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Legislative Watch

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LEGISLATIVE WATCH

The Human Rights Brief's Legislative Watch reports on key U.S. legislation relevant to human rights and humanitarian law. This list is not meant to be comprehensive.

H.R. 112, TO REQUIRE THE VIDEOTAPING OF INTERROGATIONS AND OTHER PERTINENT ACTIONS BETWEEN A DETAINEE OR PRISONER IN THE CUSTODY OR UNDER THE EFFECTIVE CONTROL OF THE ARMED FORCES OF THE UNITED STATES PURSUANT TO AN INTERROGATION, OR OTHER PERTINENT INTERACTION, FOR THE PURPOSE OF GATHERING INTELLIGENCE, AND A MEMBER OF THE ARMED FORCES OF THE UNITED STATES, AN INTELLIGENCE OPERATIVE OF THE UNITED STATES, OR A CONTRACTOR OF THE UNITED STATES.

Sponsor: Representative Rush D. Holt (D-NJ-12)

Status: Referred to the House Committee on Armed Services (Subcommittee) on January 4, 2005.

Substance: Section I of the bill requires interrogations, as identified in the title, to be videotaped to assure compliance with the Geneva Conventions of 1949; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; and prohibitions against any cruel, unusual, and inhumane treatment or punishment under the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States. The bill states that the President shall provide for the appropriate classification of the videotapes to preserve the privacy of detainees or prisoners and to protect national security. The videotapes, however, would be made available under seal, if appropriate, to defense and prosecution teams if the tapes are material to a civilian or military criminal proceeding.

Section II requires the President to take all actions that are necessary to ensure that representatives of the International Federation of the International Committee of the Red Cross and Red Crescent, the United Nations High

Commissioner for Human Rights, and the United Nations Special Rapporteur on Torture are given immediate and unfettered access to detainees or prisoners in custody or under the effective control of the armed forces of the United States.

Section III dictates that the Judge Advocate General develop guidelines to ensure the videotapes are expansive enough to prevent abuse of prisoners and detainees and comply with United States laws and international treaties. The deadline for the Judge Advocate General to submit guidelines to Congress is 30 days after the passage of the Act.

H.R. 40, COMMISSION TO STUDY REPARATION PROPOSALS FOR AFRICAN-AMERICANS ACT

Sponsor: Representative John Conyers, Jr. (D-MI-14)

Status: On January 4, 2005, the House referred the bill to the House Committee on the Judiciary (Committee).

Substance: This bill would establish a commission to study reparation proposals for African-Americans. The commission would examine the institution of U.S. slavery from 1619-1865 and the extent to which the federal and state governments of the United States supported slavery in constitutional and statutory provisions. The commission would also study federal and state laws and other forms of discrimination in the public and private sectors that targeted freed African slaves and their descendants from the end of the Civil War to the present. Finally, the commission would analyze the lingering negative effects of slavery on living African-Americans and U.S. society.

The bill requires that, after the initial examinations, the commission recommend ways to educate the American public about its findings and provide appropriate remedies, including: (1) whether the U.S. government should offer a formal apology on behalf of the people of the United States for the perpetration of gross human rights violations of African slaves and their descendants; (2) whether African-Americans are still suffering from the effects of slavery; (3) whether any form of compensation to the descendants of African

slaves is necessary; and (4) if the commission determines that compensation is due, the amount, form, and eligibility guidelines for such compensation.

The commission is to be composed of seven members, three of whom are to be appointed by the President, three by the Speaker of the House of Representatives, and one by the President pro tempore of the Senate. All members are to serve life terms on the commission and be qualified in the field of African-American studies. The commission would be granted the power to hold hearings and request the attendance and testimony of witnesses and the production of documents as needed. The executive branch is to cooperate with the commission in providing all information requested to the extent permitted by law.

H.R. 397, TSUNAMI ORPHANS AND UNACCOMPANIED CHILDREN ACT OF 2005

Sponsor: Representative Robert Menendez (D-NJ-13)

Status: The House referred the bill to the House Committee on International Relations (Committee) on January 26, 2005.

Substance: H.R. 397 declares that the goal of the bill is for the United States to take prompt and appropriate action, as an expression of humanitarian concern, to assist children who are orphaned or currently unaccompanied due to the tsunamis on December 26, 2004, in the Indian Ocean.

The bill amends Chapter 2 of Part I of the Foreign Assistance Act of 1961 to insert Title VII—Assistance for Tsunami Orphans and Unaccompanied Children. The President, through the Administrator of the U.S. Agency for International Development (Agency), is to give assistance by identifying and reunifying unaccompanied children and by providing immediate care for orphaned or unaccompanied children during the reunification and identification process. This care would consist of giving food, shelter, access to education, counseling, and protection for children against sexual abuse, trafficking, and the forcible recruitment of children into militias. Additionally, the Agency will make attempts to provide for the long-term needs of children

that are not reunited with their immediate families. Some of the listed alternatives include exploring extended family options, foster care, addressing the needs of caregivers and extended family members, and monitoring placements to ensure international standards of care and local customs are met.

Authorized appropriations to the Agency's Displaced Children and Orphans Fund are \$80,000,000 for each fiscal year 2005 through 2009, with a cap of seven percent for the funds allocated for administrative purposes. To ensure success, the bill requires the President to create a monitoring system to establish goals and performance indicators and to provide Congress with a report that details implementation of the Act for each previous fiscal year.

This bill could become part of other authorizing or appropriations legislation for the December 26, 2004, tsunami in the Indian Ocean.

H.R. 663, EX-OFFENDERS VOTING RIGHTS ACT OF 2005

Sponsor: Representative Charles B. Rangel (D-NY-15)

Status: Referred to House Committee on the Judiciary (Committee) on February 8, 2005.

Substance: H.R. 663 tries to restore the fairness in the federal election process by ensuring that ex-offenders who have completed their sentences are not denied the right to vote. The bill states that the right of any U.S. citizen to vote in any federal election shall not be denied or abridged because that citizen has been convicted of a criminal offense. The only exceptions are if the individual is serving a felony sentence in a correctional institution or facility, or is on parole or probation for any felony offense.

To remedy a violation of the Act, the Attorney General could bring a civil action to obtain declaratory or injunctive relief. The bill would also allow for a private right of action. A person who experiences a violation of the Act could give written notice of the violation to the chief election official of the relevant state. If the violation is not corrected within 90 days after receipt of notice, or within 20 days after receipt of notice if the violation occurred within 120 days before the date of an election for federal office, the individual can bring a civil action to obtain declaratory or injunctive relief for the violation. If the violation is 30 days before a federal election, the individual need not provide the required notice to the state's chief election official before bringing a civil action.

This bill is likely to see further movement in the 109th Congress. **HRB**

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to adopt a convention banning reproductive cloning because of the inflexibility of some States that were not prepared to recognize that other States might decide to permit controlled therapeutic cloning. In closing, the representative stated that the Declaration is a weak, non-binding political statement that does not represent consensus within the General Assembly.

Belgium, also a long supporter of therapeutic cloning, voted against the Declaration. Belgium's representative elaborated that the Declaration represents the wide divergence in the international community through the text and on the issue of human cloning, but it would serve to significantly divide States, rather than bringing them together. Although Belgium supports banning human cloning, Belgium's representative explained that it is essential to preserve the possibility of carrying on with therapeutic cloning at the national level.

Key States voting in favor of the Declaration include, but are not limited to, Australia, Austria, Chile, Ethiopia, Germany, Guatemala, Honduras, Iraq, Ireland, Italy, Kenya, Morocco, Panama, Poland, Saudi Arabia, Uganda, and the United States. Key States voting against the Declaration include, but are not limited to, Brazil, Canada, China, Cuba, Denmark, Finland, France, India, Japan, the Netherlands, New Zealand, Norway, Spain, Sweden, and Thailand. Key countries abstaining from the vote on the Declaration include, but are not limited to, Egypt, Iran, Israel, Pakistan, Romania, South Africa, Turkey, Ukraine, and Zimbabwe.

Although the General Assembly endorsed the Declaration, it is not legally binding on States. By adopting an ambiguous declaration without specific instructions for States seeking to comply with the Declaration, the General Assembly is sending mixed signals. Before attempting to present a declaration to the

world concerning a divisive issue, the text employed to call on States to adopt domestic legislation should be clear, unambiguous, and easily interpreted, as should the document's purpose. Because the Declaration does not have clear language to follow, it is unlikely that States will seek to adopt domestic legislation in accordance with the Declaration or attempt to interpret the Declaration's meaning and purpose. Until the General Assembly can unite on a common course to pursue with regard to human cloning, the effect of the Declaration will likely be minimal. **HRB**

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