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International Legal Updates

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INTERNATIONAL LEGAL UPDATES

UNITED STATES

UNITED STATES LINKED TO RENDITION PRACTICE IN EAST AFRICA

The U.S. government faces increasing criticism for engaging in extraordinary rendition — the practice of removing individuals in the custody of one country to another, where they are interrogated and often tortured on behalf of another nation. This tactic has been used by the United States in its War on Terror and has raised a number of instances in which U.S. officials have sanctioned, and arguably participated in, heinous human rights violations. What little is known of the U.S. practice implies involvement in the secret and illegal detainment of men, women, and children. Recent discoveries about activities acknowledged by U.S. and Ethiopian officials in East Africa shed light on a partnership with the governments of Kenya, Somalia, and Ethiopia that has led to the disappearance of at least 140 individuals fleeing violence in Somalia.

In September 2006, the United States launched several bombing raids in Mogadishu, Somalia, targeting Fazul Abdullah Mohammed, the alleged al-Qa'ida member and mastermind of the 1998 bombings of the U.S. Embassies in Kenya and Tanzania. Thousands of individuals fled for the Kenyan border. The Kenyan anti-terror police, who were created with U.S. funding, captured at least 150 individuals without acknowledgment of their detention or disclosure of their whereabouts, and placed the prisoners on secret flights departing from Kenya. Flight manifests documenting all passengers on board name 85 people, including at least 11 children and 13 women, including at least two pregnant women who gave birth while in custody, as well as Fazul Abdullah's wife. The prisoners were taken to Addis Ababa, Ethiopia and harshly interrogated by U.S. officials. Some prisoners were released and only one was charged by Ethiopian officials. The whereabouts of over 40 prisoners remains unknown.

In an interview aired on the U.S. television program Frontline, former U.S. Federal Bureau of Investigation (FBI) special agent Jack Cloonan stated that he believes the FBI and Central Intelligence Agency (CIA) not only knew about these events but were likely crucial in orchestrating them.

The Muslim Human Rights Forum filed for an injunction in Kenyan court in September 2007, challenging the legality of the detentions. Family members of the prisoners who spoke out publicly have disappeared. Meanwhile, in March 2008, President Bush vetoed legislation that would ban the CIA from using interrogation techniques more coercive than those approved by the U.S. military.

While the United States and the international community have debated the legality of U.S. interrogation techniques and detention of alleged terror suspects, the U.S. partnership in East Africa reveals U.S. complacency in the taking of women and children as hostages in the course of these secret investigations. Little is known about the treatment of the detained women and children, though the potential for additional human rights violations is chillingly present. Amnesty International denounced the actions of the United States and its East African partners and claimed that the detention of these individuals “violates the right to liberty and security of the person and the right not to be subjected to arbitrary arrest or detention.”

SUPREME COURT UPHOLDS EXECUTION BY LETHAL INJECTION BUT IMPOSES MORATORIUM ON DEATH PENALTY WHILE DECIDING CASE

On September 25, 2007 the Supreme Court (Court) granted *certiorari* to hear *Baze v. Rees*. In *Baze*, the Court addressed the constitutionality of a particular method of execution for the first time since 1878. The case did not address the constitutionality of capital punishment generally. Although the Court ultimately upheld the contested method of execution by lethal

injection, in granting *certiorari*, it enacted a *de facto* moratorium on executions until it issued its decision.

At question in *Baze* was whether lethal injection as method of execution violates the Eighth Amendment of the Constitution, which bans cruel and unusual punishment. The Petitioners in *Baze* were each convicted for murders in the state of Kentucky and sentenced to death. After exhausting all levels of appeal in state and federal courts, Petitioners filed a civil action in the Supreme Court, claiming that the method of lethal injection used by Kentucky “create[s] an unnecessary risk of pain and suffering.”

The execution protocol used in Kentucky involves the administration of a three-drug formula, intended to administer deadly potassium nitrate only after a prisoner is unconscious. The executioner first administers Thiopental, a short-acting anesthetic that is not widely used in medical practice today. Second, the executioner delivers pancuronium, which paralyzes the prisoner's voluntary muscles without numbing potential pain and suffering. If the prisoner wakes after the brief effects of the Thiopental wear off, he or she is fully conscious and capable of feeling pain, yet remains paralyzed and unable to communicate. Finally, the executioner injects the prisoner with potassium chloride, causing cardiac arrest. A doctor and coroner then verify the cause of death. Used alone or in combination with pancuronium, potassium chloride would cause a human to scream in pain before ultimately undergoing cardiac arrest.

The Petitioners argued that the Court should add an “unnecessary risk of excruciating pain” test, while the State of Kentucky argued that standard is too broad, and instead, a “substantial risk” of unnecessary pain test should apply.

In *amicus* briefs submitted to the Court, the American Society of Anesthesiologists stated that physicians are ethically prevented from participating in executions. The nonprofit Anesthesia Awareness Cam-

paigned requested that the Court consider the significant risk of “anesthesia awareness” — a condition in which the patient regains consciousness after anesthesia is administered but is unable to communicate.

On April 16, 2008, the Court announced its ruling in *Baze*. In the seven-to-two decision, the Court upheld the constitutionality of Kentucky’s lethal injection practice. To qualify as cruel and unusual punishment, the Court wrote, the practice must present a “substantial” or “objectively intolerable risk of harm.” According to the Court, the Petitioners failed to prove this standard. Since the Court issued its ruling in *Baze*, ending the seven-month moratorium on the death penalty, at least five states have conducted a total of seven executions.

Despite the ruling, an Ohio judge recently ordered that state to stop using a lethal injection practice similar to that contested in *Baze*, noting that although the practice was constitutional, it still would violate an Ohio statute requiring that execution by lethal injection “quickly and painlessly cause death.” Instead, the judge ordered the state to use a large dose of barbiturates in conducting executions.

A 2007 Gallup poll shows that 69 percent of U.S. citizens favor of the death penalty, up two percent from 2006. Currently, 37 states use lethal injection as the primary means of execution. Yet the number of executions has dropped in several states prior to the Court’s decision to hear *Baze* due to concerns about the methods employed.

In December 2007, New Jersey Governor John Corzine signed the first legislative repeal of the death penalty in the United States since 1965. According to the American Civil Liberties Union, this reflects a larger shift in national sentiment towards the death penalty. The international community shows a significant trend away from the death penalty: on December 11, 2007, the United Nations General Assembly called for immediate moratorium or abolition of the capital punishment. One hundred four nations voted in favor of the resolution, and only 54 voted against it.

INTERNATIONAL VIOLENCE AGAINST WOMEN ACT PROPOSED ON THE SENATE FLOOR

On October 31, 2007, U.S. Democratic Senator Joseph Biden of Delaware introduced the International Violence Against Women Act (IVAWA) to the Senate. The bill proposes creating an Office of Women’s Global Initiatives (Office), mandates that the President of the United States “develop and commence implementation of a comprehensive, five-year international strategy to prevent and respond to violence against women and girls internationally,” and requires special reporting mechanisms on the status of female refugees and other vulnerable populations. The Senate recommended IVAWA to the Senate Foreign Relations Committee, where it awaits debate. IVAWA is currently sponsored by 13 Senators and was drafted in collaboration with over 100 non-governmental organizations, including Human Rights Watch and the Global AIDS Alliance.

The Office would be located within the Department of State. It would coordinate all international women’s issues and direct and implement a comprehensive national strategy to prevent violence against women worldwide. From 2008 to 2012, the Office would receive \$10 million annually to administer such programs. It would be established within the U.S. Agency for International Development (USAID), where it would receive \$15 million annually from 2008 to 2012 to carry out USAID activities to improve the status of women.

The IVAWA would identify between ten and 20 ethnically different countries that face particularly high levels of violence against women; determine how this violence negatively impacts the growth of each country; assess each government’s efforts to control such violence; and develop programs to run in coordination with those governments. The goals are to improve women’s status with regards to the law, health, education, economic advancement, public awareness, and social norms.

When presenting IVAWA, Senator Biden stated that violence against women could no longer be viewed as simply a familial or cultural issue, but rather must be seen as a pervasive and deleterious human rights violation. Senator Biden hopes that

IVAWA will confront the crises of HIV/AIDS, human trafficking, female genital mutilation, rape, and the use of violence against women as a weapon during periods of conflict.

Perhaps acknowledging that serious issues of violence against women exist within the United States, Senator Biden conceded that no single country has the answer to this problem, nor does IVAWA propose to fix it. IVAWA represents a concerted effort to reduce the occurrence of violence against women in regions of the world where it prevents respect and dignity for human rights and hinders growth and development.

LATIN AMERICA

CUBA: FOREIGN MINISTER SIGNS HUMAN RIGHTS TREATIES

On February 28, 2008, Cuban Foreign Minister Felipe Pérez Roque signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), two major international human rights treaties that former Cuban President Fidel Castro opposed for over three decades. Among countless other rights, the two treaties include the rights to freedom of expression, association, and movement. Specifically, the ICCPR includes the right to freedom of association in trade unions or political parties and the right to vote in elections, but it excludes the right to live in a multi-party democracy. The ICESCR, includes the right to employment, fair wages, social security, education, the freedom to form and join trade unions, and the highest standard of physical and mental healthcare.

In his long standing opposition to these treaties, Fidel Castro argued that the ICCPR could be a tool of “imperialism” against Cuba. He also specifically opposed articles on education, arguing that they could lead to privatization, and on independent unions because he believed these types of unions only suited to capitalist countries. Despite Fidel Castro’s opposition, on December 10, 2007 — while Fidel Castro was still President — Pérez Roque announced Cuba’s intention to sign the covenants and open its doors to international scrutiny by the United Nations Human Rights Council’s Universal Periodic Review in 2009.

Through this process, the Council will review Cuba's fulfillment of its human rights obligations and commitments. Soon after Pérez Roque's announcement, Fidel Castro reminded Cubans of the reasons for his fervent opposition to the covenants. In February, four days after Raul Castro succeeded his brother as President, however, Cuba signed the covenants. After signing the covenants, Pérez Roque stressed that the government would register "reservations or interpretative declarations it considers relevant."

Amnesty International strongly supports the treaties and argues that, having signed them, Cuba should release the 58 individuals currently held as prisoners of conscience. Among those detained are Alfredo Pulido López and Normando Hernández González. Pulido López is a human rights defender and dentist who was ousted from his clinic and detained in March 2003 on charges of being a "counter-revolutionary." While in detention, Pulido López has developed more than seventeen different chronic illnesses, including osteoporosis, hypoglycemia, and chronic bronchitis. Likewise, Hernández González was arrested under Article 91 of the Cuban Penal Code, which condemns "acts against the independence or territorial integrity of the state" for criticizing state-run entities and services. He was sentenced to 25 years' imprisonment in March 2003. While in prison he has not only been denied proper medical attention, leading him to develop a serious gastrointestinal condition, but was also denied the right to go to Costa Rica after Costa Rican legislators obtained a humanitarian visa for him. Cuban activist groups, among them the Cuban Commission on Human Rights and National Reconciliation, say that the signing of ICCPR and ICESCR is positive news and that they hope that it marks a turning point for human rights in that country.

GUATEMALA: ÁLVARO COLOM OPPOSES THE DEATH PENALTY

The Guatemalan Congress passed the Law Regulating the Application of the Death Penalty to those Sentenced to Death in February. This bill gives the Head of State the right to decide whether to grant clemency to individuals on death row.

In 2002, Guatemala's Constitutional Court suspended the death penalty because the existing law was not explicit as to which body of government had the power to grant clemency. Guatemala has not applied the death penalty since June 2000 when it executed two members of a kidnapping ring. The Court ordered Congress to amend the law to specify which body has the authority to grant last-minute pardons to prisoners facing the death penalty. Six years later, Congress passed a bill giving the President that power. The law's passage also removed the obstacle to reintroducing the death penalty in light of recent public outcry over the murder of 11 public transportation drivers and assistants by youth gang members.

Advocates for the law, including former Presidential candidate Otto Pérez Molina, argue that the death penalty is necessary to deter violence. According to the United Nations, Guatemala is the third most violent country in Latin America, with violence responsible for at least 16 deaths daily. Once Congress passed the bill, international organizations, including Amnesty International, sent letters to President Álvaro Colom, urging him not to reinstate the death penalty but to seek better solutions to deter violence.

The law gave the President 30 days to decide whether to commute a prisoner's death sentence to the maximum 50-year prison sentence. If the President did not make a pronouncement in that time, the execution would go forward. After the law came into effect, 34 prisoners on death row would receive 30 days to ask for the President's pardon.

On March 14, however, President Colom vetoed the bill, stating that it violated principles established in Articles 2, 3, 15, 18, 19, and 46 of the Guatemalan constitution. In addition, the President acknowledged that Guatemala is party to the American Convention on Human Rights, which contains specific provisions relating to the use and extension of the death penalty and proposes that states that have abolished the death penalty do not reinstate it. He argued that this bill was unconstitutional because Article 46 of the constitution establishes that "in matters relating to human rights, the treaties and conventions ratified by Guatemala take precedence over domestic law." The President suggested that

the death penalty does not necessarily reduce violence, highlighting instances of increased violence immediately following the use of the death penalty in the United States. He concluded that to reduce violence, the criminal justice system must be more effective and criminal enforcement more pervasive.

Despite his fervent opposition, Colom's veto may be easily overturned. To overturn it, Congress would need a two-thirds majority — 105 of 158 votes. When Congress passed it in February, 140 members supported it.

SOLDIERS FOUND GUILTY OF KILLING COUNTER-NARCOTICS AGENTS IN COLOMBIA

On February 18, 2008, a Colombian judge found Colonel Byron Carvajal Osorio and 14 other members of the military guilty of aggravated homicide for a massacre in Jamundí, Colombia. This massacre occurred on May 22, 2006, when a unit of the Colombian army killed an informant and ten elite counter-narcotic agents to prevent the discovery of between 220 to 440 pounds of cocaine hidden in a psychiatric home belonging to the mafia. The informant led the ten counter-narcotics agents, who belonged to a U.S.-trained counter-narcotics commission, to the psychiatric center to find cocaine. A few months before this massacre, the Director of the judicial police praised the counter-narcotics commission for breaking up multiple drug rings, seizing over 4.4 tons of cocaine, and capturing over 200 traffickers, including many wanted for extradition to the United States.

Initially, the head of the Colombian army announced that the massacre had been a tragic case of "friendly fire" because the soldiers had confused the police unit for leftist rebels. Evidence collected immediately following the massacre, however, revealed that the informant and agents were unable to defend themselves from the illegal attack. Minutes after the massacre, the soldiers sent incriminating text messages later recovered by investigators. In response to the discovery of this evidence, Colombia's Chief Criminal Investigator Mario Iguarán, said that the deaths were not the result of a mistake but rather "a deliberate criminal decision," and that the army was "doing the bidding of drug traf-

AFRICA

LIBERIA CREATES SPECIAL COURT FOR SEXUAL VIOLENCE

fickers.” In addition, government officials collected 150 bullets and seven grenades. After examining the bodies, investigators declared that the men had not been killed while in combat but in an unexpected attack. Shortly after the massacre, Colonel Carvajal Osorio, two other officers, and twelve soldiers were accused of aggravated homicide.

Soon after this episode, human rights organizations demanded that those guilty of the killings, in particular high-ranking officers, be held accountable for their crimes. Human Rights Watch (HRW) and others charged that Colombia’s sentencing practices convey “the message that abuses are rarely, if ever, going to be punished.” In a letter to Colombia’s President Alvaro Uribe, HRW charged that in Colombia “low-ranking officers sometimes get punished, but hardly ever is a commanding officer prosecuted.” Based on international pressure for a prompt and honest trial, the judiciary held that a military tribunal was not competent to try these soldiers. Despite the judiciary’s efforts to promote efficiency, the trial lasted approximately twenty months, involved no less than 100 testimonies, and cost millions of dollars. During this time, President Uribe admitted before the Inter-American Commission on Human Rights in Costa Rica that “in Jamundí, the army had murdered some policemen.”

Two years after the massacre, Judge Edmundo López delivered his official verdict, finding that Colonel Carvajal ordered an ambush on the counter-narcotics agents and that the other 14 participants were responsible as co-conspirators. During the trial, the Prosecutor brought 33 witnesses and 417 photos demonstrating that the massacre’s aim was to protect cocaine from discovery. In early May, Judge López handed down a 54-year sentence for Carvajal, a 52-year sentence for his second-in-command, and 13 50-year sentences for the remaining participants. The maximum murder sentence in Colombia is 60 years. Equipo Nizkor, a regional human rights NGO, proposes that this massacre suggests a strong link between Colombian drug dealers and the military.

Liberia’s 14-year civil war displaced approximately 850,000 people and caused the deaths of about 270,000 more. During this conflict, rape and violence against young girls and women ran rampant; and despite Liberia’s peace deal signed in 2003, the violence against women has continued, and the perpetrators commit these crimes with impunity. A government survey conducted between 2005 and 2006 in ten of Liberia’s 15 counties reported that out of the 1,600 women interviewed, 92 percent reported having been victims of sexual violence.

In response to the escalating violence against women, Liberia’s Information Minister, Laurence Bropleh, told the Integrated Regional Information Network (IRIN) that the Liberian government has created a special court to deal with the rising rape cases, as well as other forms of violence against women.

In December 2005, the Liberian government enacted a new law criminalizing rape and providing sentences ranging from seven years to life imprisonment. Since then, according to government statistics, instances of rape have continued to increase, with about half of the reported cases being committed against girls between the ages of ten and 15. A December 2006 IRIN article reported that rapes against young girls and women occurred on a daily basis, with most cases going unreported in the news.

Regular courts currently do not address sexual violence because state prosecutors are busy with other cases. This has resulted in a slow progression of rape cases through the court system. In other instances, the victims of sexual violence are either deterred by the stigma associated with rape or are too scared to file complaints.

Advocacy groups, including the Association of Female Lawyers of Liberia (AFELL), have been advocating for the special court for two years. In November 2007, the United Nations Mission in Liberia (UNMIL) issued a report saying, “[t]he failure of the state to prosecute impacted negatively on the rights of women and girls to equal protection afforded by the

law.” The establishment of the new court, however, serves as a promising step for women’s rights.

Charlotte Abaka, UNMIL Independent Human Rights Expert, said that she is “encouraged” by the steps taken to create the special court and that “[t]he undue delay in prosecuting such cases will now be a thing of the past.”

CHILD SEX WORKERS IN GHANA

In response to the rising number of child sex workers in Ghana, the government has decided to crack down on the child prostitution epidemic. The Women and Children’s Affairs Ministry reports that while actual figures are unavailable, the number of child sex workers in Ghana is in the thousands. An estimated 20,000 children live on the streets in the nation’s capital, Accra. Dr. Obiri Yeboah, a sociologist at the Accra-Polytechnic Institute, believes that Ghana’s increasing urbanization and the collapse of the traditional extended family system has led to a rise in the sex trade.

Another factor contributing to the increasing number of child sex workers has been an increasing demand for such services. In February 2008, Ghanaian police raided the Soldier Bar brothel and arrested all of the 160 girls and women working there. The specific targets of the raid were 60 girls who were under the age of 16, who had been recruited by the brothel’s manager to service teenage clientele. Initially, the manager did not admit teenage boys into the brothel, but as the manager told reporters, “... after a while we realized we could make more money if we can meet their demands by supplying them with younger prostitutes of the same age, so we started recruiting child sex workers as well.”

The increased number of child prostitutes has also led to an increase in the number of young girls becoming infected with HIV/AIDS. The Ghana AIDS Commission estimates that around 25,000 children have HIV/AIDS. According to the Commission, with no protection and no say in whether their male clients use protection, the young girls “contract HIV/AIDS and often die in silence.” The Commission states that the rising number of children becoming infected with HIV/AIDS reflects the social

structure and poverty of the country, which has in turn laid “a fertile foundation for such brothels to thrive.”

In response to the crisis, the Ministry of Women and Children’s Affairs established programs designed to rescue, rehabilitate and reintegrate the young sex workers by placing them in centers where they can receive help. In conjunction with these efforts, the Ghanaian police launched a “war on child prostitution.” While such programs are a step in the right direction, they are not perfect. They are significantly underfunded, and the lack of personnel and accommodations for the young girls often makes it difficult to keep track of them. Consequently, many girls return to the streets to work in the sex trade.

The government plans to involve non-governmental organizations (NGOs) in its efforts, and to teach the girls vocational skills so they do not have to resort to the sex trade. A committee has also been formed to provide further funding to the NGOs. As Dr. Yeboah told IRIN, “[t]he solution starts with economic empowerment and an intensive educational campaign to get families to be more conscious of their responsibilities to these children.”

MIDDLE EAST

PALESTINIANS CHALLENGE HIGHWAY SEGREGATION IN THE WEST BANK

Highway 443, a major access road connecting Tel-Aviv to Jerusalem, has emerged as a contentious battleground in the Israeli-Palestinian conflict. Until recently, the road primarily served Palestinians, largely because it runs through the West Bank. In recent years as violence has escalated, Israel has restricted Palestinian access to Highway 443.

In March 2008, the Israeli Supreme Court issued an interim decision, accepting the idea of separate roads for Palestinians in the occupied areas. The Association for Civil Rights in Israel, one of the petitioners in the case, asserted that establishing separate highways for Israelis and Palestinians could be the beginning of legal apartheid in the West Bank. Palestinian petitioners argued that in accordance with the Fourth Geneva Convention, Israel, as an occupier, has a responsibility to safeguard the needs

of the Palestinians, who are protected persons. Since highway restrictions burden Palestinians in the Palestinian territories, for whom Highway 443 was originally built, petitioners argued that the segregated road system violated the Geneva Convention.

The Supreme Court’s one-paragraph decision calls on the army to give a progress report within six months on its effort to build separate roads and to compensate Palestinians because of the road restriction. But the court’s acceptance of separate roads for Israelis and Palestinians has stimulated controversy. In an op-ed in the Jerusalem newspaper *Haaretz*, David Kretzmer, an Emeritus Professor of International Law at Hebrew University in Jerusalem, criticized the “judicial hypocrisy” of Israel’s subjugation of the Palestinians. Kretzmer noted that while heightened security concerns may have forced a change in the road’s mixed use, Israelis should not be allowed to travel on a road that was primarily built for Palestinian use.

Highway 443 was first challenged in the Supreme Court in the early 1980s as an illegal expropriation of private Palestinian land. In a landmark ruling, Israeli Supreme Court Justices ruled that the road was permissible because it mainly served local Palestinians rather than Israeli commuters. Recently, however, the Israeli government has restricted Palestinians from using the roadway. In defense of implementing a two-tiered road system, the Israeli government argued that terrorism threats justified the exclusion of Palestinians from Highway 443. In particular, recent suicide bombings on the highway were cited as evidence of social harm. Some legal commentators within Israel have argued that the restriction serves not to reduce terrorism, but to reduce traffic to make the commute for Israelis more convenient. As an alternative to Highway 443, Israel is planning to build a new road within the West Bank that links the Palestinian villages with Ramallah. This road will be used to accommodate Palestinian travel.

Lack of access to Highway 443 has severely burdened the 30,000 Palestinians who live in surrounding villages. Because the highway connects these villages to Ramallah, a main city within the West Bank, the exclusionary policy greatly inconveniences many people. In one vil-

lage, A Tira, only 14 taxis have permits to travel the road, and only during daylight. Aside from the general inconvenience of not being able to use a main artery, by barring Palestinians from Highway 443, the Israeli government is impairing West Bank Palestinians access to necessary medical care. Instead of using the main highway, Palestinians now have to travel longer distances to reach services in Ramallah. While security interests are critical, the Israeli Supreme Court’s decision regarding the permissibility of segregated roads poses serious implications for the human rights of the Palestinian people.

ARBITRARY ARRESTS AND TORTURE IN LIBYA

At least 14 Libyans were arrested in February 2007 for planning to hold a peaceful demonstration in Tripoli. On February 1, 2007, political activists advertised the demonstration on news websites based outside Libya. The activists were arrested two weeks later, on February 16, 2007. Idriss Boufayed, one of the activists arrested, is an outspoken critic of the Libyan government’s extensive human rights violations. The members of the group who have been charged are accused of offenses including “attempting to overthrow the political system,” “possession of weapons and explosives with the intention of carrying out subversive activities,” and “communication with enemy powers.”

According to Amnesty International, 12 of the 14 Libyans arrested may face unfair trials before a newly-created State Security Court, and could be given the death penalty if found guilty. Although Libyan law provides for the presumption of innocence and the right to legal counsel, in practice, defendants often have little contact, if any, with their lawyers. The two remaining accused have disappeared since their arrests last year. The Libyan government has not provided any information regarding their whereabouts. Reports indicate that all of the men were held in solitary confinement for prolonged periods and that at least two of them have been tortured. During one interrogation session, these two men were allegedly punched and beaten with sticks, subjected to *falaga* (beating on the soles of the feet) and put in coffins to intimidate them. The men also lack access to necessary medical care.

As a signatory to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Libya must comply with international prohibitions against arbitrary detention, torture, and cruel, inhuman, or degrading treatment. The Libyan government is in violation of Article 5 of the UDHR; Articles 7, 9, and 10 of the ICCPR; and the CAT, for arbitrarily arresting these men and for torturing two of them. Under Article 5 of the UDHR, Article 7 of the ICCPR and the CAT, “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Subjecting prisoners to physical abuse constitutes either torture or cruel, inhuman, or degrading treatment. Moreover, confining individuals in coffins is unquestionably a cruel punishment that violates international law.

Article 9 of the ICCPR stipulates that “[n]o one shall be subjected to arbitrary arrest or detention.” Although the detainees have been charged with crimes, the offenses reported are arbitrary and have not been supported by any credible evidence. The charges merely mask the true purpose for the arrests: to suppress criticism of the government. Additionally, Article 10 of the ICCPR states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Prolonged arbitrary detention and torture indisputably violate this provision.

Amnesty International asserts that the men were exercising their right to freedom of expression and calls for their immediate and unconditional release. The organization has also urged the Libyan government to ensure that the men are receiving access to medical care and that the authorities conduct a thorough, impartial investigation into this matter.

SYRIAN SECURITY FORCES’ KILLING OF KURDS RAISES CONCERN OF UNNECESSARY LETHAL FORCE

On March 20, 2008, Syrian security forces shot and killed three Kurds and wounded at least five others at a New Year’s celebration. Human Rights Watch (HRW) asserts that the circumstances of the

shootings raise concerns that state security forces used unnecessary lethal force in violation of international law. About 200 people gathered on a road in the Western part of Qamishli and lit candles and a bonfire, around which some participants performed a traditional Kurdish dance. Firefighters extinguished the bonfire while police and intelligence officers fired tear gas canisters and live ammunition in the air to disperse the crowd. According to witnesses, security forces indiscriminately opened fire when the crowd failed to disperse.

Because none of the Kurds were armed or behaving violently, it is unclear what provoked the security forces to use deadly force. This, however, is not the first time that Syrian forces have used force to disrupt a Kurdish celebration. In March 2006, security officers arrested dozens of Kurds and used tear gas and batons to break up New Year’s festivities. In addition, in March 2004, 25 people were killed and more than 100 wounded when riots broke out between Syrian Kurds and Arabs during a soccer match in Qamishli. Nearly 2,000 Kurds were arrested by the Syrian security forces following the riots. Despite calls for Syrian officials to justify the use of lethal force, these authorities have thus far not issued an official statement on the most recent incident.

HRW maintains that Syrian security forces should comply with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These principles mandate that law enforcement officials exercise non-violent means before resorting to the use of force. Furthermore, force should only be exerted in proportion to the gravity of the offense, and lethal force only when necessary to protect life. Reports strongly suggest that the use of lethal force does not withstand the proportionality and necessity requirements. Specifically, the fact that the participants were unarmed and were not engaging in violent activity raises serious suspicion of an illegitimate state response. HRW has called on Syrian authorities to conduct an independent, transparent investigation into the shootings and hold accountable those individuals responsible.

EUROPE

TURKEY LIFTS HEADSCARF BAN IN PUBLIC UNIVERSITIES

In February 2008 the Turkish parliament passed two constitutional amendments, lifting the ban on headscarves in public universities. Although Turkey is over 99 percent Muslim, it has remained a secular state in line with the policies of its revered secular founder Kemal Ataturk. In keeping with its commitment to secularism, Turkey banned women from wearing headscarves while attending public universities and working in the public sector for two decades. Although this ban is based on a 1989 Constitutional Court ruling, it has only been strictly enforced since the 1997 military-led expulsion from power of Turkey’s first Islamist Prime Minister Necmettin Erbakan.

The ban is widely seen as unjust and unequally enforced. University rectors often tacitly allow some students to wear their headscarves, while prohibiting others, who for example, evade the rule by wearing wigs or wigs over their headscarves, from attending school. As a result of the ban, many women, including the daughters of Turkish Prime Minister Recep Tayyip Erdogan, choose to go abroad to pursue their higher educations. Since its rise to power in 2002, the governing Justice and Development Party (AKP) has been under pressure from its conservative base to lift the ban.

The change, which was proposed by the Islamic-rooted AKP, alters two articles of the Constitution, amending it to read that no one can be barred from education for reasons not clearly laid out by law and that everyone has the right to equal treatment from state institutions, including universities. President Abdullah Gul, who had his daughter wear a wig over her headscarf during the ban, ratified the bill. The legislation was prompted when the Prime Minister commented to the press in Madrid that “Even if wearing a headscarf is a political symbol, can you ban a political symbol?” Since this statement, the Nationalist Action Party (MHP), a hard-line group that has resisted reforms that would bring Turkey closer to EU membership, has continued to push the cause. The AKP formed an alliance with the MHP to pass the new legislation. The two groups, who control more than the two-thirds of the parliamentary

votes necessary to pass the amendment, struck a deal in late January.

The Turkish parliament began debating the amendments on February 6. The amendment passed an initial parliamentary vote that same day and was passed by a final vote on February 9. Parliament must now draft legislation, which will provide for the shape and type of the permitted headscarves. Nearly 100 of Turkey's 116 universities are still observing the ban.

President Gul, whose wife considered challenging Turkey's headscarf ban in the European Court of Human Rights, expressed his support for the amendment, stating that "beliefs should be practiced freely." The AKP claims that this is an issue of women's rights. Additionally, opinion polls indicate that two-thirds of the Turkish public support lifting the ban.

However, there has also been vehement opposition to the new amendment from groups including the judiciary, business organizations and academics, who claim that it is a step towards turning Turkey into a religious state. The military, which has overturned four civilian governments and has acted as a guardian of the country's secular system, has thus far only voiced its opposition to the amendments. In March, a prosecutor filed a case against the AKP for its anti-secularism, largely based on its support of the headscarf. A case has also been filed against the constitutional amendments as well. Public opposition has been most apparent at public protests, which have involved tens of thousands of people. The first took place outside the mausoleum of Ataturk, and the second occurred on February 9, when people gathered in Ankara to voice their dissent. Critics fear that lifting the ban threatens Turkey's existence as a secular state and compromises its chances at becoming a member of the European Union (EU).

Even supporters of the constitutional amendment have voiced concerns about its specificity. The amendment only allows women to wear one traditional kind of headscarf, which ties under the throat, while still banning other styles. This apparent mandate on fashion has drawn criticism spanning from women's groups to experts on the constitution. Further, lifting the ban will only affect public universities; the ban will still apply to women working in the public sector. Many view the narrow scope

of this change as indicative of the patriarchy of Turkish society and the place that women hold in it.

Although Ali Babacan, Turkey's foreign minister, claimed that this change is part of the movement towards fulfilling EU membership requirements, EU officials have said that this is a Turkish domestic matter. They have also expressed concern that in its haste to resolve the headscarf issue, the AKP has stalled on other reforms that are related to EU membership, including the passage of its new "civilianized constitution" and the amendment of Article 301 of the penal code, which outlaws insulting "Turkishness" and has marred Turkey's record on freedom of expression. Most importantly, the AKP has suspended parliamentary debate over a bill that would return state-confiscated property of religious minority groups as a result of its reluctance to upset the nationalist National Action Party (MHP), the third largest party in the Turkish parliament, which opposes such legislation.

Critics of the amendments charge that the AKP must prove its commitment to democracy. The bill now faces a legal challenge brought by The Republican People's Party (CHP) to the Constitutional Court in an effort to block this amendment.

POSSIBLE CHANGE TO ROMANIA'S FAMILY CODE THREATENS GAY RIGHTS

As one of the last European countries to decriminalize homosexuality, Romania has made great strides in promoting equality over the past decade. As a result of ten years of advocacy by human rights groups, the country repealed its law against "manifestations of homosexuality" in 2001. Since then, Romania has passed legislation prohibiting discrimination based on sexual orientation in employment and public services. Romania also allows individuals who have undergone gender reassignment to change their identity. Upon entry into the EU, Romania was required to recognize same-sex couples that were registered in other member states. A December 2006 poll by the EU, however, revealed that only 11 percent of Romanians approve of same-sex marriages.

Currently, Article 1(3) of Romania's family code, which dates back to 1953,

defines family in gender-neutral terms, stating that it is based on "marriage between spouses." A proposed amendment to this code would narrow the definition of marriage as exclusively between a man and a woman. The Romanian Senate's Judiciary Committee debated and adopted this amendment, which expressly bans marriage between same-sex partners. Romanian senators approved the amendment on February 13, 2008, and it will now be considered by the Chamber of Deputies.

The amendment has garnered support from many groups. Its largest supporter is the Greater Romanian Party, a nationalist, right-wing party led by former presidential candidate Corneliu Vadim Tudor. The party justifies the amendment as "defending the institution of marriage." Additionally, some religious groups have been instrumental in supporting the legislation. The Alliance of Romania's Families, formed last year, collected more than 650,000 signatures in support of the amendment. The amendment also gained international support from the World Congress of Families. Social Democratic Party Senator Serban Nicolae, who proposed the amendment, claims that the amendment would not infringe on European norms.

The legislation, however, has also encountered significant opposition. Human Rights Watch is one of its most outspoken critics. The organization's Lesbian, Gay, Bisexual and Transgender Rights Program stated that "these proposals not only deliberately discriminate against same-sex couples but threaten their families, including children." It characterized the legislation as "an insult to Romania's achievements elsewhere in overcoming discrimination." The organization sent a letter to government officials, urging them to reject the amendment. Sexual orientation-related-advocacy groups have followed suit by beginning their own letter-writing campaigns.

If the changes to the family code are implemented, the impact of this legislation is likely to be far-reaching. Human Rights Watch predicts that introducing inequality into the law will deprive many Romanian families of basic civil rights. Senator Gyorgy Frunda of the Democratic Union of Magyars (UDMR), a party that represents ethnic Hungarians in Romania, has voiced concerns that the amendment could result in Romania being brought before the European Court of Human Rights.

SOUTH AND CENTRAL ASIA

TAJIKISTAN: EFFORTS TO MODERNIZE CRIMINAL CODE MAY FALL SHORT OF INTERNATIONAL HUMAN RIGHTS LAW

In March Tajikistan modernized its criminal code to comply with international human rights laws by adopting an exclusionary rule. Now, evidence obtained through unlawful means, including torture or coercion, can no longer be used against the accused and will be excluded from trial. In 2007, the International Helsinki Federation Annual Report on Human Rights Violations and the United Nations Committee Against Torture (the Committee) reported frequent human rights violations in connection with arrest and detention procedures in Tajikistan. The Committee was particularly concerned that evidence gathered through torture by law enforcement officials was used in legal proceedings against the accused. The Committee reported that this was partially due to a lack of legislation prohibiting the use of illegally acquired evidence. The Government of Tajikistan responded by updating the criminal code. The updating process has been ongoing since Tajikistan independence in 1991.

Despite efforts to bring the law into compliance with the Convention against Torture (CAT), there are still deficiencies in the criminal code and within law enforcement methods that will make the application of the exclusionary rule difficult. First, the provision excluding illegally obtained evidence does not specify whether all evidence stemming from a substantial violation of the criminal code would be excluded or only the evidence directly acquired through illegal means such as torture and coercion. Furthermore, courts have not given any criteria to decide whether evidence is excludable or not. For these reasons, the exclusionary rule may not, in practice, protect the rights of Tajikistan's citizens.

Second, the definition of torture in Tajikistan's criminal code does not comply with the definition of torture under the CAT. Tajikistan's definition does not include the CAT's definition, "the infliction of pain and suffering by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity." Furthermore,

law enforcement officials are not trained on legal methods of obtaining evidence without the use of torture. While non-governmental organizations received, and reported to the Committee, a number of complaints of police torture, very few resulted in legal proceedings against law enforcement officials. These deficiencies point to the fact that there is no liability or penalty against law enforcement officials for illegal conduct. It is yet to be seen how Tajikistan's exclusionary rule will be applied and whether it will adequately protect the rights of those accused.

If there is no repercussion for using illegal means to obtain evidence, then there is no disincentive to law enforcement for using torture or threats to obtain evidence. Although pressure by the International Helsinki Federation Annual Report on Human Rights Violations and the Committee were successful in amending Tajikistan's Criminal Code, significant measures have not been taken by Tajikistan's Parliament to ensure that evidence obtained through torture and threats will not be used in legal proceedings against the accused.

BANGLADESH: HIGH COURTS EFFORTS TO UPHOLD CONSTITUTION QUASHED

On March 17, 2008, the Chief Justice of the Supreme Court of Bangladesh took away jurisdictional authority of two High Court judges after the judges challenged the Emergency Power Rules (EPR), which have been in effect since January 12, 2007. Officials have explained the judges' loss of some authority as a "routine reallocation of power." There is skepticism, however, as to the real reasons behind the Supreme Court's mandate removing jurisdiction from the High Court judges.

The mandate came just two days before the High Court was scheduled to hear a petition challenging the validity of military rule. The military government promised to hold national elections but has failed to do so since the emergency was promulgated last year. The High Court has also recently declared illegal the extortion case against former Prime Minister Sheik Hasina under the EPR and quashed the trial proceedings. The High Court held that since the EPR is unconstitutional, hearings on her extortion case cannot be held until the constitution is restored and emergency rule has ended.

The former Prime Minister was arrested on July 24, 2007, six months after emergency rule was declared. She is accused of extorting money from the Managing Director of Eastcoast Trading Pvt. Ltd., Azam Chowdhury, in exchange for granting Eastcoast a contract to set up a power plant in Bangladesh. On July 30, 2007 the High Court held that the EPR cannot be retroactively applied because the circumstances of Hasina's extortion case occurred before the EPR was promulgated. Moreover, the High Court held that it would be a violation of the Constitution if a crime committed before the promulgation of the EPR is tried under the EPR: only a crime committed after the EPR's promulgation could be tried under the EPR. The High Court further reiterated its power and authority to adjudicate cases relating to bail despite the EPR. In light of the Constitution of Bangladesh, the High Court held that the Emergency Rules limiting the right to bail are unenforceable against Hasina. On review, the Supreme Court overruled the High Court's decision in the extortion case and bail order. The Supreme Court held that the High Courts did not have jurisdiction to grant bail under the EPR.

Under Bangladesh's Constitution, a state of emergency authorizes the suspension of fundamental rights of citizens and bans all political activity. While the state of emergency might have been necessary last year, recently the High Courts, through judicial decisions, have been putting pressure on the military government to lift the state of emergency. In these decisions, the High Courts have held that the procedures and processes of the military under the EPR are illegal and void. The High Court judges, along with many other Bengalis, believe there is no longer a need for military rule. They are calling for a return to civilian rule and a restoration of the Constitution of Bangladesh. The Supreme Court, however, is upholding the EPR and showing no independence from the military government.

The emergency government, led by Fakhruddin Ahmed, took power on January 12, 2008 — one day after elections were cancelled. Bangladesh has a history of military rule. There have been 19 coup attempts in Bangladesh since it gained independence in 1971. In this latest promulgation of emergency rule, the High Courts have attempted to show judicial

independence from the military government. The High Court's efforts to hold the EPR unconstitutional and show their independence, however, have been frustrated by the Supreme Court's backing of the military government.

THE MALDIVES: NEW CONSTITUTION COULD MEAN END TO PRESIDENT'S 30 YEAR TERM

After 30 years of what many consider to be a dictatorship by President Maumoon Abdul Gayoom, the Maldives is in the process of promulgating a new constitution with democratic separation of powers between the executive, parliamentary, and judicial branches of government. Under the current constitution, there is no independent judiciary. The President holds the position as the highest judicial authority. Parliament is eager to draft a new constitution before November 8, 2008, the date President Gayoom's term expires. Constitutional reform will dramatically change the government in the Maldives and allow for free and fair elections for the first time in the country's history.

The Maldives is known for corruption and lack of democracy. Political parties were only legalized in 2005 after demonstrations calling for government reforms. The President appoints 29 members of Parliament from his party, the Dhivehi Raiyyithunge Party (DRP), and for this reason, the DRP holds a built-in majority in Parliament. The DRP drafted a proposal allowing President Gayoom to continue for another term after the expiration of his term on November 11, 2008. The opposition party, the Maldivian Democratic Party (MDP), however, argues that since Gayoom has held the Presidential office for 30 years, he should not be allowed to run for another term. This dispute cumulated on April 3, 2008, when the DRP walked out of the Parliament building just as Parliament was about to vote on the term-extending amendment. The DRP and MDP are now in the process of continuing negotiations over proposals in the constitution and are in a rush to employ a new constitution before President Gayoom's term expires.

The Constitution of the Maldives was last amended in 1997; however, it is believed that these amendments were made without fair consultation with Parliament.

This is the first time in 30 years that members of Parliament are consulting on every proposal presented by the parties.

It is widely believed that President Gayoom won the 2003 elections illegally. Opposition political parties are reluctant to approve a proposal that would allow him to run for another term. They believe if he is able to run, then there will be no chance for fair elections. The MDP instead demands that an interim government be put in place before elections to guarantee that the process is more fair and free.

EAST AND SOUTHEAST ASIA AND THE PACIFIC MINORITY RIGHTS ISSUES RESHAPE POLITICAL LANDSCAPE IN MALAYSIAN ELECTION

Malaysia's March 8, 2008 elections may be seen as a rebuff of its anti-minority policies and restrictions on political expression. Despite controlling all major print and broadcast media and limiting opposition parties' access to the political process, the ruling National Front coalition led by the United Malays National Organization (UMNO) lost its two-thirds majority in parliament and ceded control of five states. For the first time since 1969, the National Front will not have the supermajority in parliament necessary to amend the constitution at will.

The National Front's political setback was fueled in part by minority rights groups, such as the Hindu Rights Action Force (Hindraf), who assert that the government denies ethnic Indians their political, economic, and religious freedoms. Malaysia is comprised of three main ethnic groups: over half of the population is Malay, 23 percent is Chinese, and seven percent is Indian. Many Indians are upset by unequal funding provided to Tamil-speaking public schools and by the New Economic Policy (NEP), an affirmative action program that favors the Malay majority. The NEP was originally instituted in 1971 to combat social and economic disparities between Malays and ethnic Chinese. Today, minorities such as ethnic Indians feel discriminated against by policies that guarantee Malays discounts on new housing and place 30 percent quotas on government jobs.

The National Front has controlled the Parliament since Malaysia gained independence from the British in 1957. Emergency rule was declared in the wake of race riots in 1969 and civil and political liberties are limited to this day. The National Front continues to suppress political expression to maintain electoral dominance. The police restrict opposition groups from assembling freely by denying them permits to hold public gatherings of four or more people, while National Front leaders routinely organize public rallies. Prime Minister Abdullah Ahmad Badawi freely spoke in front of 20,000 supporters a week before the election, and opposition groups face excessive force from police. Police used tear gas and water cannons to break up a peaceful Hindraf march on February 16, 2008.

The National Front denies media access to those with opposing viewpoints. The Sedition Act and Printing Press Publications Act are used to stifle public criticism of government officials. All private television stations are owned by UMNO, and the government wields heavy influence over all major newspapers. Prime Minister Badawi, who serves as the Minister of Internal Security, can effectively shut down any publication by revoking its permit to operate.

PHILIPPINE SUPREME COURT UPHOLDS EXECUTIVE PRIVILEGE

The Supreme Court of the Philippines may have further enabled the Administration, led by President Gloria Macapagal Arroyo, to resist litigation filed against it for committing hundreds of extrajudicial killings and enforced disappearances, by upholding a claim of executive privilege on March 25, 2008. In *Neri v. Senate*, the court overturned a contempt citation and arrest order compelling former National Economic Development Authority Director General Romulo Neri to testify before the Philippine Senate. Neri refused to talk about conversations he had with President Arroyo regarding alleged bribery in a controversial deal, which awarded a Chinese telecommunications company a contract to construct the government-managed National Broadband Network. The Court held that as a member of the Cabinet, Neri's conversations with the President were privileged, and the Senate would

have to show “compelling need” and “the unavailability of the information elsewhere by an appropriate investigation authority.”

Human rights organizations in the Philippines, such as the Free Legal Assistance Group (FLAG), are concerned that the Arroyo Administration will use the ruling to claim executive privilege when confronted with allegations of rampant extrajudicial killings and kidnappings by the military. In 2006 President Arroyo vowed to eradicate the New People’s Army (NPA), a communist insurgent group, and a dramatic spike in extrajudicial killings followed. Military and paramilitary forces have not only targeted leftists, but also continue to attack groups or individuals who criticize the government. In 2007, the United Nations Special Rapporteur on Extrajudicial Killings reported that at least 100 journalists, labor leaders, land reform advocates, and church members had been kidnapped or killed by the military since 2005. Although the Arroyo Administration set up a taskforce to investigate these incidents, no member of the military has been convicted of extrajudicial killing or enforced disappearance.

In response to international criticism, the Supreme Court, in July 2007, created new rules establishing the *writ of amparo*, designed to prevent the government from stalling enforced disappearance cases. Usually, when a family member of a missing person files a *habeas corpus* petition, government officials simply deny that the person is in its custody. Now when a *writ of amparo* is filed, the government must produce evidence proving that the person is not in its custody. The government must also look for the person, and if the court finds the search effort insufficient, the government could be held liable.

Philippine courts have yet to enforce a *writ of amparo* case, and jurisprudence on the subject is still up in the air. Critics of *Neri v. Senate*, such as FLAG, fear that the expansion of the executive privilege doctrine may enable the government to resist *writ of amparo* claims, making the new human rights legal tool ineffective.

CHINA AVOIDS CONDEMNATION FROM UNITED NATIONS HUMAN RIGHTS COUNCIL ON TIBET

The United Nations Human Rights Council (HRC) failed to pass a resolution addressing the abuse of protesters in Tibet. In the HRC’s four-week session that concluded on March 28, 2008, China repeatedly blocked discussion of its recent crackdown on demonstrations.

Violence erupted in Tibet on March 14 after the Chinese government arrested Buddhist Monks, who staged a peaceful march outside the capital city of Lhasa on March 10 to commemorate the failed uprising of 1959. The Seven Point Agreement of 1951 officially incorporated Tibet into the People’s Republic of China but established an autonomous government headed by the Dalai Lama. Chinese land redistribution programs disrupted the delicate relationship with Tibet when noblemen and feudal lords stripped of their land organized a revolt.

After the March 10 arrests, protests spread to other cities in Tibet, western Chinese provinces, and Tibetan communities in Nepal and India. Riots broke out in Lhasa and other cities in the western Chinese provinces of Gansu, Sichuan, and Qinghai. Rioters flipped cars and torched shops belonging to ethnic Hans, who make up the majority in China. Chinese military police violently broke up the protests and opened fire into the crowds. The Chinese government claims that 18 civilians, mostly Hans, died in the violence, and that another 625 were injured, but Tibetan rights groups report more than 140 Tibetan civilian deaths. Independent news agencies have been unable to make an accurate casualty count because the Chinese government expelled foreign journalists from the region shortly after the demonstrations began.

Although delegations from the United States, Australia, and the European Union made declarations about the violence in Tibet at the HRC meeting, China cut off discussion by making procedural objections. HRC President Doru Costea upheld the objections by ruling that discussion of country-specific human rights situations was only allowed in special sessions dealing with individual countries. Although the HRC held special sessions addressing

specific human rights issues in Burma and Israel, China avoided such scrutiny.

China’s economic power is influential with many Asian and African countries, which make up more than half of the HRC’s 47 members. China provides political cover for other countries with poor human rights records, such as Sudan and Burma, by maintaining strong diplomatic and trade ties when the rest of the international community is levying sanctions. China continues to trade arms for oil with Sudan, debilitating other states’ embargo efforts and fueling the conflict in the Darfur region that has killed more than 200,000 people.

China remains the closest ally to the military junta that governs Burma, supplying the majority of its arms and military training. After the Burmese junta violently quashed large scale protests in late 2007, China blocked a resolution at an emergency session of United Nations Security Council calling for global economic sanctions. While the HRC passed a resolution condemning the junta’s actions in Burma, it remained silent on China’s actions in Tibet. **HRB**

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