

PORTUGAL TO ENFORCE WAR CRIMES TRIBUNAL SENTENCES

Portugal has become the thirteenth European nation to agree to enforce sentences issued by the International Criminal Tribunal for the former Yugoslavia (ICTY). Portugal's agreement with the UN will allow individuals convicted by the Tribunal to serve their sentences in Portuguese prisons. The ICTY cannot enter into bilateral agreements with foreign states on its own authority; therefore the Portuguese agreement is with the ICTY's parent organization, the UN. The new agreement will enter into force after it is ratified by the Portuguese government. Most observers expect that this will occur.

The new agreement makes one important limitation: it provides that the lengths of the prison terms served in Portugal cannot exceed limits upon sentences under Portuguese law. Although the ICTY is capable of bestowing lengthy sentences as well as terms of life imprisonment, Portugal would be unwilling to enforce such sentences because they exceed the legislatively enacted maximum of 25 years. This limiting provision reflects the controversy surrounding the ICTY's imposition of sentences. Critics allege that the ICTY's sentencing is inconsistent due, in part, to a lack of formal guidance and broad judicial discretion. Most of this criticism, however, is leveled at sentences that are perceived as too short. The new agreement with Portugal would do nothing to affect sentences that are perceived as lenient.

Portugal joins 12 other European nations that have agreed to enforce ICTY sentences. Although skeptics view establishing norms and institutions of international criminal prosecution and enforcement as a largely futile exercise, the growing number of states willing to enforce internationally imposed sentences validates this process.

As the ICTY becomes increasingly accepted, many skeptics seem to be undermined. There remain, however, many who are unconvinced that the ICTY offers fair

trials to the accused, criticizing both provisions of the ICTY Rules of Procedure and Evidence, as well as the forcefulness with which tribunal officials insist that indicted persons surrender or be arrested. Enforcing sentences in numerous states will help increase scrutiny over the rules and procedures of international criminal tribunals. This process may lend credence to those who have put their faith in the ability of the world's states to cooperate to prosecute and imprison human rights offenders.

OHCHR PROBE INTO DEMOCRATIC REPUBLIC OF THE CONGO HUMAN RIGHTS VIOLATIONS OF MARCH 2007

In early January, the Office of the High Commissioner for Human Rights (OHCHR) released the preliminary findings of its probe into the events of March 22 and 23, 2007 in the Democratic Republic of Congo (DRC). On those dates, government forces clashed with members of the personal security detail of former Vice President Jean-Pierre Bemba. Six months earlier, during the first national, multi-party elections in more than four decades, Bemba lost the presidential election in a run-off.

The OHCHR team responsible for the investigation has recommended that Congolese authorities initiate a judicial probe into the violence to compensate victims who were injured, who lost family members, or whose property was damaged. They also urge DRC authorities to issue a comprehensive public statement regarding the events and what is being done to correct these injustices.

Human rights groups report that more than 300 people lost their lives as a result of last March's clashes, which occurred largely in residential areas. Both sides used heavy weapons with seemingly little regard for civilian populations. In addition, there were numerous acts of looting and destruction of property. At least 40 persons were summarily executed following the initial bouts of violence.

Furthermore, over 200 people were arrested — many without proper legal procedures — and submitted to cruel and degrading treatment. The DRC's Chief Military Prosecutor established a commission to look into the arrests, but he ordered the release of only five detainees. No other investigations or prosecutions followed the establishment of the commission.

In addition to operating field offices that work to promote human rights standards, OHCHR issues direct investigations, or probes, into grave situations to support the United Nations Committee on Human Rights. The power of these probes is often criticized, however, due to the lack of enforcement capabilities. Proponents of such investigations believe that monitoring and exposing human rights violations worldwide has a cumulative, normative effect. Supporters believe that by not allowing violations to go unnoticed, these investigations both shame the state involved and remind the governments of international human rights standards. Furthermore, by offering specific advice to national governments involved in human rights violations, the UN can play a role in developing domestic institutions that are capable of and willing to enforce international human rights standards.

Many question the efficacy of OHCHR's recommendation advising the DRC government to create a judicial probe, given the continuing violence between rebel groups and government forces. A January cease-fire was broken within a week of signing, casting doubt upon the potential success of such reconciliatory efforts. Whether DRC authorities have the will or the ability to implement the recommended investigation remains to be seen.

UN CALLS FOR INCREASED SUPPORT FOR MIGRANTS' HUMAN RIGHTS

December 18, 2007 marked the eighteenth anniversary of the UN General Assembly's adoption of the International Convention on the Protection of the Rights of all Migrant Workers and Members

of Their Families (the Convention). The Convention is an attempt to reconcile the need for universal protection of human rights with the realities of increased international migration. While the Convention deals with the rights of all migrant workers, it particularly focuses upon the vulnerable position of illegal migrant workers. UN High Commissioner for Human Rights Louise Arbour stressed the importance that, “irrespective of their legal status, [all migrant workers] enjoy the protection of international human rights standards”

The approximately 200 million illegal migrants worldwide are often unprotected by legal regimes in their host countries and have little to no access to remedies under those countries’ domestic laws. Many countries also enact national legislation, further alienating and discriminating against this already exposed group. The United States, for example, is often criticized because its labor laws do not cover those who are employed illegally. Likewise, the Italian parliament recently enacted a law that allows the state to deport immigrants who have been accused of a crime.

Such laws make illegal migrants particularly susceptible to abusive treatment

both at the hands of employers and those transporting them into the host countries. Migrant workers commonly work long hours, often under dangerous conditions, for pay well below the host countries’ minimum wage. They are frequently denied access to health care and education for their children. Women and children migrants are particularly vulnerable during the process of migration. They are often sexually abused, and usually lack access to people or mechanisms that allow them to make complaints against their abusers. They also often fear exposing themselves to deportation or arrest by making such claims; therefore perpetrators of sexual abuse or violence against women and children are effectively immune from prosecution for these crimes. The Convention seeks to address this critical situation by decriminalizing migrant workers’ status and ensuring that migrants are guaranteed the same treatment under law as national citizens in their host countries.

Despite the Convention’s far-reaching protections, international acceptance of these protections remains low. Although the Convention was adopted in 1989, it did not enter into force until July 2003, when

it finally received the requisite 20 ratifying states. Now, more than four years later, only 17 additional states have ratified the Convention. The slow pace at which the Convention has been adopted highlights the complexity of the issues surrounding migrant workers and gives little comfort to those seeking to ensure that all people’s rights are protected, regardless of legal status and location.

States remain opposed to ratifying the Convention for a variety of reasons. Some question the economic value of migrant workers, claiming that migrants take jobs from citizens and that migrants’ remittances to their home states remove money from the host state economies. Critics of such opposition, meanwhile, assert that resistance to protecting migrant workers stems from xenophobia and racism. The debate over the rights of migrants continues in headlines and political campaigns of both developed and developing nations.

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