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## Regions

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## Regions

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## REGIONS

### AMERICAS

#### COLOMBIA'S EXPANSION OF MILITARY JURISDICTION UNDER FIRE

The Colombian government has historically struggled to hold military officials accountable for human rights violations committed during the armed conflict with leftist guerrillas. After the military's "false-positives" scandal in 2008 revealed that soldiers staged battles and killed civilians they had dressed as guerrillas to increase body counts and thus receive financial bonuses, former President Álvaro Uribe ordered that cases dealing with human rights violations by military personnel be adjudicated by civilian courts to ensure impartiality. Civilian jurisdiction over these cases could now be reduced under a controversial constitutional amendment, which would strengthen and reform military courts, proposed by President Juan Manuel Santos' government.

On December 11, 2012, the Colombian Senate approved the proposed constitutional amendment. The amendment surfaced as a response to reports of unfair rulings for military personnel in civilian courts. According to military officials, the uncertainty arising from prosecuting military officials in civilian courts has been detrimental to soldiers' combat and operational responsibilities. The legislation would grant the military justice system jurisdiction over crimes of service, while keeping crimes such as murder, extrajudicial executions, and other human rights violations in civilian courts. The Tribunal of Criminal Guarantees (*Tribunal de Garantías*), which includes both civilians and former military officials, would make the threshold jurisdictional determination.

The point of contention over the amendment is its ambiguity regarding the scope of military service and what circumstances the military court's jurisdiction. While the Colombian Supreme Court has held that human rights should always be adjudicated in civilian courts, the lack of a definition for "extrajudicial executions" in the proposed amendment complicates the Supreme Court's ability to grant

exclusive jurisdiction to civilian courts for "false positives" cases. The new amendment would once again expand military jurisdiction over cases arising from military service.

President Santos and Minister of Defense Juan Carlos Pinzón support military judicial reform as a way to ensure that adequate measures are taken to investigate and adjudicate military crimes. Advocates for reform reiterate that human rights violations will continue to be sent to civilian courts and will not remain under the jurisdiction of military courts. The Senate approved the amendment with a specified list of violations that would always be transferred to civilian courts. Supporters of the reforms view them as a way to ensure judicial accountability through courts-martial in military courts and the due process and sentencing in civilian courts for crimes outside the scope of military service.

The amendment has faced heavy criticisms from international organizations and human rights advocates. José Miguel Vivanco, Director of Human Rights Watch's Americas division, echoed many of the concerns that these advocates have about a historically weak military justice system that would grant impunity to military criminals. Amnesty International also stated its fears that the Tribunal of Criminal Guarantees would easily be persuaded to allow certain human rights violations, such as "false-positives," to be heard in military courts, which would contradict international norms and the Supreme Court's 1997 decision. In that decision, human rights advocates were able to ensure the inclusion of a list of crimes that would remain out of the jurisdiction of military courts, but the ambiguity of the term "extrajudicial executions" could exclude the false-positive killings.

Human Rights Watch points to rulings in the Colombian Supreme Court as well as the Inter-American Court of Human Rights' (IACtHR) 2008 ruling in *Rochela v. Colombia*, where the Court determined that a military court does not have jurisdiction to adjudicate or investigate any military issues that relate to alleged human

rights violations. While the Minister of Defense insists that any cases dealing with human rights will be transferred to civilian jurisdiction, advocates point to a cumbersome and slow system in which military judges are weary of transferring cases for fear of retaliation by their peers. The UN Special Rapporteur on Extrajudicial Executions noted in 2010 that Colombia's failure to adequately transfer cases created a judicial system that often could not effectively determine the appropriate jurisdiction for a case.

Both the United Nations and the Organization of American States (OAS) have expressed their disapproval of the proposed amendment, and the IACtHR has determined that the amendment does not meet the OAS's human rights standards. If the Colombian Congress approves the amendment, the International Federation of Human Rights, a coalition of human rights organizations, may seek an investigation by the International Criminal Court into Colombia as a state with a "lack of will to prosecute," which could result in the prosecution of Colombian military officials accused of human rights violations.

Effective controls for transferring and determining jurisdiction, as well as concrete definitions for crimes automatically under civilian jurisdiction, are now potential additions to the amendment. The amendment will now be voted on in Colombia's House of Representatives for ratification. As Santos' government continues peace talks with leftist guerrillas, Colombia is struggling to meld domestic legal accountability for military crimes with its responsibility to adjudicate alleged human rights violations in civilian courts.

#### **NO SWEARING (IN): IS VENEZUELAN OFFICIALS' SILENCING OF THE MEDIA A VIOLATION OF HUMAN RIGHTS?**

As Venezuelan President Hugo Chávez continues his cancer recovery, a battle between the Chavistas and the president's opposition is growing over the disputed constitutionality of the delayed swearing in of the president for his newest term. The public debate over the delay created media

coverage on Chávez's condition and the legality of postponing the oath of office. The Chávez Administration is taking steps to downplay the increasing pressure coming from the opposition's stance against allowing the presidency to remain in limbo with Chávez outside of the country.

Following Chávez's reelection, he traveled to Cuba for a fourth surgery in December 2012 and has remained there since to recover. The Venezuelan Constitution stipulates that the president-elect must be sworn into office on January 10. On January 8, 2013, the Chávez Administration announced that the president would be unable to return to Venezuela to take the formal oath of office; instead, he would take the oath before the country's highest court upon full recovery. As the January 10 deadline passed, the opposition called for new elections and marched in protest of the postponed swearing-in.

With the opposition demanding a response from the government, the pro-Chávez National Assembly supported the delay, declaring that it would give the president as much time as required for him to recover. The Venezuelan Supreme Court also ruled that the delay was legal under the Venezuelan Constitution. The Court's unanimous decision emphasized that the oath was an important formality of the beginning of a presidential term but not indispensable. The Court noted that the Venezuelan Constitution grants it the authority to allow the oath to occur later unless the president's absence becomes permanent.

The National Telecommunication Council of Venezuela (CONTATEL) officially opened investigations against Globovisión after it questioned the constitutionality of the court's decision. This investigation follows the January 6 raid of blogger Medina Ravell's home after he questioned the information given by the government regarding President Chávez's health.

CONTATEL relied on Article 27 of Venezuela's broadcasting law to cease showing certain segments dealing with President Chávez's health and the constitutionality of the delayed oath. The law prohibits the broadcasting of materials that "foment anxiety in the population or threaten public order," and delegitimizes government authorities. The government also cited a provision of the International Covenant on Civil and Political Rights (ICCPR's) Article 19(3)(b) that allows

governments to restrict freedom of expression to protect national security and public order. CONTATEL ordered the halt of transmissions of speeches questioning the legitimacy of the government's position and criticisms of the Supreme Court's decision. Globovisión is potentially facing sanctions, including a brief shutdown or a fine of up to ten percent of its gross annual income.

Sanctioning media outlets and social media forums for discussing the current state of Venezuelan politics has been criticized by members of the international community as political censorship. The domestic broadcasting law is now seemingly in conflict with Venezuela's commitment to adhere to the ICCPR that guarantees the right to freedom of expression. Article 19 of the ICCPR protects the right to seek, receive, and impart information regardless of frontiers or media sources.

The Office of the Special Rapporteur on the Freedom of Expression for the Inter-American Commission of Human Rights (IACHR) has previously accused the Venezuelan government of media censorship through the detention of journalists and the prohibition of the circulation of certain publications. In a communication to the Foreign Minister of Venezuela in June 2010, Special Rapporteur Catalina Botero Marino expressed her deep concern over the use of instruments such as criminal law to silence dissent in the country. The IACHR also noted in a 2010 report that Venezuelan journalists are not "able to freely carry out their work" and that a pattern of impunity for violence against media members continues to hamper freedom of expression in the country. The Inter-American Court of Human Rights, in its 2009 decision *Perozo et al. v. Venezuela*, held that Venezuela needed to continue to strengthen its redress and criminal investigations for violations of freedom of speech and adopt measures to reduce impediments to the freedom of speech and media.

With the support of the Venezuelan Supreme Court and Vice President Nicolas Maduro moving the administration forward, the opposition to the constitutionality of the oath delay continues to diminish. The absence of Chávez was ruled to be a "temporary absence" by the highest court in Venezuela and as long as he eventually returns, he will continue to enjoy support from the National Assembly and other officials within the government. The

constitutionality of the delay could become a moot point if President Chávez's recovery is weeks away, as indicated by Vice President Maduro.

With the legality of the delay of the oath affirmed by the Supreme Court, the more prominent issue continues to be the treatment and censorship of the media in relation to its criticism of the government. CONTATEL's investigation into Globovisión is the most recent attempt to censor government critics in the media. The practice of attempting to control information has continued throughout the Chávez Administration and included charges of offenses "contrary to national security" that have resulted in self-censorship by members of the media.

In November, the IACHR held a hearing where members of the Venezuelan media alleged that the Venezuelan government impeded their ability to gain access to public information. The journalists alleged that the intimidation tactics have resulted in censorship that violates Article 57 of the Venezuela Constitution. While Venezuela continues to deny working outside of its international legal obligations, the line between censorship and protection of public order continues to blur.

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#### **FEMALE MIGRANT FARMWORKERS ARE OFTEN TARGETS OF SEXUAL VIOLENCE AND HARASSMENT**

Migrant farmworkers are often excluded from basic worker protections, leading to instances of wage theft, child labor, hazardous working conditions, and pesticide exposure. These abuses are predominantly attributed to the fact that the majority of farmworkers are undocumented or are employed through a guest worker program that lacks government oversight, consequently placing these individuals at risk of serious human rights violations. The ability to join labor unions and to access collective bargaining is largely nonexistent for many farmworkers, further exacerbating a severe power imbalance between employers and migrant farmworkers. This power imbalance also leads to additional abuse of female farmworkers who are subjected to sexual violence and harassment at the hands of their male bosses including

rape, stalking, and unwanted touching. These women face significant hurdles in accessing justice for these crimes due to fear of reprisals, deportation, and separation from their children. As a result, many women do not report crimes, allowing reoccurrence of the abuse.

According to Human Rights Watch, at least fifty percent of the agricultural workforce in the United States is comprised of unauthorized immigrants. Moreover, those holding temporary worker visas greatly depend upon their employer for their continued stay in the United States, which contributes to the power disparity. Of the estimated 1.8 million agricultural workers, approximately 24 percent are female. Human Rights Watch interviewed fifty female farmworkers countrywide and reportedly almost every woman personally experienced sexual violence or harassment or knew of someone who personally experienced sexual violence or harassment. Perpetrators are typically foremen, supervisors, farm labor contractors, company owners, and others in a position of power over farmworkers.

The U.S. government ratified the International Covenant on Civil and Political Rights (ICCPR) and therefore is legally obligated to guarantee all persons within its territory and subject to its jurisdiction the right to security of persons, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to redress when sexual abuses occur. Furthermore, under Article 26 of the ICCPR as well as the Fourteenth Amendment of the U.S. Constitution, the United States is required to provide equal protection of the law irrespective of a person's legal status. United States law prohibits workplace sexual harassment under Title VII of the 1964 Civil Rights Act, which must be equally realized by the entire U.S. workforce.

Despite the aforementioned safeguards, the U.S. government is falling short in its duty to protect persons growing U.S. food. Reauthorization of the Senate version of the Violence Against Women Act (VAWA) would provide additional protections for undocumented women who are victims of sexual violence, yet it remains stalled in the U.S. House of Representatives. Through VAWA, the U-visa program provides undocumented victims legal status and work authorization when reporting violent

crimes, ultimately ensuring protection for the victim and minimizing fear of deportation. Since the institution of the program, U-visas have been instrumental in providing a measure of protection for victims otherwise without legal options of recourse. The U.S. government is obligated to provide effective legal remedies as enumerated in Article 2 of the ICCPR; therefore, a lack of provision may constitute a failure to meet its human rights responsibilities.

The U.S. government has also failed to enact a comprehensive national solution to immigration that respects the rights of everyone within U.S. borders. Deportation continues to be used as a tool to threaten and disempower undocumented farmworkers, putting the population at risk of sexual violence and harassment. Providing legal status for farmworkers will afford necessary protections for the population, which will help realize the country's international human rights obligations. Meaningful immigration reform will also abate fears of deportation for many, thus ensuring access to justice for victims who are currently unable to report inhumane working conditions or other crimes.

The widespread abuses facing female agricultural workers are likely a product of a failing immigration system and barriers to reporting sexual abuse. The U.S. government is obligated to protect all persons within its borders, including the 11.1 million undocumented individuals currently in the United States. Legislation addressing the undocumented workforce and affording necessary protections in line with human rights principles will advance the government's responsibility to protect all persons living and working in the United States. Legal status will result in increased access to mechanisms that protect the human rights of farmworkers, which will effectively expand their leverage to speak out and expose inhumane working conditions in the country. Victims of sexual abuse will also be able to access a ready means of redress without fear of deportation since their ability to stay in the country would no longer depend on employers.

#### **WITHOUT A LEGAL HOME: STATELESSNESS IN THE BAHAMAS**

Thousands of Bahamian-born persons of Haitian descent are stateless. Although the stateless situation of Dominican-born persons of Haitian descent has

been well-documented, the situation of Bahamian-born persons of Haitian descent remains largely unstudied, limiting the international community's understanding of the gravity of this problem. According to the United Nations High Commissioner for Refugees, an individual is stateless when he or she is without a nationality or citizenship in any state. Statelessness occurs when a person never obtains citizenship in his or her birth country or when a person loses citizenship in one country and has no claim to citizenship in another country. Estimates of approximately 30,000 to 50,000 Haitian immigrants and their children are denied Bahamian citizenship — despite some being born in the Bahamas — and are also without citizenship in Haiti, leaving them in a state of limbo with no place to officially call home. Children born to non-Bahamian parents or to a Bahamian mother and a non-Bahamian father born outside the Bahamas are not able to automatically obtain citizenship upon birth. These children, even though born in the Bahamas, cannot apply for citizenship until their eighteenth birthday. Furthermore, due to significant hurdles and long waiting times during the application process, generations are reportedly left *de facto* stateless.

Nationality is the legal bond an individual has with a state. Living without a nationality has dire consequences to individuals because it prevents them from benefiting from the protection and assistance of the government. As a result of Bahamian exclusionary policies, individuals are often marginalized and live in extreme poverty, without access to basic services, including education, health services, and legal processes for instances of abuse and exploitation. A large number of Haitians and Haitian Bahamians who cannot afford their own property in the Bahamas live in shantytowns, all without running water, electricity, or waste management. Tensions in society are mounting as Haitians and Haitian Bahamians are unjustifiably blamed for the country's crime problems and lack of resources.

The Bahamas is a State Party to the UN Convention on the Rights of the Child (CRC), which provides in Article 7 that a child shall have the right to acquire a nationality immediately after birth. Upon ratification, however, the government made specific reservations relating to Article 2, which requires States Parties to ensure that each child enjoys the rights

enumerated in the Convention irrespective of the child's or his or her parent's national, ethnic or social origin, "insofar as the provision relates to the conferment of citizenship upon a child." Nonetheless, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), in Articles 15 and 24 respectively, provide every child the right to nationality. In 2008, the Bahamas ratified the ICCPR, requiring the country to fully implement the provisions into domestic law.

As a State Party to the ICCPR, the Bahamas is legally obligated to ensure children born in the Bahamas have access to a nationality. The government of the Bahamas has argued that those born in the Bahamas to non-Bahamian parents can acquire citizenship elsewhere or can wait until their eighteenth birthday, options they allege fulfill their obligations. However, for many, obtaining citizenship elsewhere proves futile or, more importantly, unreasonable since the Bahamas is the only country they have ever known. Additionally, some applicants wait years to be approved for Bahamian citizenship.

Countries like the United States that have birthright citizenship laws guarantee citizenship and equal standing under the law to all who are born in the United States. A number of countries have moved away from automatically guaranteeing citizenship upon birth — including Australia, Ireland, India, the United Kingdom, and the Dominican Republic — contributing to the already-existing and serious problem of statelessness. Countries that experience high volumes of immigrants who tend to remain in the country long-term, like the Bahamas, may need to consider nationality legislation in accordance with international human rights norms.

In order to fulfill its obligations under the ICCPR, the Bahamian government must ensure all persons born on its soil have access to a nationality. Through effective nationality legislation and a universal birth registration, Bahamian people's right to nationality will be protected against potentially discriminatory practices which target minority groups. If children are registered upon birth, all Bahamians — regardless of descent — will have access to birth papers and therefore will not be prevented from enjoying equal access to opportunities, including in the fields of education, employment, and health.

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## ASIA AND OCEANIA

### BRIDAL KIDNAPPING: A KYRGYZ METHOD OF MARRIAGE

On the eve of their wedding, a third of all Kyrgyz brides hear the traditional mantra: "Every good marriage begins in tears." The custom, known as *ala kachuu* (or "grab and run"), has been on the rise for the last fifty years. Between eight and twelve thousand girls are kidnapped and forced into marriage each year. Because of the stigma surrounding the socialization of single men and women, and the rising expense of a traditional dowry, some Kyrgyz men have found kidnapping to be a cheaper alternative to courtship. Under current Kyrgyz law, a man will face a maximum of five years in prison for forcing a woman to marry against her will, but he will face eleven years for stealing cattle. As the Kyrgyz parliament moves to reform the laws concerning bride-kidnapping, it is obligated to abide by the terms of the International Covenant on Civil and Political Rights (ICCPR), United Nations Declaration on the Elimination of Violence against Women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage. The Declaration preceded the drafting of CEDAW, and Kyrgyzstan has since acceded to all three conventions.

Under this practice, when a man decides to take a wife, he will gather a large group of his male peers and plot to get the woman alone. The woman is then forcibly taken to the man's home, where her future in-laws attempt to subdue her long enough to get a shawl, symbolizing submission, onto her head. The woman is raped on the first night — if she is not, the community will still treat her as unchaste anyway. In the morning, the woman must choose between marriage and banishment from society. Eighty percent of kidnapped women choose marriage. Under the ICCPR, Kyrgyzstan is obliged to ensure "no marriage shall be entered into without the free and full consent of the intending spouses." The Convention on Consent to Marriage raises

this bar by requiring that consent "be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses." However, while formal consent requirements may provide some safeguards for Kyrgyz women, no current international obligations can adequately deal with the reality that many kidnapped women will be viewed as "unfit to marry" after being raped.

The rate of spousal abuse is much higher in forced marriages, where the women are often beaten, starved, stabbed, raped, isolated, and even killed. In the Declaration on the Elimination of Violence against Women, the United Nations General Assembly urged that Member States "condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligation with respect to its elimination." Physical, sexual, and psychological violence within the family; dowry-related violence; and marital rape are included within the definition of "violence against women." Former UN Special Rapporteur on Violence against Women Radhika Coomaraswamy also stated that religious and cultural considerations were not a legitimate reason to justify violence against women.

In 2009, the Special Rapporteur visited Kyrgyzstan and issued a report, which included the issue of bride-kidnapping. Among the numerous recommendations suggested by the report, Kyrgyzstan was urged to "increase the criminal penalty for bride abduction and coercion into marriage, withdraw the possibility of imposing only a fine and provide stringent penalties for conspiracy and aiding and abetting in this crime." Although Kyrgyzstan is not legally bound by the Declaration on the Elimination of Violence against Women, it is obligated to provide the reforms outlined in CEDAW. This includes taking "all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." Under the CEDAW requirements, Kyrgyzstan is also legally obliged to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or

the superiority of either of the sexes or on stereotyped roles for men and women.”

For Kyrgyzstan to comply with its international obligations concerning the rights of women, it is legally obligated to reform its laws and penalties regarding forced marriage. Given the modifications to the Kyrgyz Constitution in 2010, change seems to be on the horizon. The new constitution includes the following clause, which is a hopeful sign for the necessary reforms: “In the Kyrgyz Republic men and women shall have equal rights and freedoms and equal opportunities for their realization.” The implementation and enforcement of international principles relating to women could prove to be a good starting place for reform.

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#### **LEGAL ROADBLOCKS HINDER NORTH KOREAN MIGRANTS’ EFFORTS TO ESCAPE OPPRESSIVE CONDITIONS**

North Koreans seeking to flee the reportedly oppressive conditions within the country face a crackdown on defectors instituted by Supreme Leader Kim Jong-Un while struggling to find protections in nearby states. According to reports, shortly after assuming leadership from his late father, Kim Jong-Il, Jong-Un ordered border police to execute defectors on site, and made defection “a crime of treachery against the nation.”

Despite the risk, thousands continue to flee the country every year and criticism continues to mount against the nation’s practices. In March of 2012, the United Nations Human Rights Council indicated its concern over the North Korean government’s significant human rights violations. Reports out of the country allege systematic use of torture, inhumane prison conditions, incarceration for political beliefs, forced labor, and arbitrary application of the death penalty. Even those not detained are affected by the pervasive malnourishment resulting from a lack of food security.

To escape the conditions, many North Korean defectors seek refuge in South Korea, which is an extremely difficult journey both physically and legally. A heavily fortified demilitarized zone makes crossing directly into South Korea difficult, so

most defectors instead travel north through China to third states, such as Thailand or Mongolia, where they seek refuge in South Korean consulates. Estimates indicate that up to 200,000 North Koreans are in hiding in China where they are vulnerable to exploitation, forced marriages, and human trafficking. Only about 25,000 have successfully completed the journey to South Korea. The number of North Koreans arriving in South Korea fell to a ten-year low in 2012; only 1,509 successfully completed the journey, almost half of the amount in 2011.

For those who do not make it to South Korea, a difficult legal journey may also ensue as defectors are detained, mostly in southern China. The policy of repatriation is controlled by a bilateral treaty, the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas between North Korea and China, which stipulates in Article 4 that the two countries will work together to prevent residents from illegally crossing the border but allows residents to cross the boundary legally due to “calamity or unavoidable factors.” However China generally does not recognize North Koreans as meeting this standard and instead deems them “economic migrants.” The determination thus leads to return to North Korea.

Also relevant, however, is the 1951 Convention on the Status of Refugees and its 1967 Protocol, which impose direct obligations upon China, a State Party to both, as well as possibly context for interpretation of the bilateral treaty, under Article 31(3)(c) of the Vienna Convention on the Law of Treaties. The Refugee Convention defines a refugee under Article 1 as a person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.” Although the Convention has its limits, under Article 33 it prohibits *refoulement*, the return of a refugee to a territory where his or her life or liberty would be threatened “on account of his race, religion, nationality, membership of a particular social group or political opinion.”

The UN Office of the High Commissioner for Refugees (UNHCR) makes clear that economic migrants are not necessarily refugees, though economic migrants can attain refugee status if, after expatriation, they cannot return due to fear of persecution under one of the prescribed criteria. China has declined to grant refugee status to North Korean defectors, but other States have, including the United States, adding credence to the argument that the defectors qualify as refugees. UNHCR declared seven North Korean defectors as refugees in 2001 and in 2012 called on China to respect *non-refoulement*; however the agency also generally refers to the defectors as “detained North Koreans.”

China refuses to grant UNHCR access to the North Koreans seeking refugee status. Furthermore, China continues to read the bilateral treaty to provide for return of North Korean defectors, and China returns 5,000 North Korean detainees annually. This discourages defection; would-be defectors must evaluate the high risks involved in fleeing. Fear of being detained and forcibly returned, coupled with fear of harsh punishment upon return, likely prevents many from trying, but some North Koreans still brave the risks.

#### **CHINESE WORKERS COULD SEE BETTER ACCESS TO SERVICES UNDER HUKOU SYSTEM REFORM**

The Chinese government has recently shown signs that it is considering reforming the *hukou* system, which requires all citizens to be registered in their places of birth and has made it difficult for those with rural registration to access social services when they move to urban areas. *Hukou*, in place since 1958, limits individuals’ access to social services, such as pensions, employment benefits, health care, public schooling, and access to university entrance exams, by barring citizens from utilizing such services when outside their registered geographic region. Designation of *hukou* status is inherited, so children face the same restrictions as their parents. Management and implementation of the *hukou* system is a function of the provincial governments, thus efforts to reform generally come from provinces. Though many smaller cities have lowered barriers for workers to change resident status, many larger cities, including Beijing and Shanghai, have not, due to fears of rapid urban migration. Currently, only forty

percent of the considerable population that has internally relocated in search of work has been able to obtain either permanent or temporary resident status in urban areas.

As a result, rural residents are forced to make difficult choices when relocating in search of employment: either leave their children so they may attend compulsory public school or bring them and pay for private schooling. The estimated nineteen million children who were brought to urban areas under these circumstances chose either to attend private schools established specifically for children without residential *hukou* or receive no education. In spite of this, more than 200 million Chinese workers have left rural areas — leaving behind benefits and sometimes family — in search of better, though limited, employment in urban areas. According to a survey done in 2006 by the National Bureau of Statistics of China, a government organ, the income of urban residents was over three times that of rural residents.

In addition to the country's constitutional guarantee of state-subsidized health care, education, and pensions to all of its citizens, China is obligated under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to respect the right to education (Article 13). Article 13 requires compulsory and available primary education, the general availability of secondary education, and equal access to higher education, though reports indicate that children from rural areas have fewer educational opportunities and must pay for those they do have. The ICESCR further requires States Parties to promote equality and fairness in wages and freedom in pursuit of employment, particularly with regard to the freedom of choice and equality in the workplace (Articles 6 and 7). However, a report published by the UN Committee on Economic, Social and Cultural Rights described the *hukou* system as “*de facto* discrimination against internal migrants in the fields of employment, social security, health services, housing and education.” Such workers, according to the government-owned China's Global Times newspaper, are treated as “illegal immigrants in their own country.”

As a State Party to the International Covenant on Civil and Political Rights (ICCPR), China has accepted the obligation to preserve citizens' freedom of movement and residence as enumerated in the

Article 12 of the treaty. The UN Human Rights Committee's General Comment No. 27 to the treaty, on Freedom of Movement (Article 12), highlights the right to move freely within the whole national territory as indispensable. The *hukou* system requires that those who decide to move sacrifice essential services.

Though the central government has yet to mandate national reform, in 2008, the Deputy Secretary General of the National Development and Reform Commission stated the *hukou* system would be eliminated by 2020. In December 2012, the Chinese government issued statements that it remains concerned about a rapid influx of movement to cities but that it still intends to reform the *hukou* system by streamlining the process of changing registration in order to increase the income-generating power and spending ability of rural residents who move to urban areas. Should reform or elimination of the *hukou* system come to fruition, China would take a significant step toward greater access to services for its citizens regardless of their birthplace and simultaneously break a barrier to upward mobility that has stood in the way of millions of Chinese people.

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#### **THE PHILIPPINES PASSES THE PROGRESSIVE ANTI-ENFORCED DISAPPEARANCE ACT**

The Philippines has a long history of enforced disappearances, numbering in the two thousands since the dictatorship of Ferdinand Marcos when martial law was enacted in the 1970s, according to *The New York Times*. However, in December 2012, President Benigno S. Aquino III approved the Republic Act 10353, known as the “Anti-Enforced or Involuntary Disappearance Act of 2012,” which was passed by the Philippine Congress in October. This Act targets state agents and officials who confined or arrested individuals without proper process and detained those individuals outside the law's protection.

The Act defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State” or by those “acting with the authorization, support or acquiescence of the State followed

by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.” The Act defines “enforced disappearance” with the same wording as the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, which the Philippines has neither signed, ratified, nor is a state party to.

Those forced into disappearance, usually political dissidents, are often subject to torture and abuse at the hands of state officials and are outside the realm of the law's protection since their detainment is not publicly registered. This treatment conflicts with the International Covenant on Civil and Political Rights, which the Philippines ratified in 1986, under Article 9, the right to not be subject to arbitrary arrest and detention. Abuse of this nature also implicates the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the Philippines acceded to in 1986.

In an effort to build upon the substantial decrease of enforced disappearances since the Marcos regime, when many political opponents were arbitrarily arrested and tortured, the new law seeks to prevent future enforced disappearances. The new law will prohibit all disappearances and does not permit suspension of that principle. Specifically, if a superior officer orders a subordinate to disappear someone, the superior officer can be penalized and the subordinate officer has the right to defy the order. According to the law, there must be up-to-date registration of all detained persons and detention facilities. All detained individuals also have the right to communicate their whereabouts to others. To cut off a mechanism of enforced disappearances, the law prohibits “orders of battle” — a document listing all the supposed enemies of the State.

Furthermore, all those who “directly committed,” “encouraged,” “cooperated,” “allowed...or abetted” the act of enforced disappearance will be subject to a penalty of *reclusion perpetua* — essentially life imprisonment. Individuals who had knowledge that the act of enforced disappearance transpired, without actually having participated in the act itself, face imprisonment as well. The individuals who have knowledge of the occurrence of such

acts of enforced disappearance have a duty to report the act to the Department of the Interior and Local Government. Victims of enforced disappearance and their relatives are entitled to monetary compensation and “restitution of honor and reputation.” Those penalized for committing this act are allowed no amnesty.

According to Section 18 of the law, a trial and decision for violating this act in a Filipino court is independent of the trial and decision of an international court using international human rights laws. Although the Act is laudable and provides progressive change, the Philippines has still not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the United Nations General Assembly in 2006 and entered into force in 2010. The Philippines could comprehensively tackle the issue of enforced disappearance by acceding to this Convention since its Article 26 allows for the Committee on Enforced Disappearances to monitor such disappearances within states. Without a mechanism to monitor disappearances and enforce the new act, there is no outside oversight to ensure that disappearances do not occur.

#### **ANTI-TRAFFICKING LEGISLATION INADEQUATELY COMBATING SEX- TRAFFICKING IN INDIA**

A growing occurrence of rural prostitution, sex tourism, and traditional notions of gender bias contribute to the prevalence of prostitution and the sex trafficking in India. According to India’s federal police, more than one million children are prostituted in India — “a source, transit nation, and destination” of the sexual-slavery industry. The actual numbers on sex trafficking in India are more difficult to ascertain because of the “clandestine nature” of sex trafficking, but India’s Home Secretary commented that around 100 million people “were [also] involved in human trafficking in India.” Although most victims are girls who are trafficked within India, many are also girls who are trafficked across borders from Nepal and Bangladesh and sent to urban red light areas in Delhi, Mumbai, and Kolkata.

An internationally accepted definition of trafficking, as defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplements the United Nations Convention against Transnational

Organized Crime (UN TIP, Protocol), is the “recruitment, transportation, transfer, harbouring or receipt of persons” by using “force[,] . . . coercion, abduction, fraud, [and] deception” to control and exploit another person, including, but not limited to, sex exploitation.

The Indian Constitution under Article 23 specifically prohibits human trafficking, asserting that all citizens have the right to be protected from exploitation. Rampant and ongoing sex trade in India clearly violates the Indian Constitution and other domestic anti-trafficking legislation, and it simultaneously implicates India’s obligations under the many international treaties against trafficking in persons that India has ratified.

More than fifty years ago, India ratified without reservation the UN Convention for the Suppression of the Traffick in Persons, which instructs States Parties to punish any person who “[e]xploits the prostitution of another person,” even with the person’s consent. In Articles 1 and 2 of the Convention, it further instructs States Parties to punish any person who “procures, entices, or leads away” another person for the purposes of prostitution, a person who manages and finances brothels, and a person who knowingly rents out facilities “for the purpose of prostitution of others.”

Shortly after ratifying this Convention, India enacted domestic anti-trafficking legislation, the Immoral Traffic Prevention Act (ITPA) of 1956 (later amended in 1986). The ITPA punishes brothel owners, brothel managers, and traffickers with prison terms ranging from three years to life. The passage of this law indicates the legislature’s positive intent in fulfilling India’s international obligations. Despite this, the inclusion of Section 7, which penalizes those who prostitute in or near public places, and Section 8, which penalizes the solicitation of sex, both of which have in practice justified the police’s arrest and imprisonment of trafficked women who have been forced into prostitution and who have no knowledge or control over the brothel’s proximity to public places. Amending the law to exclude Sections 7 and 8 would decriminalize the activities of trafficking victims who are forced to solicit for sex. In 2006, a bill to amend the ITPA was proposed by India’s Ministry of Women and Child Development, which

would decriminalize prostitution and instead would penalize prostitutes’ clients. The law currently contains provisions that penalize brothel owners, managers, and traffickers. However, the bill did not pass.

Most recently, in 2011, India signed the UN TIP, thus reaffirming the country’s desire to combat sex trafficking within the country. The goals of this protocol are to “prevent and combat trafficking” and “protect and assist the victims of such trafficking,” especially women and children.

The Ministry of Home Affairs also set up specialized police units in major Indian cities in 2011 with the sole task of investigating sex trafficking cases and arresting traffickers and brothel owners and managers. These police officers were specially trained and sensitized to understand how trafficking rings operate. However, the police lack the resources to investigate and make arrests on every trafficking case. For example, police in West Bengal have called for faster rehabilitation and effective “social welfare and judiciary systems” that can put violators of the ITPA on trial and ensure they are not “out on bail.” In Mumbai in 2011, 242 sex-trafficking cases were prosecuted and 125 sex-trafficking perpetrators were convicted in accordance with ITPA, resulting in prison terms of three years. Although these numbers indicate a positive change, the overall conviction rate is low. If the ITPA conviction rate remains low, it will allow traffickers to perpetuate and sustain the slave trade and the violation of victims’ basic human rights.

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#### **AGEISM AS STATE POLICY IN TAJIKISTAN**

For any young Tajiks looking for a government job, things are looking up. But for the aging population of Tajikistan, a recent executive order requiring officials to fire all government employees who are over the age of 63 for men and 58 for women brings only bad tidings. The government said the policy is designed to increase its use of technology, but some worry that the ruling will exacerbate the decline of Tajikistan’s intellectual capital. If the ruling is implemented, government employees who are of age to receive a pension will be automatically fired despite their

desire to continue working, their qualifications, and a lack of qualified replacements. By firing workers because of their age, Tajikistan's ruling violates Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 2 and 23 of the Universal Declaration of Human Rights (UDHR), and Article 12 of the Madrid International Plan of Action on Ageing (MIPAA). It also violates Tajikistan's own constitution and labor codes.

By forcing older government employees to stop working, the regime is essentially condemning them to poverty. Though government salaries are low, government pensions are even worse and they do not allow workers to use their positions to make extra money, for example, by teachers giving private lessons or doctors seeing patients outside of their regular office hours. Reports indicate that as of early January, more than thirty professors have already been fired from their positions at two of Tajikistan's universities. Government sources say they face a predicament of what to do: either ignore the regime's orders and face potential punishment, or fire those over the specified age. Former Education Minister Munira Inoyatova told EurasiaNet.org "many pension-age veteran employees possess huge human, organizational and scientific potential. To reject this potential is to deprive the country of a decent future." Inoyatova also said that public anger is rising on the issue.

By firing people based on their age and prohibiting them from working, Tajikistan's government is acting contrary to Articles 6 and 7 the ICESCR, which guarantee the right to work and make a decent living, respectively. Tajikistan acceded to the ICESCR in 1999, making it binding on the country. In addition to the ICESCR, this ruling also defies Tajikistan's own constitution and labor codes. Article 35 of the Tajik Constitution protects the right of all people to work, to choose their profession, and to have their job protected. The Constitution also states that "any kind of limitation in employment relations is forbidden." Section 7 of Tajikistan's Labor Code specifically prohibits discrimination in employment based on age. Firing workers from their jobs because they reach a certain age puts the Tajik regime at odds with its own law, international law, and internationally recognized norms.

In addition to the inconsistency with binding law, this ruling also contradicts internationally recognized norms. Article 2 of the UDHR states that all people are entitled to the same rights without distinction of any kind and Article 23 defends the right to work and protects against unemployment. The UN General Assembly (GA) adopted MIPAA in 2002. It was the first global agreement recognizing older people as contributors to their societies and asking governments to include older persons in all social and economic development policies. Article 12 of the MIPAA explains that older people should have the opportunity to work, for as long as they wish and are able to, in satisfying and productive work. Though the UDHR and MIPAA are not legally binding, both were adopted by the GA and constitute international norms. The Office of the High Commissioner for Human Rights (OHCHR) stated in its document *Human Rights of Older Persons* that non-discrimination is an existing human rights norm that must be applied to older people. Guidance from OHCHR indicates that international standards of non-discrimination also apply to older persons, thus making the provisions of the ICESCR and the UDHR applicable to that group.

Freelance writer, Konstantin Parshin noted that Tajiks are raising interesting questions about the new order, and asked if Tajikistan's older leaders will step down due to their advanced age. Perhaps the Tajik government will recognize that this new ruling will not only hurt many of its citizens, but it may hurt the country as well. Low government salaries push young Tajiks to the private sector and abroad. With high unemployment and emigration, there are not many skilled workers left to fill vacancies. Without the experience and knowledge of older workers, Tajikistan will not be propelled forward the way the government is hoping and it may even regress backwards.

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## UKRAINIAN LEGISLATION THREATENS FREEDOM OF EXPRESSION OF THE LGBT COMMUNITY

A proposed Ukrainian bill commonly referred to as the "gay gag law" passed its initial reading on October 2, 2012. If signed into law, this bill would drastically restrict the right to free speech of lesbian, gay, bisexual, and transgendered (LGBT) persons. The Ukrainian draft law, officially known as bill number 8711 and backed by the ruling Regions Party, would criminalize the promotion of homosexuality with fines of approximately USD \$10,000 or up to five years' imprisonment. The bill would impact discussion of homosexuality in the printed media, television, and radio by adding a provision on responsibility for the propagation of homosexuality to an article of the criminal code section related to propagating violence, cruelty, racial, national, or religious intolerance and discrimination.

The bill's potential reach is unclear, although some groups speculated that it would include limitations on the right for LGBT persons to assemble and even engage in handholding or other public displays of affection. If the bill passes its second reading, it will be signed into law at the president's discretion. According to poll data collected by AIDS Alliance, Ukrainian voters favor the law — 78% of the country views homosexuality negatively and 61% of Kiev residents believe that promoting homosexuality should be punished by a prison sentence. Only 11% oppose any punishment.

Upon proposal, the bill evoked swift condemnation from human rights organizations and international bodies on an issue that implicates traditional concepts of free expression as well as an emerging field of LGBT rights. On the intergovernmental level, the European Parliament condemned the bill and adopted a resolution calling for Ukraine to shelve the law, citing the UN Human Rights Committee's stance that legislation of this kind is discriminatory and infringes on free speech rights. Watchdog nongovernmental organizations also weighed in, with Amnesty International and Human Rights Watch calling for the rejection of the bill because it would discriminate against the LGBT community, violate members of the community's

rights to freedom of expression and peaceful assembly, and limit children's ability to receive and transmit information. The two groups wrote a joint letter to the Chairman of the Ukrainian parliament, the Verkhovna Rada, detailing their concerns. The International Commission of Jurists (ICJ) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) also condemned the draft.

The bill's critics point to its lack of clear definitions for the behaviors that it seeks to criminalize. The organizations that condemned the draft law emphasized that it could obstruct the work of human rights defenders, endanger LGBT activists and their families, and increase Ukraine's already skyrocketing HIV rate. Supporters of the bill, including Ruslan Kukharchuk, a founder of the local group Love Against Homosexuality, speculated that one interpretation of the law could outlaw handholding and other common public displays of affection. Without clear definitions, courts would likely be left to interpret the scope of the phrase "promotion of homosexuality."

In addition to domestic concerns, the bill would also implicate Ukraine's treaty obligations under both the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 11 of the ECHR protects freedom of assembly and association, which critics argue could be curtailed under the scope of the bill. Relevant to the concern is Ukraine's violent halting of a gay rights march in 2012 while allowing without incident an "anti-gay parade." Similarly, Article 19 of the ICCPR protects freedom of expression with an allowance for restrictions "[f]or respect of the rights or reputations of others," or "[f]or the protection of national security or of public order . . . or of public health or morals." Article 21 of the ICCPR protects the freedom of assembly with similar restrictions. Additionally, Article 14 of the ECHR calls for a prohibition of discrimination. The European Court of Human Rights has held Article 14 to encompass sexual orientation since its 1999 decision in *Mouta v. Portugal*, and affirmed the recognition of LGBT protections on par with those of race, origin, or color in relation to speech in its 2012 decision in *Vejdeland v. Sweden*.

The recognition of these rights has placed European political organizations and human rights groups at odds with legislation in the region concerning limitations of LGBT rights. Both Lithuania and Moldova are considering legislation similar to the Ukrainian bill, while Russia has already passed similar laws in several districts and is under pressure from some factions to enact national legislation. If the proposed laws are enacted, they would codify the lack of cultural acceptance of LGBT individuals on a national level — an approach in clear conflict with both European and international trends. This would create a rift in the growing movement toward recognition of equal protection for political and cultural rights of LGBT individuals that could spread to other similarly situated states.

#### **TURKEY CRACKS DOWN ON OPPOSITION IN MASS ARREST OF LAWYERS AND JOURNALISTS**

More than eighty Turkish citizens, including journalists, lawyers, teachers, and students, were detained as part of a mass arrest that took place in the early morning hours of January 18, 2013. The arrests occurred in seven Turkish cities, at both residential addresses and law offices, under the authority of Article 7 of the Turkish Anti-Terror Law of 1991. The government accused those detained of being members of the Revolutionary People's Liberation Party-Front (DHKP-C), labeled a terrorist organization by the Turkish and United States governments as well as the European Union. Significantly, the Turkish government applied a "secrecy decision" to the case, whereby no details are released to the defendants' lawyers. Reports out of Turkey include accusations that several journalists were beaten and one was deprived of the use of his inhaler for twenty-four hours while in police custody. The lawyers arrested have denied any connection to the DHKP-C, and instead claim to be members of groups such as the Contemporary Lawyers Association (CHD), the Peoples Law Office, and the Progressive Lawyers Association — all of which speak out against the government and work to protect human rights.

Mass arrests have become frequent tactic used by the Turkish government. Since 2009, reports indicate that the government has arrested more than 8,000 politicians, trade-unionists, journalists,

artists, students, human rights advocates, and lawyers. A December 2012 report by the Committee to Protect Journalists found that Turkey is the world's leader in the jailing of journalists, with at least 49 such individuals reported as under detention at the time of the study's release. Although the Turkish Government has justified the arrest by using its Anti-Terror Law, watchdog groups such as Amnesty International have criticized the law for being vague, overly broad, and used to prosecute legitimate peaceful activities.

Turkey is a State Party to both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Under these documents and Turkey's own Constitution, Turkish citizens are entitled to protection from arbitrary arrest and detention and are guaranteed freedom of opinion and expression in the media. Article 9 of the ICCPR prohibits arbitrary arrest and detention, and provides that arrests must be conducted according to legal procedure. Turkish law dictates that both a prosecutor and a bar association representative must be present during the search of law offices. Turkish police ignored these laws when they searched the People's Law Office without an attending prosecutor, and reports of beatings sustained by those arrested indicate further deviation from Turkey's treaty obligations. Additionally, Article 19 of the Turkish Constitution provides that a person who is arrested has the right to be released during the ensuing investigation and prosecution. Although several journalists have been released on substantial bail, six are still in detention despite treaty obligations that would provide for their release.

The ICCPR, the ECHR, and Turkey's Constitution all protect freedom of expression in private life and media activities. Article 19 of the ICCPR and Article 10 of the ECHR protect the right to personal expression of beliefs and opinions that do not interfere with national security — a right also guaranteed by Article 25 of Turkey's Constitution. Additionally, both the ICCPR and Turkey's Constitution contain articles protecting freedom of expression of private citizens with the same narrow limitation meant to protect against threats to national security.

Both the European Union and the United Nations have expressed concerns

about the arrests. The UN Special Rapporteur on the Independence of Judges and Lawyers stated in a 2012 publication that the judiciary in Turkey needs “to ensure that the measures used to combat terrorism are compatible with international human rights principles and standards.” The targeting of dissenting journalists and human rights lawyers in these mass arrests infringes upon these standards by both censoring speech and creating a chilling effect. By invoking the national security exceptions within both domestic and international law, the Turkish government has taken a broad reading of the Turkish Anti-Terror Law that pushes the boundaries of domestic and international obligations. While the European Court of Human Rights could weigh in on these boundaries, in its absence Turkey shows no signs of halting its policies. In 2009, the Court received 6,500 complaints concerning freedom of the press and freedom of expression; in 2011, the number rose to 9,000. The situation has caused, and will continue to cause, a lesser degree of security for those who seek to bring both legal protection and exposure of the government’s inadequacies to the Turkish people.

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## MIDDLE EAST AND NORTH AFRICA

### 2022 WORLD CUP AND THE EXPLOITATION OF MIGRANT WORKERS IN QATAR

In December 2010, Qatar received the honor of becoming the first Arab country to host the FIFA (*Fédération Internationale de Football Association*) World Cup. In preparation for the 2022 games, Qatar will spend an estimated \$100 billion USD on infrastructure and require a workforce exceeding its 300,000 official citizens. Although Qatar’s official citizenry is one of the smallest in the world, the country is home to an additional 1.2 million migrant laborers — primarily from India, Nepal, Sri Lanka, Pakistan, and Bangladesh. These laborers comprise 94% of the entire Qatari population.

As a member of the International Labour Organization (ILO), Qatar is obligated to comply with a set of minimum employment standards. However, because

the Qatari government has yet to ratify any substantive treaties relating to collective bargaining rights and wage protection, the migrant laborers are being exploited so the country will have its high-tech stadiums ready in time for the games. This exploitation will undoubtedly continue until Qatar chooses to provide migrant laborers with the right to negotiate for more equitable employment terms and safer working conditions.

To obtain a construction job, workers are required to pay a fee up to \$3,651 USD. Because this sum is not readily available to the workers, many must mortgage family properties in their native countries or take out loans with high interest rates. While working, laborers earn wages — between \$6.75 to \$11 USD per day — so low that they cannot leave their jobs without being subject to financial ruin. The ILO Convention on Forced Labour defines compulsory labor as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Because the laborers are willingly entering into employment contracts with the construction companies, the conventions regarding forced or compulsory labor do not offer protection for the laborers — despite the inability for workers to leave employment at will. As a member of the ILO, Qatar is broadly required to promote the right to collective bargaining. However, because Qatar has not ratified the Protection of Wages Convention, which “prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment,” Qatar is not obligated to restructure the payment system or eliminate the application fee.

Working conditions for laborers who obtain a construction job also blur the line of acceptability. Human Rights Watch reported that a typical worker living in a labor camp sleeps with as many as 25 other people in a single room and does not have access to potable water or air-conditioning. Many workers have also reported an absence of medical care and a denial of free movement. Currently, Qatari labor laws prohibit labor unions and do not establish a minimum wage. Without the ability to unionize, the workers are powerless.

Qatar has also received media attention concerning allegations of unreported deaths at the construction sites. The Right

to Organize and Collective Bargaining Convention provides that any national laws relating to workmen’s compensation for accidents arising out of employment shall be equally applicable to all persons. The Qatar National Health Strategy recently reported that workplace injuries are the third highest cause of accidental death in Qatar. However, the Qatari Ministry of Labor has only reported six work-related accidents during the last three years. Qatar has not updated this number despite information provided by the countries sending laborers into the country for construction jobs.

The Supreme Committee for Qatar 2022, FIFA’s representative committee that is overseeing site construction, has reflected its dedication to preventing forced labor or human trafficking and has agreed to develop “mandatory contract language and assurance protocols” to address labor disputes. FIFA recently decided to add labor standards to the list of criterion required for future World Cup bids. However, even if FIFA and the Supreme Committee are able to reform labor practices at the World Cup sites, other migrant laborers in Qatar will remain unprotected. For the migrant laborers of Qatar to achieve any long-term changes in the labor system, the involvement of the Qatari government process is necessary.

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### VIOLATIONS AGAINST HUMAN RIGHTS DEFENDERS IN SAUDI ARABIA AND THE UNITED ARAB EMIRATES

Throughout the Middle East, human rights defenders (HRDs) are forced to choose between their values and their personal security. Recent media attention has focused on Bahrain and the United Arab Emirates (UAE), where the governing regimes are consistently targeting HRDs. These are not the only countries in the region where this problem exists, but consistent violations of international law merit a discussion of their implications. By arresting peaceful protesters, not providing fair trials, and criminalizing dissent, Bahrain and the UAE have disregarded the individual rights protected in the International Covenant on Civil and Political Rights (ICCPR), the Arab Charter on Human Rights (ACHR),

and the Declaration on Human Rights Defenders (DHRD).

Recently in Bahrain, human rights defenders have been arrested and detained for organizing and participating in anti-government demonstrations and posting about anti-government protests on social media sites. The Bahrain Center for Human Rights (BCHR) condemned these arrests and detentions, saying that they are aimed at thwarting human rights work in Bahrain. The group claimed that government action against HRDs is part of an effort to stop citizens from practicing their rights to freedom of expression and assembly. BCHR said it believes that Bahraini authorities have been using an unfair judiciary to target critics of the government. The Bahraini government alleged that activists are disseminating false information through social media sites and that they are inciting violence during anti-regime protests.

Bahrain acceded to the ICCPR in 2006; it is thus legally binding on the country. Article 9 of the ICCPR protects the rights not to be arbitrarily arrested or detained and to be informed of charges. Article 14 of the ICCPR enshrines the right to a prompt and fair trial. Article 19 guarantees the right to freedom of expression and Article 21 the right to peaceful assembly. In Bahrain, these provisions of the ICCPR are being violated through the arrest and trial of HRDs. The arbitrary arrests carried out by the Bahraini authorities are contrary to the standards of international law protecting those who are acting within their rights and calling for peaceful protests. Human Rights Watch reported that a prominent Bahraini HRD was charged with inciting violence, but that the court verdict cited no evidence that the HRD had actually participated in or advocated for violence. Other HRDs have experienced excessive delays in trial proceedings. For example, a lower court neglected to provide the necessary documents to the appeals court, resulting in the postponement of the appeal process and keeping HRDs detained longer. Article 14 of the ICCPR specifically guarantees the right to a fair trial by an independent and impartial court; Bahrain's courts are not demonstrating impartiality and independence when it comes to HRDs.

Last month, UAE authorities enacted a new cybercrimes decree criminalizing online dissent against the state, effectively closing off the UAE's last remaining forum

for free speech. The law also criminalized unauthorized demonstrations. Recently, several HRDs have been arrested under the new decree for their alleged connection to Twitter accounts that have criticized the government. The Emirates Center for Human Rights (ECHR) reported that the authorities have refused to publicly disclose the reasons behind the arrests and will not say where the detainees are being kept. The ECHR said it believes that these arrests demonstrate state attempts to silence online criticism. The UAE government insisted that the decree is intended to monitor online content to prevent the proliferation of racist or sectarian views and to defend state security.

Though the UAE has not ratified the ICCPR, it is a member of the Arab League, which adopted the ACHR. The Charter confirms the rights outlined in the ICCPR and includes similar articles. The ACHR creates binding obligations on members of the Arab League. By criminalizing dissent and revoking its citizens' right to freedom of expression, a right protected by the ACHR, the UAE has not acted within the parameters of the ACHR.

A troubling aspect of Bahrain and UAE's violations of international law is that they are specifically directed at HRDs. The DHRD guarantees the rights of HRDs. The DHRD is not legally binding but contains rights that are protected in other agreements, like the ICCPR. Because the DHRD was adopted by consensus in the UN General Assembly, it represents a strong commitment by the international community to its implementation. Bahrain and the UAE can come into line with international laws and norms by ending the targeting of HRDs and taking measures to protect them.

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## SUB-SAHARAN AFRICA

### **KAMPALA CONVENTION BREAKS NEW GROUND FOR PROTECTING INTERNALLY DISPLACED PERSONS**

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known as the Kampala Convention, entered into force on December 6, 2012. The Kampala

Convention is the first binding international convention containing State obligations and rights of internally displaced persons (IDPs). This represents an express recognition by the African Union (AU) of the inadequate protections for IDPs in Africa, which accounts for forty percent of the world's IDPs, and it is the result of a process dating back to 2004 when the AU Executive Council announced its intention to draft a treaty addressing IDPs.

IDPs are persons who, without crossing internationally recognized borders, have been forced to flee their homes or places of habitual residence as a result of armed conflict, violence, human rights violations, or natural disasters. IDPs make up a far larger population than cross-border refugees, and one-third of the world's IDP populations — approximately ten million persons — are found in 21 countries in Sub-Saharan Africa.

While states have increasingly recognized IDPs over the last two decades, the only previous international mechanism was the Guiding Principles on Internal Displacement, soft law issued by the UN Office of Coordination of Humanitarian Affairs in 1998. Although non-binding, the Guiding Principles have served as the basis for subsequent binding mechanisms. The first incorporation of the Guiding Principles also occurred in Africa, at the sub-regional level, with the Great Lakes Pact. While the scope of the pact was much larger, Article 12 obligates its eleven member states of the International Conference on the Great Lakes Region to adopt and implement the Guiding Principles.

Unlike the Guiding Principles and the Great Lakes Pact, the Kampala Convention is the first time states have enacted a treaty-based legal framework specifically for IDPs. The Kampala Convention has three overarching goals: (1) preventing or mitigating internal displacement; (2) protecting and assisting IDPs; and (3) promoting solutions and support among member states. Although the Kampala Convention does not grant IDPs special legal status, similar to the situation for refugees, it does outline IDPs' rights and circumstances where States must provide assistance to IDPs.

The Kampala Convention provides for important protections of IDPs' rights. States must protect IDPs from human rights abuses including discrimination, genocide, crimes against humanity,

arbitrary killing, detention, torture, and sexual or gender-based violence. In addressing emerging trends of development-induced IDPs, States have the duty to prevent development-based displacement by exploring alternatives and carrying out impact assessments. Unlike the Guiding Principles, which consider only large-scale development projects, the Kampala Convention applies to development projects of any size.

As with most international conventions, States must meet these obligations without discrimination on any grounds. The Kampala Convention obligates States to protect individuals from arbitrary displacement and to promote IDPs' human rights. It also requires that States ensure criminal prosecution of individuals responsible for causing displacement and violations of IDPs' rights and that the States provide for "satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity."

Article 5 of the Kampala Convention creates a positive duty for States to accept external humanitarian assistance. This requirement is the first of its kind in a human rights treaty and it is an extension of State obligations under international humanitarian law, which provides obligations of humane treatment and protection of civilian populations in times of armed conflict. Previously, only soft law provisions under international disaster response law have addressed state obligations to accept external assistance. As with the earlier soft law documents, the Kampala Convention's obligation of third-party assistance only requires States to accept assistance when they lack adequate resources on their own. In these situations, the AU will act in a coordination capacity to target strengthening responses and resource mobilization. Furthermore, if a state's unwillingness to accept assistance results in human rights violations in order to comply, the AU may intervene and assume the obligations under the Convention.

Although the Kampala Convention represents an important step forward in protecting IDPs, a few provisions may detract from its efficacy. Unlike the Great Lakes Pact, which grants jurisdiction over disputes on interpretation and implementation to the African Court of Justice and Human Rights (ACJHR), under the

Kampala Convention States may refer disputes to the ACJHR only after negotiations between States have broken down. Furthermore, the duty to accept external aid has a limiting clause stating, "nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states." This possible weakness aside, the Kampala Convention is an important step forward in establishing binding protections for IDPs.

#### **EVIDENCE OF MALIAN ARMED GROUPS' VIOLATIONS PREDATES INTERNATIONAL INTERVENTION**

Although the French-led international effort to aid the Malian government brought the human rights situation in Mali to the world's attention, domestic ethnic strains reached a breaking point nearly a year before. Since the April 2012 seizure of northern Mali by Tuareg separatist rebels, Islamic armed forces, and Arab militias, violence among the various factions has left the Malian people particularly vulnerable.

The immediate conflict traces back to January 16, 2012, with a rebellion against the Malian government by armed groups seeking independence and autonomy for the Tuareg people in northern Mali, a region known as Azawad. The conflict developed a mix of political opposition to the Malian government, ethnic squabbling for control of territory, and religious extremism. By April, the ethnic Tuareg separatist group known as the National Movement for the Liberation of Azawad (MNLA) controlled northern Mali. Islamist Ansar Dine, a group which sought to institute Sharia, the Islamic theological legal code, also joined the rebellion. After March 2012 saw further destabilization following MNLA success, government forces launched a *coup d'état* and instituted the National Council for the Restoration of Democracy and State (CNRDR) as the new government with the stated goal to "wage a total and relentless war" against MNLA. This *coup d'état* was met with international condemnation and subsequent sanctions from the UN Security Council, the African Union, and the Economic Community of West African States.

With disparate factions and growing instability, Malian civilians were caught in the middle of violence from multiple sides. Following the expulsion of government forces in northern Mali, the ethnic tensions between the Tuareg MNLA and

the National Liberation Front of Azawad (FNLA) undercut regional security. The FNLA opposed Tuareg rule in Azawad, which led the Front for Liberation of Azawad (FPA) to split off from the MNLA in opposition to Islamists and a focus on autonomy over independence. Within this vacuum of control, jihadist group Al-Qaeda in the Islamic Maghreb (AQIM) and its splinter group the Movement for Oneness and Jihad in West Africa (MOJWA) also sought to gain a foothold in the region. MOJWA has been in constant conflict with MNLA and has opposed Tuareg rule in Azawad.

In the course of taking over Azawad and through infighting, reports indicate numerous acts that could invoke international humanitarian law (IHL) and human rights law, but the nature of the conflict leaves unclear what law even applies — and none of the legal distinctions have yet to deter any actions against Malian civilians.

Ansar Dine, MOJWA, and AQIM are reportedly using children as young as twelve — acts generally barred under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Furthermore, reports from Amnesty International and Human Rights Watch indicate that these groups have engaged in summary executions, murder, abduction, inhumane treatment — sometimes in support of Sharia law — and sexual and gender-based violence as prohibited in various human rights instruments to which Mali is a State Party.

In a conflict situation, such as in Mali, the limitations of human rights law become apparent. Although human rights law is already a difficult tool to utilize to prevent violations during an ongoing conflict, it is more difficult in Mali because it generally applies only to state actors, leaving questions about how it applies with no controlling government. Although the human rights protections are in effect at all times, there is no enforceable obligation for non-state actors.

Reported actions by these groups also implicate IHL, which in conflict situations can have a broader application than human rights law because it could apply to all parties involved. However, application depends on the characteristics of the situation — namely whether it can be classified as an armed conflict — and can also allow

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for some violence that is a valid use of force in combat that would otherwise be banned under human rights law. Reports have indicated the various groups have targeted and pillaged hospitals, churches, and schools, which — if they were directly targeted — could implicate both Common Article 3 of the Geneva Conventions and customary law.

The violations have prompted the International Criminal Court (ICC) to open an investigation into the conflict and to reports of government forces engaging in extra-judicial killings of suspected members of these armed groups. The obligations for human rights violations will likely remain difficult to apply until a more stable government is reestablished, at

which point the State would be responsible for protecting the application of rights to people within its borders.

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