a three-quarters majority of both houses of the legislature if the president does not approve the amendment. These significant checks act as roadblocks to even popular movements for change because they demand unrealistic levels of support, especially from the privileged political groups which have disproportionate power in the government.

Constitutions create institutions that can channel fleeting popular movements without completely upending the structure of government. Institutions, however, tend to resist change. Gabriel Negretto, a professor at the Centro de Investigacion y Docencia Economicas in Mexico City, has indicated that institutional power sharing decreases the need for replacement as opposed to amendment. He notes that change occurs when "the existing constitution becomes incompatible with the new political conditions, when the constitution does not serve the interests

of powerful political actors, or when it fails to work as a governance structure.” In *The Endurance of National Constitutions*, the authors identified three elements necessary for longevity of government: inclusion, flexibility, and specificity. Chile’s new constitution should look to these elements for guidance. Claudio Fuentes identified some untouched reforms from 2000, including lowering the supermajority requirement for constitutional amendment, lifting the prohibition on union leaders running for office, relaxing the complete restriction on abortion, and reconsidering the duty of the state to promote the “family” as the basic social unit.

In addition to systemic barriers, President Bachelet is likely to face opposition from various groups when the changes are proposed. Chile has the highest income disparity of the thirty-four Organization for Economic Cooperation and Development (OECD) nations, and the country’s economy has been slowing in recent years. Some would prefer that she tackle those issues first, and argue that the difficulty of writing and ratifying a new constitution will likely consume much of her time. Of further concern, she will have to maintain her political support, which involves holding together a seven-party coalition. Despite deep support for writing a new constitution, there is little agreement on how to go about drafting it, a process that will also need consensus to preserve the desired legitimacy of the new document.

The push to write a new constitution gives Chile a unique opportunity to put its dictatorial past firmly behind it. To achieve the legitimacy President Bachelet hopes will secure the progress of democratic reform, the new document will have to be broadly appealing and able to meet the demands of governance. She will have to reach beyond the group that elected her and appeal broadly to the Chilean people if her new constitution will survive the test of time.

SEX TOURISM: HUMAN TRAFFICKING IN COLOMBIA

Human traffickers are taking advantage of the increased safety resulting from the apparent receding of Colombian narco-traffickers to meet the demands of the country’s thriving sex tourism and mining industries. Sex trafficking and trafficking for forced labor are the leading causes of human trafficking in Colombia. According to Women’s Link Worldwide, approximately 70,000 people are trafficked every year. As a result, “take care of your daughter, or she will be sold” has become a commonly heard phrase in poor communities. According to a 2012 report by the United Nations Office on Drugs and Crime, seventy-six percent of worldwide human trafficking involves women or young girls. In Colombia, and much of the Andes Region, the proportion of trafficked children is much higher than in southern countries like Chile and Argentina. Between 2007 and 2010, the percentage of Colombian victims trafficked as children rose from forty to seventy percent, while children represented less than twenty percent of human trafficking victims in Chile, Argentina, United States, and Canada during the same period.

Although Colombia is party to both the American Convention on Human Rights and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN TIP Protocol), the Colombian government has struggled to implement these measures at the domestic level.

There were no reported convictions for internal trafficking in Colombia in 2012, as government efforts largely focused on international, as opposed to domestic, trafficking.

Article 6 of the American Convention governs slavery, banning “involuntary servitude,” “traffic in women,” and “forced or compulsory labor.” The illegal nature of human trafficking for work in the sex tourism industry or forced labor in mines is specifically outlined in Colombia’s Law 985 passed in 2005. This legislation indicates that the issue in Colombia stems not from a lack of understanding of the illegality of human trafficking, but from an inability to counteract the practice.

The 2000 UN TIP Protocol on human trafficking seeks to establish discreet responsibilities of States Parties for addressing the practice and protecting victims. Articles 9 and 10 require signatories to explore and implement preventive measures and to coordinate law enforcement efforts to combat trafficking. To this effect, Law 985 also sets out fines and sentences for conviction of human trafficking. In Colombia, the enforcement discrepancy then likely results from an emphasis on local law enforcement rather than having a single nationwide director.

Victim silence represents a major obstacle to the implementation of effective preventative measures against human trafficking in Colombia. Concern for retaliation from gangs that exercise effective control over some areas makes reporting infrequent, and the frequency of trafficking in places like the Valle de Cauca, Risaralda, and Antioquia has created a culture of complacency. Additionally, traffickers target specific “market niches,” seeking out areas that have a low likelihood of prosecution, a high number of clients able to pay, and a low cost for transporting victims. These developments have led to sex tourism, with many victims held in bondage through accumulation of debt.

Some populations are more vulnerable to being trafficked than others, with people related to criminal actors, people internally displaced, poor women in rural areas, and members of indigenous communities particularly likely to fall victim to trafficking. Most victims remain within the region in which they were initially trafficked with a majority of detected South American trafficking victims originating from other South American countries.

A notable area of Colombian success, however, is the revival of a trafficking hotline for utilization by victims. Established in June 2011, approximately 8,000 people had called the hotline as of December 2011. Further, in recent years, the country has sought to improve training efforts within the police forces. These efforts, however, appear not to have substantially reduced the numbers of human trafficking victims. The problem appears not to be that Colombia does not intend to resolve the issues, but that the issues are overwhelming in their scope. Enhancing coordination of the policing agencies that address human trafficking and focusing more on internal trafficking would further bring Colombia within its international legal obligations.

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

DUSHANBE MAYOR BANS NON-TRADITIONAL MUSIC

Mahmadsaid Ubaidulloev, mayor of Dushanbe, Tajikistan, signed a resolution outlawing certain genres of music from the city's buses and taxis. In early 2014, Radio Ozodi, Radio Free Europe's Tajik service, confirmed that the ban encompasses any music considered "alien to national and universal values." The ban, intended to promote modesty, particularly targets rap music, although it also includes any music that "glorifies criminality, sexual content and music that propagates non-traditional Islam." The resolution specifies that the Interior Ministry and Ministry of Culture will conduct raids regularly to restrict the usage of such music in public places. Despite the resolution's purported promotion of positive values, it raises concerns about restrictions on civil liberties and freedoms of expression and thought.

The Tajik government's efforts to restrict certain kinds of music are not new in Tajikistan. In 2012, Radio Free Europe reported that authorities in the southern Khatlon province fined drivers for listening to loud music, especially in buses and taxis. Khatlon officials alleged that loud music disturbed public peace and could be dangerous. Though disturbing public peace and banning specific genres of music are admittedly different, human rights activists fear that these regulations may be part of greater restrictions on civil liberties. In 2012, the Global Network Initiative issued a statement (via Human Rights Watch) expressing concern over restrictions on the right to freedom of expression in Tajikistan. Among other groups, writers and journalists have reported similar attempts to limit freethinking and speech under claims of patriotism and universal values.

Despite Tajik efforts to shield the public from non-traditional music, many view this ban as an attack on human rights and freedoms. Article 19 of the Universal Declaration of Human Rights (UDHR) details "the right to freedom of opinion and expression," including "freedom to hold opinions without interference to seek, receive and impart information and ideas through any media and regardless of frontiers." Articles 2 and 18 of the UDHR further detail rights protecting religious freedoms. Article 18 extends to all people "the right to freedom of thought, conscience and religion; [and notes that] this right includes freedom to change his [or her] religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his [or her] religion or belief in teaching, practice, worship and observance." Though the ban does not specifically restrict religious freedoms of Tajik citizens, it uses religious traditions to limit artistic expression, a right explicitly detailed in Article 19 of the UDHR.

Not only can music be seen as artistic expression, but the ban also raises concerns related to the role of music as an integral part of cultural life. Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the right for all people to "freely pursue their economic, social and cultural development." Though music is not explicitly mentioned in the body of the ICESCR, General Comment No. 21 details that music is indeed considered a part of culture for purposes of enforcing the ICESCR. Tajikistan acceded to the ICESCR in 1999, imposing a duty on the Tajik government to

ensure the cultural freedom of its citizens. This duty exists even if a person's preferred customs differ from what the government considers traditional values.

While the ICESCR's notions of freedom and self-determination should be taken into consideration before propagating state-wide values, studies show that religion may be factored into how the state makes these decisions. Research by the Pew Forum, a self-described non-partisan fact tank and subsidiary group of Pew Charitable Trusts, suggests that religious restrictions are becoming commonplace in Tajikistan. Noting annual trends, the Pew Forum found that Tajikistan was among one of five countries that had a very high increase in government mandated restrictions on religion between 2011 and 2012. This increase, paired with growing fears of restrictions on civil liberties, could implicate greater difficulties for Tajik citizens seeking to express their ideas or interests through various forms of media, including but not limited to music.

THREATS TO INTERFAITH MARRIAGE IN MYANMAR

Burmese President Thein Sein asked Myanmar's Parliament in February to consider creating an intermarriage law, which he says is meant to protect Buddhists. The exact content of the proposal is unclear; however, it includes a polygamy ban, legislation to "balance the increasing population," and a law "to give protection and rights for ethnic Buddhists when marrying with other religions." The proposals are a result of campaigning by Ashin Wirathu, a Buddhist monk of the Burmese Anti-Muslim nationalist movement known as the 969 Movement. Wirathu, who was recently released from jail, has previously asked Buddhists to boycott Muslim-owned businesses and is frequently accused of increasing sectarian tensions in the country through hate speech and violent tactics. The proposal's origins raise human rights concerns about restrictions on interfaith marriage and discrimination against Myanmar's minority Muslim community.

Earlier this year, UN High Commissioner for Human Rights Navi Pillay urged the Burmese government to investigate the deaths of at least forty Rohingya Muslims as sectarian violence continues to escalate in Myanmar. The Rohingya Muslim community has settled in Myanmar's Rakhine state, which is predominately populated by Buddhists and borders Bangladesh. This February, the organization Fortify Rights released a report suggesting that Burmese government policies of oppression and persecution, many of which focus on similar topics of marriage and family planning restrictions, allow further discrimination against this minority group. Human Rights Watch also released a report last year alleging crimes against humanity and ethnic cleansing of Rohingya Muslims in the same region.

The 969 Movement, alongside other Buddhist groups, is pushing back against the Muslim population, which makes up five percent of Myanmar's population, in reaction to a history of oppression by the former Burmese government. Monks supporting the proposal reportedly fear that Muslims are spreading their faith by marrying Buddhist women. Though small in numbers, Myanmar's Muslim community has faced increasing persecution in recent years, evidenced in 2013 religious riots where forty-eight people (predominantly Muslims) were killed. In 2013, the United Nations Special Rapporteur on Human Rights in Myanmar, Tomás Ojea Quintana, deemed the Rohingya

Muslims (one of the few Muslim groups in the country) “the most vulnerable and marginalised group in Myanmar.”

While President Thien Sein only publicized support for the anti-intermarriage proposal last month, Wirathu circulated drafts of the law in 2013 that included requirements that Buddhist women obtain parental or guardian consent before marrying outside the Buddhist faith and having the marriage registered by local authorities. Under the 2013 draft, marriages performed without permission would be considered illegal. Additionally, the draft included a clause requiring men to convert to Buddhism. Opposition leader and chairperson of the National League for Democracy, Aung San Suu Kyi, criticized the 2013 proposal as “a violation of women’s rights and human rights” because of the proposal’s restrictions of marriage and religious freedom.

The Universal Declaration of Human Rights (UDHR) extends rights to all peoples, regardless of race, sex, or religion. As a UDHR signatory, Myanmar has an interest in safeguarding the rights of their citizens. These rights include UDHR Article 16, which allows men and women the right to freely marry “without any limitation due to race, nationality or religion.” Myanmar also acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. CEDAW’s Article 16 further safeguards women’s rights to choose their spouse and marry freely. The Committee on the Elimination of Discrimination against Woman released a general recommendation on CEDAW Article 16, which suggested that “[n]either traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention.”

The 2008 Burmese Constitution notes the “special position of Buddhism as the faith professed by the great majority of the citizens of the Union,” but also lists Islam as a religion recognized by the Republic of the Union of Myanmar. The Constitution proclaims that “any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is contrary to this Constitution” and subject to punishment. The government has a duty to ensure the rights of all its citizens. Article 348 of the Constitution also states “[t]he Union shall not discriminate [against] any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.” Although this proposal is in the early stages of development, it is critical that the Burmese government take appropriate steps to address these serious human rights concerns to avoid further institutionalization of discrimination.

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

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, only refugees who arrive by boat will be barred from obtaining a visa and settling in Australia. In addition,

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 on 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 his nationality and fears to return to it 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 eighteen- to thirty-year-old men, 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, with Prime Minister Kevin Rudd promising, “no one who arrives by boat without a visa will ever be granted permission to settle in Australia.”

As a signatory to the Refugee Convention, Australia is obliged to adhere to Article 7(1), which provides that states shall accord refugees the same treatment as other aliens, and Article 31(1), which requires that “[s]tates shall not impose penalties on account of their illegal entry or presence.” 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 to seek safety in Australia. The no advantage principle bars asylum seekers who arrive illegally by boat from ever applying for asylum or settling in Australia, and 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 that 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) has stated 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 punishes refugees who violate its immigration laws to enter the country, and risks violating international human rights standards against arbitrary and indefinite detentions. As a State Party to the Refugee Convention, Australia has an obligation to protect refugees and should recognize that refugees are vulnerable and often violate immigration laws when fleeing dangerous situations. By statutorily preventing asylum seekers arriving by boat from seeking protection, Australia risks failing to respect and uphold the human rights of refugees.

BRUNEI'S PLANS FOR SHARIA LAW CONTRADICT OBLIGATIONS TO PREVENT TORTURE

Brunei's Sharia Penal Code (Penal Code) will enter into effect in April 2014. However, the International Commission of Jurists (ICJ) described the Penal Code as a backward step on January 27, 2014, saying it is inconsistent with Brunei's international obligations. The new Penal Code criminalizes adultery and sodomy, and imposes harsh punishments, including the death penalty and amputation. Human rights groups, such as Physicians for Human Rights, the UN Special Rapporteur on Torture, and regional human rights commission, including the African Commission on Human and Peoples' Rights have described these penalties as torture, cruel, and inhuman punishment, demonstrating the international community's condemnation of amputation as punishment for crimes.

Head of State Sultan Hassanal Bolkiah of Brunei introduced the new Penal Code in October 2013. Existing Islamic rules in Brunei are imposed when courts deal with family-related affairs, such as marriage and inheritance. The Sultan said the new Penal Code would only apply to Muslims, but certain penalties apply to both Muslims and non-Muslims. Under the new Penal Code, Muslims can be stoned to death for adultery, have their limbs severed for theft, and be flogged for violations ranging from obtaining an abortion to consuming alcohol. Non-Muslims and Muslims alike would be subject to the death penalty for robbery, rape, adultery, and sodomy.

In contrast to Brunei's harsh new punishments, many in the international community pushed abolishing physical punishments, including the death penalty, on the basis that they contradict the universal right to life and can be considered cruel or inhuman punishments. Similarly, the UN General Assembly issued a moratorium on executions in 2007, which was reaffirmed in 2008, 2010, and 2013, and the UN Special Rapporteur on Torture Juan Méndez has said that the death penalty is a form of torture, not just because the specific methods and circumstances of execution are violations of the UN Convention against Torture (CAT), but also because of the evolving standard of when a state should be allowed to deprive a person of life. The CAT is one of the most widely accepted international conventions, ratified by 154 states, exemplifying the broad international agreement against torture, cruel and inhuman punishment.

The CAT's definition of torture in Article 1 is widely accepted by the international community and is applied not only to the CAT, but also to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political

Rights (ICCPR). The Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as punishing him for an act he has committed or is suspected to have committed." The UN High Commissioner for Human Rights has condemned amputation and stoning as cruel and inhuman punishments. Even without ratifying CAT or following the international trend regarding death penalty abolition, Brunei is still obligated under international law not to implement torture or cruel and inhuman punishment. Brunei is a member of ASEAN and has adopted the ASEAN Human Rights Declaration, which prohibits torture, cruel and inhuman punishment in Article 14.

Although the death penalty has been considered *de facto* abolished since the last time Brunei executed prisoners in 1957, the new Penal Code reintroduces the death penalty and provides for death by stoning. Amputation as a punishment for theft is also included in the new Penal Code, which the UN Special Rapporteur has said is inconsistent with the prohibition against torture.

In an open letter to Prime Minister H.M. Haji Hassanal Bolkiah, the ICJ questioned how Brunei could implement the new Penal Code while complying with its legal obligations. The letter found that the planned punishments in the new Penal Code qualify as torture or cruel and inhuman punishment under the internationally accepted definition of such acts. Brunei's implementation of the new Penal Code would not only be a step back for the international movement toward abolishing the death penalty, but may also result in Brunei violating its obligations to uphold human rights and prevent torture.

Angela Chen, 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

EMPTY WORDS: HUNGARY'S LAX RESPONSE TO DOMESTIC VIOLENCE

On July 1, 2013, Hungary enacted its first legislation specifically criminalizing domestic violence. Prior to July, the official response to domestic violence was limited to charges of battery for individual acts of physical abuse with no broader consideration of the abusive relationship; survivors did not have access to restraining orders until 2009. Criticism of Hungary's response to domestic violence has centered on the absence of comprehensive laws, the limited available resources for survivors, and a culture of victim blaming within the country. This culture was exemplified during floor debate on the proposed legislation when József Balogh, a member of parliament for the governing party, unapologetically admitted to abusing his wife, and István Varga, also a member of parliament for the governing party, suggested women would not face abuse if they had more children. According to a November 2013 Human Rights Watch (HRW) report, however, the new law contains significant gaps, and Hungary may still be failing to fulfill its obligations to appropriately respond to domestic violence under UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

This report is the most recent criticism of Hungary from human rights groups and international treaty bodies alleging the country has failed to meet its obligations. In the 2005 case *A.T. v. Hungary*, the Committee on the Elimination of Discrimination Against Women (Committee) found that Hungary violated several of its obligations under CEDAW. The Committee also found that Hungary failed to promote gender equality through appropriate legislation under Article 2, to eliminate prejudices and customs grounded in female inferiority by lacking legislation against domestic violence under Article 5, and to end discrimination against women in marriage and family life under Article 16. Accordingly, the Committee recommended that Hungary enact legislation criminalizing domestic violence and allowing victims to receive protection orders.

Hungary has been slow to adopt laws that comply with the Committee's recommendations. In 2009, Hungary enacted a law to provide temporary restraining orders to domestic violence victims, but critics of the law argue it is insufficient. The restraining order law provides that police can issue a seventy-two hour restraining order against the aggressor in domestic disputes, giving individuals thirty days to apply for restraining orders against violent family members. However, these restraining orders are not renewable, and a victim may only file for a new restraining order after another, separate, violent incident. Additionally, former common law spouses and couples who do not cohabit and have no children together cannot petition for a restraining order. A 2010 report by NANE Women's Rights Organization found that a lack of training for law enforcement resulted in gaps in the enforcement of the legislation, "frustrat[ing] the act in fulfilling its already limited goals." Further, the law did not alter the criminal code to recognize domestic violence as a specific criminal offense.

The November HRW report alleges that Hungary's response to domestic violence is lacking even after the introduction of the provision criminalizing domestic violence into the criminal code. The new law requires prosecutors to initiate criminal actions against abusers and provides stiffer penalties for domestic assaults. However, HRW feels that the law falls short by requiring at least two separate instances of domestic violence to trigger prosecution and by requiring that the victim cohabit or have children with the abusive partner. Additionally, HRW is critical of the government's decision not to include sexual violence as an offense under this law because rape is already criminalized. These requirements significantly narrow the range of victims eligible for protection and neglect varying degrees of potential violence, according to activists. Critics further allege that the new law does not amend the gaps in the 2009 protection order statute, nor has law enforcement received adequate training.

Activists and survivors of domestic violence allege that survivors frequently encounter hostility or indifference from support institutions. The HRW report found police routinely refuse to use their authority to issue restraining orders. Courts are similarly hesitant to issue protection orders, often imposing high evidence standards and issuing orders for only short periods of time. Outside the legal system, doctors and social workers provide little advice and information to survivors. Although the government established a 24/7 hotline for victims, the few

shelters operating in Hungary receive no government funding, a situation that the Hungarian Association of Women Judges finds does not meet the existing need. While the new law criminalizing domestic violence is an important step, without broadening its scope, effecting a more concerted effort to effectively respond to survivors' needs, and changing the victim blaming pervading Hungarian society, the government may continue to fall short of its obligations.

CEUTA AND MELILLA: EUROPE'S RAZOR WIRE DOOR

Thousands of migrants and asylum seekers use the Spanish exclaves of Ceuta and Melilla in North Africa as gateways into Europe, prompting Spain to attempt to stem the flow of irregular migration. The Spanish government has increased the number of barriers along the border, authorized the use of rubber bullets by the border patrol, and is seeking an agreement with Morocco to authorize summary returns, without due process, of irregular migrants. Human rights groups and the European Union (EU) have been critical of some of Spain's actions following an incident on February 6, 2014, in which fifteen migrants drowned during an attempted swim to Ceuta. The twenty-three who made it to shore were summarily deported. Rights groups argue that summary returns of the migrants, many of whom may be refugees, are violative of Spain's obligations under the European Union directive on common standards and procedures for returning illegally staying third-country nationals and the principle of non-refoulement, especially in light of the harsh treatment migrants receive in Morocco. Additionally, these groups are concerned that the use of rubber bullets may have contributed to the deaths on February 6.

Migrants from sub-Saharan Africa head to Europe for secure work and an escape from unrest in their home countries. The number of migrants entering Spanish territory irregularly surged in 2013 to over 4,300. An estimated 80,000 people have set up camps in Morocco near the border, and large groups routinely attempt to scale the barbed wire fences into Spanish territory. Migrants who cross the border are taken to detention facilities where they await either a grant of asylum or a deportation order. However, because Spain does not have extradition agreements with many African countries, deportation is often impossible.

Under international law, states are bound by the principle of non-refoulement. Article 33 of the UN Convention Relating to the Status of Refugees, the 1967 Optional Protocol, and Article 3 of the Convention Against Torture, which Spain has acceded to and ratified, prohibit the return of refugees to countries where they would face persecution or torture and require due process for claims of refugee status and asylum. Spain is also bound by the EU Charter of Fundamental Rights, which recognizes the right to asylum, as well as the EU returns directive, which establishes procedural requirements and safeguards for the return of undocumented migrants. In addition, Spain's domestic immigration law prohibits summary return without due process and guarantees migrants in deportation proceedings both legal counsel and an interpreter.

In a recent report, Human Rights Watch found evidence of widespread ill treatment of migrants in Morocco and argued that returning them would violate Spain's non-refoulement obligations. The report found Moroccan police often beat migrants,

including children, who are returned to Moroccan custody. While Spain has denied the use of summary returns, human rights groups have documented numerous incidents of deportations without due process. According to Human Rights Watch, video footage taken on February 6, 2014, appears to show survivors on the beach being escorted back to Morocco by Spanish authorities. Amnesty International argues that the survivors were under Spain's jurisdiction and were therefore entitled to the protections guaranteed under international and Spanish law. Human rights groups and the EU also criticized the border control's use of rubber bullets against migrants, and called for an investigation to determine whether its actions contributed to the drownings on February 6.

The Spanish government argues that making entry more difficult and return more efficient are necessary to combat terrorism and ease the strain migrants place on the country's resources. In response to allegations that people were summarily returned on February 6, the Spanish Interior Minister, Jorge Fernández Díaz, admitted that individuals who made it to the beach were handed over to Morocco, but argued they had not entered Spanish territory because they did not pass through a line of riot police. Additionally, Deputy Interior Minister Francisco Martínez admitted that rubber bullets and tear gas were fired in the water near people swimming towards Ceuta, but initially claimed they did not contribute to the deaths. However, on March 10, 2014, Díaz admitted the use of rubber bullets was a mistake. Spain's ruling party nevertheless blocked a motion to start an investigation into the incident. Without a proper investigation into the deaths, and without ending summary expulsions, Spain's actions may not accord with its human rights obligations.

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

MIDDLE EAST AND NORTH AFRICA

A STATE OF EMERGENCY: ISRAEL'S USE OF ADMINISTRATIVE DETENTION TO INDEFINITELY DETAIN PALESTINIANS

The Israeli government detains hundreds of individuals, primarily Palestinians from the Occupied Territories, for months and even years with renewable administrative detention orders. At the end of 2013, 150 Palestinians were being held under administrative detention in facilities run by the Israel Prison Services. With administrative detention orders, an individual may be held without charge for a period of six months with the possibility of indefinite renewal. Detainees are not given any information regarding their charges based on the premise of maintaining national



Illustration by Eamonn Donnelly

security. By indefinitely detaining individuals without charge or trial, Israel is undermining the right to a prompt, free, and fair trial as enshrined in the International Covenant on Civil and Political Rights (ICCPR), and is not protecting individuals from cruel, inhuman and degrading treatment or punishment (ill-treatment) as outlined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the ICCPR.

Administrative detention consists of arresting and detaining an individual without charge or trial, often for security reasons. According to Amnesty International, Israel has used administrative detention to punish individuals for their political views and affiliations, including detention of Palestinian politicians, journalists, students, prisoners of conscience, and human rights defenders.

A military order and two laws primarily enable Israeli authorities to use administrative detention: Military Order 1651 (1651), The Emergency Powers Detention Law (Detention Law), and the Internment of Unlawful Combatants Law (Internment Law). Order 1651 applies to the West Bank, including to Israeli citizens living in the West Bank; however, in practice, 1651 is used primarily to detain Palestinians. A military commander may issue an order if there are "reasonable grounds" that an individual is a risk to "public security" or "the security of the area." Although a detainee must be brought before a military judge within eight days under 1651, the closed court session is effectively only a routine confirmation of the order, rather than an actual hearing. Detainees spend months and even years in prison without charge or trial and any information justifying the order is withheld from both the detainee and his or her attorney. Detainees are able to appeal their orders to the Supreme Court of Israel; however, most appeals are not completed because each appeal must be resolved within six months as each extension of an order is considered a new order, requiring a new appeal.

The Detention Law and the Internment Law share many similarities with 1651. The main distinction is jurisdictional; the Detention Law applies to Israel proper while Israel uses the Internment Law to detain Palestinians from the Gaza Strip.

Israel is a State Party to both the ICCPR and the CAT. Article 9 of the ICCPR protects individuals from arbitrary arrest or detention and guarantees the right to be informed of charges at the time of arrest. Additionally, Article 14 ensures an individual's right to be promptly informed, in a language that the accused understands, of any charges and entitles everyone "to a fair and public hearing." Since 1948, Israel has been in a declared state of emergency and has used this declaration as a justification for suspending detainees' rights to due process as outlined in the ICCPR. Article 4 of the ICCPR allows a government to derogate from certain obligations in a time of "public emergency which threatens the life of the nation" provided that the measure is strictly required, does not discriminate against a particular group, and does not conflict with other obligations under international law. Article 4, however, is not meant to allow States to perpetually suspend rights. The Human Rights Committee has noted that "States parties may in no circumstances invoke [A]rticle 4 of the [ICCPR] as justification for acting in violation of humanitarian law or peremptory norms of international law." Thus, Israel's practice of detaining individuals without charge

and holding closed court sessions contravenes the protections of the ICCPR.

The use of administrative detention to arbitrarily detain individuals repeatedly and for prolonged periods can amount to prohibited ill-treatment. Under the CAT, Israel has a legal obligation to prohibit all forms of ill-treatment. In 2001, the Committee against Torture concluded that Israel's use of administrative detention fails to conform with the prohibition on ill-treatment, as provided under Article 16 of the CAT. Further, Article 4 of the ICCPR prohibits derogation from certain rights, including the prohibition against ill-treatment. Therefore, Israel may not use a state of emergency as justification for the resulting ill-treatment in administration detention.

As outlined in the ICCPR and the CAT, Israel is legally obligated to recognize the rights of individuals under its protection, including Palestinians in the Occupied Territories. Israel's process of indefinitely renewing administrative detention orders without charge or trial undermines the right to due process and the absolute prohibition against ill-treatment of detainees.

CHILDREN FACE ATROCITIES AMIDST THE SYRIAN CONFLICT

As the Syrian conflict enters its third year, the United Nations (UN) estimates that 100,000 people are dead, including an estimated 10,000 children. Children have been at the center of the conflict since the beginning; in 2011, the Syrian government arrested fifteen children for painting anti-government slogans on the walls of a school in Dar'a. After unsuccessful attempts to negotiate their release and allegations that the children were being tortured while in police custody, community members began protesting the arrests of the children. In response, security forces opened fire, killing at least four protesters, deaths which activists consider the first casualties of the Syrian uprising. Following the Syrian government's violent suppression in Dar'a, demonstrations spread throughout the region and remain ongoing today. The Convention on the Rights of the Child (CRC) obligates the Syrian Arab Republic, a State Party, to protect a child's right to life and to ensure that children are not subjected to arbitrary detention or torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment), and are protected from participation in direct hostilities.

Despite this obligation, the UN reported that government forces and associated militias arbitrarily detained, arrested, abducted, raped, and tortured children. Similarly, armed opposition groups recruited children for combat and support roles, as well as abducted, raped, and summarily executed children. The UN noted that although the report attributed many incidents of killing and injuring children to government forces during the first two years of the conflict, armed opposition groups increasingly have engaged in such conduct largely due to "increased access to heavy weapons and the use of terror tactics."

The government arrests children not only for their own perceived or actual participation in opposition groups, but also for their relatives' perceived or actual participation. Children apprehended by both sides in the conflict are often held in the same cells as adults, contrary to international standards for juvenile detention. Reports of ill-treatment while in detention are

extensive and include, "beatings with metal cables, whips and wooden and metal batons; electric shocks, including to the genitals; the ripping out of fingernails and toenails; sexual violence, including rape or threats of rape; mock executions; cigarette burns; sleep deprivation; solitary confinement; and exposure to the torture of relatives." The government uses ill-treatment to extract confessions from children or humiliate them into pressuring their relatives to confess or surrender. Outside of detention centers, the UN received reports regarding allegations of sexual violence against women and girls by government forces, including gang rape in the presence of relatives at checkpoints and while searching houses of families perceived to support opposition groups. The UN received allegations of armed opposition groups also using sexual violence, however, investigation is hampered because of lack of access to many areas in Syria. Abducting children in exchange for ransom, to release prisoners, or to pressure relatives supporting the opposing side has increasingly been a tactic used by both government forces and armed opposition groups.

The CRC protects a child's fundamental rights and freedoms. The CRC defines a child as any individual under eighteen years old. States Parties to the CRC must protect children from sexual exploitation, ill-treatment, arbitrary detention, and participation in direct hostilities. Articles 12–15 protect a child's right to freedom of expression, thought, association, and peaceful assembly. Therefore, the actions of the fifteen children in Dar'a who painted anti-government slogans were protected by international law, which the government was obligated to enforce. Article 34 obligates states to protect children from all forms of sexual exploitation and abuse, which the practice of sexual violence and rape by both government forces and armed opposition groups violates. Article 37 requires States Parties to protect children from ill-treatment, arbitrary arrest, and detention, and specifically requires that detained children remain separated from adults. Article 2 obligates states to protect children from punishment based on their relatives or guardians' activities and opinions. Therefore, the practice of detaining children in units with adults, egregious ill-treatment, and punishing children for their relatives' perceived or actual support of opposition groups is contrary to international law. In times of conflict, Article 38 requires that states ensure children under "fifteen years do not take a direct part in hostilities[;]" thus, recruiting children under fifteen for combat and support roles, as well as using children as human shields or to pressure relatives to surrender, is contrary to international law.

As outlined under international law, the Syrian government has a responsibility to protect the children in Syria from prohibited ill-treatment, sexual violence and exploitation, arbitrary arrest and detention, and participation in direct hostilities. As casualties continue to climb, the government and armed opposition groups must recognize and protect the fundamental rights and freedoms of Syrian children or face possible criminal prosecution in domestic or international courts.

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

CONCERNS OVER THE HUMAN RIGHTS SITUATION IN CONFLICT ZONES OF IRAQ

On January 3, 2014, the Islamic State of Iraq and Syria (ISIS), a principal stakeholder of jihadist sentiment in the region, declared an Islamic state in Anbar Province, exactly 747 days following the departure of the last Coalition troops from the country. Iraq continues to experience civil unrest since the final withdrawal of U.S. troops from the country in 2011. In addition, the boiling over of violence in Anbar, a noted sectarian and volatile region, and the fall of its large cities Fallujah and Ramindi raise concerns that, similar to neighboring Syria, Iraq is being driven to greater instability. Human rights practitioners have alleged that the Iraqi government and armed insurgent groups are committing human rights abuses throughout the country, and that Iraqi Prime Minister Nouri Al-Maliki may be ill-equipped or even ill-inclined to fulfill his government's human rights obligations. In particular, the Iraqi government's treatment of detainees and its poor protection of civilians in combat zones are causes for concern. Iraq is a party to the International Covenant on Civil and Political Rights (ICCPR), which bars the government from unlawful and arbitrary arrest and detention as well as arbitrary deprivation of life.

Following the removal of U.S. troops and eight years of military conflict, many hoped that Iraq would move, however gradually, toward stability. There is strong evidence suggesting that this is not the case. According to the Iraq Body Count Project, violence in Iraq continues to increase. Violence was on a downward trend after the balance of American troops left the country but leapt in 2012, the first year since 2009 where the death toll has increased. Data from 2012 reports the number of Iraqi civilians killed by violence as 4,584, up from the record low set in 2010. Preliminary figures from 2013 paint an even bleaker picture for the country, placing the death toll at nearly 9,500 civilians.

Between 2012 and 2013, clashes between Iraqi government forces and Islamist insurgents were the principal cause for the sharp uptick in violence. The sectarian fighting between the Iraqi government and anti-government forces captured thousands of civilians in the crossfire in 2012. In 2012 alone, Iraqis suffered 967 mass shootings involving civilians, killing 1,619 people. That same year, 966 bombings occurred throughout the country, claiming 2,819 lives and leaving 7,554 injured. With the mounting violence in the country and ISIS's seizure of the Anbar Province, activists fear that government forces are indiscriminately firing on civilian areas in an effort to oust the insurgents and regain control of the region.

Both Human Rights Watch and Amnesty International report that, in response to the increasing sectarian violence, the Iraqi government is employing draconian methods to apprehend and detain anti-government suspects. Articles 9 and 15 of the ICCPR guarantee freedom from arbitrary arrest or detention, while additionally requiring that following an arrest, a person is informed of the reason for the apprehension and any charges pending against them. With the prohibitions against wrongful detention, Article 14 of the ICCPR requires that the government provide the minimal principles of due process to those suspected of a crime. Most importantly, Article 6 of the ICCPR protects the

people of Iraq from arbitrary deprivation of life, including loss of life caused by internal security forces.

The Iraqi government is fighting a serious insurgency, one that is spreading to provinces outside Anbar. Article 4 of the ICCPR does allow for emergency derogation from some of the Covenant's obligations in times "of public emergency which threaten[] the life of the nation," however this special license comes with a precept that no circumstance allows for the arbitrary deprivation of life or unlawful arrest. While some of the Iraqi government's arrests of alleged insurgents may be permissible under this exception, it is likely that many of the government's armed efforts to terminate the insurgencies throughout the country are not in line with the ICCPR. By deploying capricious tactics to arrest, detain, and suppress the country's insurgents, the Iraqi government is not upholding its obligations under international law.

A stable Iraq has been a long and burdensome project largely shouldered by Iraqi civilians. With 300,000 civilians now displaced due to the violence in Anbar there is a plain need for all parties in Iraq's varied and dangerous rivalries to behave lawfully. For their part, the Iraqi government should look toward the ICCPR and bring its methods of detention and its treatment of civilians in conflict-ridden areas into line with international legal standards.

THE NEED FOR ACTION ON VIOLENCE TOWARD WOMEN IN SOMALIA

"Were you raped today?" Human Rights Watch reports this furtive question is now a common greeting in the streets of Mogadishu, Somalia. This mournful question draws much needed attention to the ugly proliferation of rape and sexual violence in the country. Somalia, a country whose name is nearly synonymous with chronic instability, is still embroiled in a 23-year-long civil war. As the country enters an intense period of reconstruction, with the 2012 inauguration of the first permanent, federal government since the start of the conflict, several humanitarian crises remain to be contended with. While any progress is welcomed as a step in the direction of long-term stability, Somalia remains, as it has for the past six years, the world's clearest example of a failed state. The absence of stability and an enfeebled national government engenders a landscape where widespread sexual violence goes largely unchecked and unpunished. These rampant sexual attacks are a preeminent point of concern for human rights practitioners. As a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Somali government is obligated to protect its citizens from sexual violence. Moreover, as a signatory to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), Somalia has indicated its commitment to eliminating sexual violence.

Few places in the world are in greater need of stability than Somalia. Since the start of the country's civil war in 1991, Somalia remains the bellwether for continued and protracted political violence as well as societal breakdown. There is hope, however, that with the establishment of a new permanent government, Somalia can start rebuilding and addressing the sexual

violence plaguing the country. The UN reported that in 2012 there were at least 1,700 cases of rape in the Internally Displaced Persons (IDP) camps throughout Somalia. Moreover, a staggering seventy percent of the perpetrators of these heinous crimes wore government uniforms and one-third of survivors were under the age of eighteen. Distressfully, this pattern continued in 2013. The UN Office for the Coordination of Humanitarian Affairs reports that in the first half of the year, there were 800 incidents of rape in the capital Mogadishu alone. Adding to the dire situation is the level of sexual violence exacted on the youth of Somalia. In 2013, the UN Children's Fund (UNICEF) and its partners provided aid to 2,200 victims of sexual violence under the age of eighteen.

Stories of women and girls being dragged from their tents, beaten, and gang-raped by security forces or armed militiamen are a common narrative in the IDP camps. A 2014 report by Human Rights Watch highlighted that these crimes go largely unreported or unpunished. Amnesty International concluded that investigations, prosecutions, and convictions for sex crimes are highly uncommon in Somalia, with some women suffering reprisals for coming forward to the authorities. These police practices compound the stigma that victims face when reporting a crime of sexual violence. Amnesty International also points toward the insensitive and intrusive nature of police questioning as well as the general unwillingness of police to investigate these types of crimes as a major humanitarian hurdle that the Somali government must surmount.

As a party to the ICCPR and the CAT, the Somali government is obligated to prevent the types of abhorrent activities that are proliferating throughout its territory. Article 7 of the ICCPR places personal security and integrity at the forefront of a state's human rights obligations. Specifically, Article 7 prohibits torture and other cruel, inhumane or degrading treatment, enshrining a universal protection against unwanted sexual activity. Tied with the general principle, Articles 2 and 26 prevent the state from discriminating based on sex through the enforcement of laws and prosecution of crime. Though Somalia only signed and has not ratified the Maputo Protocol, its signature indicates its commitment to promulgating and implementing laws that criminalize all forms of violence and unwanted sexual contact. Additionally, Somalia's signature on the Protocol should help the country establish effective procedures for punishing perpetrators of sex and gender-based crimes, while also creating an effective administrative structure for overseeing and implementing proper justice for victims.

International law requires that the Somali government protect its citizens from this epidemic of sexual violence. The Somali government can only comply with this universal legal principle under international law by putting to action laws protecting women and children from sexual violence.

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

THE RESPONSIBILITY TO PROTECT AGAINST THE SEEDS OF GENOCIDE TO PROTECT AGAINST THE REPUBLIC

Violence in the Central African Republic (CAR) drastically increased in March 2013 when the Seleka ousted President François Bozizé and installed Michel Djotodia. When Djotodia subsequently resigned in the wake of fresh violence, the CAR was left without a ruling leader. Throughout the political turmoil, civilians have reported instances of violence and of retaliatory violence leading John Ging, the United Nations operations director for the Office for the Coordination of Humanitarian Affairs, to state that he was "very concerned that the seeds of genocide are being sown."

On March 6, 2014, the UN High Commissioner for Refugees Antonio Guterres, indicated that the western part of CAR was ethnically cleansed of Muslims after a mass grave with at least a dozen decomposing bodies was discovered in Bangui, a town occupied by the Seleka rebels. Amnesty International also reported that armed Christian groups mutilated a number of Muslim corpses in Bangui. In the aftermath, Commissioner Guterres declared that "[w]e are witnessing a humanitarian catastrophe There is an ethnic-religious cleansing taking place." Some experts have called for both sides to withdraw and initiate peace talks. Others have requested military support, which has resulted in various troop deployments — over 2,000 committed by France, and over 6,000 committed by the UN. Although the use of force may be authorized, several non-violent mechanisms remain available that would fulfill the government's responsibility. The CAR was present and represented at the Summit by then President Bozize, signaling agreement.

The UN Security Council has the power to authorize the deployment of UN peacekeeping operations to conflict zones, as well as initiate other non-military actions under Chapter VII of the UN Charter. The Responsibility to Protect (R2P) was first presented at the Commission on Intervention and State Sovereignty, and has been supported as an emerging international norm after its reaffirmation in the 2005 Outcome Document of the World Summit. At the UN World Summit, all Member States formally accepted the responsibility to protect their respective populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Furthermore, when any state fails to meet their responsibility, the international community is responsible for helping to protect people threatened by such crimes.

Controversy, however, surrounds the peacekeepers' use of disarmament tactics. Disarmament, while falling under the auspices of Chapter VII, has left some communities vulnerable to attack by opposing forces. Joanne Mariner, a senior crisis response adviser at Amnesty International, raised concerns that antagonistic forces lynch persons who have been disarmed since they are unable to defend themselves. Disarmament efforts in CAR have not been able to target all groups, and even when some disarmament occurs, militia groups have continued to promulgate violence through alternative means. On December 17, 2013, for example, at least nineteen people, including children, were killed reportedly with machetes while being evacuated in a truck convoy toward Cameroon. According to report published

by Amnesty International, similar disarmament efforts in South Sudan led to an increase in violence toward civilian populations who were left unable to defend themselves.

With the recent history of genocide in Darfur, Rwanda, and Bosnia, Responsibility to Protect has gained momentum domestically as well as in the international community. President Obama recently noted that “preventing mass atrocities and genocide is a core national security interest and a core moral responsibility of the United States.” Philippe Boloipon, the Human Rights Watch UN Director, recently said, “what remains is the responsibility to protect . . . terrorized civilians.” Despite the clear policy incentive to pursue aggressive R2P measures, however, precise questions regarding R2P implementation loom over prospective international interventions. With violence continuing to escalate in the CAR, efforts to disarm militia groups and civilians alike will continue to raise questions of what measures fall under the auspices of R2P, and how such measures may be justified in light of longstanding evidence that disarmament may have disastrous effects on communities that are left unable to defend themselves. Overall, in the calculation of R2P policies, measures such as disarmament in the CAR must be carefully deliberated to avoid potentially disastrous consequences.

TORTURE IN SOUTH AFRICAN PRISONS: GOVERNMENT ACCOUNTABILITY AND PRIVATE SECURITY FIRMS’ INFLUENCE

Widespread rape, torture, and a culture of abuse plague many South African prisons that are run by both the South African government and by private security firms. Inmates have been victims of rape and sexual humiliation by fellow inmates, and HIV/AIDS has proliferated due to widespread sexual violence and limited access to health care. The degrading treatment is exacerbated by overcrowding, with as many as forty inmates to a single communal cell. Over-crowded prisons strain the sanitation, ventilation and medical care in the prisons, and in turn worsened health conditions. According to an IRIN report, when Michal Adams was violently raped by two men while being detained in Allandale Prison, the facility’s nurses and wardens ignored his claims, excusing it as, “what happens in prison.” Following the assault on Adams, prison staff denied psychiatric consultation. Adams was deprived of HIV testing for two years and after a subsequent diagnosis, he was also denied antiretroviral. Sexual violence and the spread of HIV is “regrettably common” in South Africa’s prisons, according to Lukas Muntingh, coordinator of the Civil Society Prison Reform Initiative. A report from Amnesty International also found that in private prisons security officers engage in violent tactics. Security officers beat inmates regularly and severely, causing broken limbs and external bleeding while others are stripped naked, doused in water, and then electrocuted.

South Africa, having ratified the UN Convention against Torture, is obliged to prevent and facilitate reconciliation for victims and survivors. Most recently, President Jacob Zuma signed the 2013 Prevention and Combating of Torture Act, intended to give effect to the Republic’s obligations under the UN Convention against Torture. Additionally, the South African legislature has taken steps to comply with international human rights standards. Sections 10 and 12 of South Africa’s Bill of

Rights guarantees the right to human dignity, security of the person, the right to be protected against violence, freedom from torture, freedom from cruel, inhuman or degrading punishment, and the right to bodily integrity. Section 7(2) of the Constitution obliges South Africa to protect and uphold constitutional rights and respect, protect, promote, and fulfill the protections enumerated in the Bill of Rights. Though such language ostensibly creates a regime of prisoners’ rights, experts complain that laws are lagging in application, and raise concerns over the government’s unwillingness to enforce these human rights standards in privately run prisons.

Under its constitution, South Africa has an obligation to prevent and prosecute crimes committed by their own nationals, as well as crimes committed in South African territory and against their own citizens. South Africa has the duty to inquire into acts committed by the private security firms. Although private actors are not subject to the jurisdiction of the Convention against Torture, insofar as they act under official sanction of the state, they share South Africa’s obligations to abide by the Convention against Torture. In addition, the state where they are operating must exercise control and oversight, such as establishing a licensing or regulatory system.

Although South Africa has made efforts to mitigate the effects of private security firms, Mary Rayner, South Africa researcher at Amnesty International noted that violence against inmates and impunity for human rights abuses remains prevalent. In response to criticisms, the South African government has deployed government teams to replace security firms with poor reputation for prisoners’ rights, such as G4S, according to the acting national commissioner of correctional services, Nontsikelelo Jolingana. Despite these measures, however, the BBC reported further concerns over the degrading treatment of prisoners in October 2013, increasing scrutiny of ineffective reforms and changes. When asked why preventative measures were not taken earlier, the commissioner could only state that the situation is being investigated. For now, the abject situation of prison overcrowding and abuse, accompanied with widespread impunity, reflects a poignant example of penal systems across the globe.

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

THE CONTINUING LEGACY OF SLAVERY IN MAURITANIA

The State Department’s 2013 Trafficking Report has raised fresh allegations of slavery in Mauritania. Almost twenty percent of Mauritians are affected by slavery, a practice that is especially difficult to eliminate due to the state’s history of religious and ethnic discrimination. The history of slavery in Mauritania began when the elite white Arab Moors invaded, enslaved, and assimilated the sedentary black Moors, taking control of the country’s economy and sectors of the government, military and police. When the black Moors were freed by the 1905 colonial decree abolishing slavery, they were often referred to as *Haratine*, from the Arabic word for “freedom.”

Although the Mauritanian society perceives black Moors as “free,” many remain with white Moor masters, as generations

of slavery have left some black Moors economically and psychologically dependent. According to Zekeria Denn of the University of Nouakchott in Mauritania, factors such as extreme poverty and misinterpretation of Islamic law allow such coercive relationships. Many who are still enslaved believe that Islam forbids breaking out of bondage, and that they are “divinely ordained” to be slaves. In urban centers, many work in exploitative domestic work environments in exchange for housing, medical services, and food. In rural areas, slavery persists among uneducated persons and those without marketable skills. Most Mauritanian slaves are subjected to cattle herding and domestic work without any pay.

Before the official criminalization of slavery in 2007, Mauritania issued a national order abolishing slavery. However, according to a 2010 report of the UN Special Rapporteur on Contemporary Forms of Slavery, the order ultimately proved to be ineffective due to its vague language. Special Rapporteur on Contemporary Forms of Slavery Gulnara Shahinian emphasized in the report that the order did not criminalize slavery, lacked effective implementation mechanisms, and failed to address the practice’s root causes.

The 2007 slavery law became a turning point in Mauritania’s long history of slavery. Article 3 of the Act prohibits “discrimination, in any form, against a person alleged to be a slave,” and slavery occurs when “any person reduces another person or a person under their care or responsibility, to slavery or incites them to forfeit their liberty or dignity, for the purpose of enslaving them.” The offense is punishable by five to ten years of imprisonment and a fine of up to \$4,000. The Act also acknowledges and outlines different slavery-related offenses, including “appropriating goods, products, or earnings resulting from slave labor, and prejudicing physical integrity or denying the child of a slave access to education.” Ramifications of, and compensation for, freed slaves are also provided in the form of social assistance and monetary compensation through criminal indictment of their owners.

The U.S. Department of State reported that the Mauritanian government began to provide some antislavery training for administrative officials and judges, but such efforts have been hindered by poor funding and inadequate attention. In 2012, there were no known charges brought against alleged slave owners, and an estimated number of freed slaves was unavailable. Because the 2007 law requires persons living under slave conditions to file a complaint against the alleged slave owner, prosecution is very difficult. The law further prohibits NGOs from filing on behalf of illiterate or uneducated slaves. While aware of common illiteracy among slaves, the government has not yet facilitated a program to train individuals on filing complaints. In January 2013, two slavery cases were brought to the forefront by an NGO. Although on record the investigations are ongoing, the alleged perpetrators were released soon after their arrest for reasons that their actions did not amount to slavery. To date, only one person has been convicted of the crime of slavery.

Mauritania is a State Party to international conventions directly relevant to the abolition of slavery. On November 17, 2004, the country ratified the International Covenant on Civil and Political Rights (ICCPR). Article 2 of the ICCPR advises ratifying countries to take adequate legislative measures to

ensure their people’s rights are properly protected. Article 8 specifically prohibits the practice of slavery, slave trade and forced or compulsory labor. Article 10 recognizes the overall inherent dignity of all persons. As a State Party, Mauritania also ratified the Slavery Convention of 1926 on June 6, 1986, acknowledging the importance of imposing penalties to those who facilitate slavery. Mauritania has made efforts to end the practice of slavery by ratifying international treaties and enacting national laws specifically tailored to combat slavery. Yet there are few indications that Mauritania has taken effective policy actions to eliminate the practice or create support mechanisms for newly freed slaves.

QUESTIONS OF JUSTICE FOR VICTIMS OF RAPE IN SUDAN

A nineteen-year-old Ethiopian woman who is a victim of gang rape has been imprisoned in Sudan and is now facing deportation. In August 2013, seven men lured the Ethiopian woman into an empty house and sexually assaulted her. The woman was three months pregnant at the time of the rape. Although Sudanese police found the woman shortly after the assault, they did not file a formal complaint due to the ongoing Eid holiday. The woman did not report the rape, fearing further threats of violence by the perpetrators. The seven young men filmed the incident and distributed it over the web through social media six months later. Upon discovery of the film, the police not only arrested the perpetrators, but also arrested the victim for adultery. While the Sudanese court may drop adultery charges after prosecutors establish her marital status, the issue remains in flux as sexual intercourse with a man other than a woman’s husband, even in circumstances of rape, may constitute a charge of adultery. In the interim, the court has found her guilty of committing “indecent acts,” for which she has been sentenced to one month in prison and fined the equivalent of \$960. While imprisoned, officials have denied her request to be moved to a medical facility despite the fact that she is nearing childbirth.

The initial adultery charge raised concerns among organizations such as the Strategic Initiative for Women in the Horn of Africa (SIHA). Traditionally, women convicted of adultery were subject to death by stoning. The Law of the New Sudan Penal Code of 2003 amended the old Criminal Act of 1991, prescribes imprisonment or fines for women who commit adultery. Despite legislative reform and the rare use of stoning as a form of punishment, in 2012, SIHA found that Sudan had sentenced two women, Intisar Sharif and Laila Jamool, to stoning for adultery. The courts, however, overturned the sentence on appeal.

The penal sentences for the men perpetrating the rape have also raised concern. Of the seven involved, six were convicted and sentenced for adultery and indecent acts — crimes punishable by monetary fines and corporal lashings. However, the Sudanese Attorney General barred the woman from reporting her rape, reasoning that she was the subject of an investigation for harming public morality. SIHA stated that arbitrarily denying a victim the ability to make a formal complaint “renders the perpetrators immune from accountability and violates the rights of the victim.” The victim also loses the chance to file a complaint in the future because it is illegal in Sudan to try a person twice with the same facts and evidence.

Hala Alkarib, the regional director of SIHA, commented that this case demonstrates the persistent difficulties female victims experience in reporting rape and seeking accountability for the perpetrators. Alkarib asserts that “there is an urgent need for [A]rticle 149 of the criminal code referring to rape to be reformed to protect victims and pursue justice.” Currently, Section 149 vaguely defines rape as “committing non-consented adultery,” which leaves open broad and arbitrary interpretations of the law. Furthermore, under the 1991 Criminal Act’s definition of rape, the victim alleging the rape may in turn be criminally charged for adultery or false accusation if she fails to provide sufficient evidence.

As a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights, Sudan is obligated to provide effective remedies and reparation measures for those whose rights and freedoms

have been violated. Despite the Sudanese government’s obligation to guarantee effective remedies under Article 2(3) of the ICCPR, the prosecution has filed fresh criminal charges against the woman for adultery under Section 146 of the 1991 Sudanese Criminal Act, which criminalizes “pregnant unmarried women,” along with charges that the woman violated Article 30-A of the Passports and Immigration Law of 1994. Even bleaker for the Sudanese criminal system, the victim is facing jail time for allegations of illegally entering the country. While her appeal against the new adultery charges has been filed, this case highlights the serious concerns regarding Sudan’s compliance with its international legal obligations to protect women.

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