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## International Legal Updates

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## International Legal Updates

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## INTERNATIONAL LEGAL UPDATES

## NORTH AMERICA &amp; THE CARIBBEAN

**THE SITUATION OF WOMEN AND GIRLS IN HAITI EXEMPLIFIES THE DIFFICULTIES OF POST-NATURAL DISASTER PROTECTION OF HUMAN RIGHTS**

Almost two years after a catastrophic earthquake devastated Haiti, killing more than 220,000 people and leaving more than a million people displaced, over 600,000 people still remain in makeshift tent cities, displaced within their own country. Disasters such as this leave a population vulnerable to disease and diminished personal security due to lack of infrastructure, rule of law, and effective public works. While deprivation of human rights may unfortunately be inevitable in extreme natural disasters, prevention of human rights abuses post-disaster is essential to protecting especially vulnerable groups. In Haiti, it was the existing inadequate human rights protections for women and girls that aggravated their vulnerability to increased sexual assault, gender based violence, and sex in exchange for basic needs post-earthquake. The grim situation faced by women and girls in Haiti indicates that where human rights protections are not sufficient, natural disasters only intensify existing abuses.

Before the earthquake, Haiti's protection of women and girls was troubling. The Inter-American Commission on Human Rights reported, "forms of discrimination against women have been a fixture in the history of Haiti, both in times of peace and in times of unrest and violence." Human Rights Watch (HRW) reports that according to the UN, between 2004 and 2006 up to 50 percent of girls living in conflict zones in Port-au-Prince were victims of widespread or systematic rape, sexual violence, or 'gang' rape. A survey of the area found that an estimated 35,000 women and girls were sexually assaulted between February 2004 and December 2006.

"Experience has also shown that pre-existing vulnerabilities and patterns of discrimination usually become exacerbated in situations of natural disaster," states The Inter-Agency Standing Committee's

(IASC) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters. Though there is not yet data available on the number of sexual assaults post-earthquake, HRW predicts the numbers have increased due to new vulnerabilities. Other human rights organizations have found potential correlations between levels of hunger, survival or transactional sex, and an increased risk for gender-based violence. The recovery efforts are failing to protect and provide for women who are made more vulnerable by life in the tent camps.

Despite the earthquake, Haiti's human rights obligations remain the same. Haiti is a party to several international human rights treaties that create binding obligations on the government to improve women's health, including maternal and reproductive health, such as the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, the American Convention on Human Rights, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. Moreover, the ratification of these international instruments demonstrates the State's acknowledgement of its responsibility to exercise due diligence and undertake state actions to effectively address forms of discrimination and violence against women.

Where the Government made pre-earthquake efforts to meet these obligations, it provided women some post-earthquake protection. The Ministry of Women created a five-year plan to improve the lives of women and girls throughout Haiti. The Ministry partnered with women's NGOs, and UN Agencies to create the Concertation Nationale Contre Les Violence Faites Aux Femmes (Concertation Nationale). While the earthquake greatly affected these efforts, the Concertation Nationale created some effective plans and legislation that aim to improve conditions for women. The Concertation Nationale helped to pass the 2005 decree making rape a crime and establishing a policy that all victims of sexual aggression can receive medical certification of sexual violence in order to ensure that evidence is present for the

prosecution of perpetrators. The organization continues to push for the passage of anti-violence legislation that penalizes assailants, as well as public safety officials who do not enforce the law.

Despite the advancements, Haiti's preventative and responsive efforts are falling short and the government is not fulfilling its obligations. The 2011 revision of the IASC Operational Guidelines provides that, "often, negative impacts on the human rights concerns after a natural disaster do not arise from purposeful policies but are the result of inadequate planning and disaster preparedness, inappropriate policies and measures to respond to the disasters, or simple neglect." While the political and economic realities facing Haiti may render the government unable to protect human rights as it should, it is an important lesson that protecting human rights before a disaster is the best remedy to ensure them after one.

**NEW NATIONAL DEFENSE AUTHORIZATION ACT AUTHORIZES INDEFINITE DETENTION OF U.S. CITIZENS**

On October 26, 2001 President Bush enacted the Patriot Act authorizing indefinite detention of non-U.S. citizens, allowing suspected terrorists to be detained without trial until the War on Terrorism ended. On January 11, 2002, the first group of twenty detainees arrived at Guantanamo Bay's Camp X-Ray, where they were housed in open-air cages with concrete floors. Later that month, President Bush declared detainees' status as unlawful enemy combatants, which disqualified them from prisoner-of-war protection under Article Five of the Geneva conventions (though protections are still afforded under Article Three). Human rights advocates argue that this system of indefinite detention circumvents the rule of law, and fails to prosecute terrorist suspects efficaciously, while wrongfully detaining hundreds. Yet on the eve of the ten-year anniversary of the first detainees arriving at Guantanamo Bay, President Obama signed the indefinite detention of alleged terrorists into law, despite his previously voiced reservations.

On December 31, 2011, President Obama signed the National Defense Authorization Act (NDAA), or H.R. 1540, for the 2012 fiscal year. Congress passes this act annually to monitor the budget for the Department of Defense, but this year the bill included highly controversial new provisions that allow indefinite military detention of U.S. citizen terrorist suspects, and requires the detention of suspected foreign enemies. The provisions also apply to any person who supports or aids “belligerent” acts against the United States, whether the person is apprehended abroad or on domestic soil.

U.S. citizens may now be joining the 171 detainees who remain at Guantánamo Bay, most of whom have never been charged with a crime and do not know when they will face trial, if at all. Many of the detainees were subjected to forced disappearances in secret CIA custody prior to being brought to Guantánamo, as well as to torture or other cruel, inhuman or degrading treatment; held incommunicado in solitary confinement for extended periods. Exactly what “interrogation techniques” have been used and what conditions the detainees were subjected to in CIA custody remains classified.

The Obama administration maintains that the law is merely a codification of existing standards and that U.S. citizens are exempt. While U.S. citizens are in fact exempted from the mandatory detention requirement of section 1032 of the new law, section 1031 offers no exemption for American citizens from the discretionary authorization of the U.S. Government to indefinitely detain them without charge or trial. Though supporters and critics disagree on whether the new law is a positive step, they agree that it will mean much more than maintaining the status quo. Instead, the law enshrines military authority to detain and imprison civilians anywhere in the world, without formal charges or trial. The power to detain is so broad that U.S. citizens may now be taken by the military from any “battlefield.” In support of the bill, Senator Lindsey Graham explained that it will “basically say in law for the first time that the homeland is part of the battlefield” and that people can be imprisoned without charge or trial whether American citizens or not. Senator Graham elaborated that if a U.S. citizen is “thinking about helping al-Qaeda,” then they are an

“enemy combatant” and are not entitled to legal representation.

For the past ten years, the indefinite detention system created by the Patriot Act has created a tenuous human rights situation for foreign nationals. The NDAA now extends the danger of human rights violations to U.S. citizens, and in the process violates their constitutional rights. The Fourth Amendment of the United States Constitution grants citizens liberty from unreasonable seizures of their person, while the Fifth Amendment guarantees that one cannot be deprived of life, liberty, or property, without due process of law. The Sixth amendment provides every U.S. citizen the right to a fair trial in front of a jury with the assistance of counsel. The NDAA provisions openly violate these constitutional rights and perpetuate the use of the facilities at Guantánamo Bay, now open to the U.S. citizens they purported to protect. President Obama issued a statement saying “I want to clarify that my Administration will not authorize the indefinite military detention without trial of American citizens . . . doing so would break with our most important traditions and values as a Nation.” Unfortunately, a presidential statement alone is not binding on future administrations’ interpretation of the NDAA. What will be left when the Obama Administration is gone is a law that authorizes human rights abuses and constitutional violations in the country and worldwide.

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## LATIN AMERICA

### SHUTTING DOWN CLINICS THAT ‘CURE HOMOSEXUALITY’ IN ECUADOR

In January 2012, three Ecuadorian non-governmental organizations posted a petition on Change.org, asking the Ecuadorian Ministry of Health to close “ex-gay” clinics. The petition received over 100,000 signatures, sending a strong message to the Ecuadorian government from the international community. Until January, lesbians in Ecuador were being tortured and sexually abused in approximately two hundred clinics that claimed they could “cure” people of their homosexuality. The clinics generally masqueraded

as drug rehabilitation centers throughout the country.

Despite the aims of these clinics, lesbian, gay, bi-sexual, transgender, and inter-sex (LGBTI) individuals in Ecuador actually enjoy more profound *de jure* recognition of their rights than do their counterparts in other countries in Latin America. For example, Ecuador was the first country in the Americas, and the third in the world, to include sexual orientation as a protected category in its Constitution in 1998. In 1997, the country’s Constitutional Tribunal overturned section one of Article 516 of the Penal Code, which criminalized sexual activities between persons of the same sex. Article 68 of the 2008 Constitution formally recognized same-sex civil unions under the law, and Article 11 reiterated the freedom of all peoples from discrimination. Article 66 also guaranteed all Ecuadorians the rights to physical, moral, and sexual integrity of person, as well as freedom of expression of sexual orientation. Finally, Article 212 of the Penal Code criminalizing hate speech, sanctions those who incite hate against any other person for reason of their sex, sexual orientation, or sexual identification, among other characteristics.

However, the *de facto* situation of LGBTI rights and protections against discrimination and even violence is completely contradictory to the law. These “intense rehabilitation” clinics employed methods prohibited under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture. Ecuador is a state-party to both of these conventions, and to the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women — conventions whose principles are violated by abuses which were taking place at these clinics.

Twenty-four year-old Paola Ziritti came forward after being held against her will in a clinic for two years, and reported that the clinic staff would routinely sexually and physically assault her. She spent several months handcuffed and was regularly doused with urine and water. Other women have reported being raped or threatened with rape, handcuffed, deprived of food

and water, and forced to dress like prostitutes, according to Tatiana Velasquez, a representative of Taller de Comunicación Mujer, one of the organizations that petitioned the Ministry of Health to shut down the clinics. Taller de Comunicación Mujer, along with Fundación Causana and Artikulación Esporádika, have worked with clinic victims since at least 2005. However, information about the situation of the LGBTI community in Ecuador is difficult to find, as homosexuality is still taboo in Ecuadorian society and is rarely discussed. Despite efforts by the LGBTI community to assert itself, as evidenced most recently by the July 2011 pride parades in Quito and Guayaquil, the country's two largest cities, the relative strength of the Catholic Church, as well as the *machismo* which permeates the culture, may be barriers to successfully lobbying for the closure of these clinics. During the 2008 constitutional referendum, conservative Catholic clergy and evangelical church leaders allied themselves with the "No" vote in protest over the legalization of same-sex civil unions. Furthermore, apart from the religious belief that homosexuality is a moral wrong, many people believe that homosexuality is also a curable disease, as evidenced by the prevalence of these torture clinics.

Regardless of outside influences and prevailing societal beliefs about homosexuality in Ecuador, the Ecuadorian Government has a legal obligation to continue to close these clinics. Whether Ecuadorian or international bodies take action, the practices these clinics employed are illegal and a violation of the rights of the women who were trapped in them.

#### **COLOMBIA TAKES A STEP TOWARD JUSTICE WITH ITS VICTIMS LAW**

Colombia is continuing its work toward lasting peace by addressing the needs of the victims of the country's decades-long armed conflict. On June 10, 2011, President Juan Manuel Santos signed the Victims and Land Restitution Law (Victims Law), which complies with the United Nations' Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles) of 2005. The goal of the Victims Law is to

require the return of land appropriated by armed groups to its rightful inhabitants, and to financially compensate the 3.7 million internally-displaced persons (IDPs) and other victims of violence since 1985. Santos' government chose 1985 as the earliest date to which people could cite claims because of that year's symbolic importance in the country's history — on November 6, 1985, members of the now-defunct M-19 guerilla group stormed the Palace of Justice in Bogotá. The event ended in the death of eleven of the twenty-five Supreme Court Justices, all thirty-five participating M-19 members, and nearly fifty army soldiers.

The Victims Law was generally greeted with support and enthusiasm by the Colombian and international communities, as evidenced by UN Secretary General Ban Ki-moon's presence at the signing ceremony. In accordance with the Basic Principles, the Victims Law strictly defines victims as unarmed civilians who suffered violations of international human rights and humanitarian law during the armed conflict. If the victim is deceased, immediate family members may make a claim on behalf of the victim. No armed combatants can apply to the victims' fund for compensation, except for former child soldiers. The law also outlines the general principles that will guide the restitution process, including dignity, equality, good faith, and due process. Article 28 of the law details a list of victims' rights during the restitution process, including, among others, the right to truth and justice, family reunification, and lives free of violence. The Victims Law also complies with the Basic Principles by describing the process victims must go through in order to make their restitution claims, and the social services available to victims during and after this process. The Basic Principles provide for access to justice and reparations for harm suffered. In recognition of the fact that giving detailed accounts of the violence victims experienced would be emotionally taxing, the Colombian government will provide counseling services for those who file restitution claims. Special consideration is given to IDPs and vulnerable populations like the indigenous and Afro-Colombians, as well as human rights defenders and union organizers. Finally, the law includes specific measures for land resettlement, which are presented in more detail in the corresponding regulations.

President Santos signed these regulations on December 20, 2011. They were drafted in response to questions about how the reparations provisions would actually be enforced, and they establish more detailed assistance measures for the victims. The three main components of the regulations are restitution payments to victims (up to US \$11,900 each, over the next ten years), administrative procedures to enroll in the victims' fund, and safeguards for vulnerable populations to prevent gross human rights violations in the future. The amount of each restitution payment will be determined partly by the severity of the violence suffered by the victim during the civil war, but also by the types of positive steps the victim or the victim's family has taken since then to rebuild his or her life. For example, higher payments will be given to those who have already invested in their education or that of their children, or who promise to do so in the future. This provision is in keeping with the Basic Principles as well.

A special office has been created to assist IDPs in establishing their land claims. Civil society organizations in Colombia have reported that citizens were not only forced to flee because of the violence, but were also forcibly evicted from their land in many cases. This land was then cultivated to finance the armed conflict. President Santos hopes to return over five million acres of land to displaced persons in the next few years. Concerns remain, however, about the possibility of renewed violence against victims returning to their land — since Santos took office in August 2010, over twenty leaders of farmers attempting to reclaim stolen land have been murdered and only six people have been arrested in these killings to date. Despite explicit warnings by the Colombian government that such violent acts will no longer be tolerated, no changes have been made to the penal code and the Victims Law does not directly address this new violence. Therefore, only time will tell if the Victims Law can truly provide the justice it promises.

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## MIDDLE EAST AND NORTH AFRICA

## PAGE NOT FOUND: THE TUNISIAN INTERNET AGENCY'S APPEAL TO ELIMINATE CENSORSHIP

On August 15, 2011, a Tunisian appellate court upheld a May 2011 order requiring the Tunisian Internet Agency (ATI) to censor Internet access for all Tunisians. The ATI intends to appeal the decision to the Tunisian Court of Cassation, the country's highest court. Under new leadership after the January 2011 revolution, the ATI opened Tunisia up to the Internet fully for the first time in the country's history. The ATI is using the resources at its disposal to advocate for freedom of expression via the Internet and against Internet censorship. The Agency encountered resistance on two fronts: from the Tunisian courts, which ordered the ATI to block all pornographic material, and from the Tunisian military, which ordered the agency to censor certain politically objectionable sites and Facebook pages. If the ATI loses its pending appeal, the agency will, pursuant to judicial order, block a classified list of websites deemed morally objectionable that the government can update at will. The creation and enforcement of such a censorship list would violate Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Judicial censorship of the Internet in Tunisia combined with the political agenda advanced by the military would together represent a *de facto* state of censorship not much different from the one present under the regime of ousted former President Ben Ali.

Under the Ben Ali regime, the ATI blocked culturally and politically objectionable content using censorship software installed at the Internet's point-of-entry into the country. The newly elected legislature is facing pressure from progressive groups in the country to repeal old statutes that remain in force, including laws that proscribe jail time for nonviolent speech and structural modifications that effectively give the executive branch total control over the nomination, promotion and discipline of judges.

Article 19 of the ICCPR, to which Tunisia is a party, provides that "Everyone shall have the right to freedom of expression; this right shall include *freedom to seek, receive and impart information and ideas of all kinds*, regardless of frontiers,

either orally, in writing or in print, in the form of art, or *through any other media of his choice*." (emphasis added). According to General Comment 34, which describes the UN Human Rights Committee's interpretation of Article 19, parties to the ICCPR must protect Internet-based forums and "take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto."

The planned censorship list put forth by the Tunisian court contravenes both the letter of the treaty and its interpretation by the Committee. General Comment 34 reads Article 19 to include all information including "political discourse, commentary on one's own or public affairs," even if it is "deeply offensive." The military is a legitimate arm of the government and often a political force itself, and the order to censor anti-military statements on Facebook seems to fall squarely within the definition of permissible political discourse under Article 19. Additionally, the censorship of pornographic materials may contravene the prohibition against censoring even "deeply offensive" material, although in practice more conservative interpretations may find certain pornography to be a form of gender discrimination and therefore subject to restriction to prevent public morals. Even under such a reading, the General Comment makes clear that removing all individual choice and giving the government total control over the regulation of pornography would constitute "unfettered discretion" in violation of Article 19.

The classified list of censored materials proposed under the court order is a troubling and immeasurable step backwards for the free society that the new government endeavors to build. Tunisia experienced its first free election on October 23, 2011, and the inability for its citizens to discuss future government formations and political issues using the Internet as a forum runs counter to both the goal of building a new democratically engaged nation and Tunisia's treaty obligations under the ICCPR not to confer "unfettered discretion" to limit freedoms using national laws.

**SALEH'S AMNESTY: PROVIDING PEACE OR PREVENTING REMEDY?**

On January 21, 2012, the Yemeni parliament passed a law granting President Ali Saleh immunity for all "politically

motivated" crimes against the people of Yemen. This statement of immunity formed the substantive part of a Gulf Cooperation Council (GCC) brokered deal between Saleh and the new Yemeni parliament. The International Covenant for Civil and Political Rights (ICCPR) requires signatory states to ensure that victims of violations of the ICCPR, such as those allegedly committed by Saleh during the recent Yemeni revolutions, have access to an effective remedy. The parliament's decision to neutralize Yemeni citizens' ability to prosecute President Saleh in exchange for his voluntary abdication of power represents a violation of Yemen's obligations to provide an effective remedy for violations of the ICCPR.

As part of the January agreement, Saleh ended his career as President and transferred power to Vice President Abd-Rabbu Hadi. Hadi went on to run unopposed in the February 2012 election, winning 99% of a vote in which barely 64% of the citizenry participated. The new immunity law protects Saleh and his aides from prosecution for their role in widespread violence against civilians peacefully protesting the government since February 2011, resulting in the death of around 2,000 civilians and military defectors. Protesters calling for constitutional and governmental reform suffered from armed attacks, arbitrary arrests, torture, and forced disappearances. The immunity also extends to public prosecution of crimes committed by Saleh and his aides over the course of his 33-year rule, including the government's controversial use of artillery against the Huthis in Northern Yemen during the period of unrest Yemen experienced between 2004 and 2010. While lauded as an efficient way to put a prompt end to the bloodshed, the immunity deal garnered widespread Western and GCC support due to concerns that al-Qaeda, which enjoys a strong presence in Yemen, might be strengthened by continued unrest.

The new immunity law violates Yemen's international legal responsibilities under the ICCPR, to which Yemen is a party. Article 2 of the ICCPR states that "[e]ach State Party undertakes . . . to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Thus, the ICCPR guarantees an effective remedy to any citizen whose rights have been

violated, regardless of whether the perpetrator was acting in his official capacity. Despite the political considerations in Yemen, General Comment 31 of the Human Rights Committee, which informs analysis of states' obligations under Article 2, notes that "[t]he requirement under article 2, paragraph 2, to take steps to give effect to the Covenant rights is unqualified and of immediate effect. A failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State."

Amnesty can be a powerful conflict resolution tool, but guidelines published by the Office of the High Commissioner for Human Rights (OHCHR) prohibit broad, blanket grants of amnesty that infringe on essential human rights by preventing prosecution of those who "may be responsible" for crimes against humanity. The reintegration of combatants back into society, both judicially and socially, is a common obstacle to national repair following intrastate conflict, and immunity from prosecution is a customary way to begin reconciliation as discussed by the International Committee of the Red Cross (ICRC). This comes with the explicit exception that such amnesty should not be used to allow those with command authority and suspected of war crimes to evade punishment.

The new immunity law signed by President Saleh contravenes both the letter and spirit of the ICCPR, and a fundamental misuse of amnesty as a remedy for any government-sponsored prosecution for crimes committed against the people of Yemen. Without making a judgment as to President Saleh's guilt or innocence by preventing the requisite investigation, the Yemeni parliament has acted inconsistently with international law. The General Comment notes that failure to investigate violations of the aforementioned rights, implicitly folded into the government's blanket grant of criminal immunity, may constitute a separate breach of the ICCPR.

Internal politics within Yemen make it unclear as to whether conventional political channels of overturning a policy like this one would even be possible. The Supreme Court is effectively controlled by the Executive branch, and one chamber of the bicameral legislature — the Sura Council — is entirely appointed by the President. The President's majority party controls 238 of the 301 seats in the other

legislative chamber. Given the present state of internal Yemeni politics making domestic change unlikely, a diametric shift at the highest level of parliament as the issuing body is necessary to ensure compliance with Yemen's international obligations. If legislation like this immunity law is used to parlay citizens' internationally guaranteed right to redress in exchange for political stability, the weight of international legal commitments would be insignificant in the minds of policymakers and national entities responsible for enforcement.

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## SUB-SAHARAN AFRICA

### LABOR ABUSES IN ZAMBIA'S COPPERBELT

Zambia, known for its mineral wealth and currently Africa's largest copper producer, has attracted significant Chinese investment since 1990. While these investments have created jobs and increased copper production, human rights groups decry the copper mines' poor labor conditions that have existed since these investments began. A recent Human Rights Watch (HRW) report examines the labor practices of Chinese state-owned copper mines, and calls on the Zambian and Chinese governments to take measures to enforce labor laws and conform to international labor standards. Advocacy organizations like HRW hope that shedding light on these violations will ensure that further economic development of Zambia does not jeopardize the safety of its workers.

Observed labor violations in the Chinese-owned mines include low wages, long hours, a lack of safety standards, and undercutting of mining unions. While dangers are inherent to copper mining, Zambian government representatives admit that safety conditions in Chinese-owned copper mines are very poor. For example, in 2005, mine explosions killed forty-six Zambian workers, many of whom were initially unidentified because the mine operators did not keep employee records. Contrary to copper mining and processing standards throughout Zambia, the Chinese-owned mines often require twelve-hour shifts instead of the eight-hour shifts outlined in Zambian mining standards.

The HRW report details safety and health hazards resulting from toxins and dust inhalation, as well as the lack of proper attire and equipment to prevent these hazards. Notably, HRW points out that the poor safety standards in Zambia's Chinese-run mines resemble the labor abuses occurring in mines in China.

Zambia's Mines Safety Department is responsible for enforcing the country's mining regulations. However, human rights groups report that the department is ineffective, failing to enforce both domestic and international labor law in the Chinese-owned copper mines. While regulation of all Zambian mines is subpar, human rights group emphasize that the Chinese-owned mines are some of the worst in the country. International Labor Organization Convention No. 176 concerning Safety and Health in Mines sets out basic mine safety standards that states and employers must follow. Not only do Chinese employers fail to comply with these standards, but they also tend to discriminate against employees for affiliation with non-Chinese labor unions even though freedom of association is protected under the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. Domestically, mine safety and freedom of association are outlined within the Zambian Industrial and Labour Relations Act 269 and the Minimum Wages and Conditions of Employment Act 267.

HRW has called on the Chinese government to convene the Forum on China-Africa Cooperation to establish mechanisms addressing labor conditions and compliance with international human rights standards in foreign investments. HRW also recommends that the Zambian government improve the functionality of the Mines Safety Department, and also investigate and prosecute mining company officials who intimidate miners into working in hazardous areas.

In response to the HRW report, the Chinese Non-Ferrous Metals Mining Corporation (CNM), which operates four copper mines in Zambia, said that "language and cultural differences" could have resulted in "misunderstandings." Since the report's release, however, CNM has promised to conduct a general investigation, and also to rectify existing malpractices. Yet human rights groups continue to emphasize

the need for involvement of the Zambian government if labor conditions and standards are to improve.

Human rights abuses associated with Chinese involvement in Africa are not limited to Zambia. Recently, China has sold arms to the Sudanese government, some of which have been used to remove indigenous southerners from their lands to provide for Chinese development of oil fields. Additionally, the government of Zimbabwe has become heavily reliant on Chinese lending and investment in exchange for natural resources; human rights advocates note with frustration the detrimental social impact of growing Chinese alliance with Zimbabwe, allowing Zimbabwe to continue practices contrary to international norms and pressure.

The consequences of China's increased involvement in Africa remain the subject of much debate among human rights groups. While China's willingness to build roads in Gabon, develop mines in Zambia, and buy oil in Sudan has allowed for increased economic development, human rights advocates continue to address the lack of respect for human rights. As Zambia's mining industry grows, advocates will continue to make the case that sacrificing domestic and international labor standards, along with other human rights, is too big a price to pay to attract foreign investment.

#### **ABUSE OF SOMALI REFUGEES IN KENYA AND ETHIOPIA**

Since 2010, escalating conflict in southern Somalia between forces allied with the Somali Transitional Federal Government (TFG) and the Islamist armed group al-Shabaab has resulted in thousands of civilian casualties and numerous human rights abuses against the refugee population. Human rights groups continue to encourage the TFG, the United Nations (UN), the African Union (AU), the Kenyan and Ethiopian Governments, and the African Union Mission in Somalia (AMISOM) to take steps to ensure that all parties are trained on international humanitarian law standards and how to respond to the increasingly frequent abuses committed against refugees.

The current conflict between the TFG and Al-Shabaab began in 2006 when the TFG, Ethiopian troops, and other military allies defeated the Islamist Courts Union (ICU), which was a rival administration to

the TFG based on Sharia law. Al-Shabaab formed shortly after this defeat as a TFG off-shoot and has been causing havoc ever since. Recently, the number of uprooted and displaced Somalis has increased dramatically due to regional instability, and extreme drought and famine. Somali civilians continue to flee drought and conflict-affected areas to seek assistance across the border, but have faced repeated and unlawful deportation back to their war-torn country despite obligations under the 1951 Refugee Convention to allow safe haven to asylum seekers escaping violence.

The severe drought, combined with the armed conflict, have led the UN High Commissioner for Refugees to deem the situation in Somalia "the worst humanitarian crisis in the world today." In 2010, the Office of the High Commissioner for Refugees reported that nearly 1.46 million civilians had been displaced, including 614,000 forced to flee to neighboring countries. Since this crisis declaration, human rights groups have been calling for international relief efforts. Additionally, these groups have criticized Kenyan and Ethiopian forces for violating international humanitarian law standards by returning refugees to conflict areas.

Human rights groups have reported numerous other human rights violations perpetrated against Somali refugees in addition to forced return, including arrest, deportation, and abuses by military forces and police. For example, in violation of Kenya's Refugee Act of 2006, Kenyan police regularly arrest without cause and extort money from Somali refugees. Furthermore, overcrowding and a continued influx of asylum seekers have led to poor living conditions in the refugee camps. The Dadaab refugee camp in Kenya is currently the largest refugee camp in the world, sheltering around 450,000 refugees though it was built to hold only 30,000. As a result of camp congestion, vulnerable groups such as women and unaccompanied children experience little protection. Human rights groups have also received reports of Kenyan police raping Somali refugees and not being held accountable even when the information comes to light.

Similar to the refugee situation in Kenya, Somali refugees in Ethiopia face instability and abuse. When Somali women and girls travel to and arrive at refugee camps in Dolo Ado, Ethiopia, they experience an increased risk of gender-based

violence, including rape, violence, and forced marriage. A lack of permanent security measures and preventive efforts such as adequate lighting at transit centers has impeded efforts to alleviate these human rights violations.

In light of these crises, human rights advocates emphasize the importance of TFG's collaboration with the international community, as outlined in the 2011 Kampala Accord, to assist the transitional government in holding accountable those responsible for humanitarian law violations. International humanitarian law, also known as the law of war, is defined in the four Geneva Conventions of 1949, which seek to limit the effects of armed conflict on civilians and to restrict the methods of warfare. These norms are intended to protect wounded members of the armed forces, prisoners of war, and refugees in conflict areas.

One critical component of international humanitarian law is the 1951 Refugee Convention, which requires conflicting parties to follow the principles of non-discrimination and non-penalization of civilian conflict victims. The Convention also contains non-refoulement provisions that prohibit the forced return of refugees facing persecution or violence in their countries of origin, which Ethiopia and Kenya have violated by refusing safe haven to Somali refugees.

As abuses against Somali refugees are increasingly exposed, the international community continues to call on the Somali, Kenyan, and Ethiopian governments to respect humanitarian law. Human rights activists insist that hosts of Somali refugees end their unlawful return and alleviate overcrowding of refugee camps. Without timely investigation and prosecution of international humanitarian law violations being perpetrated within and outside Somalia, however, measures to improve refugee conditions will prove insufficient to address the humanitarian crisis confronting the Somali people.

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## EUROPE

**THE CASE OF N.Ç.: A TURKISH CHILD'S PRESUMED CONSENT TO PROSTITUTION**

In many countries, when a thirteen-year-old girl is sold as a child prostitute, courts presume the girl has been raped. The Supreme Court of Appeals in Turkey recently found otherwise. Two women, who purported to be thirteen-year-old N.Ç.'s employers at a local factory in the province of Mardin, sold her as a child prostitute to over twenty-six men for a period of seven months. Both women have been sentenced to nine years in prison, but the twenty-six men, including teachers, civil servants, and village elders, have received reduced sentences ranging from one to six years. The men benefited from a legal technicality, namely the old Turkish penal code that was in effect at the time of the rapes included a provision allowing reduced sentences in cases where the minor consented to the sexual activity. The lowest court applied the old code, ruled that the girl consented to the intercourse, and sentenced each of the men to a minimum of five years in prison for statutory rape. The court also agreed to lower the sentences of some defendants by between two and ten months based on good behavior during the trial. Upon appeal, the Supreme Court upheld the lower court's ruling, and an official of the Court defended its application of the old code as an "undebatable rule of law." The reduced sentences for these perpetrators are alarmingly indicative of the state of children's rights in Turkey.

The new code leaves no room for consideration of consent by a minor to sexual intercourse (the age for sexual consent in Turkey is fifteen). As such, the new law seems to be a legal victory for children's rights. However, the alarming fact of N.Ç.'s case is not that the courts applied the old penal code. Courts are often precluded from retroactively applying new laws. The alarming fact of N.Ç.'s case is that all of the judges on Turkey's Supreme Court ruled that N.Ç. consented to sexual intercourse with at least twenty-six men. In other words, the Supreme Court ruled that a thirteen-year-old girl had the capacity to consent to child prostitution. If a child can legally consent to prostitution, then child prostitution in itself is not a violation of that child's human rights unless it is against the child's will. If a court is willing

to rule that a thirteen-year-old girl such as N.Ç. engaged in the intercourse willingly, then what child-victim of sexual violence stands a chance of obtaining justice in Turkey? Because the Supreme Court is Turkey's highest court, N.Ç.'s only alternative for recourse is through an international court of human rights.

International human rights law does not permit the assumption of consent by a minor to prostitution. Article 34 of the UN Convention on the Rights of the Child requires that all State Parties undertake to protect children from all forms of sexual exploitation and abuse by taking appropriate national, bilateral, and multilateral measures to prevent child prostitution. Article 3 of the Optional Protocol to the UN Convention on the Rights of the Child requires that all participating State Parties make sexual exploitation of a child a criminal offense, and take measures to establish the liability of legal persons for committing an offense of child prostitution. Neither document mentions or allows consent by a child to rape or prostitution. Turkey ratified both the Convention and the Optional Protocol in 1995 and 2002 respectively.

The conventions imply that there is no basis in international human rights law for the assumption of consent by a minor to acts of sexual violence, and many people in Turkey seem to agree. Human rights activists protested the Supreme Court's ruling outside the Palace of Justice in Istanbul on Friday, November 4, 2011. The Family and Social Policies Minister of Turkey, Fatma Şahin, called the sentence "unacceptable and worrying;" the President of Turkey himself, Abdullah Gul, said the Supreme Court's ruling made him "deeply uncomfortable;" and Umit Kocasakal, head of Istanbul's bar association, said the Supreme Court's decision was "bloodcurdling." But Supreme Court officials simply stated that "this decision is not definite, it is also not possible for this decision to be changed by making noise."

Regardless of the reason for the Supreme Court's decision, N.Ç.'s case illuminates the reality that the achievement of human rights principles must come through the law, at the hands of those who administer it. Without the support of a society's judicial authorities, victims of human rights violations have grim prospects for justice and restitution.

**ELECTION FRAUD PROTESTS IN RUSSIA**

Briefly in January and February 2012, it appeared the Russian government had decidedly altered its public policy against opposition protests and public demonstrations. The Russian government allowed two successful, peaceful demonstrations to occur on December 10 and December 24, 2011, and a third, much later, on February 26, 2012. Human rights organizations and activists looked hopeful and remarked on possible explanations for the policy shift. But the government's arrest of nearly 550 people at election fraud demonstrations on March 5, 2012 has refuted these hopes.

The Russian government has ratified several legal documents that protect the right of its citizens to protest publicly. Russian Constitution Article 31 states that Russian citizens "shall have the right to gather peacefully, without weapons, and to hold meetings, rallies, demonstrations, marches, and pickets." In customary international law, the Universal Declaration of Human Rights (UDHR) Article 20 provides for freedom of peaceful assembly and association and Article 19 provides for freedom of opinion and expression. The International Covenant on Civil and Political Rights (ICCPR) Article 21 requires states to recognize the right of peaceful assembly and provides that "no restrictions . . . be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." In practice, this provision enables governments to require protesters to obtain permits prior to holding public demonstrations.

Though not required specifically by its Constitution, the Russian government requires citizens to obtain a written permit from local authorities, such as the local Mayor's office, before protesting publicly. Applicants must indicate the location and estimated number of participants, and may be subject to a nominal fine if their estimates turn out inaccurately low. If Russian authorities meet resistance when attempting to disperse demonstrators, resisting protesters may be detained for up to 15 days.

Prior to the March 5 arrests, some commentators theorized that the change in Russia's response to public protests could conceivably be explained by the

permit requirement. Previous protests that ended in mass arrests either did not have a permit at all, or had displayed gross inconsistencies between the number of individuals estimated to participate and those who actually attended, with the latter exceeding the former by thousands in some cases. Conversely, both December demonstrations were sanctioned by the Russian authorities after demonstrators obtained the required permits, and were carried out peacefully, with no violence occurring between police and demonstrators. The permit requirement theory may also explain the March 5 arrests, as many of those arrested had refused to leave their demonstration sites even after their protest permits had expired at 9 p.m.

While protestors' failures to satisfy permit requirements may explain the government's varied responses to demonstrations, other commentators theorized that December's peaceful protests should be attributed to something less tangible — the political considerations required by the new and middle-class demographic participating in those protests. Vladislav Y. Surkov, a Kremlin official who previously protected Mr. Putin from potentially politically dangerous street rallies, stated the protestors on December 10 represented "the best part of our society, or, more accurately, the most productive part." Yevgeny S. Gontmakher, a government economic advisor, commented on the remarkability of the protestors' demands for political rights rather than economic relief, stating this fact "is a sign that Russia is becoming a Western country, in its own way."

Now following the March 5 arrests, another theory must be posited: perhaps the seeming, now probably temporary, policy shift had nothing to do with permit requirements or protest demographics. Perhaps instead it was simply and entirely political. In Russia, political protests are renowned for producing violence, but not change. Perhaps permitting the protests to occur peacefully was only Vladimir Putin's bone to the people to appease them after allegedly rigged parliamentary elections in December but before his expected presidential election on March 4. If so, one might argue it was quite an effective distraction. No notable protests occurred between December 24 and February 26, and Human Rights Watch, which monitored the protests, continued to write that the protests occurred peacefully.

Regardless, Vladimir Putin is Russia's President yet again, and opposition protesters are being arrested in droves. Perhaps the next election season will provide renewed hope for the respect of the people's right to peaceful assembly — but then again, a cynic would say, that seems rather unlikely.

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## SOUTH AND CENTRAL ASIA

### TAJIKISTAN'S PARENTAL RESPONSIBILITY LAW: PREVENTING EXTREMISM OR VIOLATING RIGHTS?

On August 6, 2011, Tajikistan's president, Emomali Rahmon, signed the Parental Responsibility Law into effect, banning children under the age of eighteen from attending religious services except funerals. On August 31, police began stopping individuals under the age of eighteen from entering mosques to celebrate Eid al-Fitr. The law is exclusively enforced against Muslims, who make up 90% of Tajikistan's population. According to Suhaili Hodirou, a spokesperson for the Tajik government's Office of Human Rights, "Religious activity is only banned up to the age of 18 — beyond that they have full rights." The Tajik government adopted the Parental Responsibility Law in conjunction with an amendment to the Criminal Code created to punish organizers of "extremist religious" teaching to create a safer environment for children who the government says are vulnerable to recruitment by extremist groups. These provisions violate the freedom of worship provided in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and, as a party to the ICCPR, Tajikistan is bound to protect the right to freedom of religion, the right to peaceful assembly, and the right to engage in cultural activities.

The new laws restricting religious freedom come during a movement to eliminate unsanctioned religious teaching, which the government suggests leads to violent extremism. The President introduced the new laws after the Tajikistan Defense Minister released a report showing increased juvenile violent crime rates in 2010. In August 2010, President Rahmon made an announcement to Tajik parents warning that their "children will

become extremists and terrorists" if they did not bring the approximately 2,000 students home from Islamic colleges abroad. During 2011, government authorities shut down mosques throughout Tajikistan's capital, arrested individuals in their homes for teaching unapproved schools of Muslim thought, and forced religious groups to pay for heavy censoring of literature.

Article 8 of the Parental Responsibility Law states, "Parents are obliged...not to let children-teenagers participate in the activity of religious organizations." The only children exempt from this law are those enrolled in state-sanctioned religious schools. The Tajik government's laws violate multiple articles in the ICCPR, most notably Article 18. Article 18 provides for freedom of "thought, conscience, and religion" and is one of the ICCPR's seven non-derogable rights. Because the Article 18 rights are non-derogable, Tajikistan cannot, except under very limited circumstances, infringe on these rights. Although the Parental Responsibility Law does not prevent individuals from self-identifying as Muslim or from practicing Islam as an adult, it does violate the Article 18 right for any individual to "manifest his religion or belief in worship, observance, practice, and teaching." Article 18 also requires that countries "respect the liberty of parents...to ensure the religious and moral education of their children in conformity with their own convictions." The Parental Responsibility Law prevents parents from exercising the right to educate their children in accordance with their religious beliefs.

Paragraph 3 of Article 18 allows exceptions to the freedom to worship when restriction is necessary to protect the public interest. However, General Comment 22 specifies that these restrictions should be interpreted narrowly: limitations may never derogate from Article 18's "fundamental character" but may restrain the freedom to manifest religious beliefs if the restrictions are necessary to protect other rights guaranteed in the ICCPR. Permissible limitations must meet the specific purpose for which the restriction is implemented, be directly related and proportionate to the need it is meant to fill, and may not be "applied in a discriminatory manner."

If, as President Rahmon says, the Parental Responsibility Law is necessary to prevent religious extremism and terrorism in Tajikistan, the restriction must

be directly related and proportionate to the possibility of individuals becoming terrorists through religious practice in Tajikistan. Because the Criminal Code does not specify the meaning of “extremist religious” teaching and the new law restricts most children from attending all religious activities, the statute is neither directly related nor proportionate. The Parental Responsibility Law is also being implemented in a discriminatory manner because, thus far, it has only been enforced against Muslims. The right to freedom of religion is non-derogable under the ICCPR, and the Parental Responsibility Law does not meet the Comment’s stringent test to allow for limitation on the manifestation of religious practice.

#### **EXCHANGING REPRODUCTIVE JUSTICE FOR A FOOD PROCESSOR: INCENTIVIZED STERILIZATION IN RAJASTHAN, INDIA**

In the summer of 2011, India’s National Population Stabilization Fund (Fund) instituted a new scheme in Jhunjhunu, Rajasthan, a rural town west of New Delhi, offering incentives for area residents who agreed to undergo sterilization surgery. Government health officials created a sweepstakes program, entering those who agree to be sterilized into a drawing to win a TV, mini car, or food processor. This scheme represents one of a pattern of programs designed to help India meet its Millennium Development Goal to reduce its birth rate to two children per mother by 2015. While the program does perform some vasectomies, incentive programs in rural communities disproportionately affect women: according to the most recent National Family Health Survey, 37 percent of Indian women have been surgically sterilized, and one percent of men have had vasectomies. The use of incentivizing, and often coercive, practices by government health officials compromise women’s health by encouraging women to undergo this dangerous procedure, often without informed consent, proper health care, or family planning information. By creating programs that decrease women’s access to quality health care and family planning information, India violates Articles 12, 14, and 16 of the Convention on the Elimination of Discrimination Against Women (CEDAW).

Incentive-based sterilization programs were popular with the Indian government from the 1950s until the mid-1970s

but disappeared after Indira Gandhi’s 19-month emergency suspension of the Constitution ending in 1977. During this time, Prime Minister Gandhi’s son, Sanjay, implemented a policy of forcible sterilization in an attempt to curb the growing Indian population. When emergency law was lifted, Sanjay’s program stopped, and incentivized sterilization programs fell out of favor. However, in recent years, as India’s population reaches 1.2 billion, the federal government’s Family Welfare Program returned to the practice of incentivizing sterilization among men and women in rural areas.

Unlike previous programs, the Rajasthan scheme was the first to outsource surgeries to private clinics. In an attempt to meet its goal of 30,000 sterilizations over a period of three months, the Fund offered private clinics about \$308.00 per surgery and an additional \$10.00 per case if a single clinic performed more than thirty operations a day. By offering such incentives to the private sector, the Indian government encourages clinics to “cut corners,” says Abhijit Das of Health Watch Uttar Pradesh. Utilizing the private sector also puts more pressure on women to undergo the operation because clinics have no monetary interest in obtaining informed consent, in providing women with alternative contraceptive options, or in explaining the risks associated with the procedure. Das says sterilization is the number one contraceptive method offered in India and that one quarter of people in a recent survey did not even know about other options (37 percent of Indian women have been sterilized, three percent use the pill, and five percent use condoms). Additionally, under incentive-based sterilization programs, women face an increased risk of medical complications because clinics do not provide the level of care necessary to ensure proper health, and women often decide to have children at a younger age and get sterilized between the ages of 22 and 23. At this age, women are more vulnerable to gynecological problems and are four times more likely to need a hysterectomy later in life.

CEDAW’s Article 12 requires that state parties eliminate health care discrimination against women. The article specifically provides for access to services, “including those related to family planning.” Article 14 highlights the specific discrimination rural women face, requiring States to ensure that rural women have “access to

adequate health care facilities, including information, counseling, and services in family planning.” Article 16 (1)(e) focuses on the disparity of power between spouses, requiring women to have equal rights to choose the number and spacing of children and to receive necessary information to make informed family planning choices.

Incentive-based programs violate women’s access to information and adequate health services by placing them in a position in which they are not empowered to make informed family planning decisions. As currently implemented, the Fund’s incentivized sterilization schemes greatly limit women’s legally protected choice and oppress, instead of promote, their equal rights and advancement. Private individuals, who profit from women’s lack of information, are able to coerce women into getting the surgery before they have considered other options. The provisions in Articles 12, 14, and 16 require India, as a party to CEDAW, to take active steps to ensure women are provided equal access to health care services and adequate information, regardless of where they live or how much money they have. The first step toward meeting this international obligation is to provide comprehensive information about different forms of contraceptives available, the risks and benefits of each, and about women’s protected right to choose the size and spacing of their individual families.

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#### **EAST, SOUTHEAST ASIA & OCEANIA**

##### **RECENT LEGAL REFORMS IN BURMA GIVE HOPE FOR LASTING DEMOCRATIC CHANGE**

Since President Thein Sein assumed power in March 2011, Burma’s nominally civilian government has instituted a number of legal reforms drawing the attention of the United Nations (UN) and many Western democracies. Observing members of the international community are considering whether these changes are sufficiently genuine to warrant long-term engagement with the Burmese government and the removal of sanctions against the country. As evidence of commitment to democratic advancement, they must weigh the significance of changes made

by executive and legislative decree over the past six months against nearly 50 years of authoritarian rule by military junta.

Burma's most important legislative action in the past six months has been amending its Political Party Registration law. In October 2011, Parliament removed language that barred participation by parties that had not run in previous elections, and by individuals with past convictions. The law now allows opposition leader Daw Aung San Suu Kyi to represent her National League for Democracy (NLD) in April 2012 parliamentary elections. The pro-democracy NLD is legally registered and Suu Kyi is seeking a parliamentary seat in the rural township of Kawhmu, southwest of Rangoon. Both will reengage in the political process despite Burma's military junta having refused to hand power to NLD after its 1990 electoral victory. The winner of the 48 contested parliamentary seats will nevertheless have limited influence among the 498 total elected seats in the upper and lower houses. The military controls one-quarter of the bicameral legislature, and the President's party occupies 80% of the remaining seats.

Burma's first parliament in over twenty-two years has passed additional legal reforms. Late 2011 saw the passage of a Labor Organization Law and Peaceful Assembly and Protection Bill. The former allows workers to organize unions and strike for the first time since 1962. The Assembly bill legalizes peaceful demonstrations after applying for permission from the government with five days notice. After fifty years of military rule before President Thein Sein, a retired military official himself, skeptics question the effects of these laws in practice. These cautious observers also point to reports of military abuse in Burma's northern Kachin state, despite a recent ceasefire between the government and ethnic Karen rebels, as evidence of reform in name only. Furthermore, the government has yet to release as many as 900 political prisoners.

Perhaps the best example of the tension between the government's persistent authoritarian character in the face of burgeoning democratic advancements is Burma's National Human Rights Commission (NHRC). The NHRC was created in September 2011 by Government Notification No. 34/2011, which bypassed legislative approval. The body is comprised

of fifteen members, including former military officials, bureaucrats, and academics. Few details are available about its scope of responsibilities. According to an announcement by the Commission, it was founded to protect the rights of "citizens described in the constitution." This mandate may prove controversial, as Burma's 2008 Constitution denies citizenship to individuals whose parents are not Burmese nationals. The NHRC's first actions have been to call for the release of all remaining political prisoners and to visit internally displaced persons in Kachin, though not to investigate allegations of human rights abuse by the military there.

A recent petition submitted to the NHRC will test both the Commission's mandate and independence, key criteria under the Paris Principles' minimum competency requirements for national human rights institutions. In November 2011, nearly thirty former doctors, lawyers, and students signed a letter requesting reinstatement of their access to education and practicing licenses. Due to their previous detention as political prisoners, lawyers such as Aung Thein, former legal counsel to Aung San Suu Kyi, have been banned from resuming practice. Though only protecting limited rights of citizens, the Burmese Constitution nevertheless guarantees equal opportunity to employment in provision 349, and a fundamental right to education in provision 366. The petition is a potential bellwether to determine how the retired civil servants and scholars will approach allegations of rights violations through newly created, government-sanctioned channels.

On the 64<sup>th</sup> anniversary of its independence, Burma can also celebrate the conclusion of a year that saw it win the 2014 chairmanship of ASEAN, a visit from Secretary Hillary Clinton (the first by a US Secretary of State in fifty years), and commitments to discuss expansion of humanitarian and other foreign aid from the Japanese and British governments. While the legitimacy of reforms remains to be seen, Burma's newest laws and NHRC at least create increased space for activists to take advantage of new rights and protect existing, fledgling rights. The NLD, Suu Kyi, and other activists have shown a willingness to continue to exploit even politically motivated change. Whether the President or military reneges on democratic progress, their political engagement and the international attention it draws will

nevertheless impact the demand for human rights accountability in Burma.

### **LIKE, COMMENT, SHARE: ROBUST DOMESTIC AND INTERNATIONAL DEBATE ON THAILAND'S LESE MAJESTE LAWS PAVING THE WAY FOR REFORMS**

In November 2011, the government of Thailand convicted a 61-year-old man for insulting the country's monarchy in four text messages. Under Thailand's *lèse majesté* law — one of the strictest in the world — Ampon Tangnoppakul was sentenced to 20 years in prison, or five years for each text. Tangnoppakul's sentence preceded two other highly publicized convictions in December. A Thai-US citizen was sentenced to 30 months for translating and posting online passages of a banned biography of the King. A Red Shirt political activist was furthermore sentenced to 15 years for speeches made in 2008. Thailand has seen an increase from 33 *lèse majesté* cases in 2005 to 478 by 2010. These three cases in particular have triggered international expressions of concern and much domestic debate and activism in a struggle for the future of freedom of expression in Thailand in 2012.

The *lèse majesté* law is set forth in Article 112 of Thailand's Criminal Code, which decrees that "whoever defames, insults or threatens the King, the Queen, the Heir to the throne or the Regent shall be punished with imprisonment of three to fifteen years." Before 2006, Article 112 had been used most frequently by political elites as a proxy for targeting enemies with dissenting political views. Any citizen can bring a *lèse majesté* complaint to police, and trials are often closed to the public. Thailand has been a party to the International Covenant on Civil and Political Rights (ICCPR) since 1996, Article 19 of which obligates the country to protect the rights of individuals who seek, receive, and impart information and ideas of all kinds. Nevertheless, supporters of Thailand's constitutional monarchy deny the law's harsh effect on freedom of expression. Instead, they cite the need to protect the monarchy as an institution to justify continued enforcement of Article 112.

Article 112 is often used in conjunction with the Computer Crimes Act (CCA) of 2007 to block *lèse majesté* content. Under this law, 117 judicial orders have blocked 75,000 Internet URL addresses in Thailand since 2007. The CCA's vague language

targets Internet users, their online hosts, or other intermediaries related to posting data ostensibly threatening the “kingdom’s security.” The combined effect of the two laws is to expose a large number of Thais to what some observers, such as Human Rights Watch, criticize as politically motivated prosecutions encouraged by royalist supporters. This hostile attitude toward online intermediaries has led Thai authorities to warn Facebook users that sharing or liking certain messages could expose them to *lèse majesté* penalties. The Thai government has additionally asked Facebook to remove 10,000 pages of what it perceives to be royal insults.

Thailand underwent its Universal Periodic Review in early October 2011, when 14 member states recommended amending or repealing Article 112. A few days later, UN Special Rapporteur for Freedom of Expression Frank la Rue issued

a statement calling for amendments to both Article 112 and the CCA. According to the Special Rapporteur, the laws are overly broad and impose harsh criminal sanctions. Such international pressure was met domestically with a December “Fearlessness Walk,” where *lèse majesté* opponents stood silent for 112 minutes. Reactions in support of Article 112 were also seen in Bangkok in December, when protesting Thai royalists defended the law in front of the US embassy. In this way, international attention has contributed to vigorous debate of *lèse majesté* within Thailand.

Despite criticism, the government’s pursuit of convictions under Article 112 show a continuing resolve to politicize Thailand’s monarchy. While Thailand’s Facebook users contemplate the latest *lèse majesté* convictions, Deputy Prime Minister Chalerm Yoobamrung recently

announced plans to spend \$12.6m in technology to block online content critical of the monarchy. In an effort to diffuse tensions, Thailand’s Truth and Reconciliation Commission has announced its support of reforms to Article 112. These changes would give lighter sentences for convictions and better legal oversight of claims. The announcement was publicized at the same time that the National Human Rights Commission formed a task force to review the legality of *lèse majesté* enforcement. The results of the Commission’s report will be available in June 2012. Until then, international pressure, domestic debate, and investigations by impartial government institutions will continue to act as an engine for change.

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