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International Legal Updates

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INTERNATIONAL LEGAL UPDATES

INDONESIA

ON NOVEMBER 6, 2003, the president of Indonesia extended martial law for a second six-month period in the province of Aceh to “crush” the insurgent Free Aceh Movement (*Gerakan Aceh Merdeka* or GAM). The government first imposed martial law in the north-western province in May 2003 after the collapse of a December 2002 peace deal with the insurgents. Under the deal, the insurgents agreed to deposit their guns into specially designed gun banks in return for the government’s withdrawal of its troops into defensive positions. But neither side made any effort to comply with the terms of the deal, and violence between the insurgents and government forces intensified during the last weeks before the deal’s breakdown. The government arrested five GAM leaders who had recently been set free, and it set a deadline of May 12 for the rebels to disarm. The two sides attempted last minute negotiations, but neither made any real concessions and the talks quickly failed. Later that month, the government deployed approximately 30,000 troops against the estimated 5,000 GAM insurgents. The government extended martial law because its forces were unable to defeat the GAM within the martial law’s original time period.

The conflict over Aceh has resulted in 26 years of civil war and an estimated 10,000 deaths. Led by Hasan di Tiro, a descendant of the last sultan of Aceh, the GAM was founded in 1976 by Aceh residents to protest the region’s forced incorporation into Indonesia by Dutch colonizers in the 1950s. Over years of government intransigence and exploitation of Aceh’s natural resources, particularly its vast reserves of crude oil, the GAM evolved into an insurgency fighting for complete independence. Although the Indonesian government is prepared to offer autonomy to the province, it will not accept complete independence.

Since imposing martial law in Aceh, the government has restricted access to the region by journalists, local and international human rights observers, and humanitarian organizations. The government claims that the restrictions were imposed solely out of concern for the safety of these individuals and groups.

Indeed, past events such as the reported abduction of two journalists by GAM forces and the reported beating of an Indonesian radio journalist by government elite forces highlight the perilous nature of the conflict in Aceh for non-combatants, even those clearly marked as non-partisan observers. Opponents of the travel ban nevertheless argue that international observers are necessary to ensure that both sides to the conflict respect applicable human rights and humanitarian law provisions, and to pressure the Indonesian government to apply these provisions in its anti-terrorism campaign launched in the wake of the October 2002 Bali bombings.

The province has lately seen a steep increase in violence, in the displacement of civilians, and in shortages of basic necessities. Based on the information that can be gathered from inside Aceh, witnesses charge the government with a long list of human rights and humanitarian law abuses such as the indiscriminate, extra-judicial killing of civilians, young men in particular, regardless of whether they are wearing a GAM uniform or carrying a gun. Speaking on this topic, Juwono Sudarsono, the Indonesian Ambassador to the United Kingdom, acknowledged that the military did not have complete control of all its troops in the province but explained, “you cannot expect legal accountability in a war situation,” stating that “the precise rules of humanitarian law just go out the window once the shooting starts.”

The GAM has also been accused of committing their own atrocities, but reports have not been confirmed because independent observers lack access to the region. Additional unconfirmed reports claim that some or all of these acts have been committed by military personnel disguised as GAM members.

As of late November 2003, the government claimed to have killed more than 1,100 GAM soldiers and to have an additional 2,000 in custody through arrests or surrenders. Both sides also acknowledged the deaths of more than 300 civilians, although neither will take responsibility for those deaths. Although GAM seems to enjoy popular support, civilians have borne the brunt of the conflict through food

shortages, forced movement into camps, and the assassination of young men accused of being GAM members.

Last June, the government charged and tried a number of soldiers for abusing civilians in Aceh. The soldiers, however, were given only light sentences, making it unlikely that the trials will be a deterrent to future soldier abuse of local civilians.

Of additional concern is the charge that the Indonesian military is training militia groups to fight GAM forces, similar to those used during the conflict in East Timor. Numerous military officers were charged with war-time abuses in that campaign for not controlling the behavior of such groups.

The conflict in Aceh is the Indonesian government’s largest military campaign since its invasion of East Timor in 1975. Some claim that as many as 120,000 people died during that conflict, as much from the violence as from the resulting starvation and disease.

IRAQ

ON JANUARY 9, 2004, the U.S. Department of Defense designated former Iraqi president Saddam Hussein as a “prisoner of war.” U.S. Defense Secretary Donald Rumsfeld said that Saddam Hussein’s status as a prisoner of war “can be reviewed at any time, more than once.” As a prisoner of war, the former Iraqi president is accorded the protections of the Geneva Conventions. Pursuant to the Third Geneva Convention to the Treatment of Prisoners of War (Third Convention), the U.S. must provide prisoners of war humane treatment, adequate housing, sufficient food, clothing, and medical care. Article 126 of the Third Geneva Convention permits the International Committee of the Red Cross (ICRC) to visit prisoners of war to ensure Convention standards are met. ICRC spokesperson said in January 2004 that the organization submitted a request to visit Saddam Hussein, which has recently been granted.

According to the Associated Press, the U.S. is holding the former Iraqi leader at an undisclosed location, and the U.S. Central Intelligence Agency will conduct his interrogation.

Under article 17 of the Third Convention, a prisoner of war is only required to give "his surname, first name and rank, date of birth, and army, regimental, personal or serial number." Additionally, the Third Convention prohibits the U.S. from using any form of "physical or mental torture, [or] any other form of coercion" in order to "secure from them information of any kind whatever." Article 17 also states that, "prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind." The articles protect Saddam Hussein during pre-trial interrogation by the U.S. Central Intelligence Agency. U.S. Secretary of State Colin Powell said in January, "I can't say [Saddam Hussein is] being cooperative. He realizes that he will be facing trial. He realizes the difficulties that he is in and what is facing him. So he's trying to protect himself."

Secretary of State Powell also said that the best option would be to try Hussein after the Coalition Provisional Authority (CPA), the U.S.-led temporary governing authority in Iraq, hands power to the Iraqis in July. Article 84 of the Third Convention provides that, "a prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect to the particular offense alleged to have been committed by the prisoner of war." The court must offer "the essential guarantees of independence and impartiality" under article 84.

According to Defense Secretary Rumsfeld, the possibility of Saddam Hussein's prosecution in a U.S. military tribunal is "low." Rumsfeld stated that Saddam Hussein has the potential to be prosecuted for crimes against the Iraqi, Kuwaiti and Iranian people, as well as for "activities after May 1 involving the insurgency and the killing of coalition troops." Rumsfeld did not elaborate on the type of court or location where the trial will be held. Secretary of State Powell said in January that Hussein would be "put on trial with international observers participating," but failed to provide further details. A new statute adopted by the Iraqi Governing Council provides a proposed model for a tribunal that would prosecute Saddam Hussein and would include a provision for the appointment of international observers.

On December 10, 2003, the Iraqi Governing Council adopted a statute provid-

ing for the "Iraqi Special Tribunal for Crimes Against Humanity." Pursuant to article 1 of the statute, the tribunal will consist of five judges appointed by the Iraqi Governing Council and will try all cases involving genocide, crimes against humanity, war crimes, and certain crimes against Iraqi law committed during the period between July 17, 1968 and May 1, 2003. The tribunal may try cases involving crimes committed in Iraq or elsewhere, including the Iran-Iraq War and the 1991 Gulf War. Additionally, under article 1 of the statute, the tribunal will have jurisdiction over crimes against humanity and war crimes committed against the people of Iraq, whether or not committed during armed conflict. The statute stipulates that the Iraqi Governing Council will nominate and appoint the president of the tribunal.

Following the adoption of the statute by the Iraqi Governing Council, the CPA conducted a training session for 100 Iraqi lawyers and judges on war crimes and international law. Article 6 of the statute requires the president of the tribunal "to appoint non-Iraqi nationals to act in advisory capacities or as observers to the Trial Chambers and to the Appeals Chamber." Under the statute, "the role of the non-Iraqi nationals shall be to provide assistance to the judges with respect to international law and the experience of similar tribunals (whether international or otherwise), and to monitor the Tribunal's protection of general due process of law standards."

On January 10, 2004, the CPA authorized the Iraqi Governing Council to establish the Iraqi Special Tribunal under Order No. 48, entitled the "Delegation of Authority Regarding Establishment of an Iraqi Special Tribunal." Under the CPA Order No. 48, however, CPA Administrator, Paul Bremmer, reserved the right to alter the statute and ordered that non-Iraqi nationals may be appointed as judges to the Special Tribunal.

KAZAKHSTAN

ON JANUARY 10, KAZAKHSTAN'S parliament passed a new law, effective immediately, ending the death penalty and replacing the maximum sentence with life in prison. This law follows President Nursultan Nazarbayev's moratorium on the death penalty that he had imposed on December 19, 2003, pending the new legislation. To justify his decision, the president referred to article 15 of the

Constitution, which provides in part that "[e]veryone shall have the right to life."

Kazakhstan has steadily modernized its penal system since gaining independence in 1991. It had already abolished the death penalty for crimes such as theft, robbery, and rape as remnants from the period of Soviet rule. This new law, effectively ending capital punishment in the country, culminates the reform process by abolishing the death penalty for murder convictions. The decree also directs the prosecutor general to evaluate the legality of the sentences of the six people presently sitting on death row.

Although Kazakhstan has earned praise for its work on human rights, observers and activists indicate that the country's criminal justice system needs further reforms and stronger enforcement mechanisms.

KENYA

CONSTITUTIONAL REFORM

The Kenyan Constitution, originally created after independence in 1963, has undergone frequent revisions. The Constitution of Kenya Review Commission notes that the history of the Constitution chronicles the political struggles and shifts in government since Kenyan independence. The latest of the constitutional revisions began shortly after President Mwai Kibaki was elected and were to be completed by June 2003, in order to allow the Kenyan people the opportunity to take part in the construction of a more democratic Constitution.

After an impasse of several months, delegates of the National Constitutional Conference (Conference) resolved in January 2003 that the cabinet should have between 15 to 20 members and a similar number of deputy ministers. The number of members of the cabinet and other similar matters prevented the completion of the constitutional revision process.

The Conference also recommended that the president should no longer have power to dissolve Parliament. During his election campaign, President Kibaki promised that Raila Odinga, one of his key allies, would become the prime minister, but in the midst of the constitutional revision process, many of the delegates to the Conference disagreed on the formation of the Office of Prime Minister. The Conference has agreed that the office should be created. Additionally, the Conference suggested that the Cabinet will be rec-

ommended by the prime minister and appointed by the president. Further, the Parliament should be governed by standard rules deciding such issues as when and how Parliament may be convened. The *Kenya Times* noted that this was done to gain the institution respect and free it from undue external interference.

The delegates drafting the chapter on the judiciary laid out guidelines for the vetting and appointment of the chief justice and the judges of the Supreme Court, the courts of appeal, and high courts. Under the new scheme, the judges will be recommended by the Judicial Service Commission, approved by the relevant standing committee of Parliament and then appointed by the president. The guidelines also established standards such as moral conduct and years of experience that should be taken into account in the appointment process.

HIV/AIDS INFECTED CHILDREN DENIED ACCESS TO EDUCATION

Seventy-two children filed a lawsuit on January 7, 2004, against the Kenyan government for denying them access to public schools because of their HIV/AIDS status. President Kibaki campaigned in 2002 on a platform of free and universal primary education for all Kenyan children. In light of this promise, lawyer Ababu Namwamba, counsel for the children, alleged that the Nairobi City Council, the City Council Education Department, school principals, and the Ministry of Education denied abandoned and orphaned HIV-positive children access to education and discriminated against them. The children sought to have the court declare that any school official who denied them admission breached their constitutional right to education, the Kenyan Children's Act, and offended international agreements on the rights of the child. State lawyers John Gacivih and Rosemary Owino denied the claims of discrimination.

On January 10, 2004, the government acceded to the children's demands. Namwamba told reporters that "we have reached consent with the government that the children be taken into class immediately." He later added, "Our judiciary has demonstrated its readiness to uphold and assert human entitlements of all shades, including those within the socio-economic realm, as being due to all

classes of the citizenry, no less the vulnerable, the weak and the voiceless."

MOROCCO

IN JANUARY 2004, MOROCCAN KING Mohammed VI pardoned thirty-three prisoners, including several Moroccan journalists such as Ali Lmrabit. Lmrabit was serving a three-year sentence for charges of undermining sacred institutions through the press. Lmrabit worked as editor-in-chief of the French-language *Demain* and Arabic-language *Doumane* weekly satirical magazines. In June 2003, a Moroccan court sentenced him for publishing in *Demain* satirical cartoons and articles about the royal family, which questioned the allocation of the royal household budget and opposed Morocco's policy regarding the Western Sahara. In 2002, a Moroccan court sentenced Lmrabit to four months in prison for disseminating false reports by publishing an article stating that the royal palace was for sale.

Lmrabit serves as the Moroccan representative of Reporters Without Borders (RSF), which condemned the charges against him upon his sentencing. RSF Secretary-General Robert Menard said that the RSF "thanks King Mohammed VI for the release of Ali Lmrabit and [journalist] Mohammed El-Hourid." Menard stated, however, that "we regret nevertheless that these two men were in prison for so long and hope that no journalists will be jailed again in Morocco." Hassan Aourid, the palace spokesperson, said that the king pardoned the thirty-three prisoners for "humanitarian reasons" and that the pardons reflected "the King's firm desire to consolidate the rule of the law and promote human rights."

Coincidentally, the king also established the Justice and Reconciliation Commission (Commission) to address six thousand past cases of alleged disappearances and torture. According to the Moroccan Minister of Justice Muhamad Bu Zabaa, the king's pardon of the thirty-three prisoners showed King Mohammed VI's support of the Commission.

The Commission is chaired by Driss Benzekri, Secretary General of the palace-appointed Human Rights Advisory Council (CCDH). The CCDH serves as an advisory body on human rights issues. The Commission was recommended by the CCDH and approved by King Mohammed VI in November 2003.

Half of the Commission's membership comes from the CCDH, including Ahmed Chaouki Benyoub, Vice-President of the Moroccan Human Rights Organization (OMDH), Latifa Jbabdi, Chairwoman of the Union of Women's Action, and Mustapha Iznasni, founding member of the Moroccan Human Rights Organization (OMDH). OMDH former president Abdelaziz Bennani also serves on the Commission.

The Commission will pursue out-of-court settlements for compensation to victims and their families in cases related to forced disappearances and arbitrary detention occurring during the reign of the late King Hassan II, which lasted from 1968 until 1991. According to Chairman Benzekri, the purpose of the Commission is to "establish the truth and obtain financial compensation for victims and their families."

The Commission, however, will not address current allegations of human rights abuses. In October 2003, the United Nations Committee Against Torture expressed concern that the Commission has not attended to reports of torture. Regarding past allegations, however, the king stated that the Commission will "reconcile Moroccans with their history." The king set a deadline of February 13, 2004, for the Commission to receive compensation requests for material and moral damages.

TURKMENISTAN

TURKMENISTAN PASSED NEW LEGISLATION last November requiring all NGOs in the country to register with the Ministry of Justice. The Law on Public Associations (LPA), which applies to both domestic organizations and international organizations with branches operating in the country, requires NGOs to follow lengthy and confusing registration procedures for obtaining government approval. The LPA, which consists of seven chapters and thirty-three articles, is unclear about what the NGOs are specifically required to register. Article 16 of the LPA requires all NGOs to have a public association charter and lists eleven provisions that the charter must contain. Many of these provisions are difficult to assess and involve complex information that many small organizations generally do not have. One such provision, for example, requires NGOs to outline the "procedure for its reorganization, liquidation, and disposal of property/assets after liquidation."

The obscurity of the LPA's provisions has left a number of active organizations unregistered and confused about what steps to take. If apprehended, these NGOs face penalties such as fines, sentences of up to one year of "corrective labor," up to six months in jail, and confiscation of the organization's equipment and property.

Supposedly in response to a failed attempt on his life more than a year ago when his motorcade came under machine-gun fire, and despite protests by human rights organizations and foreign governments, President Saparmurat Niyazov has imposed ever-increasing government control over civil society through the enforcement of such laws as the LPA. Thus far, forty-six people have been convicted for their alleged involvement in the assassination attempt.

ZAMBIA

PRESIDENT LEVY MWANAWASA DISMISSED Mukelabai Mukelabai, the director of public

prosecutions (DPP), on January 9, 2004, because of allegations that he mishandled cases implicating former President Frederick Chiluba in corruption. President Mwanawasa cited anonymous letters which alleged that Mukelabai had met with the former Director General of the Zambian Security and Intelligence Service, Xavier Chungu, who is also charged with stealing from the government. President Mwanawasa told reporters that the allegations against Mukelabai were so serious that the DPP had to be forced from his position, although no formal charges of being involved in the corruption scandal have been brought against Mukelabai. Mr. Mukelabai was ordered to hand over all his cases. At the same time, conflicting reports of Mr. Mukelabai sending President Mwanawasa a resignation letter have been reported by the *Zambian Post*.

Initially, news of the forced resignation of Mukelabai was welcomed by many within the political and legal communities. However, the Law Association of Zambia (LAZ) has since stated that the president has violated article 58

of the Constitution which states that the DPP can only be removed if he is found "incompetent or unable to perform the functions of his office, by reason of infirmity of body or mind or for misbehavior, by an independent tribunal appointed to investigate any claims of incompetence." Michael Musonda, president of the LAZ said that "whatever the reasons for wanting Mr. Mukelabai out, the President has to adhere to the Constitution." Mukelabai says he is confident that if such a tribunal were enforced, he would be found innocent of the charges. *HRB*

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