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## International Legal Updates

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## INTERNATIONAL LEGAL UPDATES

NORTH AMERICA AND THE  
CARIBBEANMORE VIOLENCE FOR THE PEOPLE OF  
LOMAS DE POLEO

Since 2002, the community of Lomas de Poleo, a dusty neighborhood on the western outskirts of Ciudad Juárez in Chihuahua, Mexico has been fighting for ownership of land where many residents have lived for more than twenty years. The original settlers petitioned the national Agrarian Reform Institute for title in 1970, and five years later, the land was declared “Property of the Nation” by then Mexican President Luis Echeverría. Perhaps that would have been the most interesting part of the story of Lomas de Poleo had the prominent Zaragoza family not claimed the land as its own. In 2002, it became clear that the land was in a key geographic location for the western expansion of Ciudad Juárez and its sister city in the United States, El Paso. With much money to be made and only Lomas de Poleo in the way, the neighborhood has been at the center of major human rights violations committed by the Zaragozas, the local Juárez government, and the Mexican government.

Much has been written about the struggles of the people of Lomas de Poleo. Their grievances are too numerous to list, but include having their neighborhood surrounded by barbed wire and guard towers, their privately installed electricity and water systems destroyed, their homes bulldozed and burned (some with children inside), and residents beaten, harassed, shot, and intimidated. The local government and police force have done nothing to stop the death and destruction, and but for the involvement of international human rights groups and brave attorneys, the last twenty or so families of the 400 who once lived there would likely be dead or gone. Instead, with the assistance provided by the Mexican human rights law firm *Tierra y Libertad* and lawyers like Barbara Zamora and Digna Ochoa, the people of Lomas de Poleo have sought official recognition of their ownership of the land. Their claim is now before the Ciudad Chihuahua Agrar-

ian Tribunal, and after years of delay and stall tactics, it appears that the Tribunal may soon rule in favor of the remaining families.

Still, on what seems to be the eve of victory, the violence shows no signs of abating. On December 4, 2009, Adelaida Plasencia Sierra, a resident of Lomas de Poleo, was shot in the doorway of her home after two masked men came asking for gasoline. The police labeled the event a “common robbery attempt” although nothing was stolen and the men never entered her house. This latest, seemingly random act of violence shows that even in the face of defeat in the Tribunal, the community, police, and the mayor of Ciudad Juárez continue to accommodate and embolden the Zaragozas. As the families of Lomas de Poleo are either intimidated or enticed away from the area, time is clearly on the Zaragozas’ side. If the international human rights community fails to keep pressure on the situation, there will be no families left to defend the community’s legal rights. Few cases so well demonstrate the truth of the adage, “Justice delayed is justice denied.”

HAITI’S VULNERABLE CHILDREN  
AFTER THE EARTHQUAKE

In the days after the devastating January 2010 earthquake in Haiti, the United Nations Children’s Fund (UNICEF) issued warnings about the dangers that Haitian children would face as aid pours in and the nation tries to rebuild. Ironically, though much of that danger comes from the devastation caused by the earthquake, some of it comes as a by-product of the humanitarian efforts that seek to help those very children. With little governmental oversight and regulation before the earthquake, the destruction of nearly every government office in Port-au-Prince almost certainly means there will be even less protection for children, at least in the near future. Under the cover of the enormous amount of unregulated and unmonitored humanitarian work, child exploitation and trafficking may explode beyond what was already an endemic problem in Haiti. Perceiving

this threat, officials in Haiti suspended all extra-national adoption activities, even those approved prior to the earthquake.

Anecdotal evidence of this danger is already coming to light. Children have reportedly been offered for sale and kidnapped from hospitals in the weeks since the earthquake. The most sensational incident involving Haitian children occurred on February 4, when ten American Baptist missionaries were charged with “criminal association” and “kidnapping” for attempting to bring 33 Haitian children across the border to the Dominican Republic. They had no official papers for the children, many of whom were not even orphans, but rather were handed over by parents or relatives who believed they would have better lives outside Haiti. The American missionaries were reportedly warned by Dominican officials that without proper documentation, they could be detained and charged with child trafficking. While all ten were initially charged at their February 4 hearing, the Haitian judge ordered eight of them released on February 17.

The American missionaries and their actions represent the confusing collision of the humanitarian aid that the country so desperately needs with the questionable and destructive practice of speedy child adoption that has led to repeated and widespread violations of children’s rights in Haiti. Prosecuting the Americans to the fullest extent would have sent a message that anyone wishing to adopt a Haitian child must follow the local laws, possibly preventing some confusion for parents wishing to put their children up for adoption. However, such a message would be unlikely to address the underlying issues facing Haitian children, nor would it dissuade child traffickers who prey on Haitian children using less overt channels than the American missionaries. Ideally, the arrest of the Americans was not just an attempt at setting an example, but an instance of the government and judicial system working to protect its people and its children in ways that have been elusive in the past.

## STILL CASTRO'S CUBA?

It has been nearly three and a half years since Fidel Castro first delegated his powers to his brother, First Secretary of the Cuban Communist Party Raúl Castro. Though initially temporary, the transfer of power became permanent in February 2008 when Raúl Castro officially became President of Cuba. The new President Castro began his tenure with some welcome reforms, such as allowing greater cell phone use, permitting the purchase of consumer electronics, and allocating unused government land for private use. While these reforms have given previously unheard-of freedoms to the people of Cuba, they do not address the greater human rights issues endemic to the country. One major reform now possible for Cuba is to rejoin the Inter-American human rights system. The General Assembly of the Organization of American States (OAS) passed a resolution in June 2009, lifting the 47-year-old ban on Cuba's participation and allowing Cuba to begin the process of becoming a fully functioning member state. With no outside venue for addressing human rights violations in Cuba, full membership in the OAS would allow its citizens access to at least one level of supranational review, the Inter-American human rights system.

Over seven months have passed since the General Assembly removed the ban, and Cuba has made no sign of interest in participating in the OAS. Further, after two years of Raúl Castro's administration, it is ever clearer what the future of human rights in Cuba will be under his rule. Human Rights Watch (HRW) and the Cuban Commission for Human Rights and National Reconciliation issued their 2009 reports on the state of human rights in Cuba. Both reports note that the number of political dissidents imprisoned in the country has fallen over the past two years, from nearly 300 to just above 200 today. The reports also note that the number of people on death row in Cuba has dropped sharply. Still, as the reported number of jailed dissidents falls, the reported incidents of harassment and abuse continue to rise. The HRW report directly criticizes Raúl Castro's continuation of his brother's policies: "The government continues to enforce political conformity using criminal prosecutions, long- and short-term detentions, mob harassment, surveillance, police warnings, and travel restrictions."

The arrest of human rights activist Jorge Luis García Pérez, best known as "Antúnez," and his wife on January 19, 2010 while they were working to organize an independent library in Santiago de Cuba province, is a reminder of the continued repressive tactics of Castro's Cuba. Antúnez and his wife were released on January 21 without any formal charges filed against them. Antúnez has been detained briefly many times since his release from prison in April 2007 after 17 years as a political prisoner. Such treatment begs the question of whether short detentions will replace long ones as the new Castro regime's harassment of choice. Furthermore, with no venue like the Inter-American system to challenge such treatment, Antúnez has little legal recourse.

Time will reveal whether Raúl Castro will depart from more of his brother's policies. Ultimately, becoming an active member in the OAS again is a necessary reform for Cuba; doing so would give activists like Antúnez a legal voice where one is needed most. Whatever Raúl Castro may say publicly about Cuba fully participating in the OAS, the international community should not abandon the effort of pressuring Cuba to do so. At the very least, thanks to the General Assembly's Resolution, the choice is now Cuba's to make.

*Evan Wilson, a J.D. candidate at the Washington College of Law, covered North America and the Caribbean for this issue of the Human Rights Brief.*

## LATIN AMERICA

### A BALANCING ACT: TRENDS IN LATIN AMERICAN MEDIA LAWS

Both Argentina and Venezuela have media laws that seek to prevent small groups of private companies from controlling media outlets and to foster public support for the government. Such laws may be justified given the countries' history with *coup d'états* and corporate influence over the media. Nevertheless, the laws' severe restrictions have, in some instances, amounted to censorship. Meanwhile, Bolivia is considering similar reforms to its laws.

On its face, Venezuela's 2004 Social Responsibility Law appears to pursue legitimate governmental aims. The law requires

every station to air at least seven hours of national programming a day, which may include cultural and educational shows. Four of the seven hours must be produced by national companies or organizations. Moreover, the law indicates the number of times a day that media stations must play the national anthem. Regulations like these are meant to foster support for the national government by ensuring that the public hears significant amount of programs that portray the government and country in a positive light.

Opponents to the law argue that it hinders freedom of expression. The law provides for harsh penalties for non-compliance, including confiscation of airtime and imposition of fines. Further, it prohibits any reference to violence, illegal activity, or political uprising. Finally, in January 2010 President Hugo Chavez used the law to take six stations off air, including Radio Caracas Television International (RCTV), Venezuela's largest private media source. RCTV is known to be highly anti-Chavez and supported the 2002 *coup d'état* attempt against the President. Chavez justified taking RCTV off air by saying it did not broadcast the entirety of his lengthy speeches as required by the Social Responsibility Law.

Similarly, in December 2009 Argentine legislators passed the Audio-Visual Communications Law with the goal of diversifying the types of entities that own the media. The law requires that private companies, the government, and civil society each control one third of radio and television channels in order to encourage broader local participation and to diversify broadcasting. The United Nations has been supportive of the initiative, calling it the "democratization" of Argentina's media by making broadcasting accessible to a broader range of society.

Although the law has not yet come into force, it seems to regulate broadcasting through different means than the Venezuelan law. Whereas the Venezuelan law explicitly prohibits the broadcast of anything anti-government and pro-violence, the Argentine law, by redistributing control of the channels, limits previously existing stations from broadcasting to their full extent. For example, if a private station previously controlled forty percent of channels, and under the new law controls only a third, some of its programs must be

taken off the air. While promoting democratic principles through greater social participation in the media, the Argentine law provides the government with more regulatory power over the national media than it has previously had.

A third country, Bolivia, may also reform its media laws. During his reelection acceptance speech in September 2009, Bolivian President Evo Morales announced that he is considering new media laws that would redistribute control of broadcasting channels so that corporations do not own all of the channels. As Latin American governing parties try to foster national support, they are strategically turning to media outlets to help gather support, while also trying to ensure that the media is not used against them.

These regulatory trends in Latin America show efforts to democratize the media and make it accessible to groups outside of the powerful media corporations, but the regulations might at times come close to censorship. The right to freedom of expression is protected and prior censorship is prohibited by Article 13 of the American Convention on Human Rights, with an exception for material that might pose a threat to national security or incite lawlessness or war. Emerging Latin American media regulatory laws should be checked against the American Convention on Human Rights to ensure that government regulations do not interfere with the freedom of expression.

#### ACTIVISTS IN LATIN AMERICA MAKE PROGRESS ON GAY MARRIAGE

In December 2009, gay rights activists in Mexico and Argentina took steps to uphold the rights of same-sex couples. Mexico City's legislative assembly voted to change the definition of marriage, while in Argentina an official from Tierra del Fuego Province officiated over Latin America's first same-sex marriage even after a national judge filed an injunction prohibiting the couple from marrying in Buenos Aires.

Activists in each country have taken different approaches to the struggle for marriage equality. In Argentina the struggle began in the courts, while in Mexico City activists went directly to the legislature. Notwithstanding this strategic difference, the question of gay marriage has sparked

similar debates in both countries: both are predominantly Roman Catholic and struggle with whether gay marriage is moral.

The saga in Argentina began in November 2009 when Judge Gabriela Seijas from the Buenos Aires State Court declared the civil code unconstitutional and ordered the civil registry to grant Alejandro Freyre and José María di Bello a marriage license if they sought one. Specifically, Seijas declared Article 172 of the national civil code, which defines marriage as an agreement between a "man and a woman," unconstitutional. She reasoned that the Argentine Constitution does not define marriage as a contract between a man and a woman and that Article 11 of the Buenos Aires Constitution, which prohibits discrimination based on gender, made gender-based restrictions on marriage in the national civil code unconstitutional.

Shortly after Seijas issued her judgment, lawyers from Buenos Aires sought an injunction before national Judge Marta Gómez Alsina that would prevent Freyre and di Bello from marrying in Buenos Aires. Gómez disagreed with Seija's interpretation of the civil code, opining that determinations on the legality of marriage should be left to the legislature and issued the injunction as a precautionary measure because she claimed that Seija did not have the authority — as a member of the judiciary — to change the national civil code. Gómez argued that the ability to alter the civil code is a legislative action that remains exclusively with the national congress. Seija noted in her opinion, however, that her decision did not affect Argentina as a whole, but only the people of Buenos Aires, where her court has jurisdiction.

Activists in Mexico City, on the other hand, took a legislative rather than a judicial approach. Representatives voted in December 2009 to change the city's civil code, which previously defined marriage as a union between a man and a woman, to simply defining marriage as a union between two people. Despite opposition from the Catholic Church, lawmakers in Mexico City passed this and other progressive legislation, including a bill legalizing abortion during the first trimester of pregnancy.

Mexico's left-wing Party of the Democratic Revolution (PRD) led the legislative assembly in revising the civil code by a

vote of 39 to 20 with five abstentions. Opposition party leaders from the National Action Party (PAN), President Calderon's party, say they will contest the revision. The statute only applies to marriage within Mexico City. None of Mexico's states have passed similar amendments to their civil codes.

Although harder to achieve, Mexico City's legislation assures same-sex couples the right to marry, whereas attempting to legalize gay-marriage through a judicial opinion has had disappointing results in Argentina. The legislative approach codifies the right to same-sex marriage and makes it a right for all. Mexico City's bold action should be commended and taken as an example by its neighbors throughout the Americas.

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#### SUB-SAHARAN AFRICA

##### BOTSWANA'S OLDEST RESIDENTS MAY RESORT TO ICJ, CLAIMING GOVERNMENT IS FLOUTING THEIR LEGALLY PROTECTED RIGHT TO TRIBAL LANDS

The Bushmen are the oldest inhabitants of sub-Saharan Africa, with ancestors dating back some 20,000 years. Despite their constitutionally protected right to live and hunt on the Central Kalahari Game Reserve (CKGR), the government of Botswana continues to deny the Bushmen the right to access water and hunt on the land.

On January 18, 2010, Roy Sesana, leader of the First People of the Kalahari, declared that peace talks with Botswana's president Ian Khama were unsuccessful and that the Bushmen are ready to take their case to the International Court of Justice (ICJ). The ICJ has authority under the United Nations Charter to issue advisory opinions to states regarding human rights violations. In order to pursue such an advisory opinion, the UN Secretary-General or another authorized organization would have to file a request on behalf of the Bushmen. Sesana accuses the government of ignoring the 2006 High Court decision that granted the Bushmen the right to live, hunt, and access water on the CKGR. Attempts to resolve the conflict

in domestic courts have also failed, after the government violated the 2006 ruling and failed to comply with subsequent rulings concerning livestock confiscation and hunting permits.

The Bushmen reside in the CKGR, which was created in 1961 to protect their traditional lands and to help preserve the wildlife. However, after diamonds were discovered on the reserve in the 1980s, major conflicts developed between the Bushmen and the government, which many claim has tried to clear the Bushmen off the land in order to allow diamond miners freer access. Land evictions in 1997, 2002, and 2005 pushed almost all the Bushmen on the Kalahari Reserve off their lands into resettlement camps. To force people to relocate, the government also dismantled the Mothomelo water borehole inside the CKGR and stopped delivering water to Bushmen who lived in more distant areas on the reserve. Without access to the borehole or the water deliveries, the Bushmen could no longer survive on the CKGR.

In 2006, after the longest and most expensive court case in Botswana's history, the split High Court ruled that the government's actions in evicting the Bushmen were "unlawful and unconstitutional" and ordered it to allow the Bushmen to return to their land and have access to water and hunting permits. The swing vote was delivered by Judge Mpaphi Phumaphi, who stated that stopping food rations and depriving the Bushmen of hunting licenses was equivalent to condemning them to "death by starvation." The ruling ordered the government to comply with Article 14 of Botswana's constitution, which protects the Bushmen and allows them to live freely in the reserve.

Since the 2006 landmark decision, Botswana's government has evaded the ruling and made it almost impossible for the Bushmen to live peacefully in the reserve. Over fifty Bushmen have been arrested since the court ruling for attempting to hunt inside the reserve. Despite the court's holding that Bushmen have a legally protected right to hunt inside the CKGR, Roy Blackbeard, the High Commissioner from Botswana to the United Kingdom, recently compared allowing the Bushmen to hunt for food to feed their families with allowing people to kill animals at the London National Zoo. Additionally, Dikgakgamatso Seretse, the Minister of

Defense, Justice, and Security agreed that denying the Bushmen the ability to hunt was unconstitutional, but maintained that the Bushmen do not have automatic rights to hunt and must rather apply for permits. However, since 2001 the government has denied every Bushmen who has applied for a Special Game License to hunt.

Since the Bushmen returned to the CKGR after the 2006 ruling, the government has denied them access to the boreholes they previously used for water, forcing them to travel 300 miles to collect water for their communities. Of the Bushmen who have been brave enough to return to their land, at least one person has died from dehydration. The government consistently claims that its actions are based on environmental concerns and that boreholes should only be used for wildlife. However, a safari company was recently allowed to build a swimming pool on the reserve at a tourist lodge supposedly designed to give visitors a true "Bushman experience." Tiffany and Co. is also partnering with the Botswana's government to build new boreholes on the CKGR for the exclusive use of wildlife. Not only has the government explicitly refused to let the Bushmen access these new boreholes, it has further denied the Bushmen the right to drill a borehole at their own expense. The government has also said that Gem Diamonds, a company which is in the process of being approved for mining, will be able to drill boreholes to clean diamonds, a process that requires billions of gallons of water.

Water and access to the CKGR are crucial to the Bushmen's survival and the continuation of their way of life. The government is flagrantly violating the ruling of its own judicial body by continuing to discriminate against the Bushmen and deny them access to water. It is now up to the international community to rebuke the government of Botswana and make it conform to its own law.

#### **SOUTH AFRICAN FARMERS SUE ZIMBABWEAN GOVERNMENT OVER FARM SEIZURES**

Three white South African farm owners, Louis Fick, Michael Campbell, and Richard Etheredge, are poised to challenge Zimbabwe's controversial land reform program in South Africa's High Court of Pretoria. The week of January 22, 2010, the

civil rights group AfriForum filed papers on behalf of the farmers against Zimbabwe, challenging its defiance of a 2008 Southern African Development Community (SADC) decision that the Zimbabwean land reform program violated international law and was racially discriminatory. The case is scheduled to begin on February 23, 2010 and could lead to the Zimbabwean government's assets in South Africa being attached so that farm owners can recover some of their losses. The farmers' attorney, Willie Spies, stated that if the case succeeds, it would set a precedent for other dispossessed farmers to claim damages for lost property in South African courts.

Since 2000, Zimbabwean president Robert Mugabe has implemented a land reform program that has displaced approximately 4,200 white farmers and affected up to 60,000 workers and their families. In late 2009, Zimbabwe and South Africa signed the Bilateral Investment Promotion and Protection Agreements, which South African government officials promised would protect South African interests under the land seizure program. However, evictions have actually increased since the agreement was signed, with at least seventeen farms affected in January 2010 alone. So far, South African government officials have denied requests to use the agreement to protect their citizens' property rights, stating that the agreement is unenforceable until it is ratified by the Zimbabwean parliament.

Section 16B of Zimbabwe's constitution provides that "no compensation shall be payable" for land that is forcibly taken for agricultural settlement and land reorganization. Even though SADC declared the provision illegal in 2008, the Zimbabwean government has continued to seize land without paying the former owners. On January 26, 2010, Justice Bharat Patel of Zimbabwe's High Court declared that, while Zimbabwe would normally recognize SADC judgments, this ruling directly contradicts Zimbabwe's constitution and is unenforceable as a matter of public policy.

The violence and lawlessness of aggressive land takeovers in Zimbabwe is alarming. At least eighteen people have been murdered during violent evictions since 2000. As recently as December 2009, farm owner Don Stewart was strangled and burnt to death in his home. On January 12, 2010, the Smit family was locked inside

their home for over a week without water or electricity while a mob, bussed to the farm by a government official, camped outside and demanded that the family give up its property. A November 2009 report by a coalition of Zimbabwean agricultural organizations claims that during land evictions, 65 percent of dispossessed farmers have been tortured according to the United Nations Convention against Torture definition.

Although many takeovers are orchestrated by high-ranking officials in Mugabe's government, the land evictions are controversial even within the government. In April 2009, after a farm was seized and given to President Mugabe's biographer, the Zimbabwean deputy prime minister, Arthur Mutambara, denounced the takeover and demanded the farm be returned. Although his demands were disregarded and the former owners were chased off the land, Mutambara continued to argue that land takeovers scare off foreign investors and lead to economic instability.

Mutambara is not alone in contending that the economy has suffered because of land reform. The Commercial Farmers Union (CFU) claims the land reform program has led to non-productivity of eighty percent of formally cultivated land, leading to a U.S. \$12 billion loss in agricultural production over ten years. The United Nations Famine Early Warning System Network has also reported that between January and March of 2010, 2.2 million Zimbabweans may be in need of food assistance. CFU blames the food shortages on the dramatic decrease in food production since the land takeovers began in 2000 — a logical conclusion considering there has only been one drought since the initiation of the land reform campaign.

Even if AfriForum wins the current litigation in South Africa, evictions of commercial farms are unlikely to stop: of the three hundred still operating in Zimbabwe, 152 are already being targeted. However, the ruling could find Zimbabwean officials in contempt of South African law if they refused to appear in court or pay any judgments, and may provide dispossessed farmers with an avenue to receive compensation for land that has been taken from them. Considering that the government ignored the SADC ruling and domestic court decisions, this may be the most effective remedy farmers can expect.

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## MIDDLE EAST AND NORTH AFRICA

### TURKISH CONSTITUTIONAL COURT BANS KURDISH POLITICAL PARTY, TURKEY'S LARGEST MINORITY GROUP LOSES ITS POLITICAL VOICE

Thousands of protestors took to the streets in southeast Turkey after the Turkish Constitutional Court announced its decision to ban the Democratic Society Party (DTP) on December 11, 2009. The DTP was the only legally recognized pro-Kurdish party in Turkey; Kurds make up about twenty percent of the Turkish population. Officers used pressurized water and gas bombs to quell the protests in the Hakkari Province which continued for days after the initial announcement. The DTP is the 27th political party to be banned by the Turkish Constitutional Court.

Along with banning the party, the Court also barred 37 party members from participating in politics for five years. It justified its decision by citing violations of the Law of the Political Parties and Articles 68 and 69 of the Turkish constitution. These articles state that political parties shall be permanently dissolved if they are in conflict with the indivisible integrity of Turkey's territory or incite citizens to commit crime. The Court accused the DTP of connections with the Kurdistan Workers' Party (PKK), a party that was banned and has since been considered a terrorist-separatist group by the Turkish government. The chairman of the Court, Hasim Kilic, stated that the party was banned because "it had become a focal point of the activities against the country's integrity."

This decision will harm recent efforts by the Turkish government to improve relations with the Kurdish community. As recently as November 2009, the first Turkish Foreign Minister entered the Kurdish region of northern Iraq since the birth of the Republic, the government announced proposals to reduce the sentences of boys associated with the PKK, and members of the PKK offered themselves to the Turkish authorities as a symbol of peace. These were considered to be important steps in improving the Turkish government's relationship with its considerable Kurd-

ish population. Prime Minister Erdogan criticized the Court's ruling, arguing that individuals should be punished for their activities rather than entire political parties.

The Laws of the Political Parties and the Court's trend of banning parties have also been extensively criticized by the European Union. Turkey has been vying for EU membership since 1987. The Venice Commission on the Council of Europe and the European Convention on Human Rights both dictate that parties can only be banned for inciting violence. In the case of the DTP, there has been no evidence that any of its members have promoted violence in any of their political activities, which makes the Court's decision in violation of Articles 10 and 11 of the European Convention on Human Rights, to which Turkey is party. The Court's unanimous decision to ban the DTP not only threatens the possibility of Turkey's EU membership but also allows for further violations of the freedom of expression and democracy.

### GAZA CAGED

On January 20, 2010, the UN Aid and Association for International Development Agencies called for the immediate opening of Gaza's borders in light of the escalating crisis that threatens the area. In direct contravention to this request, Gaza's borders will soon be further blocked. Early this year, Israel announced plans to build a wall on its southern border, and Palestinians protested the construction of another wall that Egypt has just begun to build on its Rafah border. With the completion of these two walls, Egypt and Israel will have effectively caged off the Gaza strip, preventing Palestinians in Gaza from leaving and keeping out the supplies that are smuggled through the border.

It has been a year since Egypt was harshly criticized for closing its border to Palestinians desperate to escape during Israel's offensive against Gaza in the winter of 2008 to 2009; the construction of this wall is drawing the same kind of criticisms. Egyptian officials have explained that the wall is necessary to defend Egypt's national security, but it is widely understood that the wall is intended to halt the smuggling that occurs underneath its borders every day. The steel wall is to run one hundred feet deep, blocking the estimated 400 tunnels that run underneath the Egyptian-Gaza border.

Israel too, for the purposes of national security, is building a wall on its southern border. In addition, Israeli Prime Minister Benjamin Netanyahu announced that the wall is intended to protect the “Jewish character of the state.” Thousands of African migrants cross the border from Egypt into Israel every year, many of whom are asylum seekers, hailing from Ethiopia, Eritrea, and Sudan. The journey to Israel is often very perilous; seventeen African migrants have been ordered shot at the border by Egyptian security since May 2009.

These walls suggest the possibility of serious humanitarian problems. Once completed, the two walls will indirectly link up near Rafah, Egypt; it is speculated that eventually the whole Gaza strip will be surrounded by one single wall. Caging in the Gaza strip will likely foster an explosive atmosphere among residents. There have already been casualties associated with the project, as violent protests have erupted along the site of the walls.

Since the Israeli blockade began in 2007, Gazans have come to rely on the U.S. \$1 million worth of goods smuggled through the tunnels every day. The blockade limits basic necessities like food, medical supplies, construction, and fuel from entering Gaza. With no other option, these same goods must be smuggled through the tunnels. The tunnels have helped deter a humanitarian crisis for those isolated on the 360 square kilometer strip. By blocking the tunnels, Egypt will be denying Palestinians the goods they desperately need.

Further, the aim of these protective measures may fail to prevent and, instead, exacerbate the existing problems. Migrants are likely to continue trying to enter Israel through more perilous routes, and smugglers may try to construct deeper tunnels. Israel has international obligations under Articles 55 and 56 of the Fourth Geneva Convention to ensure that residents in Gaza have access to food and medical supplies. With the construction of these walls, not only are Israel and Egypt evading their international obligations, but the walls may lead to more problems by forcing people to seek desperate schemes to obtain relief.

#### AFTER HESITATION, IRAQ ELECTION BAN IS REINSTATED

On February 13, 2010, Iraqi officials confirmed the decision by the Iraqi Justice

and Accountability Commission to ban more than 500 individuals from participating in the March 7 elections. This decision quickly undermined the hope for free and democratic elections sparked when an Iraqi appeals court suspended the voting ban on February 3. Candidates had just three days to appeal the decision; only 177 actually exercised that right, and just 28 of them were granted permission to participate in the elections. The original ban, announced in January, was widely protested domestically and internationally. Most of those blacklisted come from the Sunni community, including fifteen political parties, popular Sunni politicians, and original drafters of the Iraqi constitution. The most recent confirmation of this decision may exacerbate the country’s unstable political climate, which has been rocked with sectarian violence for the past seven years.

The constitutionality of the original ban is dubious. The standards that were used to bar participation were not transparent, and the commissioners involved had yet to be approved by the Iraqi parliament, as required by law. Beyond the domestic legality issue, Iraq has an international obligation under Article 25 of the International Covenant on Civil and Political Rights to allow its citizens to freely elect their representatives. Most Sunni Arabs boycotted the parliamentary elections in 2005. As a result, there is a disproportionately high representation of Shiite and Kurdish Iraqis in the Council of Representatives; approximately 35 percent of Iraqis are Sunni but they comprise less than 20 percent of members of the Council of Representatives. Because of the boycott, many Sunni leaning electors did not have the opportunity to elect prominent Sunni candidates.

The Commission’s decision is an extension of its overall de-Baathification efforts. The policy, first promoted by U.S. administrator of Iraq Paul Bremer, was implemented in an effort to erase all traces of Saddam Hussein’s regime. Its initiatives included the dissolution of all branches of the Iraqi government that were Baathist in nature and the implementation Article 7 of the Iraq Constitution, which bars political parties that promote Baathism. Most of the candidates and parties that were banned had ties to the pre-2003 Baath party.

The de-Baathification process has been criticized by human rights proponents, who

argue that it punishes individuals who were innocently associated with or obligated to join the Baath party. Not joining meant forfeiting basic employment, health, and education rights because the party was the political entity promoted by the authoritarian government of Saddam Hussein. Most members were teachers and administrative figures with virtually no ties to Saddam Hussein or his politics. The ban further isolates Sunnis in an already polarized political system.

The March elections are considered a litmus test for the national reconciliation process. Since the announcement, a Sunni female suicide bomber killed 54 and wounded 117 Shiites on pilgrimage in Iraq; most recently on February 3, another Sunni suicide bomber killed twenty Shia pilgrims. If recent events are an indicator for the future of reconciliation, the court’s decision may escalate the sectarian tensions that already plague the country.

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## EUROPE

### RUSSIA PROMOTES JUSTICE BY RATIFYING PROTOCOL 14 OF EUROPEAN COURT OF HUMAN RIGHTS

With a vote of 392 to 56, Russia’s parliament, the Duma, ratified Protocol 14 to the European Court on Human Rights (ECtHR) on January 15, 2010. The Protocol is part of a new set of reforms aimed to streamline the work of the ECtHR. Since 2006, Russia has been the only state out of 47 in the Council of Europe (CoE) to oppose Protocol 14. The reforms are a response to the growing backlog of cases in the ECtHR, partly due to the ongoing ascension of Eastern European countries to the European Union. Although many of the reforms proposed by Protocol 14 have already been implemented by most of the CoE Member States through the adoption of an interim protocol last year, Russian late ratification allows the Court to implement faster and simpler procedures.

In 2006, President Vladimir Putin sent Protocol 14 to the Duma for review, but concerns over the Russian Federation’s national interest and sovereignty proved obstacles to ratification. According to

Aleksei V. Makarkin, a leading analyst at the Center for Political Technologies, a Moscow policy research group, Russia's decision to ratify Protocol 14 was brought on by a change in atmosphere in the capital. Makarkin suggests that "[Russia] no longer [has] the feeling that Europe wants to build revolutions here."

European ministers' recognition of Russian complaints regarding the reforms also prompted Russia to ratify Protocol 14. One of the conditions set by Russia before ratifying the Protocol was a guarantee that one out of three judges presiding over cases at the ECtHR will be a national of the state against which the legal claim is brought. This means that at least one Russian judge will review complaints against the Federation. As a result of this compromise, the ECtHR cannot investigate complaints before cases are formally accepted by Russian judges, and the ECtHR could not adopt new powers to force the implementation of the court's rulings. This compromise was needed because, without Russia's acceptance of the reforms, the CoE was powerless. However, no changes were made to the Protocol itself during the CoE's negotiations with Russia.

The implications of this ratification are numerous. First, it will streamline the workload encumbering the ECtHR. Up to this point, failure to ratify the Protocol meant that it took approximately four to five years to process a case, which is significant given that one-third of the cases pending are either from Russia or implicate Russia in some way. Protocol 14 reforms aimed at simplifying the procedures of the Court include: screening applications through a national court before proceeding to the ECtHR, having one judge decide the admissibility of a case, and merging multiple complaints against the same state in certain circumstances. Although new procedures will not resolve all problems resulting from the flood of applications to the Court, they will promote efficiency.

Second, the ratification is an important step in strengthening the Court's role in upholding human rights across Europe and providing all Europeans with better access to justice through the Court. Third, Protocol 14 enables the CoE Committee of Ministers to bring states before the ECtHR for failing to implement the Court's judgments. For this reason, ratification of the Protocol could force Russia to implement

ECtHR judgments on abuses in Chechnya. In more than 115 rulings, the Court found Russian officials responsible for the disappearances of human rights activists, extrajudicial executions, and torture. Although Russia paid monetary compensation to the families of the victims, as required by the ECtHR, it failed to effectively investigate these crimes and hold the perpetrators criminally accountable.

For instance on July 15, 2009, the leading human rights activist in Chechnya, Natalia Estemirova, was kidnapped and murdered. Less than a month later, Zarema Sadulayeva and her husband Alik Dzhabrailov, activists for the Save the Generation organization in Chechnya, were kidnapped from their office and found murdered the next day. In total, four Chechen human rights activists were killed in 2009, and their murders have yet to be effectively investigated and prosecuted. The ratification of Protocol 14 brings hope that crimes in Chechnya will not go unpunished.

Finally, the Federation views this ratification as a step toward improving the entire legal system in Russia. The potential overhaul of Russia's legal system is also evidenced by the recent ratification of Protocol 13 of the European Convention of Human Rights, which implements a moratorium on the death penalty in the Federation. However, only time will tell if Russia will comply with the terms of the Protocol and will not use its negotiations with the CoE to thwart the justice system in Europe. Russia's decision to ratify Protocol 14 also comes on the eve of an important ministerial conference to discuss the future development of the Court, to be held in Interlaken, Switzerland, on February 18 and 19, 2010.

#### LANDMARK RENDITION TRIAL IN ITALY

In a landmark ruling on November 4, 2009, Italy's highest court gave verdicts on the 2003 abduction of Egyptian-born cleric Mustafa Osama Nasr, known as Abu Omar. On February 17, 2003, Nasr was abducted as part of an extraordinary rendition operation between the U.S. Central Intelligence Agency (CIA) and the Italian Military Intelligence and Security Service (SISMI) while he was walking to a mosque in Milan, Italy. Under investigation by the Italian police, Nasr was suspected of recruiting militants for Iraq. The CIA flew

Nasr to Egypt where they tortured him with electric shocks, beatings, genital abuse, and threats of rape. Although the Italian court issued indictments against the defendants in June 2005, the case was slowed by the Prodi and Berlusconi administrations, which were concerned with maintaining friendly Italian-American relations.

Of the 26 CIA operatives tried *in absentia*, 23 including U.S. Air Force Lt. Col. Joseph Romano were convicted by the Italian court, while three were protected by diplomatic immunity. Robert Seldon Lady, the CIA station chief in Milan at the time of the kidnapping, received an eight-year sentence, while 21 other former agents each received five years. The Milan court also found that two Italian officials were complicit in the CIA abuses and sentenced them to three years in prison. The court also ruled that those convicted must pay €1 million (U.S. \$1.5 million) in damages to Abu Omar and €500,000 to his wife. The judge refrained from providing a verdict against five of the seven Italians on trial, as a result of a March 2009 ruling by the Italian Constitutional Court that interpreted the state secrecy doctrine to provide broad protections and served to block evidence against them in the trial.

Joanna Mariner, Human Rights Watch (HRW) Terrorism and Counter-Terrorism Director, criticized the United States and Italy for using the state secrecy doctrine to provide diplomatic immunity guarantees to government officials responsible for gross human rights abuses. Nevertheless, HRW stated that the verdicts "[mark] a historic legal challenge to the CIA's rendition program." This is the first time CIA operatives have faced a criminal trial for the use of extraordinary rendition, a controversial anti-terrorism program expanded by the George W. Bush administration. According to Italian prosecutor Armando Spataro, this verdict sends a clear message to all governments "that even in the fight against terrorism you can't forsake the basic rights of our democracies."

As all of the American defendants were tried *in absentia*, they are now considered fugitives under Italian law. Spataro confirmed that the American CIA operatives are only subject to arrest in Europe, because the Italian government refused to send the request to arrest and to extradite the fugitives to Interpol or U.S. authorities.

## SOUTH AND CENTRAL ASIA

### BREAKTHROUGH FOR EUNUCH RIGHTS IN PAKISTAN

Eunuchs in Pakistan received much-needed support from the unlikely source of the Pakistani Supreme Court, giving many hope for future improvements. In June 2009, the Court ordered provincial governments to conduct a survey of all eunuchs in the country. The term eunuch, as used in most of South Asia, describes those who fall outside of socially-accepted sexual norms: intersexuals, transsexuals, gay men, and men who have not fully developed.

The Supreme Court's move came after Dr. Mohammad Aslam Khaki filed a petition seeking to establish a commission to create greater equality for eunuchs and effeminate men who are generally treated harshly in Pakistani society. Dr. Khaki began advocating for better treatment of eunuchs after a police raid led to the arrest of several transvestites in Taxila, in Pakistan's Punjab province. Dr. Khaki found the group's living conditions to be among the worst of any minority group in the country and that most eunuchs in Pakistan make their living through dancing, begging, and prostitution. According to the petition, parents of transvestite or transgender children commonly give them to eunuch leaders, who train them in one of these occupations. The petition also detailed the social hardships many eunuchs face: living in slums; denial of basic civil rights such as inheritance; and exclusion from public facilities and transportation. Many eunuchs also experience physical and financial abuse from gangsters, police, and even their own families.

The court-ordered survey required the social welfare departments of provincial governments to gather information, including the population of eunuchs in Pakistan, the status of facilities available to them, the nature of offenses committed against them as children, and the reasons parents are giving them up at birth. The detailed results were compiled in a report submitted to the Supreme Court.

In July 2009, after reviewing the requested report and hearing the testimony of eunuch witnesses, the Supreme Court ruled that eunuchs are entitled to the same benefits and protections available to all Pakistani citizens. The Court ordered the

provincial governments to ensure their security, work to curtail police abuse, and offer them provincial financial aid programs and NGO welfare programs. The Court showed compassion for the plight of the Pakistani eunuchs, who live what it considered "a life of shame." The Justices also lamented the discrimination practiced by parents against their own children.

In November 2009, the Supreme Court held a hearing to review the implementation of the July decision. At the hearing, the Court directed the Pakistani federal and provincial governments to hold meetings to determine how to fulfill the requirements of the ruling. During the hearing, Chief Justice Iftikhar Mohammad Chaudhry suggested possible mechanisms to address the issues facing eunuchs, including a job quota system and the involvement of federal agencies such as the National Database and Registration Authority (NADRA). The Chief Justice also suggested a meeting between representatives of provincial governments, the federal government, and NGOs as the next step in resolving the problem.

After the provinces were given time to comply with these directives, the Supreme Court issued a final order in mid-December that identified eunuchs as a distinct gender. The order also established that eunuchs are entitled to their inherited property and assigned Pakistan's Social Welfare Department to oversee the task. In addition to other reforms, the Election Commission was directed to register eunuchs in electoral rolls.

The Court's orders are yet to be fully implemented, but the support of the Supreme Court is a welcome change to the ostracization eunuchs have faced for years. It is an important victory and a chance for a better future for the eunuch community of Pakistan.

### RELEASE OF CHILD SOLDIERS: A GOOD SIGN FOR THE NEPALESE PEACE PROCESS

The ten-year conflict between Maoist rebels and the government of Nepal, which ended in 2006, resulted in many human rights abuses, not the least among them the use of child soldiers by the Maoist rebels. According to human rights organizations, Maoists forcibly took children from schools and persuaded them to fight

Most importantly, the verdicts call on the Obama administration to follow Italy's lead in prosecuting other officials who were involved in the program. Although the Obama administration launched an investigation into the CIA's abusive interrogation techniques in 2009, it has not focused on the U.S. rendition program. The CIA has not commented on any of the allegations surrounding Abu Omar, and a spokesperson for the State Department said, "We are disappointed by the verdicts." It is uncertain whether the CIA operatives have any recourse in the United States following their guilty verdicts in Italian court, since the Italian judge has ignored requests to move Lt. Col. Romano's case to the United States. On the other hand, Sabrina De Sousa, an American defendant, sued the State Department in federal court for diplomatic immunity. In an American Broadcasting Corporation (ABC) interview with Dan Ross, De Sousa acknowledged that "[c]learly, we broke a law, and we're paying for the mistakes right now of whoever authorized and approved this." She then criticized the U.S. government, stating, "I was assigned as a representative of this Government, and I should have been protected." She plans to amend her lawsuit to include Jeffrey Castelli, Robert Seldon Lady, and the CIA as defendants because they were responsible for the abduction. De Sousa denies involvement in Nasr's rendition.

In light of the verdict dismissing a suit brought by Canadian rendition victim Maher Arar on November 2, 2009 by a U.S. federal appellate court in New York, the United States is unlikely to enforce the recent Italian ruling. However, the EU arrest warrants issued against the 22 defendants renders them subject to the threat of arrest outside the United States for the rest of their lives. One thing is for certain: the outcome of the Italian court verdict increases pressure on the Obama administration to re-evaluate its rendition program.

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against the government during the civil war.

In early January 2010, 155 former child soldiers were released as civilians after three years in UN-monitored detention camps. These were the first of over 24,000 former Maoist fighters to be discharged under the 2006 agreement, including 3,000 minor combatants and another 1,035 who helped the Maoists in non-combatant roles. By February 8, 2010, a total of 2,394 former child soldiers were released. Unlike their adult counterparts who are to be incorporated into the national military, former child soldiers who were under the age of eighteen in 2006 were released to their families and received rehabilitation packages that provide them with the opportunity to attend school or to learn new trades. Their progress will be monitored by the United Nations.

The discharge of former Maoist child soldiers from detention camps is part of an action plan agreed to in December 2009 by the United Nations, the Nepalese government, and the Unified Communist Party of Nepal-Maoist (UCPN-M). Once the former child soldiers are released, the UCPN-M will be removed from the Secretary-General's list of child soldier recruiters.

The move is a momentous one in furthering the Nepalese peace process, which reached a standstill in November 2009 after Maoists protested the president's powers concerning the army. The UCPN-M had originally refused the rehabilitation plan, demanding financial packages for the minors instead of educational and vocational training. The government refused to alter the plan, however, fearing that financial benefits would end up funding the People's Liberation Army, aiding them in recruiting former child soldiers to join them instead of returning home. After November's tension, the UN envoy to Nepal cited the release of the child soldiers as an optimistic sign in the peace process.

The UN mandate responsible for facilitating negotiations thus far was to end on January 23, 2010, but was extended through May 15, 2010. The enormous task of reintegration of former rebels, coupled with the drafting of the national constitution and preparation for the elections to follow, was presented to the UN Security Council as evidence that Nepal needs addi-

tional help from the United Nations. The release of child soldiers was just the first of many steps necessary to ensure that the peace process continues. Despite the initiation of the former child soldiers' rehabilitation programs, there is no guarantee that the peace process would continue without further UN assistance.

#### DEVOUT AZERBAIJANI VILLAGERS ARRESTED AFTER RELIGIOUS CEREMONY

More than a hundred Azerbaijani villagers were arrested in the village of Bananyar in the Nakhchivan enclave on January 5, 2010. Initially, several arrests reportedly took place the day after the Day of Ashura, on which Shia Muslims mourn the death of Muhammad's grandson, in late December 2009. These detentions were allegedly a reaction to the villagers' performance of ritual mourning practices on Ashura. Those detained were subjected to interrogations and physical abuse by local security forces. Their detention inspired strong protests from family members, including one young man who set himself on fire in an attempt to free his relatives.

After the initial arrest of several Ashura participants, security forces returned during the night of January 5 and violently arrested others thought to be responsible for organizing the ceremony. The prisoners were taken to the Interior Ministry headquarters and a pretrial detention center to be questioned. Almost all of the prisoners were released within a week of the arrests; a few, however, were held in mental institutions and jails within the Nakhchivan enclave.

Initially, the Nakhchivan Interior Minister denied the allegations of arrests, but later admitted that arrests had been made. The Minister blamed the opposition, the Popular Front Party, and a mentally ill villager for the trouble. Nakhchivan officials claimed that the young man who set himself on fire was mentally ill and was provoked by villagers, led by the leader of the Popular Front Party, to threaten suicide if closed kiosks were not reopened. Meanwhile, the head of the pretrial detention center denied that any villagers were held at his facility.

Less than one week after the clashes between security forces and villagers led to these arrests, Norwegian and U.S. Embassy

officials were not allowed into the Bananyar village on a fact-finding trip. The trip was halted by a group of neighboring villagers, allegedly organized by Nakhchivan enclave authorities to deter the officials' progress. Azerbaijani human rights groups also requested official permission to enter the area, but did not receive a response from Nakhchivan authorities. Officials from the Organization for Security and Co-operation in Europe (OSCE) were able to meet with activists in Baku, however, to evaluate the situation.

The United States joined Norway on January 14 in encouraging Azerbaijani officials to investigate the events that led to the detention of Shia Muslim worshippers. The joint statement, signed by the two countries also expressed objections to the access to Bananyar during their fact-finding trip. Azerbaijan has already been repeatedly accused of persecuting devout Muslims, a practice which rights groups attribute to the government's fear of Islamic influence in the country.

According to Human Rights Watch, new laws instated in the last year in Azerbaijan are furthering restrictions on freedom of conscience and religion. These laws include a requirement that each religious organization register with the government and conduct its activities solely at its legal address. In addition, organizations need express permission from a government agency, the State Committee for Work with Religious Organizations, to publish literature, and the organizations can only be headed by Azerbaijani citizens educated in the country. These restrictions violate the norms of freedom of religion and conscience practiced by other states in the OSCE and the Council of Europe; Azerbaijan is a Member State of both. Azerbaijan has come under increasing scrutiny for restricting multiple basic freedoms; hopefully the events in the Nakhchivan enclave are not a harbinger of more abuses to come.

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## EAST ASIA

### UIGHUR PROTESTERS SENTENCED TO DEATH

China's far western Xinjiang province, rich in oil and gas deposits, is home to the Uighurs, one of China's minority groups. Representing less than one percent of China's total population but about forty percent of the inhabitants of Xinjiang, the Uighurs speak a Turkic language and are predominately Muslim. The Uighurs have continuously called for the region's independence, referring to Xinjiang as "East Turkistan" or "Uighuristan." The Chinese government, however, relies on the One China Policy and opposes the region's autonomy, labeling the Uighurs as "anti-China forces."

During the last few decades, a growing population of Han Chinese, the majority ethnic group in China, has moved into the area, causing disruption and insecurity in the Uighur community. The Uighurs viewed the newcomers as a threat to their jobs and traditional way of life, attempting to crowd the Uighurs out of the region. Before this influx of Han residents, more than ninety percent of Xinjiang's population was Uighur.

Tensions between Han Chinese and the Uighurs, who had long complained of Chinese government's repression, erupted into deadly riots on July 5, 2009 in Urumqi, the capital of Xinjiang province. Peaceful demonstrations in reaction to the brutal murders of two Uighur migrants working in China's Guangdong province in June 2009 escalated into a violent clash. While the Uighurs argue that the police triggered the violence by responding harshly to peaceful protests, Han Chinese allege that Uighurs first attacked Han Chinese and vandalized their shops. Official figures from the Chinese government reflect at least 197 dead and more than 1,600 injured. However, Uighur exile groups argue that Chinese police shot or beat to death about 800 people.

The July riots forced many Uighurs to leave the region and they have since been issued "Persons of Concern" letters by the UN High Commissioner for Refugees. However, some remained in the region, and over 1,000 people who allegedly participated in the violence were detained. As of January 2010, 26 of those detained were

sentenced to death and at least nine of these death sentences had been carried out.

Human rights groups and members of the international community have condemned these executions, claiming that the suspects were denied due process rights and that the use of the death penalty far exceeds international standards. Motivated to impose political pressure on dissidents, the Chinese government executed participants in the riots for "violent crimes of attacking, smashing, looting and burning." Article 6 of the International Covenant on Civil and Political Rights (ICCPR) limits the imposition of death sentences to the "most serious crimes;" most countries that utilize the death penalty impose it only for very serious crimes such as murder, rape or terrorism. China, however, has long been the target of criticism for giving suspects a "political verdict" and using the death penalty as a tool for threatening those who challenge social harmony.

Due to a lack of transparency in China's legal system, questions remain as to whether the accused had fair trials. While the spokesperson for Xinjiang's regional government maintains that the media and the family members of the accused had access to the trials, Human Rights Watch (HRW) contends that the trials were neither publicly announced nor open to the public and that the defendants were given less than one day's notice of the date of their trials. HRW further alleges that the trials of those involved in the July violence do not meet "minimum standards for the administration of justice" because the Chinese government threatened lawyers who began independently investigating the violence, denying suspects access to legal representation of their choice.

The lack of transparency in the trials of those sentenced to death for participation in the July demonstrations violates both international and domestic standards of due process. Under China's criminal procedural law, a suspect has the right to be appointed a defender for both publicly and privately prosecuted cases. Also, the ICCPR states that "[a]ll persons . . . before the courts and tribunals . . . shall be entitled to a fair and public hearing . . ." Although China has signed but not ratified the ICCPR, Chinese law incorporates the internationally recognized principle of open trials established by the ICCPR. Moreover, according to Article 18 of the Vienna Convention on

the Law of Treaties (VCLT), as a signatory to the ICCPR, China is "obliged to refrain from acts which would defeat the object and purpose" of the ICCPR. China has not ratified the VCLT; although many of the provisions of the VCLT are considered customary international law and therefore binding on all states, it remains unclear whether this includes Article 18. To come into compliance with its treaty obligations and widely-accepted international legal norms, China should afford fair trials to all suspects involved in the July riots, regardless of their actual or suspected status as political dissidents.

### SOUTH KOREA GRANTS REFUGEE STATUS TO GAY PAKISTANI ASYLUM SEEKER

Due in part to the strong cultural influence of Confucianism, South Korea is a conservative society with a generally negative public perception of homosexuality. It was not until 2000, when Korean celebrity Seok-cheon Hong publicly announced that he was gay, that the public began to actively discuss LGBT issues. Despite such societal changes as greater recognition and understanding of gays and lesbians, homosexuality in South Korea, as in many other Asian countries, is still viewed as unusual and unwelcome.

Recently, however, the Seoul Administrative Court granted refugee status to a gay man facing persecution in Pakistan for his sexual orientation. He fled from Pakistan to Korea in 1996 after family members threatened to report his sexual orientation to the police; he lived illegally in Korea until he was caught last year by the agents of the Korean Immigration Bureau. He filed a petition for refugee status in February 2009, which was denied by the Ministry of Justice four months later. The Seoul Administrative Court overturned the ruling on the grounds that it is highly likely that "the plaintiff will be subject to persecution by the Pakistani government" if repatriated. Under the Pakistani Penal Code, "carnal intercourse against the order of nature" is a crime punishable by a fine and possible imprisonment of two years to life.

The Administrative Court's decision has generated a debate among South Koreans. Since it is the first time in Korean history that sexual orientation has been used as a basis for granting refugee status, some question its legitimacy. South Korea

became a State Party to the 1951 Convention relating to the Status of Refugees (Refugee Convention) and the 1967 Protocol in 1992. Since then, 2,413 foreigners have applied for refugee status in South Korea. Only 145 applicants have been granted asylum for racial, religious, and political reasons.

Article 1A(2) of the Refugee Convention defines a refugee as a person who, "owing to a well-founded fear of being persecuted," cannot return to his own country. Moreover, Article 1A(2) lists several grounds for persecution for which refugees may be granted asylum: race, religion, nationality, membership in a particular social group, or political opinion. A particular social group is defined as a group of people who share common immutable characteristics other than risk of persecution, such as background, customs, or social status. States such as the United States, the United Kingdom, the Netherlands, Germany, and Sweden have for some time accepted asylum claims based on an individual's sexual orientation as a basis for membership in a particular social group. These countries, among others, have found that granting asylum on the grounds of sexual orientation is in compliance with the Refugee Convention.

Although the South Korean Supreme Court must review the Administrative Court's holding before refugee status will be granted, this decision is the first acknowledgment of sexual orientation as a valid basis for accepting asylum seekers in South Korea, and reflects the changing attitudes of South Korean society towards gays and lesbians.

#### CHILD ABDUCTION BY PARENTS IN JAPAN

On January 30, 2010, ambassadors from the United States and seven Western nations met with Japanese Foreign Minister Katsuya Okada to urge Japan to address its child custody issues; the current Japanese system enables parents who abduct their children and interferes with the ability of divorced foreign parents to see their children in Japan. International parental child abduction occurs when a marriage between nationals of different states fails and one parent takes the child to another country or detains the child in violation of a custody or visitation order without the

consent of the other parent. In some cases, the parent who is left behind cannot visit the child because laws in the country where the child has been taken provide protections to the abductors.

In most countries, divorced parents make a child custody arrangement, detailing their legal rights over their children, including visitation and custodial rights and responsibilities. Such custodial arrangements, however, are unenforceable in Japan, where the country's Family Code only recognizes sole custody and does not provide visitation rights for noncustodial parents. Divorced Japanese parents can bring their children to Japan in violation of custody or visitation arrangements made in a foreign country and face no repercussions. If the abducting spouse refuses to have contact with their former spouse, the foreign parent ultimately loses access to his or her children. As a result, some critics have called Japan an "international haven for child abduction." Moreover, activist groups such as the Assembly for French Overseas Nationals for Japan estimate that as many as 10,000 children with dual citizenship in Japan are unable to contact their foreign parents.

As international marriages and divorce rates increase, the number of parental child abductions crossing international borders also continues to grow. According to 2010 statistics released by the U.S. Embassy in Japan, the number of parental child abduction cases in Japan almost doubled between 2007 and 2009. The longstanding child custody problems in Japan gained international attention last year when an American father, Christopher Savoie, was arrested by Japanese police after he attempted to take his two children to the U.S. Consulate in Fukuoka, Japan. Savoie alleged that his ex-wife, Noriko, illegally removed their children from the United States without his knowledge. Upon the couple's divorce in Tennessee, a court granted custody of the two children to Noriko and gave Christopher visitation rights. Despite her agreement to stay in the United States, Noriko fled to Japan with the two children. After spending over two weeks in jail, Savoie was released on the condition that he would not take his children back to the United States.

The 1980 Hague Convention on the Civil Aspects of International Child Abduction protects parental rights of access to their

children by providing a legal mechanism for returning a child wrongfully removed from their country of habitual residence. Japan is the only industrialized nation in the Group of Seven that has not ratified the Convention and the ambassadors from the eight Western countries urged Japan to sign the Convention, emphasizing that for their welfare, children should have access to both parents.

The Japanese government regards its decision not to sign the Convention as a protection for Japanese women and children fleeing from abusive relationships with foreign nationals. Japanese Foreign Minister Katsuya Okada, however, recently announced that Japan will review the Convention, a sign that Japan may be considering a policy change. Whether or not Japan ultimately signs the Convention, the country must address the growing issue of international parental child abduction disputes in order to guarantee parental rights and to assure that custodial arrangements are made to serve the best interests of the children.

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## SOUTHEAST ASIA AND OCEANIA

### VIETNAMESE BUDDHIST MONKS AND NUNS DRIVEN INTO HIDING

Several hundred members of the Buddhist Bat Nha monastery, followers of internationally-renowned monk Thich Naht Hahn, have been driven into hiding, illustrating Vietnam's continued failure to respect religious freedom. The monks and nuns left the Phuoc Hue pagoda in Vietnam's central Lam Dong province, where they have been seeking sanctuary since September 2009, after government sponsored mobs forcibly removed them from Bat Nha. In December 2009, a mob of nearly 200 people, many of whom were reportedly bused in from distant provinces and paid by the government to protest the pagoda, dragged the Phuoc Hue abbot from his room and forced him to sign an agreement that the sheltered monks and nuns would leave the pagoda and return to their home provinces by December 31. In the days leading up to the deadline, the monks and nuns left Phuoc Hue and dispersed into an underground network of sympathetic

laypeople, with a few dozen likely heading to Thailand and France.

Thich Naht Hahn, currently in exile in France, founded the Bat Nha monastery in 2005 while returning to Vietnam for the first time since his 1966 exile. The monastery is part of the Unified Buddhist Church of Vietnam (UBCV), an illegal organization of Buddhists sects, temples and monasteries acting as a progressive alternative to the government-controlled Vietnam Buddhist Church (VBC). Since its formation, the UBCV, and especially Bat Nha, have experienced considerable harassment from both the Vietnamese government and traditional Buddhists, critical of the UBCV's progressive approach. In June 2009, a mob of VBC monks burned the homes of nuns and beat several monks at the monastery. According to eyewitnesses, police made no effort to stop the violence.

Although Vietnam's constitution and the 2004 Ordinance Regarding Religious Belief and Religious Organization provide for freedom of religion, in practice the highly centralized Communist government retains tight controls on all religious activities. The Office of Religious Affairs officially sanctions and oversees all religious activity in the country. Even state-registered religious groups, including many Buddhist and Christian sects, must give up considerable autonomy and allow government control over clerical appointments and other internal issues.

Unofficial religious groups, like the UBCV and the neo-Buddhist sect Hoa Hao, however, remain in constant standoff with the government. These groups are not allowed to operate educational and training centers or places of worship. National and local security officers have used their broad powers to monitor and detain citizens in order to harass and imprison leaders of unofficial sects. Additionally, the government often pressures ethnic minorities to convert from their traditional religion to a state-sponsored religion.

Although the monks and nuns of Bat Nha have been driven underground, they remain committed to practicing their faith and serving their communities. Sister Natasha, a nun at Thich Naht Hahn's monastery in France, says that the hiding monks and nuns "are undeterred from their path, even though they must practice underground."

A delegation of monks and nuns from Thich Naht Hahn's monastery petitioned the French government for temporary asylum for the Bat Nha members. Asylum has not been yet granted.

#### TREATING ADDICTION THROUGH FORCE

Drug users in Cambodia are subject to arbitrary arrest and commitment to drug treatment facilities, but in a startling development, may now also be unwilling participants in an experimental drug trial. In December 2009, police in Phnom Penh reportedly arrested at least seventeen drug users and forced them into a drug trial for the experimental herbal formula Bong Sen at the military run "drug treatment center" Orksas Knyom. Bong Sen is an unlicensed treatment for opiate addiction, which according to its Vietnamese manufacturer Ben Tre Fataco, has no side effects and enables addicts to recover in five to ten days.

Local and international NGOs, including Human Rights Watch, have expressed significant concern over the Bong Sen trials. In addition to the potentially coercive recruitment tactics, these trials were not subject to the Ministry of Health's ethical review process. Other ethical problems include a lack of informed consent, or safeguards for the health of participants. Moreover, after treatment, the detainees were released with no opportunity for follow-up care or counseling. Local NGOs estimate the relapse rate of drug users released from Orksas Knyom to be around 100 percent.

If these claims are true, the trials run contrary to the World Medical Association's Declaration of Helsinki, the definitive statement of ethical principles for human medical research. The Declaration mandates, among other things, that all human research undergo review by an ethics committee, that free and informed consent be obtained from each subject, and that the subject be able to withdraw participation at any point in the process.

Cambodia vehemently denies the claims made by NGOs. Cambodia's National Authority for Combating Drugs, a collaborator in the trials, insists that Bong Sen is not a drug but an herbal treatment, and as such is not subject to the same ethical review procedures. Additionally, the government denies the assertions that the trials were involuntary, maintaining that all

participants consented to the trial and that the treatment was effective.

In the past, the Cambodian government has been hesitant to allow drug trials on its citizens, and even halted an HIV drug trial for human rights concerns. This time, however, the government has an interest in permitting the trials. With considerable financial and technical support from Vietnam, Cambodia is planning to build the country's first national drug rehabilitation center to help combat Cambodia's rampant drug problem. Bong Sen, a Vietnamese drug, would be at least one of the treatments provided to patients at the proposed center. Ben Tre Fataco has been actively involved in the negotiations, including being present on at least one of the official visits of Vietnamese officials to discuss the deal.

As an increasing number of major pharmaceutical companies outsource their trials to developing countries, the prevalence of unethical drug trials in these areas has been a subject of recent interest for human rights and medical organizations. The Bong Sen trials in Cambodia highlight this concern. These trials must abide only by the host government's standards, which are often minimal and rarely enforced. Since the people affected are already some of the most vulnerable, the ethical and legal implications of drug trials in developing countries deserve considerably more attention. While drug trials offer the possibility for new, potentially lifesaving, treatments, the human costs of involuntary and unethical medical testing must be vigilantly scrutinized.

#### MORALITY LAW THREATENS INDONESIAN UNITY

Police arrested four women for "sexy dancing" during a New Year's Eve party at the Belair Coyote Bar and Restaurant in Bandung, Indonesia. These women, along with an event organizer and a manager of the club, could be among the first charged under Indonesia's controversial anti-pornography law, passed just over one year ago. The law's sweeping reach goes beyond merely prohibiting the possession of pornographic materials, but also proscribes any public performance or publication which could "arouse desire." The punishment for the dancers could be up to

ten years in jail, while the organizer and manager each face fifteen years.

Although it is not clear exactly what prompted the arrests, the Belair Coyote typically features young women dancing in bikinis. Arman Achdiat, chief detective for the local police, provided few details. When asked what the women were wearing and how they were dancing, he commented, "It could be described as sexy dancing. But more importantly, they were wearing minimal clothing and performing in public, which can stir desires."

The anti-pornography law has been under significant attack since its passage in October 2008, but enforcement up until now has been rare. Women's groups, rights groups, artists and non-Muslim cultural groups have protested the law's vagueness, which leaves wide room for discriminatory enforcement. Additionally, some claim that the political forces behind the law are using the public's concerns about pornography and immorality to eliminate non-Muslim cultures in Indonesia. This attempt to eliminate minority cultural groups counters international law aimed at protecting cultural and minority rights, along with religious freedom.

For example, in West Java, where Bandung is located, concerns center around a traditional dance called *jaipong*, which comes from West Java's Sundanese culture. The dance features female dancers moving their arms, hands and hips in what critics, including West Java's governor, say is a suggestive, sensual manner. With support from the Indonesian Ulama Council, a leading Muslim clerical organization, the government of West Java has made efforts to promote the law. Hafizh Utsman, the leader of West Java's branch of the Council, stated that "[w]e are trying to eliminate the non-Islamic parts of West Java's traditional culture, to make it more Islamic."

The new law has been challenged in the Constitutional Court, but so far has been upheld. A broad range of approximately thirty rights groups recently challenged the law as an unconstitutionally broad threat to artistic, religious, and cultural freedom. Proponents of the law, however, continued to articulate its moral necessity. The government's witnesses at the trial argued that children's exposure to explicit images is detrimental to their moral and physical development, with one government expert claiming that watching suggestive images

"may result in brain damage similar to having a traffic accident."

The anti-pornography law is just one example of a growing interconnection between Islam and politics in Indonesia, which continues to threaten the secular and diverse political tradition of the country. Moreover, widespread discrepancies among the provinces in promoting the Islamization of Indonesia evidence an increasing divide. While Banda Aceh continues to enact stricter sharia laws, the governor of Bali declared last year that he will not enforce the anti-pornography law. Some fear that stringent enforcement of the law could further threaten the already-fraying unity of the Indonesian government, and give more fuel to secessionist provinces. **HRB**

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