

# INTERNATIONAL LEGAL UPDATES

## UNITED STATES

### Obama Administration Revamps Approach to Terrorism Suspects

Barack Obama faces the incredible task of reshaping the U.S. response to terrorism and to terrorism suspects. Over the last eight years, extraordinary rendition and the state secrets privilege became increasingly more prevalent as part of the U.S. approach to terrorism.

Beginning in the 1990s, the U.S. Central Intelligence Agency (CIA), along with other government agencies, established the extraordinary rendition program involving the transfer of terrorist suspects to detention facilities in foreign countries. Suspects were detained and interrogated either by U.S. or foreign officials in these “secret prisons.” Prior to the September 11, 2001 attacks on the U.S., the program was very limited in nature. Former President George W. Bush expanded the program dramatically and increased the number of foreign nationals suspected of terrorism sent to detention facilities in Jordan, Iraq, Egypt, Afghanistan, and Guantánamo Bay. The brutal, inhumane interrogation methods utilized at these detention facilities are prohibited under federal and international laws such as the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment.

Several challenges to extraordinary rendition have come before U.S. courts in the last few years but have been unsuccessful due to the adoption of the state secrets privilege. The state secrets privilege allows the government to prohibit the release of information in a lawsuit if that information would harm national security. The DOJ frequently utilized the privilege, especially under the Bush administration, in defending against charges such as warrantless wiretaps and rendition and, in some cases, prevented lawsuits from continuing as in *El-Masri v. Tenet*. El-Masri charged former CIA Director George Tenet with authorizing others to abduct, to beat and drug, and to transport him to a secret CIA prison in Afghanistan. The CIA continued holding El-Masri even after his innocence became

known. A judge dismissed the case, adopting the CIA and Department of Justice (DOJ) argument that the lawsuit would jeopardize state secrets.

More recently, the American Civil Liberties Union (ACLU) sued a Boeing subsidiary, Jeppesen DataPlan, for participating in the extraordinary rendition of five men. Under both the Bush and Obama administrations, the DOJ again asserted the state secrets privilege, claiming the ACLU’s lawsuit would undermine national security. Under President Obama’s administration, the DOJ again asserted the state secrets privilege in a suit by the al-Haramain Islamic Foundation challenging warrantless wiretaps.

Although it has adopted the state secrets privilege, the new administration is changing other approaches to addressing terrorism. In direct opposition to the Bush administration’s detention methods for terrorism suspects, President Obama issued an executive order banning torture and ordering the closure of the detention facilities at Guantánamo Bay Naval Base within a year. The order requires the prompt and thorough review of the factual and legal bases for the continued detention of all individuals held at Guantánamo, as well as determinations regarding who should be prosecuted or released.

Unfortunately, despite Obama’s executive order, current conditions at Guantánamo still violate U.S. obligations under the Geneva Convention and international human rights law. The Center for Constitutional Rights (CCR) recently reported that abusive conditions continue, including solitary confinement and sensory deprivation which can lead to permanent psychological and physical damage. CCR listed several recommendations to ensure compliance with Obama’s executive order standards for humane treatment while the Guantánamo detention facility closes. They include ending (1) solitary confinement, (2) religious abuse such as violations of detainees’ right to practice their religion, (3) sensory deprivation such as temperature manipulation and sleep deprivation, (4) force-feeding detainees, and (5) prohibitions on indepen-

dent access to medical and psychological professionals.

### Immigration Reform

“The time to fix our broken immigration system is now. It is critical that . . . it is fully reflective of the powerful tradition of immigration in this country and fully reflective of our values and ideals.” In this statement to the Senate, President Obama acknowledged that the heated immigration reform debate of the last several years needs to end. The approximately 12 million immigrants in the U.S. represent a valuable asset to the U.S. economy and to U.S. culture. President Obama, addressing the Congressional Hispanic Caucus, signaled that he will take on the challenge of reform before the end of 2009.

To begin reform of immigration detention facilities, Representative Lucille Roybal-Allard introduced legislation that would provide protections for detainees. The bill includes access to medical care, phones, legal materials, and law libraries. It provides specific protection for children, sexual abuse victims, survivors of torture, and families. Although the bill is a promising start, it only addresses detention facilities and detainees. The National Alliance of Latin American & Caribbean Communities (NALACC) and the ACLU focus on providing a path for undocumented immigrants to earn legal status and on protecting immigrants’ constitutional and human rights; both are vital to any comprehensive immigration reform.

Although criticized and debated heavily, any comprehensive immigration reform must include a path for undocumented immigrants in the U.S. to earn legal status. The current system separates family members and forces people to abandon everything they know. The combination of high application fees and an incredibly long legalization process makes it nearly impossible for individuals to become U.S. citizens. To fix the system, there must be a change in attitudes. The NALACC stresses placing a greater overall emphasis on keeping families together. In providing a path to legalization, the NALACC made several

recommendations such as limiting processing of immigration benefits applications to six months, providing undocumented immigrants the opportunity to become legal permanent residents, and creating a foreign worker program to allow a worker to remain in the U.S. for a reasonable amount of time.

The ACLU, in its immigrants' rights advocacy, recognizes that the U.S. has the authority to decide who may enter or remain in the country, but that authority must be exercised fairly, humanely, and subject to constitutional norms. All "persons" have the right to due process and equal protection under the U.S. Constitution regardless of legal status. A comprehensive reform bill should include provisions protecting constitutional rights such as limiting restrictions on federal court review and prohibiting deportation based on suspicion without proof. The bill should address harsh treatment by law enforcement agencies such as Immigration and Customs Enforcement, specifically in their methods of conducting immigration raids and detention facilities.

The ACLU also supports the idea that any bill introduced must not violate privacy, unlike the Employment Eligibility Verification System (E-Verify). Computer databases and systems, such as E-Verify, require employers to check the legal status of employees in massive government databases, essentially turning employers into immigration law enforcers. Inevitably, such systems lead to employment discrimination on the basis of race and ethnicity, while placing huge burdens on businesses. A better option is a guest worker program which gives employers better access to legal foreign workers and allows illegal immigrants to remain in the country while continuing to work, thus preventing privacy violations.

### **Faith-Based Initiatives**

President Obama signed an executive order on February 5, 2009, establishing the Council for Faith-Based and Neighborhood Partnerships (Council). The Council, known as the Office of Faith-Based and Community Initiatives under President George W. Bush's administration, coordinates religious groups addressing U.S. social issues. The Council's priorities include making community groups an integral part of encouraging economic recov-

ery, ending poverty, supporting women and children, addressing teenage pregnancy, reducing abortion, encouraging responsible fatherhood, and reaching out to the Muslim world and interfaith leaders. In his guidelines for the Council, President Obama, a former professor of constitutional law, attempted to alleviate the constitutional concerns raised by the Bush administration's controversial office.

Separation of church and state is one of the biggest concerns of critics of federally funded faith-based initiatives and programs. Particularly concerning was the Bush-era practice of awarding federal contracts to religious groups of the president's own faith. In essence, the Bush office also allowed these federally-funded groups to perpetuate religious discrimination in their hiring practices. President Obama hoped to prevent these problems by elaborating a few principles that ensure the separation of church and state. First, churches and religious groups may not use federal grants to proselytize to individuals receiving assistance. Second, religious groups may not perpetuate religious discrimination in their hiring practices or in their provision of services. Third, federal dollars that churches and faith-based groups receive can only be used for secular programs.

"With these principles as a guide, my Council for Faith-Based and Neighborhood Partnerships will strengthen faith-based groups by making sure they know the opportunities open to them to build on their good works," stated President Obama. The goal of the initiative is to bring together many perspectives to solve the nation's social problems and to improve American communities of all religious, secular, and political beliefs. President Obama further stated that the goal "will simply be to work on behalf of those organizations that want to work on behalf of our communities, and to do so without blurring the line that our founders wisely drew between church and state."

## **LATIN AMERICA**

### **Constitutional Referendum Leads to Land Redistribution in Bolivia**

On March 15, 2009, Bolivia redistributed over 94,000 acres of land, mostly to indigenous farmers, after the nation passed a constitutional referendum this January. President Evo Morales said that the redis-

tribution encourages people to put country over profit and ends human rights violations against indigenous people. Bolivia seized the redistributed land from five big ranches in Bolivia's wealthy eastern lowlands. Morales explained that, "It is not that these lands were not in production, but that they were the site of human rights violations against the Guarani, who will now be their new owners."

The land transfer followed the January approval of a new Constitution. Key reforms in the governing charter include an entire chapter devoted to indigenous rights that stresses the importance of ethnicity in Bolivia's makeup, the establishment of an indigenous system of justice that has the same status as the official existing system and where judges will be elected and no longer appointed by the Congress, and a 12,355 acre limit on land ownership. "Private property will always be respected but we want people who are not interested in equality to change their thinking and focus more on country than currency," Morales said.

In an effort to appease wealthy landowners, Morales did not make land limitation retroactive. Despite this concession, four of Bolivia's nine regions voted "no," on the constitutional referendum. The greatest opposition to the reform and land redistribution was in the eastern lowlands region, where most of Bolivia's wealth is concentrated. Opposition strongholds in Santa Cruz, Tarija, Beni and Pando, easily defeated the referendum. "The 'No' vote has put the brakes on the fools who wanted to destroy our country," argued opposition leader and Santa Cruz Governor Rubén Costas. Bolivians, however, approved the referendum by 61%. During the celebration of the referendum's victory, Morales announced: "[h]ere we begin to reach true equality for all Bolivians."

Morales—an Aymara Indian and former leader of coca-leaf farmers—is Bolivia's first indigenous president and enjoys broad support amongst indigenous Bolivians. Morales enjoys particular popularity amongst the Aymara, Quechua, and Guarani indigenous groups that suffered centuries of discrimination. In fact, only 50 years ago, indigenous people of Aymara and Quechua descent were prohibited from entering the central square of La Paz. The new constitution aims to establish what some Bolivians are calling a "plurinational

state.” The goal is an all-inclusive society where different groups coexist, and where everyone enjoys full legal protection. “Today, from here, we are beginning to put an end to the giant landholdings of Bolivia,” Morales said.

### **Ortega’s Nicaragua May Be Sliding Towards Autocracy**

Opposition leaders in Nicaragua criticized President Daniel Ortega Saavedra’s call for constitutional reform to allow a second presidential term. While extending term limits is not *per se* undemocratic, other Ortega policies suggest that he is leading the country down a path towards autocracy.

Ortega, of the Sandinista National Liberation Front (FSLN, known as the “Sandinistas”), served as president from 1985 to 1990. He returned to the presidency in 2007. In March 2009, Ortega criticized constitutional provisions prohibiting him from running for re-election as unfair. “The President can’t be re-elected. Only the congressman can be re-elected. It is not just, it denies the people of their right to choose,” said Ortega.

The opposition says that an attempt to change the constitution to allow Ortega to run again will undermine democracy. Yet some democracies in the hemisphere, including Brazil and the United States, allow presidents to serve multiple terms. Moreover, some credit the dramatic security improvements in Colombia over the last six years to a 2005 constitutional reform that allowed President Álvaro Uribe serve a second term. It is clear that transition periods between presidential administrations—marked by hiring staff, developing policy priorities, and crafting implementing strategies—consume a larger percentage of the overall administration for single presidential terms than for multiple presidential terms. Therefore, multiple presidential terms may allow presidents to spend more time governing than preparing agendas.

Ortega’s attempts to amend the constitution place him at odds with the Congress. An amendment will require a majority of Congress, something Ortega and his party currently do not have. Ortega also applauded Venezuelan President Hugo Chávez’s recent referendum victory allowing Chávez to run for multiple terms. Yet Venezuela may not be an ideal reference

since Chávez’s referendum abolished term limits altogether.

If seeking to amend the constitution to allow multiple presidential terms is not *per se* undemocratic, Nicaraguans also protested election results this November after Ortega’s Sandinista party won 105 of 146 municipal races. Violence briefly erupted after right-wing parties accused Sandinistas of fraud. The *Wall Street Journal* also accused the Sandinistas of using “violence [as] a key campaign tactic.” In response, the United States and several European nations froze some \$62 million in developmental aid over concerns that Ortega and his party rigged the November elections. The U.S. Millennium Challenge Corporation (MCC) upheld the suspension in a decision this March after it identified over 40 mayoral posts that the Sandinistas allegedly stole. Ortega has been defiant in the face of foreign criticism, stating that “[t]he [United States] and some European [nations] are saying that they are going to take away our bread if we don’t negotiate the municipal governments. But the municipal governments will not be negotiated.”

Nicaragua’s slide towards autocracy, however, extends beyond the allegedly rigged local elections. Ortega has deployed gangs of uniformed thugs to break up opposition protests in the wake of the municipal protests and his growing unpopularity. One Sandinista leader who now finds himself in the opposition likens the current political state to that of the 1970s, under the country’s infamous dictator, Anastasio Somoza. The former Sandinista says he feels forced to meet contacts in secret, “as we used to do under Somoza.”

The international community is losing patience with Ortega, and as such, Nicaragua loses foreign investors and business that are critical to its people’s standard of living. The result, therefore, has been a weakened state that is sliding towards the very autocracy against which Ortega once led a revolution.

### **Renewed Wiretapping Abuses in Colombia: 479 Words**

Colombian President Álvaro Uribe halted the nation’s wiretapping program in February amidst claims the secret police, known as the Administrative Department of Security (*Departamento Administrativo de Seguridad*, DAS) illegally wiretapped prominent journalists, Supreme Court jus-

tices, and opposition politicians. Eavesdropping is a major crime-fighting weapon in Colombia against drug mafias, leftist rebels and right-wing paramilitaries. Law enforcement agencies have extensive wiretapping powers and equipment, and admit that the potential for abuse is great. DAS, which has approximately 6,000 employees, has been particularly rife with scandal during the Uribe administration.

Uribe’s first DAS director, a former campaign director named Jorge Noguera, is in prison awaiting trial for colluding with right-wing death squads. Another director, María Pilar Hurtado, resigned last October after an opposition senator leaked a memo showing that Hurtado ordered surveillance of the senator. Several DAS officials resigned after the news magazine *Semana* broke the story of illegal surveillance this February. Uribe decried illegal wiretapping and has blamed corrupt agents for the scandals. Some critics, however, think that the Uribe government may have benefited from the wiretaps. Opposition leaders even believe that top ranks of the government directed the recordings. If these claims turn out to be true, they would mar the security successes of the surveillance program and would be counter evidence to Uribe’s claims that the program stamps out corruption. Former DAS director Miguel Maza Márquez believes that, “[o]ne has to arrive at the sad conclusion that it is a process identical to what the KGB used, when not only was the opposition being recorded, but so were some friends of the government.” High-ranking officials have called for DAS’s disbandment. One ministry of defense source stated that the organization is too corrupt for reform.

## **AFRICA**

### **Movement Builds to Protect Albinos in East Africa**

On March 20, 2009, the Legal and Human Rights Centre (LHRC) and the Tanzania Albino Society (TAS) filed a joint petition with the High Court of Tanzania, charging the government with failure to protect the rights and dignity of its albino population. Tanzania, with 40 million inhabitants, is estimated to have a population of about 200,000 albinos.

Since early 2008, the international media has been full of grisly reports of approximately 45 albinos killed and mutilated by

traders, who allegedly sell albino body parts to witch doctors, who in turn use the body parts in casting spells for people seeking wealth. In East Africa, superstition holds that albinos bring luck and riches. The high prices paid for albino body parts has led to the recent spate of killings, which some attribute to organized crime rings. Such “harvesting” is not limited to Tanzania: it is also reported in neighboring Burundi, Kenya, and Uganda. More generally, discrimination and superstition against albinos is common across sub-Saharan Africa, evidenced by the organizations created to protect albinos in South Africa and Nigeria.

In East Africa, the combination of international media attention and local advocacy efforts signal a growing call for change. The first albino Member of Parliament, Al-Shaymaa J. Kwegyir, was appointed in April 2008, pledging to fight discrimination. In June 2008, the Albinism Foundation of East Africa organized an Albino Awareness Day in Tanzania. As the spate of killings continued into 2009, the Canada-based organization, Under the Same Sun, called for a tourism boycott if the Tanzanian government did not act to prevent the violence. Finally, during his visit to Tanzania at the end of February 2009, UN Secretary-General Ban-Ki Moon condemned the killing of albinos.

At the beginning of March 2009, Tanzanian President Jakaya Kikwete announced the deployment of police to twenty-two provinces and urged the public to cooperate by confidentially naming those who have participated in attacks on albinos. This move follows other government steps, including a 2007 amendment to the Witchcraft Act, the arrest of over a hundred individuals involved in the albino trade in 2008, and a campaign launched in January 2009 to distribute special cell phones to albinos, so that they have a direct line to police in case of attack.

These steps did not come soon enough to divert the petition filed against the government by LHRC and TAS. Indeed, LHRC calls the recent government efforts “political measures,” pointing out that two hundred cell phones can hardly be serious help to the 200,000 albino citizens. The additional police deployment, it suspects, will only be short term.

The petition charges the government with breaching several articles of the

Tanzanian constitution: Article 12, under which all human beings are recognized as free, equal, and entitled to dignity; Article 14, which guarantees the right to life and to protection of life by society; and Article 29(2), which guarantees every person equal protection under the law. Interestingly, the petition charges two grounds for violation: the failure of government ministries to provide skin protective gear and reasonable health care services to albinos, many of whom die of skin cancer by age thirty; and the failure of these agencies to protect the lives of albinos from killings due to superstitious beliefs. The petition names the Tanzanian Attorney General, the Ministry of Health and Social Welfare, and the Ministry of Home Affairs.

Just days after the petition was filed, LHRC announced that TAS had withdrawn from the case for unexplained reasons. Some attribute the move to pressure by the government. The central TAS office in Dar es Salaam made the decision despite the protests of TAS affiliates from rural areas “upcountry,” where attacks on albinos are worse.

Nevertheless, LHRC reaffirmed its commitment to move forward with the petition, which it hopes will result in a High Court declaration that the ministries have been in continuous breach of the constitution. In addition to such a declaration, LHRC seeks a High Court order for specific government action and compensation for the victims of mutilation and the families of murdered albinos. Such legal recourse is bold and unprecedented, adding a legal element to the already highly politicized issue.

### **Land Reform and Forced Evictions in Uganda**

The Ugandan government’s latest push to move the Land Amendment Bill (introduced in December 2007) forward in the legislature depicts the bill as a pro-tenant measure to address the problem of forced eviction. The real motivation for the bill and its anticipated affects are the subject of heated controversy, seemingly opposed or at least questioned by landowners and tenants alike.

Forced eviction is both an urban and a rural problem in Uganda, although to a lesser degree than in many African countries. Indeed, the 2006 *Global Survey of Forced Evictions published by the Centre on Housing Rights and Evictions (COHRE)*

praised President Yoweri Museveni for taking a “strong public stand against illegal evictions,” although it noted that both government agencies and private owners continue the practice.

In the last year, *Ghetto Radio* reported on the ongoing eviction and demolition of about 120 homes in the Kisenyi area of Kampala, during which agents of the land owner, a former Kampala mayor, distributed what appeared to be forged eviction notices bearing the name of the City Council. In the Kayunga District, about 200 kilometers northwest of Kampala, more than 17,000 people were evicted from their farms when the landlord sold his land to a Kampala businessman. According to the Foundation for Human Rights Initiative, these farmers received no compensation and many had nowhere to go but a displacement camp.

Both government and private evictions often fly in the face of the law. For example, in February 2008, ten days after the murder of a Belgian tourist at the Mt. Elgon National Park allegedly carried out by cattle thieves, the Uganda Wildlife Authority (UWA) evicted more than 4,000 people from communities indigenous to the Mt. Elgon area. The UWA acted with the assistance of the Ugandan military, known as the Uganda People’s Defense Forces, and justified its action as “humanely” addressing “encroachment in the park.” The eviction, however, directly contradicted an October 2005 decision by the Uganda High Court in Mbale, which ruled that the Benet were the “historical and indigenous inhabitants” of the park and should be allowed to “carry out agricultural activities.”

In the face of such impunity, it is unclear how legislative reform alone could be expected to significantly protect tenants against forced eviction. And, despite the tenor of the recent public campaign, a closer look at the Land Amendment Bill’s provisions increases skepticism. In a March 11, 2009 editorial, the current Minister of Lands, Housing and Urban Development began with an apparently sympathetic overview of the underlying causes for forced eviction: landowners failing to give tenants notice before selling land; landlords’ and tenants’ inadequate knowledge of the law by both landlords and tenants; and landlords’ ability to gain lever support of local law enforcement and land administrators. The Minister’s subsequent overview of the proposed amendments is not as convincing.

For example, the bill proposes to criminalize both illegal evictions and illegal tenants or trespassers—merely upping the ante on both sides.

The bill is a continuation of Museveni's overall land reform begun in 1998, which attempts to modernize the confusion of overlapping systems of private, public, and customary ownership left after the colonial period and former President Idi Amin's rule. Museveni's reforms are met with general suspicion from both the Ugandan elite, who accuse him of trying to set up a system in which land may be sold to foreign business interests, and rights groups, who believe he is undermining communal land ownership more appropriate for the large population surviving on subsistence agriculture.

### **Nigeria Attempts to Criminalize Same-Sex Marriage**

On March 11, 2009, the Nigerian National Assembly held a public hearing on the Same Gender Marriage (Prohibition) Bill, proposed in 2008. What captured most headlines was the demonstration by hundreds of young LGBT men and women organized by the Queer Alliance. Inside the hearing, a number of local rights groups—Human Rights Watch, Global Rights, and Amnesty International—spoke against the bill, while religious groups, including the Anglican Church of Nigeria, spoke in its favor.

The proposed bill, which at this writing had yet to be put to a vote, seeks to broaden the criminalization of homosexuality in Nigeria, prohibiting not just same-sex marriage but any form of same-sex cohabitation in which parties “intend to live together as husband and wife.” Homosexual activity is already illegal, punishable by up to 14 years in prison, and same-sex marriage is not legal under any of Nigeria's legal systems: the Marriage Act, Islamic law, or customary law. However, the proposed bill adds prison sentences of three years for anyone attempting to enter a same-sex marriage and five years for anyone “aiding and abetting” a same-sex marriage.

Rights groups struck a fairly moderate tone in opposing the bill, criticizing the overly broad definition of same-sex marriage and its redundancy given Nigeria's already-existing prohibitions on homosexual activity. The law seems to provide additional legal grounds for the harassment

of the LGBT community and human rights groups. Moreover, speakers emphasized its inconsistency with Nigeria's international human rights commitments as a signatory to the African Charter on Human Rights, as a member of the UN Human Rights Council, and as party to the International Covenant on Civil and Political Rights (ICCPR).

The debate echoes the reaction to a similar but broader bill proposed in 2006, which never went to a vote. Hopefully, this bill will meet the same fate. As 23-year-old Queer Alliance leader Rashidi Williams said during the demonstration, “It is already a trial to survive the hardship of our nation let alone the discrimination we face as sexual minorities.”

## **MIDDLE EAST AND NORTH AFRICA**

### **Iraq: Closing the Legal Loophole for Private Contractors**

In March 2009, the widow of an Iraqi bodyguard killed by a drunken Blackwater guard filed suit in a California federal court against the security contractor and the employee, Andrew Moonen, accusing Blackwater of fostering an environment of impunity and lawlessness during its employment in Iraq. This suit was filed less than two months after the Iraqi government banned Blackwater from operating in Iraq because of the company's role in the deaths of 17 Iraqi civilians during a shootout in Baghdad in September 2007. In December 2008, in response to the international community's cries to hold private contractors in Iraq responsible for their actions, U.S. federal prosecutors charged five Blackwater guards with manslaughter for the killings.

Currently, the 1,000 guards employed by the contracting company are immune from prosecution because they fall within a loophole in the Military Extraterritorial Jurisdiction Act (MEJA) as employees of the U.S. State Department. If a judge consents to jurisdiction, the prosecution of the Blackwater guards for their role in the Baghdad killings will be the first trial of non U.S. Department of Defense (DOD) contractors under MEJA.

Since being awarded a contract to provide security for American and Iraqi diplomats in 2003, Blackwater has been involved in many disputes during the Iraq war. In February 2006, a Blackwater-employed sniper fired at Iraqi Media Network guards,

killing three of them. Witnesses reported that the shootings were unprovoked, but the U.S. government refused to charge the sniper, stating that he acted appropriately.

The Iraqi government has complained of numerous other incidents involving Blackwater guards indiscriminately shooting at civilians. On September 17, 2007, Blackwater guards shot and killed 17 civilians in a crowded square in Baghdad. Prompted by a car that was driving in the wrong direction in its lane, Blackwater guards started shooting, killing the driver, his wife, and their infant child. The guards continued to shoot in the crowded square, killing more civilians trying to flee the area. Blaming the company for the innocent deaths of civilians, the Iraqi government revoked Blackwater's license the next day. The U.S. government agreed with the Iraqi government's findings that Blackwater had used excessive force without provocation. In January 2009, the Iraqi government permanently banned Blackwater from operating in the country, though the U.S. government continues to use the company for aerial transport in Iraq.

Though the trial of the five guards involved in the shooting is ongoing, the U.S. Justice Department faces significant legal hurdles in prosecuting the guards or any Blackwater employee for crimes committed in Iraq. Under MEJA, the U.S. government can try military personnel for murders of Iraqi civilians, but private contractors such as Blackwater are often immune from prosecution. MEJA only applies to DOD employees and Blackwater is employed by the State Department. This exception has allowed many contracting firms to escape liability and will likely be raised in the upcoming trial. Blackwater is thereby permitted to operate in an environment of impunity.

In response to the Baghdad shootings, the United Nations issued a report suggesting that Blackwater's actions may be a form of mercenary activity, illegal under international law. The U.S. government has countered this report, denying that Blackwater guards are mercenaries. Private contractors are immune from prosecution in Iraqi courts because of an exception created by the coalition government. Thus, families of victims killed by Blackwater guards will only find justice, if at all, in U.S. courts. This case will set the precedent of liability for private contractors in Iraq.

## **Morocco: Police Brutality in Africa's Last Colony**

In February 2009, Moroccan police allegedly raped and assaulted a nineteen-year-old Sahrawi woman in Western Sahara. This attack is just another in a trend of violence that has occurred since Morocco controlled Western Sahara after Spain left the country in 1975. Since then, the Moroccan government has fought with Polisario Front, an independence party, for control of the region. Despite some steps towards sovereignty, both sides have accused each other of committing grave human rights violations. Moroccan police have historically used excessive force against Sahrawis and others involved in Polisario Front. The Moroccan government has indirectly supported the violence against innocent civilians by failing to hold police responsible for their action.

Moroccan police officers often operate in an environment of impunity. The police have specifically targeted Sahrawis, members of Polisario Front, and individuals associated with human rights organizations and groups that have criticized the Moroccan government for its control over Western Sahara. Human rights organizations and independence parties are often not permitted to function and are forbidden by the government. Their supporters are frequently harassed by the police. Plainclothes police officers will typically arrest individuals on false charges and torture and interrogate them for connections to the independence movement.

Demonstrators have also accused police of using violence against their peaceful protests. In 2007, a fourteen-year-old girl was arrested and beaten after a demonstration supporting independence; the government failed to investigate the assault. Human rights organizations have received reports of police abuse, but no police officer has been charged for any crime committed during the year. The U.S. State Department notes that of the 12 complaints received since 2005 alleging police abuse acknowledged by local authorities, none were investigated.

Morocco has signed and ratified several international human rights instruments that require it to respect the rights of its citizens and those in Western Sahara. In particular, Morocco has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under both documents, police officers are forbidden from committing many of the actions of which they have been accused, such as arbitrary arrests and torture of detainees. The ICCPR grants individuals in Morocco the right to assemble and join political parties and human rights organizations. Further, under CAT, the Moroccan government has a responsibility to investigate allegations of torture, especially when the accused are police officers. It has failed to do so. Responding to the allegation of police rape in February 2009, the Moroccan government has denied that anyone was even questioned in the territory that day. Unless further action is taken to bring those responsible to justice, this charge will likely disappear as all the others have.

## **Iran: President Obama's Willingness to Negotiate**

In a marked difference from prior U.S. policy, President Barack Obama released a video message for Iran on Nowruz, the Persian New Year. In the video, Obama emphasized that the U.S.-Iran relationship is changing and that it will be based on diplomacy and "mutual respect." Obama urged the Iranian government to dispose of hostile actions and to improve its society through peaceful means. Although human rights abuses are rampant in the Islamic Republic and have continued under the administration of President Mahmoud Ahmadinejad, Obama's message focused on improving relations with Iran to combat its aggressive stance toward the United States. Improving human rights and curbing Iran's nuclear threat, however, can be mutually exclusive goals. These dual objectives can be achieved through negotiations.

Though the Iranian Constitution guarantees equality among ethnicities, protection of women's rights, and freedom of speech and religion, it also states that these rights are conditional on the principles of Islam, which religious clerics have the power to interpret. As a result of this constitutional conditionality, human rights abuses have occurred throughout Iranian society. Iran is second only to China in the number of executions, with nearly 350 in 2008. Relying on the clerics' interpretation of Shari'a law, Iran has executed people for "crimes" such as political opposition, adultery, and homosexuality.

Women also face severe abuses with limited access to education and other services, disproportionate punishments, unfair trials, and other violations. Women's rights activists have been arbitrarily arrested for attempting to collect signatures for a petition. Iran also persecutes religious minorities despite offering nominal protection in the Constitution. In early 2008, seven leaders of the Bahá'i faith were arrested and charged with spying for Israel, a common tactic used by the Iranian government to persecute religious minorities. Ethnic minorities have also faced systematic abuse when they have demonstrated for increased rights. In February 2008, hundreds of Iranian Azerbaijanis were arrested and detained for peacefully demonstrating for education services in their local language.

The Obama administration's willingness to engage Iran establishes a new precedent by the United States, which has a legacy of hostility toward Iran. President George W. Bush's policies and his inclusion of Iran in the "axis of evil" further antagonized US-Iran relations. The current administration has taken a different approach with Obama's Nowruz video and Secretary of State Hillary Clinton's endorsement of Iranian involvement in negotiations about Afghanistan. Iran's poor human rights record should be an important factor in any negotiations. Incorporating human rights in future U.S.-Iran negotiations will send a message to the world that the United States values engagement in both peaceful diplomacy and an agenda that promotes human rights. While the Obama administration appears to be focusing on nuclear capabilities, ending human rights abuses in Iran could be part of the "peaceful actions" that Obama implores Iran to adopt.

## **EUROPE**

### **Guantánamo Detainee Questions UK's Role in Torture**

A terrorist suspect recently released from Guantánamo Bay is charging the UK government with disregarding its legal and moral obligations to its citizens. UK granted Binyam Mohamed political asylum in 1994. In 2001, Mohamed traveled to Afghanistan. During his trip, Pakistani police detained Mohamed for suspected terrorist activities. Mohamed claims that he simply wanted to visit a Muslim country. However, British and United States (US)

officials maintain that Mohamed admitted traveling to Afghanistan to receive paramilitary training with Al-Qaeda. At the time of his arrest, Mohamed was not traveling with his own passport.

Pakistani police transferred Mohamed to US custody. In the three years that followed, the US government subjected Mohamed to the practice of extraordinary rendition, which provides for the extrajudicial transfer of a suspect from one state to another. During this time, Mohamed was moved between prisons in Morocco and Afghanistan. He then spent five years at Guantanamo Bay until his release in February 2009, almost a full year after the charges against him were dropped.

Officials brutally and systematically tortured Mohamed in each detention facility. Moroccan officials cut Mohamed's penis and poured chemicals on his wounds. In Afghanistan, officers hung Mohamed by his wrists for days and subjected him to sensory deprivation. Officials at Guantanamo forced Mohamed to write a false confession detailing his plans to detonate a dirty bomb, and told Mohamed that he would have to testify against other detainees if his case was ever brought to trial.

Mohamed's case presents the question of when a state should come to the aid of citizens who have been accused of terrorist acts. Of the UK government, he says "[T]he very people who I had hoped would come to my rescue . . . allied themselves with my abusers." Human rights advocates condemn the British government for its complicity with Mohamed's torture. Mohamed himself reached out to the government while in Guantanamo, authoring a letter to Prime Minister Gordon Brown which invoked his right to a fair trial and asked the government to intervene. Still, no definitive action was taken.

Some organizations claim that the British government played a more direct role in Mohamed's torture. Just weeks after his release from Guantanamo, the media released telegrams written by British intelligence agency MI5. The telegrams show that MI5 colluded with Mohamed's torturers by feeding them questions and requesting an interrogation timeline. On at least one occasion, an MI5 agent assisted with the interrogations.

Advocates are demanding that the British government make amends by releas-

ing documents related to the treatment of Mohamed during his detention. Foreign Secretary David Miliband has conveyed an unwillingness to release the papers, citing precarious relations with the U.S. This concern was validated when judges of the High Court decided to publish intelligence provided to them by the U.S. The U.S. quickly responded that this would be perceived as a threat and that the government would reconsider its intelligence-sharing policies.

Regardless of its standing with the U.S., human rights officials are calling for remedial British action. The allegations of torture were recently referred to Britain's Attorney General Patricia Scotland, who launched a criminal investigation. However, international advocates question the legitimacy of this investigation and whether true action will be taken.

### **Europe Sees Drastic Rise in Human Trafficking**

Human trafficking is the second largest and fastest growing illegal industry in the world. This is particularly evident in Europe, where human rights experts say many countries are experiencing a drastic surge in the trafficking of human beings. For example, Lithuanian police report that in the last few years, hundreds of Lithuanian women have been rescued from the sex trafficking industry in London alone. Nearly 20% of these victims were underage. Police also noted that Lithuania is a popular transit state, with traffickers from Russia and Belarus passing through on their way to more popular trafficking destinations.

These destinations are often Western European countries. Police in Northern Ireland (NI) recently expressed concern over the growing rate of trafficking in the country. Security Minister Paul Goggins declared NI was "no longer immune from the vile crime of human trafficking," and announced a government initiative to prevent traffickers from entering the country while offering support services to those victims who are discovered.

Despite these efforts, international organizations are expressing concern that European countries are not taking the action needed to address this growing epidemic. A recent United Nations (UN) report stated that most countries' conviction rates of traffickers rarely exceed 1.5 per 100,000

people, which is "below the level normally recorded for rare crimes . . . and proportionately much lower than the estimated number of victims." The report also warns that many countries' concerns are quelled by unreliable statistics that don't convey the depth of the problem.

Organizations such as the Council of Europe warn that the crisis has reached "epidemic proportions." Advocates say the trafficking industry is booming due to the global economic recession. Trafficking has a global annual market of roughly \$42.5 billion, and the recession has led thousands of people to seek alternative work opportunities. Fronting as legitimate operations, traffickers prey upon people's economic vulnerabilities and sell them into forms of modern-day slavery in the sex trade and domestic labor markets.

In recent years, government agencies have taken more serious steps to combat trafficking. Since 2003, the proportion of UN member states with legislation outlawing the major forms of trafficking has risen from 1 in 3 to 4 in 5. In March 2009, the European Commission proposed new legislation aimed particularly at the sex trafficking of children. These laws would make it possible to punish European Union (EU) citizens who abuse children in non-EU countries, organizers of sex-tourism trips, and internet predators. Victims would also receive accommodation and medical care, police protection, and free legal aid.

International watchdogs warn that implementing new legislation is a slow-moving process. These groups identified two key approaches to combat trafficking on a localized level: increasing understanding and awareness of what trafficking is, and enforcing harsher sanctions against those convicted of trafficking. But in the face of a global trafficking crisis, many fear these efforts will not be enough.

### **High-Profile Murders Highlight Government Abuse in Chechnya**

A string of high-profile murders in Chechnya has garnered the attention of human rights advocates amidst allegations that Russian-backed president Ramzan Kadyrov has been "systematically removing any opposition to his absolute rule."

Ruslan Yamadayev and his brother Sulim were once members of a prominent Chechen family who had publicly fallen

out with Kadyrov after accusing his administration of torture and murder. In October 2008, Ruslan was shot to death in Moscow as his brother's car stopped at a stoplight. Just months later in March 2009, Sulim was shot multiple times in an underground parking garage in Dubai. Although Sulim's younger brother told reporters that his brother was unconscious but alive, Russian authorities confirmed Sulim's death a few days after the shooting.

Chechen Umar Israilov was forced to live in exile after similarly accusing Kadyrov of murdering those who pose a threat to his rule. In written legal complaints, Israilov accused Kadyrov and his aides of torturing and executing their rivals. Israilov worked closely with advocates and journalists to uncover stories of abduction, detention, disappearances, extrajudicial executions and torture committed by both Russian and Chechen authorities. In January 2009, Israilov was hunted down at his home in Austria and fatally shot in broad daylight.

Advocates say these murders hint at the longstanding political instability of the region. Chechnya has particularly struggled since Russia launched its "anti-terrorist" operations in the region ten years ago. These operations targeted separatist groups who sought Chechen independence from Russia. Although the Russian government has said peaceful Chechen civilians "have nothing to fear," it is believed that over 100,000 people have been killed due to fighting between the states.

Advocates say that the human rights situation in Chechnya has deteriorated under Kadyrov's rule. In 2006, the Parliamentary Assembly of the Council of Europe (PACE) issued a report denouncing Chechnya's history of murder, torture, kidnapping and arbitrary detention and criticizing the "governments, member states, and the Committee of Ministers of Europe [which] have failed to address the ongoing human rights violations in a regular, serious, and intensive manner, despite the fact that such violations still occur on a massive scale."

Despite this call for action, international organizations have yet to intervene. Advocates now fear that the situation in Chechnya may worsen as Kadyrov recently announced that Russia's anti-terrorism campaign will soon come to an end. As a result, more than 20,000 Russian troops would be pulled out of the region, leaving

the majority of community policing to Kadyrov's administration.

The lack of international support recently moved local Chechen advocates to action. Chechnya's human rights ombudsman, Nurdi Nukhazhiev, has confirmed the creation of a database to track citizens who have been kidnapped or disappeared, as well as the formation of a laboratory to begin identifying the remains of exhumed mass graves. While advocates say this is a step in the right direction, international legal forums must continue to hold the Chechen government accountable for its crimes against humanity.

## SOUTH AND CENTRAL ASIA

### Kyrgyzstan's Human Rights Situation in Flux

On February 26, 2008, human rights activist Vitaly Ponomarev was denied entry into Kyrgyzstan. Ponomarev arrived in the Kyrgyz capital of Bishkek but was deemed a *persona non grata* and was forced to return to Russia. Ponomarev is a member of Memorial, a Russian based human rights organization that released a report on Kyrgyzstan's human rights abuses shortly before Ponomarev's expulsion.

The Memorial report details abuses stemming from protests in the impoverished region of Nookat in southern Kyrgyzstan. In October 2008, a group of Muslim residents of Nookat protested a prohibition on prayer and celebration marking the Muslim holiday of Eid al-Fitr. The protest led to some property damage of a government building and police injuries. As a result, over thirty people were arrested.

Furthermore, the report exposed the torture inflicted upon the arrestees in order to obtain confessions. Aziza Abdirasulova, a human rights defender in the office of Kyrgyzstan's Ombudsman, affirmed the use of torture and asserted that the arrestees were beaten, exposed to boiling and freezing water, and forced to sing the national anthem. The government asserts that the protestors are members of Hizb ut-Tahrir, a banned Islamic fundamentalist group. Tursunbek Akun, the Ombudsman of Kyrgyzstan, claims, however, that only four of the 32 convicted protestors are Hizb ut-Tahrir supporters. Furthermore, Akun seeks to present his findings to Parliament and have the convictions and prison sentences reviewed.

Due to the use of torture, Ponomarev's deportation, and recently proposed legislation that would impose restrictions on non-governmental organizations, some human rights advocates argue that Kyrgyzstan is slipping into an authoritarian regime akin to Uzbekistan and Turkmenistan. Unlike the latter two countries, however, Kyrgyzstan's new Ombudsman is a respected human rights advocate and political dissident whose outspoken discourse about governmental abuses may evidence Kyrgyzstan's greater transparency. Even though the Kyrgyz Ombudsman is appointed by the President and approved by Parliament, the department maintains independence from the executive and recommends proposals to strengthen human rights. Such independence contrasts with Uzbekistan and Turkmenistan where, as reports claim, officially appointed watchdogs are beholden to the executive. Nevertheless, the Ombudsman's role is constrained to investigations and policy recommendations to the government, which it may implement on a discretionary basis.

Kyrgyzstan has recently acceded to an important UN human rights instrument: the Optional Protocol to the United Nations Convention against Torture (OPCAT). The OPCAT allows the UN to monitor prison conditions and prisoner treatment within the country's detention facilities and requires that a local independent enforcement mechanism also be created. Currently, a civil society coalition is assessing what local mechanism to institute and will likely suggest that the Office of the Ombudsman take a lead role in preventing torture. The Kyrgyzstan Ombudsman may have the opportunity to expand its role from an investigatory body that recommends policy changes to an institution that is instrumental in enforcing international human rights law in Kyrgyzstan.

### Pakistan Accedes to Taliban's Law

In February, 2009, the government of Pakistan accepted a peace agreement with the Taliban and associated militants in the Northwest Frontier Province of Pakistan (NWFP). The agreement, known as the Malakand Accord, includes the cessation of fighting between the Taliban and the Pakistani army in the greater Malakand region of the NWFP. Furthermore, the accord permits the Taliban to impose their version of Sharia law in the region, affect-

ing more than four million people. The Taliban already control much of the Federally Administered Tribal Areas of Pakistan.

Known as the Switzerland of Pakistan, the Swat Valley is part of the greater Malakand region, which was once a scenic tourist haven. It became a war zone, however, as the Pakistani army battled the Taliban and their militant allies. Numerous residents have fled their homes to escape the violence, although some have returned due to the accord.

Before the peace deal, the legal system in Swat was a mixed Sharia-civil system where Islamic clerics advised judges in civil courts. Appeals were heard in a high court in Peshawar under the civil code and the Pakistani Supreme Court remained the final arbiter under the civil code. This system, however, was deemed insufficient for radicals such as Maulana Fazlullah, the pro-Taliban militant leader in Swat.

Known as the “Radio Mullah,” Fazlullah and his cohorts broadcast incendiary speeches that describe “un-Islamic” activities and list the names of beheaded transgressors. Before the February agreement, Fazlullah forcibly implemented a brutal version of Sharia law in Swat. This version of Sharia law, now officially sanctioned under the Malakand Accord, is just one version of Sharia law amongst many and is advocated mainly by the Taliban and other radicals.

The imposition of a harsh version of Sharia law in Swat bears the hallmarks of the Taliban’s previous rule in Afghanistan: music is banned, shops must close during calls to prayer, and a system of reporting “un-Islamic” behavior has been implemented. Political opponents are beheaded and public beatings are common for minor infractions.

A sharp curtailment of women’s rights is also in effect. Women are forbidden to leave the home without accompaniment from a male relative. During the conflict, the Taliban demolished more than 170 girls’ schools and imposed a ban on female education. Some reports assert that the peace accord has allowed girls to return to school while others maintain that the ban is ongoing.

Additionally, a disturbing video displaying the Taliban’s contempt of women’s rights has recently circled the internet. The video shows a 17-year-old girl subjected

to public flogging on mere suspicion of having an affair. The newly reinstated, independent-minded Chief Justice Iftikhar Chaudhry ordered a probe into the incident and summoned officials from the NWFP to the Pakistani Supreme Court, subjecting them to criticism. The extent of the civil courts’ power to oversee activities in Swat is currently unclear, but is likely diminished, if not obliterated, due to the Malakand Accord.

A parallel system of law has been created in Swat. The new Sharia courts have been established as traditional lawyers and judges in region have been banned from practice. Sharia judges have replaced civil law ones and many expect these new judges to judicially enforce the Taliban’s harsh version of Sharia. Although a Sharia judge in Swat recently ruled against the Taliban in a land dispute, it still remains unclear whether judgments against the Taliban will continue or if a judge would rule against the Taliban in a criminal case involving “un-Islamic” activities.

The Pakistani government has touted the benefits of the peace agreement as it claims that the deal would relieve military presence in the area, reduce harm to civilians, and redress dissatisfaction with the judiciary. On the other hand, commentators such as Talat Masood, a retired lieutenant general of the Pakistani army, claim that the deal has strengthened the Taliban and presents a great danger of further expansion of Sharia law.

### **Children and Prison Reform in India’s Tihar Prison**

On March 17th, 2009, a judge in New Delhi, India ordered that a six-year-old boy known as Sameer, who had been staying with his imprisoned father at Tihar Prison, be released to the care of the local government’s social welfare department. The judge asserted that the boy’s placement in a department-run home and local school will promote the best interests of the child.

Tihar Prison in New Delhi is one of the largest prison complexes in the world, housing about 12,000 inmates despite an official capacity of approximately 6,250. According to Indian law, children can stay with incarcerated mothers until they reach the age of five. Some criticize this policy, arguing that poor conditions in prisons present challenges to child development and safety. Maheni Giri, a women’s rights

activist, has campaigned for prison reform to prevent other inmates from abusing children in prisons. Tihar has implemented such reform and allows non-governmental organizations to visit its facilities as a check on inhumane conditions.

Reforms taken by Inspector General of Prisons, Kiran Bedi in the early and mid-1990s jettisoned Tihar’s reputation as a poorly-run prison. Bedi implemented detoxification programs for drug addicts, yoga and meditation groups, and education programs. Various civil society groups are active in Tihar running these programs, as are local universities such as Delhi University, whose law students advise the prisoners of their rights. Furthermore, other local non-governmental organizations provide day care, recreation, health care, and education for children at Tihar.

Despite the reforms and the positive contributes of civil society, the problem of over-crowding threatens the safety, hygiene, and equitable distribution of resources for inmates and their children. The Human Rights Law Network, an Indian non-governmental organization, blames the glacial pace of the Indian judicial system and the inability for many inmates to pay fines as direct causes of prison over-crowding.

Whether children should stay with incarcerated mothers or be placed with relatives or in other homes remains a contentious issue. While Tihar is an example of positive reform, inmates and their children languish in meager conditions in other prisons of India. The Tihar Prison, with its emphasis on rehabilitation and vigorous civil society involvement, may be an example of how to improve the quality of life for both children and their incarcerated parents.

## **EAST AND SOUTHEAST ASIA**

### **ASEAN Human Rights Body Lacks Power to Investigate and Punish**

The Association of Southeast Asian Nations (ASEAN) celebrated the creation of its Human Rights Body (AHRB) in February 2009 as a historic first step towards confronting human rights violations in the area. The body appears to lack sufficient power to investigate or penalize human rights violators, such as the military regime in Burma. A draft of the terms of reference was discussed at the 14th ASEAN Summit in Thailand in late February, with the final

instrument expected to be ready for confirmation by July 2009.

Subject to the approval of the terms of reference, the establishment of an ASEAN human rights body, which would cover an estimated 570 million people throughout the 10 member states, will be announced at the 15th ASEAN Summit in October 2009. A reading of the draft, however, reveals a number of logistical issues. The human rights body would “promote and protect human rights and fundamental freedoms” throughout Southeast Asia, but will continue to abide by the bloc’s steadfast policy of non-interference in member states’ internal affairs. The draft of the terms of reference, which outlines the proposed powers of the future human rights body, falls short of key demands expressed by international human rights groups. Amnesty International, upon evaluation of the terms of reference, predicted that the body will have limited effectiveness unless it can impose sanctions or expel countries that violate the rights of their citizens.

Summit delegates, however, are optimistic about the body’s evolution into an effective defender of human rights in the region. The establishment of a human rights body is a momentous and highly controversial action for the bloc, marking the efforts of the region to move towards democracy. Thailand’s Sihasak Phuangketkeow, chairman of the drafting committee, described the human rights body as a work in progress, claiming that its powers will evolve over time. Phuangketkeow stated that “investigative powers should not be ruled out. We’ll take it step by step. We have to go as far as we can, but at the same time we have to be realistic.”

ASEAN’s ten member states include a few small democracies, authoritarian states, a monarchy, and a military junta. The bloc itself has long been criticized as an alliance which forges agreements by consensus and steers clear of confrontation; a crucial factor that may impede progress for an eventual human rights body. According to the terms of reference, the body would follow the principles of non-interference in member states’ internal affairs and would “respect the right of every member state to be free from external interference, subversion, and coercion.” The instrument further states that any decisions made by the group “shall be based on consultation and consensus,” effectively giving Myanmar

and other violators a veto power to block unfavorable decisions.

While the notion of an ASEAN human rights body is an exciting step towards democracy and equality of rights, the existing terms of reference indicate that it will lack the necessary power to become an effective tool in the region. The body must possess the power to enforce and reprimand if it is to make any difference in the region. Though the draft of the terms of reference is a landmark step in the direction of human rights, many are hopeful that the final provision presented in July 2009 will embody a much stronger and solid version.

### **Claims of Police Torture Emerge in Malaysia**

Politicians and citizens of Malaysia called for the establishment of an independent and impartial body to investigate claims of police torture stemming from the death of a Malaysian citizen. Kugan Ananthan died on January 20, 2009 after being held for five days in a Taipan police station on suspicions of auto theft.

Chief of Police Datuk Khalid Abu Bakar stated that Kugan was in the process of interrogation when he requested a glass of water and suddenly collapsed. The police initially claimed that Kugan died of “breathing difficulties,” but a post-mortem report found that he died due to excess fluid in his lungs.

Kugan’s family strongly contested Abu Bakar’s statements. On January 20th, approximately 50 people stormed through the mortuary where Kugan’s body was taken for evaluation. Some took pictures of his body, revealing signs of severe bodily injury, and alleged that the police were responsible for his death. Parliament members and political party representatives responded to the allegations, calling for an immediate investigation into Kugan’s death and into police investigative tactics in general.

This is not the first assertion of police torture in Malaysia. Since 2005 the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police (Royal Commission), a government-created body, lodged several reports on people who have died while in police custody. In light of these findings, the Royal Commission proposed an independent external police

oversight body to oversee complaints of police misconduct, as well as institute a code of practice relating to the arrest and detention of persons. It also proposed the establishment of an independent custody officer responsible for the welfare and custody of every detainee. None of these recommendations for reform, however, have been implemented.

Malaysia was scheduled for review by the United Nations Human Rights Council (UNHRC) on February 11, 2009. UNHRC regularly reviews the human rights situations in all UN member states. Though the reports have yet to be released, human rights organizations domestically and internationally expect Kugan’s death, along with additional claims of police torture, to be of central importance. The report will likely also focus on the lack of action by the Malaysian government.

Kugan’s death came on the heels of a prior claim of police torture in December 2008. B. Prabakar, a 27 year old Malaysian citizen, alleged that he was tortured by at least ten police officers in the state of Selangor. These claims of torture included beatings with a rubber hose, splashing boiling water on the body, and threatening death with a cloth tied around the neck. Seven of those ten officers were charged with “criminal intimidation” and “voluntar[ily] causing hurt to extort confession,” to which they have collectively pled not guilty.

Though members of parliament and various political parties have called attention to the Kugan incident, the Malaysian government has done little to remedy the situation. Many have called for an investigation into interrogation tactics, but little progress has been made. Malaysia should, first and foremost, implement the recommendations made by the Royal Commission as a check on police power. This, along with future UNHRC recommendations, would bring about great reform and establish compliance with international human rights standards.

### **Discriminatory HIV/AIDS Legislation in South Korea**

South Korean Minister of Justice Kim Kyung-Han pledged “an open society for all” in response to claims of discriminatory legislation towards people living with HIV/AIDS. In a Korea Times op-ed entitled “Breaking Down Walls of Discrimination,”

Minister Kyung-Han stated that the South Korean government recently began pushing for a “proactive immigration policy that shifts the focus from regulation and control to openness and exchange” in regards to those diagnosed with the disease.

The South Korean legislature was heavily criticized within the past year for its blatant discrimination against both citizens and aliens diagnosed with HIV. The state continues to implement legislation which restricts entry to those with HIV and regularly deports those diagnosed. South Korea’s practice of deporting people living with HIV gained notoriety in 2008 when a Chinese citizen of Korean descent who was visiting his mother in South Korea was tested for HIV, and upon the finding of a positive diagnosis, was detained and eventually deported. The National Human Rights Commission, finding the legislation outrageous, represented him in front of the Seoul High Court, and the order for deportation was eventually overturned.

The Seoul High Court wrote that “[p]ublic health goals must be balanced against the rights to privacy and to receive medical treatment, and that detection and treatment rather than deportation are the most effective means of curbing the spread of HIV.” Despite the positive message set by the High Court and Minister Kyung-han, the legislature has barely reformed its policies. A parliament bill was introduced in December 2008 which sought to expand the requirements to obtain work visas. Under this bill, immigration officials could require drug and HIV testing from any foreigner seeking a work visa.

South Korea’s restrictions on entry and residence for people diagnosed with HIV violate a number of international human rights norms which prohibit discrimination and uphold the notion of equality. The International Covenant on Civil and Political Rights, to which South Korea is a signatory party, broadly guarantees the right to equal protection of the law without discrimination. This provision has generally been interpreted to include a ban on discrimination based on health. More specifically, the 2001 Declaration of Commitment on HIV/AIDS mandates that member states, such as South Korea, enact legislation to eliminate all forms of discrimination against people living with HIV/AIDS.

South Korea’s rigidly discriminatory restrictions on entry and residence will do little to promote a healthier and safer country. Enacting widespread, discriminatory legislation leads to secretive networks lacking the proper treatment and false information. South Korea’s legislation, in fact, will more than likely lead to further spread of the disease. However, a more open immigration policy which respects human rights would better deal with this threat to human health.

Both the World Health Organization (WHO) and the United Nations (UN) uphold this belief, with the WHO declaring in 1987 the screening of international travelers for HIV to be an ineffective public health policy. UN Secretary General Ban Ki-Moon echoed this sentiment at the UN General Assembly High Level Meeting on HIV/AIDS in June 2008, stating that “[i]n the world as a whole, I call for a

change in the laws that uphold stigma and discrimination, including restrictions on travel for people living with HIV, both because stigma drives the virus underground, where it can spread; and as important, it is an affront to our common humanity.” Though Seoul has done little in the face of legislative reform, there are high hopes that Minister Kyung-Han and the Seoul High Court can work together to abolish these discriminatory policies. *HRB*

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