

2003

## International Legal Updates

Meghan Stewart

*American University Washington College of Law*

Sara Ibrahim

*American University Washington College of Law*

Patricia Staible

*American University Washington College of Law*

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



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

---

### Recommended Citation

Stewart, Meghan, Sara Ibrahim, and Patricia Staible. "International Legal Updates." *Human Rights Brief* 11, no. 1 (2003): 36-37, 39.

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

## INTERNATIONAL LEGAL UPDATES

## PAKISTAN

On June 2, the Provincial Assembly of the North West Frontier Province (NWFP) unanimously passed a bill that introduced Sharia, or Islamic law, into the region. The dominant alliance of parties, the *Muttabida Majlis-e-Amal* (MMA), took power last October and quickly made their influence known across Pakistan, pushing for the consolidation of Sharia at the national level. Efforts by opposition parties to moderate the potential impact of the bill by incorporating provisions to protect women's rights were quashed in the face of strong support in the Assembly.

The NWFP is a mountainous region bordering Afghanistan and is considered to be one of the most conservative provinces in Pakistan. Although the National Constitution of Pakistan embodies Sharia principles, and Pakistan has a Federal Sharia Court that bases its decisions on its interpretation of the Sharia, this is the first time that the Sharia has been adopted in full force in a region in Pakistan.

Sharia, or Islamic law, follows the teachings of the Qur'an and governs all interactions between people and the world around them. The rules are meant to be strictly observed, although their application is subject to interpretation. Sharia has been a topic of great political debate among human rights advocates. Most criticism is directed towards interpretations of Sharia that often result in oppressive and unfair conditions for women.

The passage of the Sharia bill has elicited strong reactions in Pakistan. Within a week of the vote, Pakistan's president, Pervez Musharraf, dismissed two of the highest governing officials in the NWFP for their indifference to incidents of violence against individuals and establishments deemed to violate Sharia principles. Weeks before the Assembly passed the bill, supporters of the Sharia tore down advertisements featuring women and restricted the sale and distribution of popular music and movies.

Supporters of the Sharia bill argue that the bill will promote a society free of evil and corruption. The bill provides for free education for all children under the age of 16. Furthermore, the MMA is expected to outlaw honor killings, where women are executed for adultery. Religious fundamentalists, however, might construe the bill as allowing them to take the law

into their own hands. Indeed, extremists have already taken steps to limit the bill vis-a-vis interaction between women and men. Laws already in force prohibit male doctors from examining women and men from coaching women athletes. These laws raise doubts that the Sharia bill will maintain the human rights status quo in the region, much less improve it.

Pakistan has struggled to find a workable balance between its secular institutions and its religious roots, a tension that has worsened in recent years because of the conflict in neighboring Afghanistan and the general political instability brought about by the growing strength of religious fundamentalism in the region. The Sharia bill is a reflection of this tension that undermines the federal government's efforts to adopt a more moderate stance, for example by expanding its recognition of women's rights. Last summer, the Pakistani Police sentenced a number of men to death who gang-raped a woman as a family punishment, because her brother had illicit relations with a woman from a wealthier neighboring clan. Also last summer, the Federal Sharia Court overturned a ruling from a local court in the town of Kohat in the NWFP that charged a woman for adultery for giving birth to a child while her husband was in prison. Although the court found that she was raped, it nevertheless sentenced her to be stoned to death for her indiscretion. The Sharia Court held that no woman should be found responsible for 'forced adultery,' and that the man should be punished instead. The Court's ruling is significant considering the possibility that, according to estimates offered from human rights groups, thousands of honor killings take place each year in Pakistan. Human rights groups fear that the introduction of Sharia law will undermine government and private initiatives to improve the condition of women in Pakistan.

## CAMBODIA

On September 27, Cambodia's newly elected National Assembly opened without the attendance of two of the three major political parties and the king, Norodom Sihanouk. The Cambodian People's Party (CPP) was the only party to attend, after the United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) and the San Rainsy Party (SRP) boycotted the session, calling for the resignation of the head of the

CPP, Hun Sen. King Sihanouk, who is seen as a strong reconciliatory figure, refused to attend in the absence of the opposition parties. The king is constitutionally required to convene the National Assembly 60 days after the election.

The CPP won the national elections held on July 27, capturing 73 out of the 123 seats in the National Assembly. Its electoral victory, however, was insufficient to allow the CPP to maneuver in disregard of its two major opposing parties. This means that the CPP must establish a coalition to form a ruling majority. After the last national elections in 1998, the CPP and FUNCINPEC established an uneasy alliance to run the government. In the latest elections, SRP and FUNCINPEC formed an "Alliance of Democrats" in an attempt to force the CPP to accept a three-party government with a neutral premier. Hun Sen, the head of CPP and acting Prime Minister of Cambodia, is decidedly opposed to the idea.

The long road to peace in Cambodia began in 1991 with the Paris Peace Accords that ended the civil war between the government and the rebel Khmer Rouge. The United Nations first administered elections in Cambodia in 1993. The new coalition government and constitution did not last long, however. The country quickly settled back into infighting that culminated in a coup in 1997 by Hun Sen. Cambodians organized a second round of elections in 1998, which was marred by controversy. The CPP won the majority of the vote, but opposition groups refused to honor the final tallies. Opposition parties claimed that they were denied equal access to the media, and that violence and intimidation leading up to the election reduced their votes.

In a similar vein, opposition parties have accused the CPP of rigging the July 27 elections. Domestic and international reports allege numerous assassinations and the intimidation of FUNCINPEC and SRP activists and politicians, as well as coercion of regular citizens, in order to influence the outcome of the elections. The National Election Commission (NEC), the governmental monitoring body, is yet to properly respond to these accusations.

The establishment and maintenance of integrity in the national electoral system is an essential step for Cambodia's path towards strengthening its human rights protections and

addressing its myriad of problems, such as severe poverty, the elimination of landmines left from years of civil strife, and the beginning long overdue trials of Khmer Rouge leaders. International monitoring bodies have reported many improvements in the 2003 elections compared to the 1998 elections. They point to strong structural changes such as the clarification of seat allocations in the National Assembly and the implementation of a 30-day campaigning period. Domestic and international monitoring groups recognize, however, that there are still many problems left to be resolved in the current electoral system in Cambodia. They recommend, among other things, the improvement of equal access to the media for all parties, greater transparency in the selection of the NEC, improved implementation and enforcement of NEC regulations, and the regulation of village chiefs who keep tight control of local elections.

#### EGYPT

On September 15, 2003, Egyptian state Prosecutor-General Maher Abdel-Wahed ordered the trial of twelve police officers on charges of torture and forgery stemming from their investigation into a case involving disappearance and murder. In February 1996, the Montazah police station in Alexandria, Egypt received a report about the disappearance of Mohammed Badr Al Din Gomaa's daughter. After finding the body of an unidentified girl seven months later, police arrested and detained Gomaa for his daughter's murder. According to a report by the Egyptian Organization for Human Rights (EOHR), officers continuously tortured Gomaa and his wife for eight days in order to force his confession.

Prior to Gomaa's trial, his daughter Gehad reappeared. Immediately after her disappearance, she was placed in a juvenile home in the Al-Azarita district of Alexandria and returned to her mother, EOHR reported. In November 1996, when the mother reported her daughter's reappearance to the Montazah police station, officers allegedly detained her and her daughter until Gomaa's trial ended. Almost a year later, the police allegedly forged another charge against Gomaa for hitting a person with his car and a five-year prison term was ordered in absentia. The Alexandria Criminal Court acquitted him in October 1998, ruling that his confessions were the result of severe torture and cruel treatment. Based on Article 11 of the Criminal Procedure Code, the court referred the allegations of torture and forgery to the Public Prosecutor.

According to the *Cairo Times*, UN

Committee against Torture special investigators questioned Egyptian government representatives about the Gomaa case during its 2002 review of Egypt's report on compliance with the UN Convention against Torture. Egypt ratified the Convention in 1986.

The Committee's conclusions included concerns about "torture and ill-treatment of detainees by law enforcement officials, and the absence of measures ensuring effective protection and prompt and impartial investigations." The Committee expressed "particular concern at the widespread evidence of torture and ill-treatment in administrative premises under the control of the State Security Investigation Department," including deaths in custody. In response to Committee questions, Egyptian Ambassador to the UN Naela Gabr said that prevailing Egyptian law under the state of emergency did not authorize torture and that Egypt carries out prosecution of torture perpetrators.

#### IRAQ/ISRAEL/PALESTINE

On September 24, 2003, Belgium's highest court, the *Cour de Cession*, dismissed war crimes lawsuits against former U.S. President George Bush, Sr., U.S. Secretary of State Colin Powell, Israeli Prime Minister Ariel Sharon, and Israeli General Amos Yaron, holding that the court no longer has jurisdiction to bring them to trial. Earlier in September, the Brussels Court of Appeals also dismissed a case against retired U.S. General Tommy Franks on the same grounds.

Belgian lawyers filed the lawsuits under Belgium's 1993 universal jurisdiction law, which allowed Belgian courts to rule on crimes against humanity irrespective of whether the defendants were Belgian nationals. In August 2003, Belgium agreed to dispense with the old law under pressure from the U.S. and U.K. and apply a new version only to perpetrators who are Belgian nationals or residents. This revision of the universal jurisdiction law comes in the wake of an amendment passed in April providing for the referral of cases involving American or British leaders to their respective national courts.

Belgian Foreign Minister Louis Michel said, "as long as complaints based on the universal jurisdiction law were not thrown out, we cannot resume (high level) contacts with the United States." The revision followed a warning in June by U.S. Secretary of Defense Donald Rumsfeld that the U.S. would withhold money to build a new NATO headquarters in Brussels and could restrict travel by senior officials to NATO meetings unless Belgium changed the universal jurisdiction law. Rumsfeld called the suits "absurd." He said, "By passing this law Belgium has turned

its legal system into a platform for divisive politicized lawsuits against her NATO allies."

Among the cases originally brought under the universal jurisdiction statute, the *Cour de Cession* dismissed two lawsuits against Israeli General Amos Yaron and Prime Minister Ariel Sharon, filed by a Belgian lawyer on behalf of survivors of the 1982 massacres of Palestinian refugees in the Sabra and Shatila refugee camps in Lebanon. The court ruled that the cases were inadmissible because none of the plaintiffs resided in Belgium at the time of filing. Another dismissed case filed on behalf of seven Iraqi families implicated former U.S. President George Bush, Sr., former Chairman of the Joint Chiefs of Staff and current U.S. Secretary of State Colin Powell, former Secretary of Defense and current U.S. Vice President Dick Cheney, and U.S. General Norman Schwarzkopf for alleged war crimes during the 1991 Gulf War, including the bombing of civilians in the Al-Amiriya shelter in Baghdad.

On September 23, 2003, a Belgian appeals court also dismissed a case against retired U.S. General Tommy Franks and U.S. Marine Colonel Brian McCoy that was filed in May by Belgian lawyer Jan Fermon representing 17 Iraqi and two Jordanian plaintiffs. The cases charged Franks and McCoy with responsibility for crimes committed during their leadership of the U.S. invasion of Iraq in 2002, including the use of cluster bombs and shooting civilians during the invasion. The court dismissed the charges based on the new residency requirements of the universal jurisdiction statute applied in the previous cases.

#### QATAR/SAUDI ARABIA

In May 2003, a royal decree in Qatar established the nation's first human rights committee. The thirteen-member committee includes eight representatives from the government ministries as well as five human rights experts. The experts include Qatar's representative to the United Nations Children's Fund, Ghalia bint Mohammad as the only female panel member.

Saudi Arabian Foreign Minister Prince Saud al-Faisal also announced the planned establishment of Saudi Arabia's first official human rights body as well as an "independent" non-governmental organization. The government body's purpose will be to implement "government decisions regarding human rights, and to reformulate local laws to be consistent with the basic governance system, which focuses on human rights," he said. The body will reportedly include 40 members and be chaired by a newly-appointed human rights minister. The non-governmental organization will aim at domestic reforms and

*continued on page 39*

neration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.” The guidelines also address consumer protection by mandating that businesses comply with fair business practices and ensure the safety of the products they manufacture. Further, business entities should not “produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.”

#### ENVIRONMENTAL STANDARDS

The Norms emphasize that corporations are responsible for the impact their industry has on the environment. The Norms recognize that the environment should be protected for future generations, environmental contamination is hazardous to the health of surrounding communities, and business entities should be responsible for the environmental and health impacts of their activities in light of the connection between the environment and human rights.

To ensure degradation of the environment is not occurring, the Norms direct business entities to periodically assess the impact of their activities on the environment. “Assessments shall . . . address particularly the impact of proposed activities on certain groups, such as children, older persons, indigenous peoples, and communities (particularly in regard to their land and natural resources), and/or women.” According to the Norms, the results of these self-assessments should be disseminated to the United Nations

Environmental Program, and any other interested parties, including the hosting government and the general public.

#### IMPLEMENTATION AND ENFORCEMENT

Ultimately, states still bear the primary responsibility to protect and promote human rights. Since the Norms have not been passed by the member states of the UN, they are not legally binding. The Norms, however, provide the steps for implementation should they be adopted. The first step in implementation is for each business entity to adopt, disseminate, and implement internal operational rules in accordance with the Norms. Corporations should then make their internal operational rules available to anybody with an interest in the company. The corporation also has a duty to adequately train managers and workers to comply with the guidelines outlined in the Norms.

The Norms are more forceful than the UN Global Compact because they call for regulation by third parties (rather than self-regulation), and mandate corporations provide reparations to people and communities adversely affected by corporations not adhering to the guidelines. According to the Norms, third-party regulation is necessary to ensure that business entities make adequate internal changes, and provide reparations when necessary. The Norms call for business entities to “be subject to periodic monitoring and verification by the United Nations, [and] other international and national mecha-

nisms already in existence or yet to be created,” including periodic monitoring and input by NGOs. Recognizing the international community alone cannot enforce these guidelines, the Norms also enlist the help of state and local governments to pass the necessary legislation to provide additional support for the implementation of the guidelines.

#### CONCLUSION

While the Norms are not currently binding, they are an important first step. They synthesize a wide range of international human rights standards into one document that targets business entities as powerful non-state actors. Though the international community cannot currently enforce the Norms, state governments can use them as a model for the implementation of legislation that accurately reflects current international human rights standards.

The Norms are a useful guideline for the international community to hold TNCs and BEs morally, if not legally responsible for violations of international human rights guidelines with respect to business practices. Hopefully, this important first step will provide the basis of a binding document that will regulate corporate responsibility with regard to human rights law.

#### HRB

*Nicole Trudeau is a J.D. candidate at the Washington College of Law and a staff writer for the Human Rights Brief.*

#### International Legal Updates *continued from page 37*

follows the request of several Saudi citizens for its establishment, al-Faisal stated.

#### IRAN

On October 10, 2003, the Nobel Committee awarded Iranian human rights lawyer Shirin Ebadi the Nobel Peace Prize, making her the first Muslim woman to receive the award. At a press conference, Ebadi said that, “there is no difference between Islam and human rights” and urged for the release of prisoners of conscience.

Prior to the 1979 revolution, Ebadi worked as the first female judge in Iran. She currently works as a lawyer and professor at Tehran University. Ebadi represented families of the writers and intellectuals murdered in 1999. In 2000, Ebadi and another lawyer, Mohsen Rahami, were arrested and jailed for three weeks for alleged links to distribution of a videotaped confession, in which a vigilante militia member alleged government involvement in attacks on reformists. Ebadi received a suspended sentence and was banned from working as a lawyer for five years. According to the Nobel Committee,

“Ebadi represents Reformed Islam, and argues for a new interpretation of Islamic law which is in harmony with vital human rights.”

#### SWAZILAND

The United Nations Integrated Regional Information Network (IRIN) reported that the Swaziland palace is close to completing the redraft of the constitution. IRIN expected the Constitution to be finished in September of this year. Resistance has mounted from pro-democracy groups that allege the constitution, as drafted by King Mswati’s brother and head of the Constitutional Drafting Committee (CDC), Prince David Dlamini, continues to centralize power in the hands of the crown. Of note is the reported fact that the document bans any opposition to royal rule. The proposed constitution also grants the king uncontested power over the cabinet, parliament and the courts. The proposed Bill of Rights offers freedom of speech, assembly and association, and equality for women. These rights, however, are granted contingent upon approval by the king. Further,

these rights are subordinate to the unwritten laws of Swazi tradition.

During the Parliamentary elections in mid-September many of the King’s appointed members were voted out of office. The results of the elections revealed the people’s demand for change in the current government. Opposition groups have worked on drafting a proposed Constitution, which they promote as more democratic and describe as ensuring the voice of the people, rather than “His Majesty.” Thus far, the CDC has not yet acknowledged the opposition’s proposed draft of the Constitution. *HRB*

*Meghan Stewart, a J.D. candidate at the Washington College of Law, covers human rights issues in Asia for the Human Rights Brief.*

*Sana Ibrahim, J.D. candidate at the Washington College of Law, covers human rights issues in the Middle East for the Human Rights Brief.*

*Patricia Staible, a J.D. candidate at the Washington College of Law, covers human rights in Africa for the Human Rights Brief.*