

## INTERNATIONAL LEGAL UPDATES

### UNITED STATES

#### U.S. Congress Overturns U.S. Supreme Court's Interpretation of "Disability"

The American Disabilities Act Amendments Act of 2008 (ADAAA) takes effect on January 1, 2009. The Americans with Disabilities Act of 1990 (ADA) prohibits employers, among others, from discriminating against individuals with disabilities, thus preventing their exclusion from society. Under the ADA, "disability" is a physical or mental impairment that substantially limits one or more major life activities. Over the years, the U.S. Supreme Court (the Court) strictly interpreted the meaning of "disability," prohibiting many individuals from receiving the benefits the ADA provides. The ADAAA amends the ADA and directly overturns the U.S. Supreme Court's strict interpretation.

Prior to the ADAAA, the Court's two most significant cases regarding the ADA were *Sutton v. United Airlines* and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, which greatly limited the definition of disability. The Court held that major life activities only included those activities of central importance to daily life such as working. The use of corrective or mitigating measures affected the Court's evaluation of whether an individual had a substantial limitation of a major life activity. For example, the Court did not consider a person who was severely myopic disabled, such as in *Sutton v. United Airlines*, because that person could correct the visual impairment. The Court further narrowed the definition of disability, requiring that the individual be significantly restricted from performing either a class of jobs or a broad range of jobs as compared to the average person with comparable training, skills, and abilities.

The ADAAA explicitly rejects the Court's demanding standards to restore the original protection intended by Congress. The ADAAA clarifies the definition of disability, redefining "major life activity" and revising other aspects of the law. The ADAAA specifies that, "in general . . .

major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." Under the ADAAA, the qualifying impairment does not need to limit more than one major life activity and can be episodic or in remission. The ADAAA eliminates the Court's interpretation that an individual's disability must restrict them from either a class of jobs or a broad range of jobs. The ADAAA also overrides the Court by prohibiting lower courts from considering mitigating or corrective measures in their analysis.

Although some worry that the ADAAA might increase lawsuits by increasing the quantity of individuals qualifying as disabled, the clarified definitions will likely lead to a decrease in litigation. The ADAAA provides a clear, national mandate to follow which will prevent misinterpretations by employers that previously made compliance difficult. The ADAAA will protect individuals with conditions not previously covered, such as carpal tunnel, depression, and learning disabilities. Representatives Steny Hoyer and James Sensenbrenner, two of the ADAAA's sponsors, said in a joint statement, "With the passage of the ADA Amendments Act . . . today, we ensure that the ADA's promise for people with disabilities will be finally fulfilled. Our expectation is that this law will afford people with disabilities the freedom to participate in our community, free from discrimination and its segregating effects that we sought to achieve with the original ADA."

#### States Passing Conflicting Immigration Laws

The U.S. federal government has failed to significantly reform federal immigration laws to address the nation's problem with illegal immigration. State governments argue that the lack of national leadership has left them no other choice but to begin passing their own laws. Legislatures in 46 states have adopted over 244

immigration-related measures in the last year. While some states are passing stricter laws enforcing current federal laws, others are passing more lenient laws that protect illegal immigrants' rights.

Like many states looking to curb illegal immigration, Tennessee's legislature revoked laws granting illegal immigrants driving certificates and has allowed law enforcement officers to act as state immigration police. Tennessee and other states, such as Colorado, have passed laws that suspend or revoke business licenses of employers who knowingly hire illegal immigrants. One of the toughest, the Oklahoma Taxpayer and Citizen Protection Act of 2007, makes it a felony to transport or shelter illegal immigrants. It denies illegal immigrants access to driver's licenses and public benefits such as rental assistance and fuel subsidies. It also forces government contractors to check new employees against a federal system called E-Verify to make sure they are legally eligible to work, with the penalty of losing their contracts for noncompliance. Currently, nine states require employers and state agencies to use the E-Verify system. State Representative Randy Terrill, who authored the Oklahoma bill, argues that the bill saves taxpayers' money by not subsidizing services for illegal immigrants.

Not only has Oklahoma's bill negatively affected the state economy, but it also represents a far-reaching attempt to expand the immigration enforcement power of states. Businesses, especially those in the agriculture industry, face worker shortages because they cannot employ anyone of unknown legal status. The resulting delays in production particularly affect consumers in the agriculture and construction industries. Construction industry leaders argue that raised wages in Oklahoma, a state with low unemployment, would lead to a net loss of jobs as some businesses close due to competition with other states allowing less stringent hiring practices. As businesses struggle to adjust to the new law, legal immigrants and citizens have also lost jobs. Many illegal immigrants and their family members who are legal immigrants or U.S.

citizens are leaving Oklahoma in order to find a safer haven in nearby states such as Missouri and Arkansas.

Missouri and Arkansas are not the only states with more lenient immigration laws. To prevent employers from taking national origin into account in their hiring decisions, Illinois recently attempted to pass a law prohibiting businesses from using E-Verify to check the legal status of employees. Advocates of the Illinois law argue that the E-Verify system is flawed and inaccurate; legal immigrants and citizens can lose their jobs if the system discovers any Social Security inaccuracies. Those who are here legally could also be questioned or investigated by the Department of Homeland Security (DHS) because of a discrepancy. New York, in contrast to Oklahoma, wants to offer driver's licenses to illegal immigrants and has already extended limited medical coverage to those battling cancer. A former New York governor stated, "We're left dealing with the reality of up to 1 million [illegal] immigrants in New York. . . . I would prefer to have [them] carrying a legitimate form of identification, a driver's license that allows them to get insurance, allows our law enforcement to track their driving records and brings these drivers out of the shadows." Some cities, such as New York City and Washington, DC, even consider themselves to be "sanctuary cities" by adopting a "don't ask-don't tell" policy; the cities do not require city employees, such as police officers, to report potential illegal immigrants. The Alaska state legislature passed a resolution prohibiting state agencies from using their resources to enforce federal immigration laws.

Some states, like Florida and Alabama, are working with the federal government through cooperative agreements instead of attempting to pass legislation enforcing federal laws. The agreements place local law enforcement officers under the direction of the DHS to exercise immigration enforcement authority. The agreements allow cooperation between the federal government and the states while leaving the control over the enforcement with the federal government.

The conflicting state laws may pose a problem for the federal government when seeking reform. Some fear that federal standards will never be possible; the longer

states must regulate immigration issues on their own — some being entirely contradictory — the harder it will be to create consensus in favor of uniform rules. Others argue that the increase in state legislation provides an opportunity for the federal government to observe and study what does and does not work. The problem with this "laboratory" approach is that it takes time; as more time passes and states continue to take conflicting approaches, creating uniform federal legislation becomes more difficult. Additionally, legal battles are already taking place between the federal government and states whose laws conflict with the intent of the federal laws. For instance, the DHS sued the state of Illinois for its ban on the use of the E-Verify database, which Illinois State officials called flawed and unreliable.

The continuing debate over the enforcement of immigration laws and required reforms is controversial and presents significant challenges. The new administration faces divided and conflicting policies that are already in place. New attempts to create uniform federal laws must analyze and balance the impact those laws will have on individual communities.

## LATIN AMERICA

### **Mexico: Women Face Continuing Violence Despite Passage of 2007 Law**

The 2006 National Survey of Domestic Relations (*Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares 2006* — ENDIREH), conducted by the United Nations Development Fund for Women (UNIFEM), in conjunction with the National Institute for Woman (*Instituto Nacional de las Mujeres* — INMUJERES) and the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía* — INEGI), revealed that 67% of women in Mexico have experienced some form of violence. The study concludes that nearly one in four Mexican women have been physically or sexually abused by a present or past partner. The study seeks to raise awareness of violence against women by providing statistical data on both the national and state levels.

Pandemic violence against women in Mexico persists despite passage of the 2007 General Law on Women's Access

to a Life Free of Violence (*Ley General de Acceso de las Mujeres a un Vida Libre de Violencia*). The law requires "federal and local authorities to prevent, punish and eradicate violence against women." The law also creates several defined categories of violence, including domestic, workplace, institutional, and gender-based violence. Federal, state, and municipal governments are also charged with specific responsibilities under the law.

Continued violence, however, has led many to conclude that Mexican authorities do not take the issue seriously. Amnesty International identified several obstacles that women face when trying to report cases of domestic violence in a series of reports and articles in August 2008. Their reports conclude that the federal and state governments have failed in the implementation and funding of the law. Women face officials refusing to accept complaints, deficient investigations, and poor enforcement of protective measures, an Amnesty International report says. In some cases, officials have even asked women to deliver summons to their aggressors.

Several states have passed additional legislation to the 2006 General Law. In some instances, however, the additional state legislation has actually deterred women from reporting cases of violence. The Chiapas Law on Women's Access to a Life Free of Violence, for instance, omits many of the violence-defining sections and regulation responsibilities found in the general national law, and lacks a budget. These characteristics led attorney Martha Figueroa Mier of *Grupo Mujeres de San Cristóbal*, to conclude that with this "new law, we have law, but we have no protection."

Such was the case of "Martha," first reported by Amnesty International in May 2008. Martha, a Mexico City resident, sought police assistance three times within a year, reporting that her husband was punching her in the stomach so fiercely that she could barely breathe after each beating. The police told her that they could do nothing unless she returned with cuts and bruises. Martha explained that her husband raped her on a weekly basis. The police, however, never arrested Martha's husband, nor did they even bring him in for questioning. Cases such as Martha's demonstrate that even after the adoption

of the 2007 law, curbing violence against women is still not a priority in Mexico. The National Institute for Women in Mexico reports that the rate of violence against women in Mexico is twice the worldwide average. "It's considered natural," laments the Institute's executive secretary. While the passing of the anti-violence law was an important first step in providing a measure of protection to women, they will continue to face the same obstacles as before until the Mexican government steps in to enforce it and make women's safety a priority.

### **Colombia Misuses Red Cross Emblem During Betancourt Rescue**

The International Committee of the Red Cross (ICRC), in an August 6, 2008 statement, condemned the misuse of its emblem by Colombian forces during the 2 July 2008 rescue mission that liberated fifteen captives from the Revolutionary Armed Forces of Colombia (FARC), including former Colombian senator and one-time presidential candidate Ingrid Betancourt. Her release sparked an international celebration. Betancourt, held captive since 2002, described her rescue as "a miracle," and "a moment of pride for Colombia."

Colombian forces posed as aid workers transporting the captives by helicopter from one FARC camp to another. The rescue mission was the result of years worth of intelligence gathering and has been considered a daring success. The Colombian government, however, has since faced stiff criticism after allegations surfaced that a member of the rescue team misused the Red Cross emblem during the rescue mission.

The original Geneva Convention, adopted on 22 August 1864, established the Red Cross symbol, and articles 37, 38, 39 and 85 of Additional Protocol govern the symbol's use. The articles establish that "feigning of protected status by the use of . . . emblems" of neutral parties is a violation of international humanitarian law. The Commentary on Article 38 of the Geneva Convention establishes that neutral emblems such as the Red Cross are intended "to signify one thing only — something which is, however, of immense importance: respect for the individual who suffers and is defenseless, who must be aided, whether friend or enemy, without

distinction of nationality, race, religion, class or opinion."

The Colombian government initially denied any use of the Red Cross emblem, but later said that rescuers unintentionally used the Red Cross symbol. Colombian President Álvaro Uribe described the symbol's use as an error. "This officer, upon confessing his mistake to his superiors, said when the [rescue] helicopter was about to land . . . he saw so many guerrillas that he went into a state of angst," Uribe explained.

Photos taken before the rescue mission and video taken during the rescue, however, show one man of the rescue team donning the Red Cross bib moments before the mission began. The bib in the photos clearly shows the Red Cross symbol. The videos show the same man standing next to FARC generals throughout the rescue mission. Regardless of whether the emblem's use was unintentional, maintaining the neutrality of the emblem is vital to the ICRC's missions around the world. Violations endanger the ICRC's ability to safely serve populations in situations of violence and armed conflict. The Red Cross emblem may only be deployed to protect medical units and establishments. These regulations apply both in situations of external and internal conflict. Using the emblem in a deceitful way constitutes perfidious use and is a war crime. Maintaining the emblem's neutrality is of paramount concern in protecting the safety of humanitarian aid workers across the globe and ensuring they will be able to continue their work.

### **Venezuela Expels Human Rights Watch Activists After Critical Report**

On September 18, 2008, Venezuela expelled Human Rights Watch (HRW) Americas Director José Miguel Vivanco and Deputy Director Daniel Wilkinson. Earlier that day, Vivanco and Wilkinson presented their report "A Decade Under Chavez: Political Intolerance and Lost Opportunities for Advancing Human Rights in Venezuela." The HRW report concluded that the expanded human rights guarantees under the 1999 Constitution have "been largely squandered." Vivanco also stated that that President Hugo Chávez had "weakened democratic institutions

and human rights guarantees" during his decade in power.

Vivanco and Wilkinson's expulsion has led to international criticism of the Venezuelan government. The Inter-American Commission on Human Rights (IACHR) issued a statement that "this measure affects the right to freedom of expression of the representatives of that organization and constitutes an act of intolerance against criticism which is an essential component of democracy." The International Commission of Jurists also stressed that "such a move is an attack on freedom of expression and legitimate defense of human rights."

In a televised statement, the Venezuelan Foreign Ministry said that Vivanco, a Chilean national, "illegally interfered in the country's internal affairs," and that the expulsion "is a clear message to whoever intends to come here and plot from within." In response, the Chilean Vice Minister of Foreign Affairs called the expulsion a disproportionate reaction.

The expulsion of the HRW directors is yet another instance of the Chávez government curtailing freedom of expression. In May 2007, the Venezuelan government denied a broadcasting license renewal for the nation's oldest private television channel, *Radio Caracas Televisión*. The station was consistently critical of the Chávez administration. The United States government, the European Union, the IACHR, the Chilean Senate, the EU Parliament, and the Inter-American Press Association criticized the decision.

Under Chávez, the Venezuelan government increased both the scope of speech and broadcasting offenses and the penalties for committing these offenses. Human rights watchdogs argue that these toughened laws have been used to contravene international norms of freedom of expression and have stacked the deck against critical opposition.

## AFRICA

### Complaints Against Hissène Habré Filed with Senegalese Prosecutor

In July 2008, the Senegalese Parliament took final steps in removing legal barriers to prosecute former Chadian dictator Hissène Habré for torture and crimes against humanity. Under pressure from the European Union (EU), the African Union (AU), and international non-governmental organizations (NGOs), Senegal took the first step in February 2007 and passed legislation allowing it to prosecute cases of genocide, crimes against humanity, war crimes, and torture, even when committed outside of the country. The constitutional amendment passed in July 2008 allows laws such as this one to be applied retroactively, as is necessary for the legislation to apply to crimes allegedly committed during Habré's eight-year rule (1982–1990).

With a legal pathway finally cleared for prosecution, fourteen victims of abuse under Habré's regime, including two Senegalese merchants, filed complaints with a Senegalese prosecutor on September 16, 2008. The complaints detail political arrests, detention, torture, and other abuses suffered at the hands of Habré's political police, the DDS (*Direction de la Documentation et de la Sécurité*). "The evidence shows that Habré was not a distant ruler who knew nothing about these crimes," says Reed Brody, a lawyer at Human Rights Watch. "Habré directed and controlled the police force which tortured those who opposed him or those who simply belonged to the wrong ethnic group."

After being deposed in a 1990 military coup, Habré fled to Senegal in 1991. Victims of torture under his rule have been pressing for his prosecution ever since, through NGOs such as the Chadian Association of Victims of Political Repression and Crime. In 2000, Senegal indicted Habré, but the process stalled due to political and legal concerns, particularly that Senegal's laws at the time did not allow prosecution for crimes committed outside the country. Disappointed, victims and their advocates turned to Belgian courts, which after a four-year investigation, in September 2005 charged Habré with crimes against humanity, war crimes, and torture. Senegalese authorities arrested Habré but refused Belgium's extradition request.

International pressure has played an important part in moving Senegal forward. In May 2005, the United Nations Committee Against Torture ruled that Senegal was in violation of its treaty obligations under the Convention Against Torture, to which it is a party, since it failed to either prosecute or extradite Habré. Senegal then appealed to the AU, requesting advice on how to proceed. In July 2006, the AU called on Senegal to prosecute Habré "in the name of Africa."

The Senegalese government, including President Abdoulaye Wade and the Justice Minister Madické Niang, has appeared supportive of prosecution despite a highly politicized environment. In August 2008, Chadian courts sentenced Habré and 11 others to death in absentia for participating in or supporting the February 2008 coup attempt against Chadian president Idriss Deby Itno. Upon receiving this news, Minister Niang publicly expressed surprise about the Chadian conviction: "If Hissène Habré was judged for the same deeds for which he is prosecuted in Senegal . . . he could no longer appear before any court in the world." Because Habré was not charged for acts committed in Chad between 1982 and 1990, the principle of double jeopardy does not apply. While the principle of double jeopardy is not uniformly applied worldwide, one fear is that if a Chadian prosecutor were to charge Habré for crimes committed between 1982 and 1990, Senegal might refuse to prosecute him altogether.

Among its own citizens, the Senegalese government has faced criticism for "modifying its national constitution to satisfy the desire for vengeance of the Europeans and Libyans against Habré, who had chased them from his country," and for "selling an old African head of state to white slave drivers for 18 million francs," a reference to the financing promised by the EU to assist with the costs of a future trial. Along with such editorials, Senegalese newspapers have in recent weeks also published the statements of Habré's legal defense team, which claims that the victims' complaints are aimed at the DDS rather than Habré, and that, even after the constitutional amendments, it will be "impossible for Senegalese justice to start new prosecution against their client."

### African Union Finalizes Plan for Merger of African Courts

At the 11<sup>th</sup> Summit of the African Union (AU) in Sharm El-Sheikh, Egypt in early July 2008, the AU adopted the draft Protocol on the Statute of the African Court of Justice and Human Rights (ACJHR), drafted in April 2008 by justice ministers of the AU member states. The statute will enter into force 30 days after ratification by 15 member states. The ACJHR will be the main judicial organ of the AU and will merge and replace both the African Court of Justice (ACJ) and the African Court of Human and Peoples' Rights (ACHPR).

According to the draft protocol, the new ACJHR will be composed of 16 judges split evenly between two chambers: a General Affairs Section and a Human Rights Section. The Human Rights Section, like the ACHPR, will have jurisdiction to hear cases alleging violations of rights granted under the African Charter on Human and Peoples' Rights, the Charter on the Rights and Welfare of the Child, Protocol on the Rights of Women in Africa, or any other human rights instrument ratified by the State in question.

In months leading up to the AU Summit and since adopting the Protocol, NGOs have criticized a key element of the proposed structure: the refusal by the drafting justice ministers to grant individuals the right to directly access the new court. In a June 2008 editorial, Chidi Odinkalu of the Open Society Institute's Justice Initiative and Nobuntu Mbelle of the Coalition for an Effective African Court on Human and Peoples' Rights (the Coalition) wrote: "That Africa needs this court is not in doubt. In many states, national laws are outdated, non-existent or inadequate; courts are ineffective or inaccessible; and public prosecutions have become too politicized or weakened by self-indulgent politicians. . . ." However, the two authors continue, the new, merged court "has design flaws similar to those that have made it impossible for the [ACHPR], established a decade ago, to receive any case to date. . . . By denying individual victims access to the new court, governments will close an avenue through which atrocities might be addressed, effectively rendering the court still-born."

Another serious design flaw, according to ACHPR Judge Fatsah Ouguergouz, is the impossibly broad mission of the merged court. Speaking at the *Advocacy Before Human Rights Bodies: A Cross Regional Agenda* conference at American University Washington College of Law in October 2008, he expressed concern that the ACJHR may not be “fully equipped” to deal with a jurisdiction roughly corresponding to that which Europe divides between four bodies: the European Court of Human Rights, the European Court of Justice, the International Court of Justice, and the UN Administrative Tribunal.

Since the ACJHR protocol’s adoption, the Coalition and regional NGOs have lobbied African nations to ratify it, while at the same time continuing to criticize the design flaws. For example, the Nigerian Bar Association, a Coalition member, published a position statement urging the Nigerian government to adopt the single legal instrument establishing the ACJHR and simultaneously supporting ongoing negotiations “to assure the right of individual access to the proposed court.”

Fears that the ACJHR will prove ineffective as a forum for protecting human rights in Africa arise from the disappointing progress of its predecessors. The development of a pan-African human rights court has moved at a snail’s pace since it was first proposed in 1961. In 1981, the African Charter on Human and Peoples’ Rights was established, followed by the establishment of the African Commission in 1987. Since the Commission lacked power to render or enforce decisions on complaints brought before it, the ACPHR was conceived in 1998.

Not until late 2003, however, did the requisite number of members ratify the protocol. The court’s protocol came into force in 2004; judges were not appointed until 2005; and to date, only 24 of the 53 AU member states have ratified the ACPHR, which has yet to hear a case. As of early 2008, just 15 AU members had ratified the protocol of the ACJ, created in 2003.

## **Problems Continue in Camps for Those Displaced by South Africa’s Xenophobic Violence**

Months have passed without resolution to the wave of xenophobic violence killing 60, injuring hundreds, and displacing thousands of foreigners — most from elsewhere in Africa — residing in South Africa. The South African government established shelters for victims and those targeted in the attacks. Originally, the shelters or camps established for victims were given a two-month timeframe, and government officials readily admitted that this was not a long-term solution. “We could have a dilemma,” said Thabo Masebe, a spokesman for the Gauteng local government. “We cannot force people to go back to their home countries [or reintegrate] and we cannot establish permanent shelters.”

Although most local governments planned to close camps in mid to late August, many camps have remained open. Civil society organizations called for the camps to remain open until the government publishes a detailed reintegration plan. In Gauteng Province, groups obtained an interim order from the Constitutional Court to keep camps open until at least September 30. On October 1, the provincial government shut down the Glenada Camp and began shutting down two remaining camps.

In Gauteng, many are electing to return to their home countries rather than reintegrate. The opposite is true in Western Cape Province, where approximately 90 percent opted for reintegration, despite reported violence towards some returning to their South African communities.

## **MIDDLE EAST AND NORTH AFRICA**

### **Saudi Arabia: Police and Courts Discriminate Against Religious Minority**

In a recent report, Human Rights Watch (HRW) states that government officials in Saudi Arabia have subjected members of a Shi’a sect, the Ismailis, to secret detentions, torture, and unfair trials since 2000. As a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Saudi Arabia is bound to ensure that its law enforcement and judicial system do not discriminate on the basis of ethnic origin. Saudi Arabia

ratified the ICERD in 1997 but has failed to adhere to it. Over 400,000 Ismailis live in the southern province of Najran, where they have experienced increased ill-treatment from the current governor’s administration.

The HRW report focuses on the consequences of the April 2000 arrest of Ismaili cleric Muhammad al-Khayyat for “sorcery.” In conjunction with the arrest, the police confiscated religious books and other belongings from students inside an Ismaili mosque. Witnesses heard shots fired and at least one person was injured, though sources are unclear on whether the injured was a student or an officer. The event triggered a demonstration outside the residence of Governor Prince Mish’al. The local police arrived and exchanged fire with the protestors, killing at least one person from each side. After the demonstration ended, the police arrested between 400 and 500 people, some of whom had not even participated in the protest. The report also admonishes the Saudi Arabian government for preaching religious tolerance worldwide while systematically discriminating against its own citizens.

Many of the detainees arrested after the demonstration experienced inhumane conditions in prison. All of the detainees interviewed by HRW had been tortured. Prisoners also faced harsh interrogations, beatings, electric shock treatments, and sleep deprivation. Guards suspended one man from a cable for hours while they beat him. As a result of being tortured, detainees falsely confessed to committing acts of violence during the demonstration. The Saudi Arabian courts also participated in discriminatory trials and judgments against prisoners. Detainees faced secret trials, some of which were unknown even to the prisoner on trial. Some received their sentences when they appeared at court, after being forced to sign false confessions. King Abdullah pardoned many of those detained during an official visit to the region, but seven detainees are currently still in prison.

In April 2008, Ismaili leader, Shaikh Ahmad bin Turki Al Sa’b, led a delegation to present a petition to King Abdullah, detailing the condition of Ismailis in Najran and requesting the dismissal of Prince Mish’al. One month later, Al Sa’b was arrested, and six months later, he remains

detained without charge. In response to the incidents of April 2000, HRW urges the Saudi government to open an investigation into the treatment of detainees arrested in the aftermath. HRW also urges the Saudi government to adhere to the standards of ICERD and to establish a national human rights monitoring body to investigate the abuses suffered by the Ismailis, as well as the legal consequences of the April 2000 demonstration. In November 2008, King Abdullah removed Prince Mish'al from his post as governor of Najran. This occurred after continued protests by Ismailis about the treatment of detainees arrested in April 2000 and the release of HRW's report condemning Prince Mish'al's abuse of the Ismailis. Saudi officials, however, continue to mistreat Ismailis.

### **Iran's Execution Rate Tripled in Three Years**

Iran's execution rate has more than tripled under the administration of President Mahmoud Ahmadinejad. Iran has the second highest execution rate in the world, surpassed only by China. In recent years, as Iran's execution rate has increased, the international community has heavily criticized the Iranian government for its lack of transparency in death penalty proceedings and its continued execution of juvenile offenders. In particular, both the European Union (EU) and the United Nations (UN) have expressed concern over Iran's execution of juvenile offenders.

In the three years since Ahmadinejad became the president of Iran, executions have drastically increased. In 2005, when Ahmadinejad took office, Iran executed 86 people. In 2007, that number had increased to 317. As of September 2008, the UN estimated that the Iranian government had already executed 220 people. Iran is also one of only a few countries that execute juvenile offenders, a practice that accounts for two-thirds of all juvenile executions worldwide in the past three years. Human Rights Watch (HRW) estimates that the Iranian government has executed at least six juvenile offenders so far this year with another 120 on death row. In August, Behnam Zare and Seyyed Reza were executed for murders they committed when they were 16 and 15 years old, respectively.

Iran's law permitting the execution of juvenile offenders is in direct violation of

UN treaties that the Iranian government has ratified. Signatories to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights have promised not to execute any offenders under the age of 18. Iran, however, identifies adulthood as beginning at puberty, and has set the age as 15 for boys and nine for girls.

Iran's death penalty laws provide the courts with a wide-reaching authority over how executions are carried out. Iran's legal system authorizes the death penalty for a number of crimes, including insulting the Prophet, murder, and social crimes like adultery. With murder cases, the law allows for the practice of *qisas-e-nafs*, or retribution. Victims' family members can pardon the criminal, ask for retribution, or accept compensation in place of retribution. In recent years, however, Iran's judicial system has shown a disregard for the requirements of the law. Iran's lack of transparency does not provide sufficient notice about imminent executions. Iranian law requires the family and lawyers of the criminal to be notified at least 48 hours before the execution. In Behnam Zare's case, however, neither his family nor his lawyer was notified until after his execution.

Iran's death penalty system provides the government with unchecked power over the lives of those on death row. With hundreds of people on death row, including 130 children, Iran's human rights crisis has escalated drastically under the administration of President Ahmadinejad.

### **Torture and Unfair Trials for Demonstrators in Egypt**

Forty-nine people in Egypt are awaiting the continuation of their trials after authorities arrested them for participating in a series of protests on April 6, 2008, in the city of Malhalla. The detainees are being tried by the Egyptian government in front of an emergency court and have faced severe ill-treatment at the hands of prison guards during their imprisonment. In September 2008, Amnesty International released a statement urging the Egyptian government to transfer the cases to an ordinary court and to open an investigation into the nature of the arrests. Egypt has renewed its state of emergency almost continuously since 1981 after the assas-

ination of President Anwar Sadat. Under emergency law, the Egyptian government can detain people without charges and can use emergency courts. Emergency courts do not follow legal procedures as carefully as ordinary courts do, and those on trial often receive sentences without the ability to adequately defend themselves.

More than 150,000 workers across Egypt have been involved in strikes, sit-ins, and other demonstrations in an attempt to increase the minimum wage. The Egyptian government banned strikes on April 5, 2008 to maintain order. A demonstration of textile-factory workers was scheduled by labor organizers to take place the next day, but was called off in response to the ban. Violent demonstrations occurred anyway, leading to large-scale clashes between security forces and demonstrators. At least three people, including one school boy, died after being shot by law enforcement officials. Many more protesters were wounded and over 250 people were later arrested, including the 49 people who are now awaiting the continuation of their trials before the emergency court. In May, the state of emergency was set to expire. Despite formal denials from the Egyptian government that it was going to be renewed, Parliament approved a two year extension of emergency law in May.

The 49 detainees were subjected to harsh interrogation and torture while in prison. They were blindfolded by guards for nine days, beaten, faced electric shocks, and received threats to their family members. Interrogators obtained forced confessions from them that they had thrown stones at the police, though some of the detainees maintain that they were not even present at the demonstrations. Their lawyers complained about their treatment, but no action was taken.

The trials in front of the emergency court will move forward with potentially tragic results. The courts have charged the 49 accused individuals with illegal possession of firearms, violent resistance, assault on a police officer, assembly of more than five people with the aim of disturbing public order, ransacking and theft, and deliberate destruction of public and private property. The detainees may receive up to 15 years in prison if convicted of these charges. Amnesty International has criticized the emergency courts for using

confessions obtained through torture and for their judicial proceedings being generally below standard. Unlike in a non-emergency legal system, the emergency court rulings cannot be appealed and are final once ratified by President Hosni Mubarak, condemning detainees to their fate once they receive their sentence.

## EUROPE

### European Parliament Condemns Italy's Treatment of the Roma

Italy's move to fingerprint its entire Roma population has drawn harsh criticism from the European Parliament (EP), which branded the effort a "direct act of racial discrimination." Europe is currently home to over 10 million Roma, a community who currently constitute the largest ethnic minority in the European Union (EU). Roughly 150,000 Roma have moved to Italy, composing almost 10 percent of the population and living in some 700 encampments.

The Roma have encountered significant resistance from the Italian community. The 2007 murder of an Italian woman, in which the main suspect was a Romanian migrant of Roma descent, sparked a wave of vigilante justice against the community that included frequent fire bombings and mob attacks.

But the strongest criticisms are of the Italian government's treatment of the Roma. The Italian government recently implemented a plan to fingerprint the country's entire Roma population, calling the move part of a broader crackdown on crime and a push for Roma children to attend school instead of begging. The fingerprinting initiative has already begun, and Italian Foreign Minister Franco Frattini defends the practice, claiming it "does not target ethnic groups and is not inspired by racism."

In what some considered a surprising move, the European Commission (EC) approved the plan, suggesting that the fingerprinting measures are not discriminatory or in breach of EU standards. An EC spokesperson stated that the plan only aimed to identify persons who cannot be identified in any other way, and would exclude data relating to ethnic origin or religion. Nonetheless, Italian newspapers recently published pictures of officials taking fingerprints and filing them accord-

ing to religion, ethnicity and level of education.

Many consider the fingerprinting to be a violation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), a United Nations (UN) convention committing its members to the elimination of racial discrimination and the promotion of understanding among races. Italy signed the convention in March 1968 and ratified it in January 1976, promising "[e]ffective remedies against acts of racial discrimination which violate individual rights and fundamental freedoms."

The fingerprinting initiative has sparked particularly loud protest from the EP, which held a Roma Summit in Brussels in September 2008. This Summit marked the first time that EU institutions, national governments, and European civil society organizations came together to discuss the ongoing discrimination of the Roma. In a vote of 336 to 220, members of the EP (MEPs) adopted a resolution calling on Italy to immediately cease its fingerprinting practices. The resolution holds that the fingerprinting is an act of discrimination based on race and ethnic origin, and that the EP "condemn[s] utterly and without equivocation all forms of racism and discrimination faced by the Roma and those seen as 'gypsies.'"

Although the resolution is not binding, lawmakers have urged the EC to investigate whether the fingerprinting policy violates European law. Commission president José Manuel Barroso acknowledged increasing EC concern over the practices and issued an urgent appeal for united European action: "The problem which we are facing together — as political leaders and citizens, as members of majority societies and as Roma — is one of great urgency."

In response, Italy has watered down its practice, only requiring the fingerprinting of those who cannot provide official documents. The international community remains concerned with the impact these potentially discriminatory tactics may have on the Roma community. A delegation of MEPs is scheduled to travel to Italy to observe the situation firsthand.

### New Concerns Over Rendition in U.K., Other European Countries

In the midst of the United States' war on terror, several European countries have been accused of turning a blind eye to America's rendition tactics and allowing them to take place on European soil. In February 2007, members of the European Parliament (MEPs) found evidence that the United States completed some 1,245 covert flights in which detainees were moved to states where they could face torture. Despite persistent claims to the contrary, the MEPs' official report stated that it was unlikely that European governments were unaware of rendition activities on their territory.

Recent investigations by the Council of Europe and the European Parliament (EP) have reignited controversy over Europe's role in rendition. In 2007, the Council of Europe released a statement saying, "there was now enough evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005, in particular in Poland and Romania." Dick Marty, a Swiss senator who led the Council of Europe inquiry, says NATO allies entered into a secret agreement allowing the CIA to operate these jails. Marty also declared that Poland was a CIA black site where eight "high-value detainees" such as Khalid Sheikh Mohammed, alleged mastermind of the 9/11 attacks, were interrogated. Prosecutors in Poland did not launch an official investigation of these claims until August 2008.

Several human rights organizations are now calling for a similar investigation in the U.K., specifically focusing on concerns over the use of a U.S. base on the British-owned island of Diego Garcia. Shortly after the 9/11 attacks, reports began to surface that U.S. planes seen in British airports and territories were being used to transport detainees to detention centers overseas. The British government repeatedly denied these claims, releasing statements that the U.S. had not requested permission for a rendition through U.K. territory or airspace at any time.

These statements preceded a surprising announcement made by David Miliband, Secretary of State for Foreign and Commonwealth Affairs, in February 2008. Miliband admitted that on not one but two occasions, Diego Garcia was now known

to have been used for rendition flights. In an effort to pacify both local and international concern, Miliband announced an ongoing collaborative effort between his office and multiple human rights organizations to investigate any other flights of concern.

Groups such as Amnesty International are calling for further action, stating, “[n]ot a single measure has been taken to further prevent European involvement in U.S. renditions and secret detentions.” Despite calls for immediate investigation and prevention, other European countries with alleged participation such as Italy and Germany have yet to launch official investigations into their own involvement.

### **Russia-Georgia Conflict Raises Multiple Human Rights Issues**

The recent conflict between Russia and Georgia has both sides alleging brutal human rights violations in the most serious confrontation between the two nations since their 1992 war. After several months of low-level conflict, Georgian troops launched an offensive attack against pro-Russia separatists in the province of South Ossetia in August 2008. Russia responded by reinforcing their troops already stationed in South Ossetia, who then entered Georgia proper in a move many interpreted as a violation of the territorial integrity of the sovereign state. A brief but violent war erupted.

Although French president Nicolas Sarkozy mediated a ceasefire that has seemingly quelled the countries’ fighting, Russia and Georgia are now locked in a heated debate in which each side is accusing the other of breaching international humanitarian law. The International Criminal Court (ICC) is currently investigating these claims, and faces a challenge in determining fact amidst accusations of “indiscriminate violence, murder and genocide.” Researchers now suggest that both sides may have violated the laws of war in using violence that was disproportionate, discriminatory, or both.

As these legal investigations get underway, human rights organizations are growing increasingly concerned as stories surface of brutal human rights violations on both sides. A guiding rule of international humanitarian law remains that disproportionate attacks are prohibited; if a country

intends to attack a military target where there is likely to be excessive civilian damage relative to the expected gain, the country should not attack. It appears that neither Russia nor Georgia fully undertook their duty of civilian protection. Reports have emerged of Russian forces dropping bombs on a convoy of passengers fleeing Georgia’s Gori district, and of Georgian soldiers driving and firing tanks in residential areas.

Despite the ICC’s ongoing investigation, both Russia and Georgia have sought other legal courses of action. Russian prosecutors recently launched their own investigation into the deaths of 133 civilians they say were killed by Georgian forces. Although this number is significantly lower than initial estimates of up to 1,600 deaths, Russia still claims they have a potential case against Georgia for committing acts of genocide.

In return, Georgia has filed a lawsuit with the International Court of Justice (ICJ) alleging that Russia attempted to ethnically cleanse Georgians in the breakaway regions and killed at least 69 civilians. Georgia maintains that Russia breached the Convention on the Elimination of All Forms of Racial Discrimination, a convention that entered into force in 1969, which commits all parties to the elimination of all forms of racial discrimination. Both Russia and Georgia are parties to the Convention.

Although the fighting between Russia and Georgia has ceased for the time being, the international community recognizes that the situation remains volatile. As representatives of the European Union arrive in Georgia to monitor the security situation, human rights organizations are calling on the two nations to maintain peace.

## **SOUTH AND CENTRAL ASIA**

### **India Becomes First Country to Convict Suspect Based on Brain Scan**

In June 2008, a court in Pune, India, convicted a murder suspect partly based on evidence from a brain scan, sentencing her to life in prison. Using results from a Brain Electrical Oscillations Signature (BEOS) test as well as a polygraph test, Judge S.S. Phansalkar-Joshi asserted that the suspect had “experiential knowledge” that only the perpetrator could possess. The convict,

Aditi Sharma, maintains her innocence. While consent to the procedure is required, the looming threat of abusive police interrogations may leave the accused little choice but to accept.

The states of Maharashtra and Gujarat have established electroencephalogram (EEG) labs for prosecutorial use and about seventy-five suspects have currently undergone the test. The June conviction, however, was the first time a suspect was convicted based upon the test.

The BEOS test consists of placing electrodes from an EEG on the scalp. The EEG processes electrical brain activity through computer software. Then, investigators read aloud the actions and details of the crime and analyze the resulting brain waves for patterns of recognition. The developers of the test insist on its accuracy. The test has not been independently repeated, however, nor have its results been published in any renowned peer-reviewed scientific journals.

Dr. Rosenfeld, a neuroscientist and psychologist at Northwestern University, asserted that such technologies are not credible without peer review and independent replication. He further asserted, “The fact that an advanced and sophisticated democratic society such as India would actually convict persons based on an unproven technology is even more incredible.” The technique is also susceptible to criticisms that brain signals arising from actual memories versus illusory ones are largely indistinguishable. In a critical analysis of the brain scan procedure, Dr. Rosenfeld underscored the fragility of memory as an entity susceptible to distortion and falsehoods.

In addition to the multifarious scientific problems of the BEOS test, this technology raises important legal-ethical issues of cognitive liberty. Novel issues are cropping up due to the use of many emerging technologies, leading to questions regarding a state’s power towards the prosecutorial use of information derived from a defendant’s brain activity. Critics of techniques such as the BEOS test fear the violation of cognitive liberty is a slippery slope towards growth in state power and may lead to criminalization of thoughts detected through advanced neuro-technologies such as fMRI (functional Magnetic Resonance Imaging) or EEG.

If independent replications and robust peer reviews prove the BEOS technology reliable, its potential to aid in criminal prosecution and defense may be scrutinized in light of ethical and legal considerations. By convicting a suspect based on the BEOS test, the Pune court has not only preemptively deemed the technology reliable before a scientific consensus, but also brushed aside the ethical-legal questions such technologies present.

### **Religious Liberty in Uzbekistan Continues to Suffer**

The trial of Aimurat Khayburahmanov began on August 15, 2008 with charges of participation in a religious extremist organization and the unauthorized teaching of religion. Uzbekistan's strict penal code criminalizes religious teaching without prior approval from the state. The charge of religious extremism is considered to be unfounded, however, because it is regularly attributed to entities that the Uzbek state deems a threat, such as radical Muslim organizations.

As a Protestant, Khayburahmanov belongs to a small minority group within Uzbekistan that has had difficulty obtaining governmental approval to practice their religion. Religious registration is particularly difficult in the autonomous region of Karakalpakstan, where Khayburahmanov's trial took place. The region has not registered non-Muslim or non-Russian Orthodox groups since 2005.

Judge Yelena Medetova dropped the charges brought under Article 244 Section 2 of the Uzbek criminal code prohibiting participation in religious extremist groups. Judge Medetova also granted amnesty regarding religious instruction without prior governmental approval. Such leniency is rare where political trial verdicts are determined by state authorities. The reason for the leniency in Khayburahmanov's case is unclear.

Legally registering with governmental authorities has proven to be a losing battle for many religious minorities. Registration requirements include providing a list of at least one hundred group members and a registration address. If a religious group meets the requirements but fails to obtain governmental approval, the State may easily decide to persecute the group given that it has already obtained the specific names

of the group through the legitimate submission of registration requests. This catch-22 presents significant challenges to religious groups who may forgo registration for fear of persecution, thus risking a future crackdown for illegal religious activity.

The Uzbek state is generally more accepting of mainstream religions such as Islam, the majority faith. Nevertheless, mosque-goers in Karakalpakstan have reported plain clothed security personnel surveilling mosques, particularly during the holy month of Ramadan.

The U.S. Department of State International Religious Freedom Report of 2008 criticizes the severe lack of religious freedom within Uzbekistan and maintains the designation of Uzbekistan as a "Country of Particular Concern" under the International Religious Freedom Act.

After the 2005 Andijan massacre, where government forces killed hundreds of protestors, the Uzbek authorities under President Karimov have been especially concerned about maintaining control and ensuring compliance with all laws. As the Uzbek government continues to circumscribe religious activity within the narrow confines of state approval, Uzbeks continue to suffer from punitive measures designed to enhance state authority by curbing religious freedom.

### **Prominent Sri Lankan Human Rights Lawyer Attacked**

On September 27, 2008, a grenade exploded in the home of leading Sri Lankan human rights lawyer and anti-corruption activist, J.C. Weliamuna. Fortunately, Weliamuna and his family were not hurt in their heavily guarded area of Colombo. Three days after the attack, an unidentified person tried to enter the Sri Lankan office of Transparency International, (an anti-corruption international NGO) of which Weliamuna is executive director. The man asked for a person who had never before worked in the office and security prevented the man from entering while Weliamuna escaped. Weliamuna has since gone into hiding.

Weliamuna contends that the attack was politically motivated and directly related to his professional work. Weliamuna advocated for the Seventeenth Amendment to the Sri Lankan constitution, which estab-

lishes independent commissions to administer the police, judiciary, and elections departments, thereby reducing the executive's power. Weliamuna also represents controversial cases and some of his clients have become embroiled in the controversies. For example, Lalith Jarapakse, one of Weliamuna's clients, allegedly received threats and demands to withdraw his complaint regarding police torture.

After the attack, high-level members of the government, including President Mahinda Rajapaksa, met with the Bar Association of Sri Lanka to discuss the incident. President Rajapaksa urged an expedited investigation and sought to dispel allegations that the government played a role in the attack. Over 300 lawyers displayed solidarity with Weliamuna in a demonstration demanding an effective investigation and prosecution of the perpetrators.

Numerous organizations have condemned the attack, including the International Commission of Jurists. They describe the context of the attack as one in which violence against dissidents is rising. For instance, Sugath Nishanta Fernando, a plaintiff in a torture and bribery case against the police, was assassinated on September 20, 2008 and his lawyers received threats demanding a withdrawal of the case.

Transparency International identified the UN Convention against Corruption, which Sri Lanka has ratified, as an international legal instrument obliging the government to investigate the attack against Weliamuna. Nevertheless, it is uncertain whether the government will rigorously investigate the attack. In March 2008, an independent advisory group, titled The International Independent Group of Eminent Persons (IIGEP), ceased its work advising the government's investigative branch on robust investigations of human rights violations. The IIGEP stopped its work as a result of the government's obduracy in adopting the group's recommended reforms.

Although it is uncertain who planned and executed the attack upon Weliamuna, the incident may be indirectly linked to the government's long and bloody battle with the insurgent group, the Liberation Tigers of Tamil Eelam (LTTE). The government has been harsh with those critical of its conduct against the LTTE, as evidenced by its prosecution of J.S. Tissainayagam.

Tissainayagam was a journalist whose critical reporting led to charges of “bringing the government into disrepute” under the Prevention of Terrorism Act. The Sri Lankan government is concerned, not only about its image, but also about its legitimacy in fighting the insurgency. Whether the perpetrators of the Weliamuna attack were the state security forces, nationalist criminal gangs or other groups, one intention may be to intimidate voices that ostensibly threaten governmental legitimacy and consequently, the war against the LTTE.

## EAST AND SOUTH EAST ASIA AND THE PACIFIC

### China Avoids United Nations Action Against Child Soldiers in Burma

China, backed by Russia and Indonesia, thwarted United Nations Security Council efforts to ban recruitment of child soldiers in Burma. China prevented the Security Council from addressing the issue by barring UN officials’ access to Burma and by suppressing plans to address the issue before they could commence.

Burma has a long history of human rights abuses, with its military regime described as one of the most brutal and oppressive regimes in the world. The Burmese people are subjected to forced labor and face prohibitions on freedom of speech, movement, and association. One of the most pressing matters, however, is the commonplace practice of kidnapping and recruiting children as young as 11 into the national military. Human Rights Watch estimates that about 70,000 of Burma’s 350,000 soldiers are children.

The United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) in 1989 which outlined the civil, political, economic, social and cultural rights of children. Articles 1 and 2 of the Optional Protocol on the Involvement of Children in Armed Conflict further require signatories to ensure children under the age of 18 are not compulsorily recruited nor engaged in hostilities. Although Burma’s active recruitment and use of child soldiers clearly violates the CRC and its Optional Protocol and despite the fact that the conscription of children under the age of 18 is recognized as a war crime by the International Criminal Court, Burma has escaped relatively unscathed. China, a strong supporter of the military

junta in Burma, has used its position on the Security Council to obstruct any discussion or action by the UN against the Burmese regime.

This is not to say that the Security Council has been helpless in the matter of child soldiers elsewhere. In 2003, the Security Council successfully pushed the governments of the Ivory Coast and the Democratic Republic of the Congo to abandon the use of child soldiers and prosecute those who were responsible. They also took a tough approach in 2007 with respect to the Sri Lankan Tamil Tigers, whose child soldier recruitment dropped over 70 percent within a six-month deadline.

The Security Council has repeatedly pressured Burma to address its use of child soldiers but found little success. China has used its political influence to effectively block proposals for more comprehensive action and has even on occasion prevented UN personnel from traveling to Burma to verify its claims.

Article 43 of the CRC establishes the Committee on the Rights of the Child which monitors and carries out the objectives of the Convention. China’s actions have effectively rendered the Committee useless by barring UN access to Burma. China’s position is that in order to build a relationship of trust with the Burmese state, there must be full acceptance of whatever it says. With China’s support, Burma continues to use child soldiers, evades UN sanctions, and renders the law of child soldiers moot.

### New Japanese Government Sanctions Use of Capital Punishment

Newly appointed Japanese Prime Minister Taro Aso, and Minister of Justice Okiharu Yasuoka have continued to sanction the use of capital punishment, executing three men in September 2008. As one of only two industrialized democracies still practicing capital punishment, Japan has been highly criticized for continuing a practice that various international organizations have deemed cruel, unusual, and torturous.

The recent executions bring the total number to 13 people in 2008. While the Japanese public widely supports the state taking of life, many within the interna-

tional community have called for Minister Yasuoka to reconsider the national policy. Non-governmental organizations such as Amnesty International have asked Japan to comply with United Nations General Assembly resolution 62/149, which calls for a universal moratorium on the utilization of the death penalty.

In 2006, the United Nations Human Rights Council (HRC) found Japan’s Penal Code inconsistent with the International Covenant on Civil and Political Rights (ICCPR) due to its secretive, lengthy, and inhumane nature. Death row inmates are said to be notified of their impending execution only hours before it occurs, while family members are only notified after its completion. Failure to give prior notice of execution directly violates Articles 2, 7, and 10 of the ICCPR, to which Japan is a signatory party.

According to Article 475 of the Japanese Code of Criminal Procedure, the Minister of Justice has six months to issue a death warrant. However, prisoners in the past have sat on death row for as long as 30 years. Further, the appeals process for inmates is cumbersome and futile. Those convicted at trial based on confessions suspected of being given under duress have little to no avenue by which to appeal their convictions. Between 1983 and 1990, five inmates were found falsely convicted and released on average 30 years after their initial conviction and sentencing. Former Minister of Justice Hideo Usui acknowledged that “[t]here are probably more cases like that” on death row.

The HRC has previously described Japan’s capital punishment system as torturous and inhumane. Death row inmates’ lives are characterized by the vacillation of their execution and are deprived of basic human contact. Executions occur at one of seven detention centers throughout Japan, where prisoners are blindfolded and secured to a noose. An official then presses a button which releases a trap door, sending prisoners ten feet to their deaths. While Japanese officials describe this as a clean death, Amnesty International and Human Rights Watch decry it as cruel and inhumane.

The Japanese government defends this practice with polls showing strong public support for the death penalty. Organizations such as the Japanese Federation of

Bar Associations and the Human Rights Committee have argued that this is because the procedure is largely masked in secrecy. The appointment of Prime Minister Aso and the recent execution of the three prisoners have, however, opened dialogue within the Japanese legislature, calling for a moratorium and a public debate on the issue, as well as better disclosure on all issues related to the death penalty.

### **North Korean Migrant Workers May Find More Rights in Mongolia**

After about half a century of stringent isolationist policy, North Korea entered into bilateral agreements with Mongolia which may set a positive precedent for North Korean migrant workers. The two states formally agreed to a program in July 2008 whereby North Koreans will be able to travel and obtain employment in Mongolian factories and firms. The agreement is scheduled to allow approximately 5,300 North Korean employees to enter Mongolia over the next five years. Many expect this agreement to foster better labor conditions and more comprehensive labor laws for North Koreans both domestically and abroad.

North Korea remains one of the last centrally planned economies in the world. Pyongyang's almost complete control over a rigid, centrally planned economy has led to severe downsizing and created widespread unemployment. Small businesses are unable to compete against government-owned industries and the agriculture sector has never fully recovered from the Korean War and the famine of the 1990's.

Work shortages have led North Koreans to search for more favorable conditions outside the nation. The Kaesong Industrial Complex (KIC), located on the border between North and South Korea, consists of a number of South Korean firms which employ North Koreans in a factory set-

ting producing goods predominantly for the South Korean market. North Koreans expect to find the same conditions in Mongolia. Mongolia will open its main industries to the North Koreans, including construction, mining, processing of animal products, and textile manufacturing. Furthermore, Mongolia's labor law is more liberal in its support of freedom of association, minimum wage, and maximum hour laws.

North Korean labor law is notorious for its shortcomings in the areas of freedom of association, collective bargaining, prohibitions on gender discrimination and sexual harassment, child labor, forced labor, maximum hours, and minimum wage. Despite having found work abroad, North Korean workers overseas still face severe restrictions upon their freedom of expression, movement, and association. North Korean "minders" allegedly spy on those who work abroad, limiting their movement and socialization with others. Those working abroad are also consistently required to deposit large percentages of their salaries into a bank account overseen by North Korean embassy officials.

North Koreans employed domestically at the KIC are not protected by its labor laws and instead are subjected to oppressive and harsh labor conditions. While the KIC labor law specifies that employees be paid directly in cash, North Koreans' wages are instead paid in U.S. dollars directly to the government, which retains 30 percent for a social welfare fund and then redistributes the rest in the North Korean Won.

The employment agreement between North Korea and Mongolia is viewed internationally as a potentially positive step for North Korean migrant workers. Many see this as an opportunity for improvement in the field of labor law and ask the Mongolian government to

ensure the North Korean migrant workers receive the same benefits and rights their own citizens enjoy. Among these rights are net wages compliant with minimum wage, safe and clean working conditions, the ability to assemble, and freedom of movement without supervision of North Korean officials. **HRB**

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