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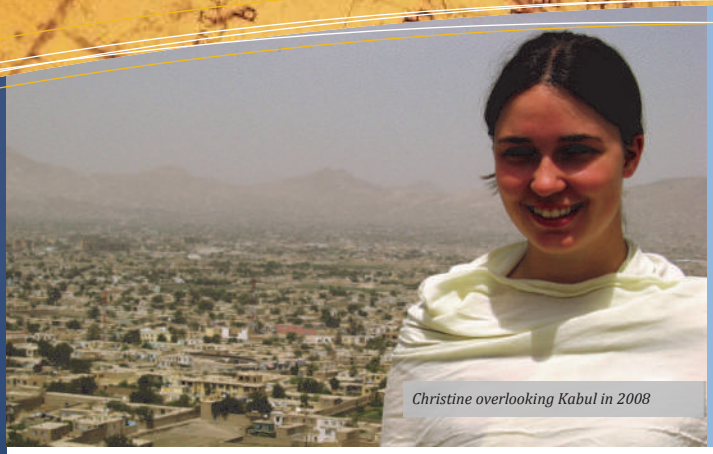
Rights Review



Christine overlooking Kabul in 2008

this issue

The Need for Afghan National Police Reform

Christine Wadsworth, first year, University of Toronto, Faculty of Law

After three decades of war, Afghanistan's government institutions are weak and dysfunctional. The stabilization and reconstruction of Afghanistan remains far from complete. One of the most spectacular failures of the Afghan mission is the training of the Afghan National Police (ANP). The ANP is widely viewed as a corrupt, ineffective, and untrustworthy institution. Members of the ANP have been implicated in bribery, extortion, kidnapping and abuse. The ANP have taken high casualties and have been increasingly targeted by insurgents.

A number of factors contributed to the failure of ANP training efforts. The Afghan National Army was seen as the priority in the first few years of the Afghan mission and received the bulk of support and resources. From the beginning, ANP training missions have suffered from low numbers of international trainers. The popular mantra in Afghanistan has become "no trainers, no transition".

The lack of a cohesive training ideology or consensus on the ANP's purpose has been an obstacle to creating an effective police force. The Germans and European Union believed the ANP should serve a civilian policing function in communities, promoting law and order and upholding the rule of law. However, the American police model envisioned the ANP as more of a paramilitary force that could be used to support counter-insurgency operations. Critics of this model argue that counterinsurgency work detracts from the police's specialized role in protecting local communities.

Pervasive corruption in the Ministry of the Interior (MOI), which runs the ANP, is another obstacle to reform. There have been numerous allegations that the MOI and police are involved in organized crime and the opium trade. The United Nations Office on Drugs and Crime (UNODC) describes a complex network of payments between traffickers, police chiefs, and officials who provide political protection for traffickers in exchange for money. Factional networks and drug traffickers try to obtain positions in the MOI and ANP to give them access to bribes, particularly along key drug smuggling routes. These individuals attempt to co-opt state institutions to facilitate their illegal activities.

Local power dynamics have also corrupted the ANP. Many Afghans believe the police abuse their coercive powers in the service of local elites. Patronage systems are ingrained in the hierarchy of the MOI and in local policing. Provincial police chiefs often appoint their local militia commanders as district police chiefs and incorporate militia members into the local police force. Giving these militia members official positions of power, arming and training them, increases their legitimacy and influence over communities.

Another catalyst of corruption is the low pay that police officers receive. Low pay leads police to look for alternative sources of income such as bribes, extortion, and involvement in the narcotics trade. Recently, the MOI increased police officers' basic salary in an attempt to rectify this problem. Longevity pay has also been created to reward long-term service.

High rates of illiteracy have posed significant problems for training. Illiterate officers cannot carry out basic policing functions such as reading drivers' licenses and reviewing identification. High rates of illiteracy contribute to the perception that the ANP is not a professional force. Literacy training has been incorporated into basic training, but this is not sufficient for individuals who have no formal education.

Without a functioning judicial system, the ANP is limited in its ability to fight crime and provide stability. The Afghan justice system is weak, suffers from corruption, processes complaints slowly if at all, and is known for the widespread impunity that has become characteristic of many Afghan institutions. Employees of the justice system are inadequately educated and poorly paid. There is little coordination be-

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UNIVERSITY OF TORONTO FACULTY OF LAW

INTERNATIONAL HUMAN RIGHTS PROGRAM

Greetings from the IHRP Director: Renu Mandhane

Welcome to the Fall edition of Rights Review, the International Human Rights Program's Signature publication.

A quick read of these pages gives you a sense of the breadth of our students' interests and the depth of their commitment - both of which are the greatest strengths of our program! This publication is meant to provide broad exposure to a myriad of current human rights issues and will serve its purpose if it spurs you to get involved in the IHRP or human rights advocacy more generally. Please do not hesitate to contact me if you would like to discuss how to support our work. Enjoy!

From the Editors' Desk

Although we have been involved in the *Rights Review* throughout our law school career, this is our first full issue as Editors in Chief. We have been extremely impressed and inspired by the enthusiasm from students, academics and practitioners who were interested in contributing articles. This energy is but one example of the commitment of those studying and working in the field of human rights to raise awareness and to give voices to people who might otherwise not be heard.

The diversity of the articles we received, from the theoretical to the highly specific, demonstrates the cross-disciplinary nature of human rights. This issue, the authors wrote on very different topics and from very different perspectives. Some interviewed speakers brought to the school by the International Human Rights Program. Others wrote on subjects relating to their thesis work or personal research. Many wrote on subjects that are international, but have specific implications for Canada and Canadians. One student wrote about a personal experience, describing a human rights abuse that directly, and tragically, impacted her family. In every case, the passion and commitment of the writers to their work is palpable. As editors we endeavoured to preserve the integrity of the articles, to ensure that the original tone of the author's narrative remained reflected in their work. The diversity of content contained in the *Rights Review* encourages us to reflect upon the various ways human rights intersects and reminds us that behind the academic inquiry are real people and real lives.

It is our hope that this edition serves multiple purposes. First, to showcase the work of students and members of the community who are committed to the promotion and protection of human rights. Second, to highlight the work of the IHRP at the University of Toronto, Faculty of Law in terms of the speaker series, the working groups and the clinic program. Finally, to capture a snapshot of the human rights issues that are currently at the fore of the field and to provide insight into these issues aimed at provoking discussion and inspiring others to get involved.

We hope you enjoy this edition of the *Rights Review*!

Becca McConchie and Natasha Kanerva

Inside this issue:

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(Re-) Mapping the Congo, Circa 2010

Michael Nesbitt, SJD Candidate, University of Toronto, Faculty of Law

In August 2010, the United Nations High Commissioner for Human Rights issued the *Report of the Mapping Exercise documenting the most serious violations of human rights and international humanitarian law committed within the territory of the Democratic Republic of the Congo between March 1992 and June 2003*. The Mapping Exercise is the latest in a long line of human rights fact-finding exercises in the DRC. However, despite the UN's best efforts, the atrocities persist; the DRC is now known as much for its unofficial "title" as "rape capital of the world" as for anything else. A separate report issued by the UN shortly after the release of the Mapping Exercise's final report stated that more than 600 women and girls were sexually assaulted along the Congo-Angolan border in Fall 2010. Such reports, rather than leading to a solution, point instead to the perpetual currency of past investigations. Violence continues to beget violence and reports continue to document it.

The DRC Mapping Exercise marks the culmination of the trend in such seemingly intractable situations, where the UN resorts to "judicialized", but pointedly not "judicial", large-scale human rights fact-finding missions to paint a holistic picture of the ills of a nation and offer a panoply of cures to help end such cycles of violence and lay the foundation for peace and development. The stated purpose of the Mapping Exercise was to investigate the most serious violations of international human rights and humanitarian law (although the intention was explicitly not to establish individual criminal responsibility, the investigation nevertheless retained a confidential database of alleged perpetrators and does identify the armed groups involved); assess the capacity of the DRC's legal system to cope with the violations; provide an historical record of the abuses; and identify options for transitional justice mechanisms to confront the legacy of abuses.

The report, though substantively excellent, generally offers broad recommendations in lieu of specifics. It offered great insight into the pertinent patterns of violence, most notably crimes against children, women, and violence linked to the exploitation of natural resources. The report posited important "principles" upon which its recommendations should be built. It also recommended that consideration be given to the continuation of its work by more specialized bodies, including a hybrid domestic-international court to determine legal accountability for the types of crimes it documented, a truth commission to provide a history of the events and a process for victims to tell their stories. The report also recommended that others conduct local consultations and further studies to reform judicial and security institutions.

Procedurally and methodologically the investigative team did an excellent job. It offered an illuminating example of how a compendious, "holistic" mapping of the human rights landscape might take place. However, as with other such UN investigations, one could have predicted *a priori* the general reforms that it recommended just by perusing a standard taxonomy of transitional justice reform methods: reparations, vetting of the security apparatus, judicial and law enforcement reforms, prosecutions usually with international involvement, local consultations, and further investigations.

The investigation was given a very broad mandate that no one body could likely accomplish with detailed specificity, so naturally it first conducted a fact-finding study of patterns of ("grave") legal violations. It then made broad recommendations based on its findings in order to focus the more specific, contextual follow-up work that would undoubtedly be necessary to move the country toward peace and reconciliation. However, the international community knew what follow-up work was necessary, and had a general idea of the principles upon which it should be built, before ever beginning the process: it was the same work that is always recommended by transitional justice experts. Further, we already knew that violations of international law were taking place in the DRC; the International Criminal Court has already issued Indictments. The investigation's real achievement lies with the collation of facts and data marshalled together to buttress the quasi-judicial legitimation of a pre-existing perception (or perhaps knowledge?) of both the nation's ills and the solutions thereto.

Such large-scale, *ad hoc* UN investigations are becoming increasingly common, and a number of benefits are regularly attributed to them, perhaps as best evidenced by the DRC investigation's mandate. If any UN investigation to date were capable of fulfilling such an ambitious mandate, the procedural methodology of the DRC investigation would assure that this was it. As a result, the release of the DRC report is a good opportunity to begin questioning what such investigations are really doing, what they are capable of, and how this might matter. Perhaps by also inquiring into how such reports are subsequently used, when, and by whom, we might be able to understand better what purposes should be attributed to these inquiries and how they might best organize their work so as to tailor it to those who make use of it in the future. ◆

Indefinite Detention in Canada

Jennifer Egsgard, Lawyer, Refugee Law Office, Legal Aid Ontario

Detention in provincial jails without criminal charge and with no end in sight happens more often in Canada than one might think. After more than four years being held on immigration detention in provincial jails, several clients of the Refugee Law Office (RLO) of Legal Aid Ontario have recently been released. Several more remain detained. Most people are aware of long term detention pursuant to security certificates. Security certificates may be issued by the Minister of Public Safety and the Minister of Citizenship and Immigration when they believe that an individual is a danger to national security or public safety. The 2008 Supreme Court of Canada decision in *Charkaoui v Canada (Citizenship and Immigration)* held that detention under a security certificate cannot be considered indefinite if it is subject to meaningful review. Ultimately, the five men named in certificates were released, most on very restrictive bail conditions. The security certificate regime required that the reasonableness of the continued detention be reviewed every six months by a Federal Court Judge in order to continue the detention.

Immigration detention is permitted under a similar scheme. The *Immigration and Refugee Protection Act* provides that foreign nationals or permanent residents may be detained if there are reasonable grounds to believe that they are inadmissible to Canada and that they are unlikely to appear for removal or an immigration proceeding, they are a danger to the public, their identity is not established; or because the Minister is investigating possible involvement in violations of security or international or human rights.

The reasonableness of detention is reviewed by a member of the Immigration Division (ID) within 48 hours, then again within 7 days, then each subsequent 30 days that the individual is detained. The ID is required to consider the same factors relevant in the security certificate cases: reason for detention, length of detention, anticipated future length of detention, reason for delay in deportation, and alternatives to detention. If the individual has had a criminal charge or conviction of any type, no matter how minor, they are detained in provincial jails, together with the criminally accused awaiting trial and criminally convicted persons serving sentences for less than two years. According to Canada Border Services Agency (CBSA) statistics, 197 individuals were held on immigration detention in the GTA for less than 90 days in October 2010. 94 people were held for more than 90 days. 79 of these people were held in the provincial jails.

The RLO routinely conducts intakes with individuals on immigration hold, and is uniquely positioned to identify and assist long term detainees. This is an area of law that requires a judicial spotlight be regularly held to its operation. Yet, long term detainees almost always lack the financial resources required to judicially challenge their

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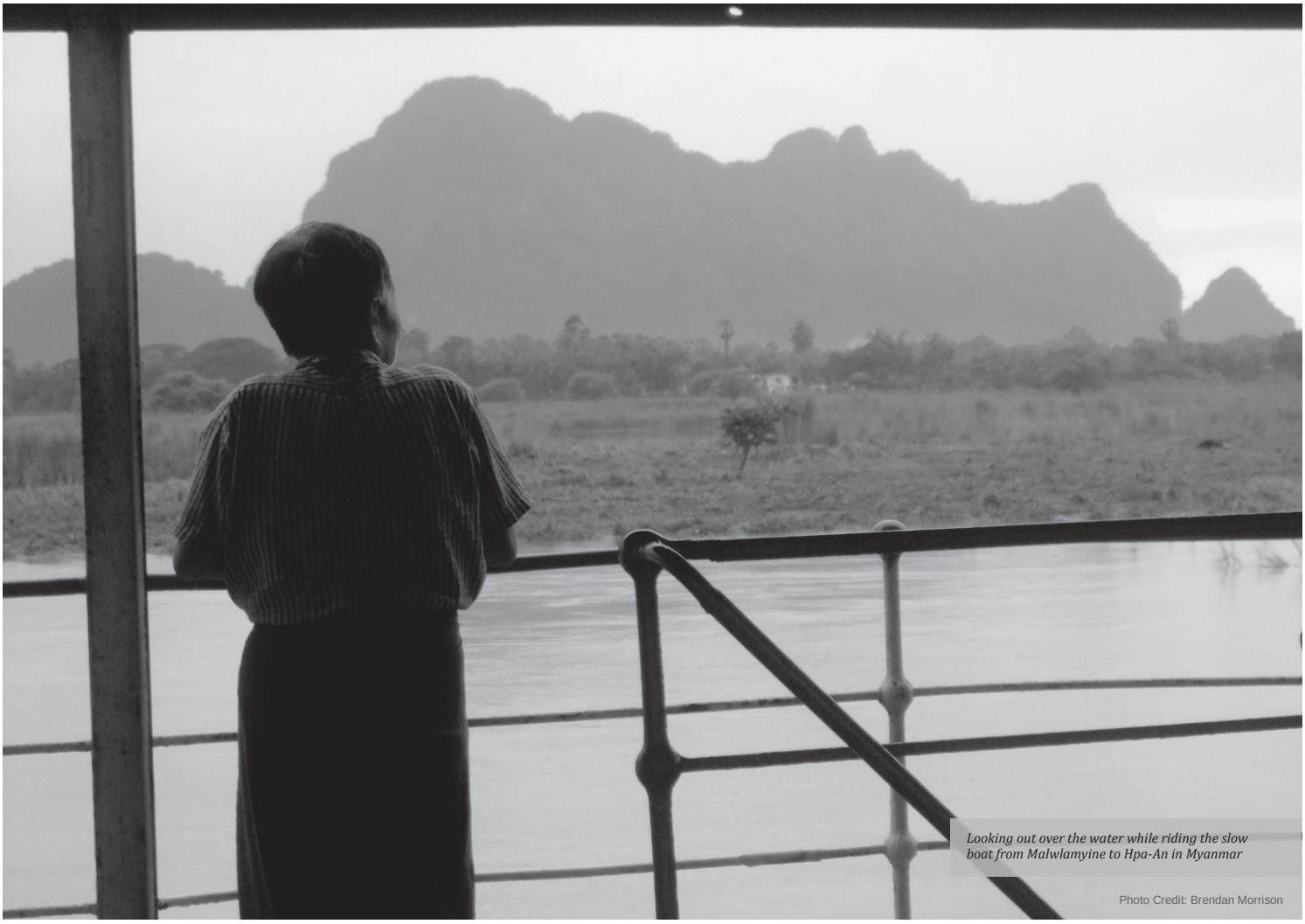
From Military Rule to Military Rule: 2010 Burmese Elections

Lane Krainyk, first year, University of Toronto, Faculty of Law



Looking out over the water while riding the slow boat from Malwlamyine to Hpa-An in Myanmar

Photo Credit: Brendan Morrison

On November 7th, 2010, Myanmar had its first election in two decades. In 1990, the opposition National League for Democracy (NLD), led by Nobel Peace Prize winning activist and recently released political prisoner Aung Sun Suu Kyi, recorded a landslide electoral victory, surprising even the ruling military junta. Unfortunately, the junta, or State Peace and Development Council (SPDC) refused to yield the reigns of power and has continued to control the state through oppressive tactics over the course of the past twenty years. In the run up to the 2010 election, the SPDC repeatedly violated human rights as it worked to ensure its continued dominance over the Myanmar state.

In 1990, the junta argued that the election results could not be recognized as the polls took place in the absence of a constitution. They suggested that a constitution must be drafted and approved before another election could take occur. The drafting of a constitution was to be a part of the SPDC's "Roadmap to Democracy." Eighteen years later, in 2008, the SPDC put forward a constitution for referendum. Controversial provisions in the proposed constitution included guaranteeing the military a quarter of the seats in parliament, making military personnel immune from civilian prosecution and granting key ministerial portfolios to military officers. In addition, the proposed constitution barred anyone married to a non-Myanmar citizen from standing for election. This provision specifically targeted Suu Kyi, whose deceased husband was British.

Just a few short weeks after 2008's devastating Cyclone Nargis, with many Myanmar communities in disrepair and international agencies barred from delivering aid or monitoring government actions, the constitution was put to referendum. It was passed by an improbable 92% of the electorate. Both the result and government tactics associated with the referendum were met with widespread skepticism. Perhaps still contemplating their surprise 1990 electoral loss, the SPDC was not satisfied that they had taken enough steps to ensure electoral success coming into the election year. As a result, in early 2010 several new electoral laws were passed. These included the Election Commission Law that appointed allies of the military to the Commission controlling all aspects of the election. The Commission's powers included authorization to cancel the election in areas for "regional security" interests. This law is commonly thought to have been an attempt to suppress votes from minority ethnic groups.

The Political Parties Registration Law, the People's Assembly Election Law and the National Assembly Election Law banned prisoners (including over 400 political prisoners of the NLD), anyone from "outlawed organizations", or anyone using religion for political purposes from standing for election or voting. This final provision was an obvious attempt to prevent Buddhist monks, instrumental in the 2007 Saffron Revolution, from partaking in the electoral process.

Finally, an additional order, Directive 2/2010, imposed severe restrictions on political party activities including requirements for parties to apply a week in advance for permission to hold gatherings either at campaign offices or at other locations, barring the chanting of slogans, marching or carrying flags, giving speeches or publishing materials that would "tarnish" the image of the state, criticizing the constitution or harming community peace.

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Collective Rights in Ethnically-Polarized Developing Countries

Dr. Theresa E. Miedema, B.A., LLB, SJD. Associate & Instructor, Trinity College in the University of Toronto

As ethnically-polarized developing countries (those with only two or three ethnic groups) emerge from periods of violent conflict, the transitional process often includes reform of human rights institutions. During the reform process, care must be taken to ensure that collective rights are taken seriously and are not displaced by concern for the protection of individual rights alone. This article makes a case for the recognition and protection of collective rights by referencing the role of the group in the lives of its members, international law, and practical experience. In many developing countries, the ethnic group plays a pivotal role in meeting the basic needs of group members and in providing structure to community life. In the face of weak governance structures and the failure of the state to provide basic socio-economic services, the ethnic group provides many of the services that the government typically performs in developed societies. Strong kinship ties act as a form of insurance, providing a social safety net for members of the ethnic group. The shared norms within the ethnic group govern various aspects of daily life, and provide a structure for everything from the granting of credit to the division of property upon death to the deterrence of opportunistic behaviour in order to facilitate more complex business arrangements.

In many developing countries, the ethnic group plays a pivotal role in meeting the basic needs of group members and in providing structure to community life.

In an important respect, the ethnic group constitutes a self-contained society within the larger geo-political unit of the state. This has important implications for how we understand human rights in these societies. Western countries place a high premium on individual rights. In ethnically-polarized, developing societies, however, the individual is more likely to conceive of herself politically and socially as a member of the ethnic group rather than as an individual within the polity. The framework for protecting and actualizing human rights in such countries must reflect this reality. The recognition and protection of group rights, such as language rights, protection and enjoyment of culture, and rights linked to education, must therefore be taken seriously during constitutional negotiations. Moreover, the importance of the group should influence how political and civil rights are recognized and protected in the polity. For instance, taking the significance of the group seriously in an ethnically-polarized polity favours the adoption of a consociational model of democracy.

The recognition of collective rights is well-established in international law. The history of international law's protection of minorities within a state's borders extends back to the treaties adopted during the seventeenth century to protect religious minorities within state borders. During the twentieth century, the collective rights of ethnic groups to be protected against genocide, cultural extinction, and racial discrimination and the right to participate in the political, economic, cultural, and social life of the state were recognized in numerous international conventions and declarations, such as the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), the *International Covenant on Civil and Political Rights* (1966), and the *Vienna Declaration and Programme of Action* (1993). For example, the 1992 *Declaration on the Rights of Persons Belonging to Ethnic, Religious, and Linguistic Minorities* imposes a positive obligation on states to protect the existence of the ethnic identity of minorities living within their borders and to facilitate the promotion of these identities.

Experience illustrates the importance of recognizing and protecting group-based rights in an ethnically-polarized polity. Language rights are a good example, as these rights tend to be very important to ethnic groups. Designating a group's language as an official language of the state protects this vital element of the group's collective identity and sends a powerful message about the status of the group in the polity. It indicates that the group belongs in the polity and that the polity in some way belongs to the group. By contrast, failing to recognise a group's language as an official language of the state excludes the group symbolically from the state and, in practice, often alienates the group from state institutions. This alienation makes it easier to justify adopting radical extra-institutional strategies to advance the interests of the group. Language issues have been closely related to the emergence of violent conflict in Sri Lanka, Pakistan (in which the conflict ultimately led to the secession of East Pakistan, now Bangladesh), and Spain (the Basques).

Some scholars argue that recognizing group rights, particularly in the political system through power-sharing systems, only perpetuates problems of instability and inter-ethnic conflict. These scholars advocate the cultivation of civic nationalism or perhaps the quiet assimilation of ethnic groups into a homogenous, civic-based national group. This article responds to these arguments by suggesting that it may be neither prudent nor readily possible to move past ethnic divisions in a polarized polity by subsuming these divisions within an over-arching civic identity. Indeed, the aforementioned arguments may not be consistent with international human rights law. A willingness to take group rights seriously, particularly in light of the fundamental role of the ethnic group in meeting the needs of its members in developing societies, is necessary in order to set the foundation for peaceful coexistence in ethnically-polarized countries. ◆

Murder in God's Name:

Persecution of Ahmadi Muslims in Pakistan

Sofia Ijaz, first year, *University of Toronto*, *Faculty of Law*

Blood-stained shoes lined the bullet-riddled walls of the Darul Zikr mosque in Lahore, Pakistan. Hundreds of worshippers, who gathered to pray together on Islam's holy day, Friday, took them off before entering the mosque. Tiny sneakers and worn out sandals were all that was left to remind us that inside, a child and grandfather, a son and brother, a husband and father prayed, and for that, they were killed.

Two mosques belonging to the minority Ahmadi Islamic sect were attacked on May 28th, 2010 in Lahore. Gunmen infiltrated the mosques and perched themselves atop the minarets. The onslaught against the unarmed worshippers began with grenades, then gunshots, and finally three suicide bombers. Members of the Punjabi Taliban (a local branch of the Pakistani Taliban) murdered an estimated ninety-four people and injured over a hundred. When all thought that the blood had dried and the last round of bullets had been fired, the gunmen struck again, this time at the Intensive Care Unit of the local Jinnah Hospital where many of those injured in the Friday attack were being treated. Twelve of those caring for the Ahmadi victims were murdered.

Although terrorist attacks are common in a chaotic Pakistan, attacks on Ahmadis are much more than a product of state failure, sectarianism, and the Taliban threat. Ahmadis are viciously hated across the Muslim world, and even amongst Muslims living in the West. What Ahmadis face in Pakistan is unique: state-sanctioned persecution. Mosques and homes are burned down, calling oneself Muslim is constitutionally banned, and scores of citizens are jailed or shot – all with the silent nod of approval from the Pakistani state. These are realities that exist for Ahmadis solely for their belief – and with it, their identity.

Before delving into the legal foundations of this persecution, we must ask – why Ahmadis? What distinguishes this minority sect from other Muslims is their belief that the long-awaited Messiah has already arrived in the person of Mirza Ghulam Ahmad. Ahmad died in 1908 and left behind a community that has followers in the millions, spanning across 195 countries. While the theological details of this sect can be expounded upon for pages, the focus here is the state's justification for this persecution.

Constitution Second Amendment 1974: Pakistan's constitution was amended in 1974 to enshrine an explicit declaration that Ahmadis were to be considered non-Muslims. It states: "A person who does not believe in the absolute and unqualified finality of the Prophethood of Muhammad… or claims to be a Prophet… after Muhammad… or recognizes such a claimant as a Prophet or religious reformer, is not a Muslim for the purposes of the Constitution or law." Accordingly, Ahmadis are not only declared to be non-Muslims (Pakistan does indeed tolerate Christians and Hindus), but

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Counter Point

Should Canada have signed the Declaration on the Rights of Indigenous Peoples?

Noah Dolgoy says…

Growing up in this country, every one of us learned noble myths and sobering truths. One set that simply does not fit is the myth of a multicultural immigrant state forged by the heroic westward journey of brave European settlers venturing into untamed, unoccupied lands, and the truth; those settlers encountered multitudes of aboriginal people, representing a plethora of diverse cultures.

The truth is, those aboriginals were displaced. The truth is, aboriginals have been marginalized to the fringes of our state by policies which serve only to entrench problems already facing the manifold aboriginal cultures. The truth is, Canada is unable to completely compensate these people for what has happened to their ancestors and the ramifications this has on their futures. So, how to address the injustices on which this country was built? And how to proceed?

That correct course is the public assumption of responsibility through symbolic gesture. This assumption would serve to recognize past ills committed, and would illustrate a commitment to never let such horror occur again. The gesture we have employed is the ratification of the United Nations *Declaration on the Rights of Indigenous Peoples*, a declaration to which the United States remains as the lone nonsignatory. The federal government, bowing to petition from provincial authorities, has recently committed to a declaration that imposes no legal responsibilities on the government or people of Canada, but send a clear statement regarding aboriginal rights.

In my view, the signing of the declaration will do very little to tangibly improve the lives of aboriginals who are unwilling or unable to operate in mainstream Canadian society: it will not bring back the tribes, and it will not turn an inch of land over to aboriginal peoples. Aside from cynically attempting to rebuild our depleted moral capital within the community of states, such ratification serves to illustrate our continued commitment to human rights and the promotion of human dignity, values we claim as our own. Moreover, despite the already existing constitutional recognition of a legal status for aboriginals in Canada, the gesture of *not* signing *does* did make us appear unwilling to address aboriginal issues, and impression shared by both to the rest of the world and by aboriginal groups within our borders.

The declaration itself does call for a broad set of rights to be applied to aboriginal groups. Were the document to be legally binding and were Canada to ratify, then yes, all of the "horrors" my colleague, Josh, and the government have brought up would become reality. But it is not binding.

Therefore, the last question we must ask is, "Why should we sign a document that has no binding legal force?"

The answer lies in our ratification of another declaration that has no binding legal force, the *Universal Declaration of Human Rights*. We sign all sorts of things that indicate that we support an idea, even without legal obligation. The *Declaration on the Rights of Indigenous Peoples* is one of those things. Quite simply, ratifying the declaration suggests we care about the enormous damage suffered by aboriginal peoples in Canada, the many people who have been hurt, and the multitude of others still at risk. Signing the declaration improves our image and illustrates that we are willing to own up to an important chapter of our history. We need to take responsibility, even if only in a symbolic way. We can only hope that it leads to more action and improved circumstances for aboriginal Canadians, and aboriginals worldwide. ◆

Joshua J. M. Stark says...

In September of 2007, the UN General Assembly adopted the *Declaration on Rights of Indigenous Peoples*. One hundred and forty-three nations voted in favour. Canada, along with Australia, New Zealand, and the United States, voted against the declaration. On November 12, 2010 the federal government announced it would sign onto the declaration. However, Canada was right to vote against it in 2007, and Canada should not have reversed its position without substantial changes to the declaration.

I take a practical approach. We need to consider how – if at all – signing this declaration will benefit Canada, its citizens, and its aboriginal peoples. We need to consider what message it sends to the world, and how we should approach international agreements. First, the text of the declaration is flawed. There are two notably problematic sections. The first is Article 19, which says that the state must obtain "free, prior and informed consent" from indigenous peoples before "adopting and implementing legislative or administrative measures that may affect them." A broad reading of this provision seems to grant indigenous peoples a veto over any legislation that could conceivably impact them. Canada should not sign declarations that, if followed, would grant rights that flatly contradict our legislative process.

The second is Article 26, which requires that "indigenous peoples have the right to the lands [...] which they have traditionally owned, occupied or otherwise used or acquired." Once again, this is a very broad statement. It ignores the fact that in countries with indigenous populations, many land claims have been settled. If followed as written, it would seem to cast doubt on the finality of these agreements. It also treats indigenous peoples as a monolith, ignoring situations where different indigenous groups claim competing rights to land. The complex question of land rights is better addressed by the courts. In *Delgamuukw v. British Columbia* the Supreme Court presented a nuanced approach to a complicated question: the nature and content of aboriginal land title. Supporting the simple maxim contained in the UN declaration simply contradicts the much better solutions to be found in our domestic courts.

As Noah points out, the declaration is not binding and has no legal force. Does it matter at all, then, what it actually contains? It is worth pointing out that this is a strange argument to make. By this justification, Canada should sign any non-binding international document at all regardless of its content. This is intuitively odd. If these declarations matter, they matter because of their constituent text, and if we find deep flaws with the content then we should not support them. Instead, perhaps the value of a non-binding agreement is simply that it presents an opportunity for dialogue on important shared issues. However, this goal is not served when states sign declarations despite deeply problematic provisions. The reason that declarations are useful for creating dialogue is that coming to an agreed draft requires discussion, debate, and compromise. Still, if every country is simply encouraged to sign the declaration despite problematic provisions, then dialogue is never necessary, or at least far less important.

Noah argues that signing the declaration would be good for Canada's reputation on indigenous rights at home and abroad. However, Canada has a bad reputation on indigenous rights because our country has done atrocious things to indigenous peoples. The way to improve Canada's image is not to sign problematic declarations, but to actually improve the treatment of Canadian indigenous peoples. Canada's reserve system is infamous for horrible living conditions, rights abuses, and corruption. Many land claims across Canada remain unsettled. If we want to improve our image, let's actually address the real problems that generate our bad reputation. Canada should not sign declarations that contain deeply flawed provisions, undermine the process of dialogue required to create such documents, and offer no positive benefits to the indigenous peoples of Canada.

Both Noah and Joshua are first year students at the University of Toronto, Faculty of Law

Water: Finally a Human Right?

Gemma Boag, Agri-Environmental Policy Analyst, Agriculture and Agri-Food Canada

On July 28th, 2010 the UN General Assembly adopted a resolution declaring access to clean water and sanitation a human right. No country voted against the resolution but 41 abstained, many arguing that they were waiting for the UN Human Rights Council to conclude its assessment of the issue.

They did not have to wait long; the Council affirmed the rights to water and sanitation on September 30th, 2010, explaining that they are derived from the right to an adequate standard of living. Catarina de Albuquerque, the UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation declared, "The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable." This past summer marks an important chapter in the ongoing dialogue regarding water as a human right.

Fighting for recognition

Human rights advocates, NGOs and legal experts are among those who have long argued that the right to water is guaranteed under the *Universal Declaration of Human Rights* and other international and regional agreements. In some cases the right is implicit (e.g. *International Covenant on Economic, Social and Cultural Rights*) and in others it is explicit (e.g. *Convention on the Rights of the Child*). The UN Committee on Economic, Social and Cultural Rights produced non-binding General Comment 15 in 2002 affirming that access to water was a human right. Despite these various references, the Bolivian representative who introduced this summer's resolution claimed the right to water was still not fully recognized within the international community. At the state level, a small (yet growing) minority of countries recognize the right in domestic law. Perhaps one of the most famous examples, South Africa explicitly references the right to water in its 1996 constitution (Chapter 2, Section 27): "Everyone has the right to have access to [...] sufficient food and water".

Why does the fight for the right to water matter? As Danielle Morley from the Freshwater Action Network says, "in all regions of the world, governments can no longer deny their legal responsibility to provide water and sanitation to the billions of poor people lacking access." Statistics released this year show that 884 million people still lack access to clean drinking water and 2.6 billion people lack access to adequate sanitation. On an annual basis almost 2 million children die from diseases caused by unclean water and poor sanitation. International recognition of the right implies a greater onus on individual states to ensure basic water access, but what does it mean on the ground?

Water as a right in practice

The right to water is composed of both freedoms and entitlements. People have the right to be free from interference with their existing supply and are entitled to a system of water supply that fulfills the human right requirements. The normative content of the right covers water supply availability, quality and accessibility: individuals have the right to a continuous and sufficient amount of water for personal and domestic uses; the water must be free from hazards to human health and should be of an acceptable taste, colour and odour; and the supply must be physically and economically accessible to all without discrimination.

The right to water is a "positive" right. As outlined in South Africa's constitution, "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights". Thus, the declaration and recognition of the right to water does not imply that every citizen is guaranteed immediate access to a clean water supply. Moreover, the normative content of the right is still open to interpretation. The World Health Organization sets the basic need for water at 20L per person per day. To put that in perspective, the average Canadian uses 329L per day. South Africa's basic water policy grants each citizen 25L of free water per day, or 6kL per month. Citizens have contested this amount, along with the installation of pre-paid water supply metering systems (*Mazibuko v. City of Johannesburg*). Cases like this demonstrate that despite international recognition of the human right to water, the normative content of this right will continue to be debated at the national level. The challenge of implementation looms.

Water pump in Uganda

Photo Credit: Gemma Boag

Water Fast Facts:

-884 million people lack access to clean drinking water
-Diarrhoea kills more children every year than AIDS, malaria and measles combined (WHO)
-For every $1 invested in water and sanitation, $8 is returned in increased productivity (UNDP)
-2.6 billion people lack access to adequate sanitation
-The average person in the developing world uses 10L of water every day for drinking, washing and cooking. The average European uses 200L per day while North Americans use 400L (WaterAid)

2010 and beyond

Although water has taken centre stage in the debate about positive rights in past years, it is important to emphasize that sanitation has also been recognized as a human right. With 2.6 billion people still lacking access to adequate sanitation, in many ways this summer's events placed a greater, and necessary, focus on an issue that cannot be divorced from the right to water. Moving forward, the international community needs to understand these rights in partnership and engage with communities, water providers and governments to push for progressive realization of both fundamental rights. ◆

The opinions expressed in this article are solely those of Gemma Boag. They do not necessarily reflect those of her employer Agriculture and Agri-Food Canada.

Grooming a Third Generation of Leadership:

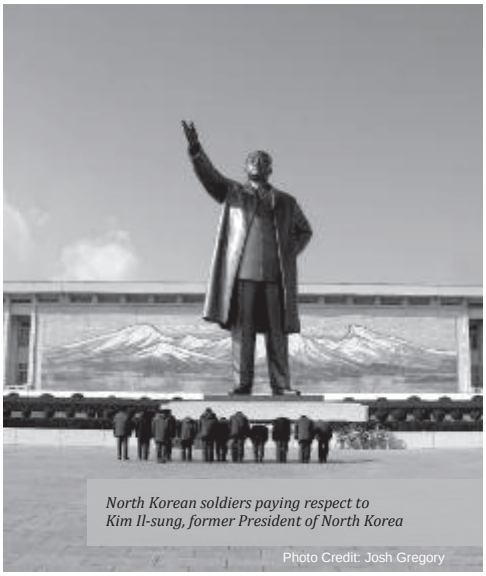
An Opportunity for Change in North Korea?

Jenny Yoo, first year, JD / MGA candidate, University of Toronto

The international community watches from its limited vantage point as the inner workings of a secretive state unfold to reveal the vision for a third generation of the Kim regime. Following the Korean War, Kim Il-Sung, the "Eternal President", established the Worker's Party, which still runs this highly centralized state built on a cult of personality. Current head-of-state, Kim Jong-Il, the "Dear Leader", was handed control only after training at Kim Il-Sung University as well as several high-ranking military appointments.

Fast-forward twenty years and this seems to be the same path on which Kim Jong-Il's youngest son has set out upon. After receiving an education abroad, Kim Jong-Un, the "Brilliant Comrade", returned to North Korea to attend Kim Il-Sung University, and has most recently been appointed to the positions of Four-Star General in the Korean People's Army as well as Vice-Chairman of the Central Military Commission.

Overseeing one of the largest armies in one of the most militarized countries in the world, the probable continuation of the Kim line of leadership in North Korea raises critical questions of human rights, security, and development. The isolated state built on the *juche* ideology of self-sufficiency struggles to meet the basic human needs of its citizens. The conditions of limited productivity and efficiency are exacerbated by a history of natural disasters, subsequent famines, and government policies focused on militarization and weapons development. Military expenditures are estimated to account for anywhere between 20 to 40 percent of the country's GDP, which presents a stark contrast to the 3 percent of state spending allocated to public health.



North Korean soldiers paying respect to Kim Il-sung, former President of North Korea

Photo Credit: Josh Gregory

The demilitarized zone splitting the Korean peninsula between the north and south is the most heavily militarized border in the world, and symbolizes the longest standing armistice that remains in force to this day. The fragile nature of relations between the two Koreas is a critical point of unease, and as South Korea continues to reach new heights of economic, technological, and social achievement, the future for North Korea's impoverished population suffering under despotic leadership seems bleak.

The process of preparing North Korea's next leader sparks an opportune moment to examine the reception of a third generation under the Kim regime by all segments of North Korean society. Defections of elite members of the North Korean state apparatus have been increasing since the 1990s, and now average more than one hundred per year. Access to information on life in North Korea is also growing as more of its citizens successfully cross the border into China. As an alternative to state-produced propaganda (the North Korean government has developed accounts on popular social media networks including Twitter and YouTube), the information which citizens in exile are able to provide has the potential of shedding light on the operations of the highly secretive state and bringing about more effective measures to increase dialogue and cooperation.

The potential shift in leadership from an ailing Kim Jong-Il to a foreign-educated Kim Jong-Un may present an opportunity for change. The reactions of high-ranking officials who doubt Kim Jong-Un's abilities may test party and military loyalties. Members of the "first family" positioned as alternate potential successors, including Kim Jong-Il's elder sons as well as his brother-in-law, may present obstacles to the smooth transition of leadership to the relatively young and inexperienced Kim Jong-Un. It will remain to be seen how the transition of leadership unfolds and what implications this shift will have for the country, the Korean peninsula, and the international community. ◆

Parliamentary Imperative: Reviving Canada's Access to Medicines Regime

Gilleen Witkowski, MA, Munk School of Global Affairs, University of Toronto. Canadian HIV/AIDS Legal Network

A lack of medicine to treat life-threatening conditions such as HIV proves fatal for thousands of people living in developing countries each year. While the number of people accessing life-saving drugs worldwide is increasing thanks to initiatives around the world, including the Global Fund to Fight AIDS, TB and Malaria, the dire needs of those who remain without treatment must be addressed by all means possible. The inability of governments and individuals to procure life-saving medicine because of prohibitively high prices of brand-name drugs is an extremely serious problem.

In 2004, Canada modified its patent law to address the developing world's need for affordable drugs, pursuant to a waiver of certain provisions of the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS waiver was adopted by the WTO General Council on August 30, 2003. It allows states to implement legislation for the production and exportation of generic drugs to countries with insufficient pharmaceutical manufacturing capacity, "without prejudice" to other flexibilities in the TRIPS Agreement.

Jean Chrètien's government introduced this legislation in 2003 and it was enacted unanimously by Parliament in May 2004. Disappointingly, but as predicted by many NGOs, what is now commonly referred to as Canada's Access to Medicines Regime (CAMR) has since proven flawed. A sole shipment of HIV medication has been shipped (to Rwanda) since its implementation. The one Canadian company that has used CAMR has stated that it will not use it again unless the cumbersome procedure the Regime requires for the production of generic drugs is dramatically simplified.

There is a movement to reform CAMR through Bill C-393, a private member's bill in Parliament. As introduced, the bill proposed further amendments to the *Patent Act* to make CAMR function as intended. The most important clause in C-393 has proposed to enact what has been labeled as the "one-licence solution". It would allow Canadian companies to acquire a compulsory licence to produce generic versions of brand-name drugs. Instead of having to complete an extensive application process for each individual importing country, the generic manufacturer holding a single licence would be authorized to export the given pharmaceutical product to any developing country on a list of countries already agreed upon by the WTO and reflected in CAMR.

The "one-licence solution" was stripped from Bill C-393 in a vote during clause-by-clause debate by the House of Commons Standing Committee on Industry, Science and Technology. The abandonment of this solution to CAMR's failures is an indication by the Committee that it accepts the existing dysfunctional compulsory licensing procedure and endorses the continued uselessness of the Regime. The bill's chief supporter in Parliament, NDP MP Brian Masse, along with allies from other political parties, is fighting to have the clause reinserted into the Bill before it reaches third and final vote in early 2011. Without the "one-licence solution", Bill C-393 does not address the core problems with CAMR. While Canada continues to delay fixing this initiative, thousands of people are dying due to the lack of affordable medicine. ◆

Should Canada's Mining Mastery Come at the Cost of Human Rights?

Meaghan Lowe, first year, University of Toronto, Faculty of Law

"We truly are a global mining giant," Natural Resources Canada declared in a May 2009 media release, and the staggering statistics prove this is no exaggeration. 75% of the world's mining companies are headquartered in Canada and traded on the TSX. The mining sector employs 350, 000 Canadians and accounts for 3.5% of our GDP. With Canadian mineral reserves depleting while global demand grows, companies are racing to secure foreign resources. Accordingly, 12% of Canadian direct investment abroad is bound for mining companies in developing countries. With such global dominance, one would hope for Canadian-inspired leadership.

However, in a recent survey of 171 high-profile allegations of corporate abuse in the sector, Canadian extractive companies were found to be the target of one third of allegations of human rights and environmental abuses. One recent example is *RamÌrez v. Copper Mesa & TSX*, a claim filed in March 2009 alleging violent attacks by security forces on villagers protesting a proposed copper mine in the Andes of northwestern Ecuador. Additionally, there are ongoing disputes between Barrick Gold and Chilean and Argentinean communities regarding the Pascua Lama project. This particular controversy began as Barrick stated that it would need to relocate three glaciers in order to access gold reserves. Realizing the environmental and cultural implications of the project, Barrick issued a report which claimed that the project would only intercept five hectares of the glaciers, as the remaining would naturally melt over time providing access to the gold. Barrick's project received environmental approval despite opposition highlighting threats to the valley's eco-system, agriculture, and water quality.

The controversy surrounding the Pascua Lama project reveals tensions that can arise between human rights and environmentalism when the former is defined in economic terms to the exclusion of the latter. Barrick devotes pages of their website to respond to allegations, arguing that the Pascua Lama project furthers human rights via economic development. The company cites as evidence a letter signed by a community association supporting the mine as a means of combating unemployment. The average Barrick mine lifeline is 14 years and skilled workers fuel long-term productions. Developing the mine creates unskilled employment opportunities and trickle down economic effects; however, the long term impact is unclear.

In response to public concern surrounding this and other allegations, Prime Minister Harper created *Building the Canadian Advantage: A CSR Strategy for the Canadian International Extractive Sector*. Part of this strategy is the Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor. The current Director is Dr. Marketa Evans, who was previously employed at the University of Toronto as founding director of the Munk Centre. The Office is developing a process by which allegations against Canadian companies can be brought. The IHRP working group, Accountability for Mining Companies Abroad (AMCO), is creating a guide on this complaints process for use by communities.

Dr. Evans met with the AMCO Working Group this past October. She seemed genuinely optimistic about the Office and spoke of opportunities for poverty reduction. The Office will perform a mediatory function, promoting an informal process that provides constructive dialogue and produces tangible results. However, obstacles exist in terms of budgetary restrictions, eligibility requirements, and the balancing the needs of communities against those of companies. For instance, complaints can only be brought with public information. The Office is subject to the *Access to Information Act* and is concerned that companies' sensitive information could end up publicized. Furthermore, because companies with verified allegations will not suffer sanctions, the process it oversees is entirely voluntary and its success depends on participation by both communities and companies. This could encourage company participation but pose challenges for communities trying to submit complaints.

John McKay, a liberal MP, put an alternative to this approach before the House of Commons in the form of Bill C-300. This private members bill would have empowered the Minister of Foreign Affairs and the Minister of International Trade to investigate complaints and determine whether firms had violated standards and, if so, submit annual reports on the violations to the House of Commons and the Senate. Verified allegations would have resulted in tough sanctions including the removal of government sponsorship, funding through the Export Development Corp, and investment from the CPP.

(Continued on page 17)

Trebilcock Talks Foreign Aid

Laura Berger, first year, University of Toronto, Faculty of Law

On October 22, Michael Trebilcock, Chair of the Law and Economics Program at the Faculty of Law, told a group of alumni and students that aid to developing countries rarely manages to encourage durable economic growth. Trebilcock acknowledged that his lecture, "Why Foreign Aid Mostly Fails", has an admittedly "gloomy thesis".

Trebilcock argued that the world's poorest countries usually lack the responsible governance required to effectively deliver aid where it is needed most. Donors are understandably wary of "writing blank cheques to foreign governments," especially in countries plagued by corruption and inefficiency, but bypassing government raises its own problems. Too often, Trebilcock suggests, we're left with "a gaggle of NGOs" running every which way, pursuing different priorities, and failing to institute coordinated, targeted policies.

Trebilcock does acknowledge the importance of basic humanitarian aid, and there have been successful measures to provide the world's poorest citizens with essentials like vaccines and clean drinking water. Still, he insists, there is a fundamental difference between distributing mosquito nets and putting a developing country on the path towards long-term, self-sustaining economic growth. The latter has proven far more problematic. When Trebilcock is asked to identify some success stories, he falls silent. "I'm struggling to think," he admits. Countries like Botswana and Chile, he notes, have developed relatively strong economies, yet these successes cannot be attributed to foreign aid. Crucially, both Botswana and Chile have good governance ratings.
Which brings Trebilcock to the crux of his argument. "Institutions matter, governance matters," he insists. International aid works best in countries with responsive governments, good policy and healthy institutions. That's why democratic and institutional reform should be front and centre on the development agenda, not an afterthought. And that means development can no longer be dissociated from politics. Trebilcock explains: "We cannot persist with the fallacy that poorly performing governments simply lack information, technical expertise, and resources (which aid can provide) but are otherwise well-motivated towards their citizens." Moving forward, we must identify reform-minded constituencies within a country and support their efforts, using international aid to "exert leverage on government" and thereby further the reform agenda.

Several days after his lecture, I asked Trebilcock what role lawyers and law students can play. Aren't the challenges he identified primarily economic and political? Sitting in his Falconer Hall office, Trebilcock considered my question. We sat surrounded by books and sheaves of paper heaped on every available surface, including a large percentage of the floor, and the law professor meditatively smoked a pipe. He replied that developing countries sorely need responsible, transparent legal institutions. This requires reforming bureaucracies, the court system, judges and judicial appointments, the police, legal education, freedom of information laws, and even labour laws.

As Trebilcock concluded, "There's no end of ways in which law matters." ◆

If Canada Wants a Seat, It Should Take A Stand

Renu Mandhane, Director, International Human Rights Program, University of Toronto, Faculty of Law;
Michael Da Silva, second year, University of Toronto, Faculty of Law
Lauren Rock, third year, University of Toronto, Faculty of Law

The 191 member states of the UN spoke loud and clear on October 12th, 2010 when voters rejected Canada's bid for a seat on the Security Council, and we should heed their message: Canada is not living up to its historic reputation as a leader on human rights. With hard work and a bi-partisan approach, however, Canada can redefine this failed bid not as a loss but as an opportunity to recommit to its core values.

Despite the fact that Lester Pearson won his peace prize over fifty years ago, Canadians are too prone to fall back on our pioneering role as peacekeepers as evidence of leadership on human rights. This inflated sense of self resulted in Canada taking for granted a seat at the world's most powerful roundtable, and is shameful in light of our recent track record on human rights. In its most recent review of Canada, the UN Human Rights Council recommended that Canada ratify and adhere to a number of international human rights obligations. Even our historic ally, the UK, has suggested that Canada cannot rely on federal and provincial division of powers as an excuse for failure to fulfill treaty obligations. Canada has drawn condemnation for its failure to uphold the rights of child soldiers detained abroad (Omar Khadr), recently voted against recognition of the right to water, has a dismal record on climate change, and has unnecessarily restricted the reproductive rights of women in developing countries. In this context, it is unsurprising that many states could not bring themselves to support Canada's bid for a seat on the Security Council.

Security Council Chamber at the UN Headquarters

Photo Credit: Ryan Liss

While recognition of our failures is long overdue, we must also begin to chart a way forward. Canada is particularly well-poised to show global leadership on human rights in post-conflict situations and to "re-brand" ourselves as the go-to nation in the delicate transitional justice context. Our *Charter of Rights and Freedoms* is a template that is admired around the world, we have shown great leadership in terms of establishment of the International Criminal Court, and could play a key role in advancing the responsibility to protect as a core norm in international humanitarian law. University of Toronto Professor Sujit Choudhry's recent appointment to the United Nations Mediation Roster and receipt of the Trudeau Fellowship for his work on post-conflict constitutional-making are examples of our tremendous potential for leadership and capacity-building on these issues.

It will be approximately a decade before Canada is next up for a seat at the world's most powerful roundtable, which is plenty of time for us to revive our global "brand" as a neutral nation that not only adheres to, but also actively promotes international legal commitments in the areas of human rights, security and environmental protection. Starting today, Canadians must demand that our elected representatives rise above divisive party politics and the current government's preoccupation with domestic policy to regain our nation's position as a nation worthy of respect by our peers. ◆

The "Inconveniencies" of the ICJ's Advisory Opinion on Kosovo's Unilateral Declaration of Independence

Mai Taha, SJD Candidate, Faculty of Law, University of Toronto

After prolonged anticipation, on July 22, 2010, the International Court of Justice (ICJ) issued an Advisory Opinion on the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. All throughout that Thursday in July, the ICJ's website was inaccessible; internet speed was beset by the influx of international legal scholars anxiously awaiting the Opinion. Questions on the post-Cold War right to self-determination, the right to remedial secession, and declaratory statehood were among the primary questions speculated to be addressed by the Court. To everyone's dismay, the ICJ dealt with none of the above.

Ballot boxes from Kosovo's election

Photo Credit: Danielle Monaco

In the aftermath of NATO's 1999 military intervention in Kosovo, the UN Security Council adopted Resolution 1244, which sanctioned the UN Mission in Kosovo (UNMIK). After nine years of UN administration, the settlement process was considered a stalemate. On February 17, 2008, the Assembly of Kosovo unilaterally declared independence from Serbia. Subsequently, and following Serbia's request, the General Assembly referred the following question to the ICJ: "Is the unilateral declaration of independence [(UDI)] by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" The Court concluded that the adoption of the UDI did not violate general international law, Security Council Resolution 1244 or UNMIK's Constitutional Framework (par. 122). For the purposes of this article, I will only deal with the scope of the question referred to the Court and the implications of the Court's reading on questions of self-determination and secession.

The Court chose to adopt a very narrow reading of the question. It interpreted the question as merely inquiring on the legality of the UDI as a "stand-alone" act with no apparent legal consequences. The Court acknowledged that there are, obviously,

(Continued on page 16)

Persecution in Pakistan *(Continued from page 5)*

non-Muslims claiming to be Muslims – the ultimate intolerable apostate. This amendment set forth the legal basis for persecuting Ahmadis, with no recourse.

Ordinance XX April 26, 1984 and *Criminal Law Act of 1986*: The 1984 *Ordinance* amended the Pakistan Penal Code by adding Sections 298-B and 298 -C (under the so-called "Blasphemy Laws") which define a number of punishable offenses only relating to Ahmadis. Section 298-C declares: "Any person of the Qadiani [derogatory term for Ahmadi] group… who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith… or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment… which may extend to three years and shall also be liable to a fine." In addition, the *Criminal Act* amended Section 295-C by raising the punishment for blasphemy from imprisonment or a fine, to death. The fact that an Ahmadi practices his faith – or even makes it appear that he is a Muslim – can be deemed as an offense of blasphemy and is thereby punishable by death.

This brief assessment of only a few legal foundations of the persecution sheds light on many questions that beg to be asked: Why did police officers, stationed outside of the two mosques under siege on May 28th, take hours to respond to the barrage of bullets and grenades aimed at worshippers locked inside? Why was humanitarian aid in the wake of the recent floods, Pakistan's worst natural disaster in modern history, denied to Ahmadis? Why do prominent television personalities openly declare that Ahmadis are "*wajib-ul-qatl* [obligatory to be killed]" without reproach? Why do Pakistanis have to sign a statement declaring Ahmadis to be infidels before obtaining a passport? The answers are found in the heart of Pakistan's legal fabric, the constitution and the penal code: Ahmadis are non-Muslim apostates, and as such, they are not only undeserving of basic rights, they deserve to be punished. The ideology of those who pushed for amendments in Pakistan's constitution has led to the oppression of Ahmadis not only in the Muslim world, but in Europe, the U.S. and Canada. There is a recent upsurge in the level of animosity towards Ahmadis in Britain, where the media has been used to call for their murder. A recently distributed British pamphlet stated: "Kill a Qadiani and doors to heaven will be open to you."

For those hopeful for a brighter day when the blasphemy laws will be repealed and the state will come to realize the harm it has done, hear the words of Imam Suhail Bawa of Britain: "If the blasphemy laws are touched by anyone in Pakistan then the 1953 Lahore agitation against the Qadianis will be repeated in the streets once more. The streets and roads of Lahore were filled with blood in that agitation." Threats of what is to come: more death and oppression, more silent nods of approval, more blood-stained shoes to remind us of what has been done with the sanction of the state, and in the name of God. ◆

Russian Journalists Targeted in Khimi Dispute

Alice Tsier, first year, University of Toronto, Faculty of Law

Mikhail Beketov has been silenced. He has lost the use of his voice, as well as a leg and several fingers which were amputated after he was brutally beaten and left for dead two years ago on November 13th, 2008. At the time of his beating, Beketov, the editor-in-chief for Russian newspaper *Novaya Gazeta,* was writing critically about a new highway that was to be built between Moscow and St. Petersburg and was to cut through the Khimiki forest.

The Khimki forest was established as a protected area around Moscow in the 1930s in order to safeguard against increasing pollution in the city. In 2006, plans arose to construct a toll highway that would connect Moscow and St. Petersburg by cutting through the Khimki forest. On April 28th, 2006 the governor of the Moscow region, Boris Gromov, issued an order that released the Khimki forest for construction purposes, and reserved 3000 meters on each side of the potential highway for development (Order No. 358/16).

Almost as soon as the project was announced, numerous groups and individuals began to protest the destruction of the protected forest. The project was awarded to the French construction company VINCI in 2008. VINCI, with its subsidiary Eurovia, formed the Russian Entity SZKK (Northwestern Concessionary Co. Ltd.). In 2009, Order No. 358/16 was rescinded; however, on November 5th, 2009, Russian Prime Minister Vladimir Putin issued a directive that transformed 144,8821 hectares of the Khimki forest from protected forest to land used for the purpose of "industry, energy, transport….and land for the express use of building a highway."

Construction was scheduled to begin in May 2010, but on August 27th, 2010 Prime Minister Dmitry Medvedev announced a halt to the construction of the highway citing as a reason the need to reconsider the project as a result of public protests. On November 2nd, 2010, Bellona, an international environmental NGO based in Norway, reported that "the European Commission has confirmed that its structures will not finance the building of a highway between Moscow and St. Petersburg that cuts through the Khimki Forest."

From its inception the project has garnered fierce criticism from civil society in Russia, especially from residents of the Khimki area. Protestors have set up camp in the forest to prevent logging, organized large scale demonstrations and concerts to spread the word, and even attempted to take legal action against Putin's directive no. 1642 (a suit that was rejected by the Supreme Court of the Russian Federation). A disturbing trend that has emerged over the course of the Khimki battle is the violence against protestors and journalists involved.

The arrests of Khimki activists started in 2008 when a protest was broken up by the police and two women, N. Khoroshilova and A. Grigoryevna were arrested, held in custody for seven hours, denied water and intimidated. In August of the same year police raided a rock concert in defense of the forest and arrested three activists camping in the woods, as well as a youth group leader named Artem Buslayev. Buslayev was subsequently held without being charged for 15 days. Police interference with protesters continued into 2010. On July 28th, 2010 Yuri Timofeyev, a photographer for Radio Free Europe/Radio Liberty's (RFE/RL) Russian service and Elena Kostyuchenko, a correspondent with *Novaya Gazeta,* were arrested along with thirty environmental activists.

According to RFE/RL, all were arrested at the site of protests on charges of "minor hooliganism" but later released for lack of evidence. Kostyuchenko was injured during the arrest. Finally, on 4 August 4th, 2010 Evgenia Chirikova, a leader of the Khimki protests, was detained by the police after a press conference with other activists. These arrests, while invasive, are perpetrated officially by the police, who are at the very least nominally accountable for their actions. Far more disturbing have been the brutal attacks on journalists and activists by unidentified individuals.

Mikhail Bekhetov was the first journalist to be seriously injured while reporting on the Khimki highway. His attackers did not bother to wear masks – an indication that he was not meant to survive the attack. Yevgenia Chirikova told RFE/RL that an unidentified motorist tried to run her down but was unsuccessful. On November 4th, 2010, Khimki activist Konstantin Fetisov was beaten with baseball bats outside of his home and suffered a fractured skull. Two days later a well-known journalist from the Russian newspaper *Kommersant,* Oleg Kashin, was attacked and brutally beaten outside of his building. The gatekeeper of the building said that two men had been standing outside of the gate with a bouquet of flowers, evidently waiting for Kashin to arrive. Kashin's legs and jaw were broken and he suffered a concussion. He was hospitalized and remained in a coma for several days. Two days after Kashin's beating, Anatoly Adamchuk, a reporter for *Zhukovskiye Vesty*, was attacked outside of his office. According to Reuters, "Adamchuk had recently written about the detention of several youths aged between 11 and 14 last week by local police for protesting against town authorities' highway construction plans."

None of these attacks were officially linked to the government, nor has any group taken responsibility and indicated that the reporters were attacked specifically for their coverage of the Khimki protests. At the same time, it is hard to ignore the patterns when such a high number of individuals connected with the battle against the Khimki highway have been attacked and their assailants remain at large. It is also disturbing that the last three attacks have occurred after the halt of the project, and after Medvedev has expressed a commitment to negotiating with civil society. While the future of the highway remains uncertain, what is clear is that Russia remains, today, one of the most dangerous places in the world to be a journalist. ◆

Canada Fails To

Jumping the Queue: The New Canadian Perspective on Refugee Claimants

Dana Wagner, Master of Global Affairs Candidate, University of Toronto

The arrival of the MV Sun Sea on the Vancouver coast in August 2010 landed over 490 Sri Lankans in Canada. The newcomers received much sensationalist attention, but the vessel's landing signified something far more threatening. In October, the Canadian government tabled legislation to curb human smuggling in response to the Sun Sea problem. Bill C-49 is called the *Preventing Human Smugglers from Abusing Canada's Immigration System Act*. Although not featured in the title, asylum seekers are the *de facto* target of this Bill.

In principle, Bill C-49 aims to deter human smuggling and refugee claimants from resorting to human smugglers; yet the dominant legal opinion in Canada is that the bill has only trace relevance to human smuggling and scant likelihood of real prevention. It also relies on punitive deterrence, the success of which has been widely countered. Moreover, the punitive measures the bill would impose, like mandatory minimum sentences, seem like mere window dressings compared to the existing and far tougher penalties for convicted human smugglers – life imprisonment for one.

An important feature of Bill C-49 is the persuasive language employed. Cognitive linguist George Lakoff terms this framing, or the tactical use of metaphor by politicians to influence the public attitude towards a policy. In this case the frame is not hard to identify, with key words peppered into government press releases and ministerial speeches; words like "jumping the queue", "irregular migrants" and "play by the rules". These phrases are used repeatedly by Jason Kenney, Minister of Citizenship and Immigration Canada, and Vic Toews, Minister of Public Safety Canada, in a media blitz to sell Bill C-49. The frame the government uses in this dialogue tells us that irregular migrants are cheating a generous system. The bill has the effect of lumping refugee claimants in with human smugglers as cheaters and potential criminals.

The reason to identify framing is not to expose government ministers as subversive or manipulative. Instead, it is to highlight the way the debate is being shaped in favour of the government position. It is important to consider that a frame is not static, and that a successful shift can be accomplished with a change in the "queue jumping" mindset. The foundation for a newly framed debate has been laid; there is credible opposition. Consider the position of legal experts and leading human rights organizations, like Amnesty International Canada, which hold that Bill C-49 contravenes the Canadian constitution and international law. These accusations give credence to the view that the bill does target prospective refugees.

Among the changes to the treatment of asylum seekers, the proposed law calls for a detention period of at least one year, a limit on the right to appeal determination of refugee claims, a restriction on temporary or permanent residency for five years, and a bar on sponsoring family member unification. Treatment of this ilk would be applied to irregular arrivals, as designated by the government.

A group of eight prominent Canadian lawyers recently authored an editorial to highlight the impending violations of human rights law. Counter to the *Charter of Rights and Freedoms*, Bill C-49 is rife with sections on unlawful detention and equality rights. The bill also stands in contradiction to the UNHCR *Convention and Protocol Relating to the Status of Refugees*, to which Canada is party. The most significant violation of international law could be to the prohibition against discrimination between refugee claimants and the prohibition against penalizing refugees who arrive unlawfully.

The way to deter human smuggling is not by evading international legal obligations, nor is it by criminalizing asylum seekers. Attempting to target human smugglers at the operational level is futile given the web of alternatives for bona fide criminals to subvert the law. Moreover, the required groundwork would be extralegal for Canadian law enforcement. Instead, the focus should be on the domestic conditions of the political regime that triggered the initial migrant flight.

Bill C-49 is unlikely to survive a court challenge, but its short life could have a lasting effect on public attitude. Endurance of concepts like irregular migrants and queue jumping are detrimental to the best interests of refugees and by extension, to Canada's tradition of human rights leadership. To reposition the public attitude in support of the rights of persecuted people irrespective of mode of arrival, the frame needs to be recast. Irregular migrants are asylum seekers and should be identified as such. It is clear that a metaphorical queue is a contradiction in the refugee context in so far as none of Canada's asylum seekers escaped by way of a queue. ◆

Divesting the Power of Ex

Philip Holdsworth, Graduate Fellow, Centre for Ref

Central to the conception of sovereign authority is the notion of control; specifically, the ability of "the sovereign" to discern and actively exercise the powers of exclusion from the political community of citizenship and its conferred benefits, rights, and protections. A commitment to human rights in principle is completely consistent with the notion of sovereignty, insofar as inclusion in the political community of citizenship forms the basis of one's ability to claim full rights as a human. However, the existence of asylum seekers directly challenges the disjuncture between a country's commitment to the protection of human rights enshrined in the Refugee Convention, and their provision by virtue of inclusion within the political community. By making a claim on the duty of protection from a state signatory to the Refugee Convention, asylum seekers forestall the state's ability to exercise its power of exclusion as provisional rights-holders under the state's jurisdiction. Pending an assessment of their claim to formal refugee status, asylum seekers are entitled to, importantly: non-discrimination (Art. 3), non-penalization for illegal entry and freedom from arbitrary detention (Art. 31), and *non-refoulement*, among others.

Uphold Refugee Rights

Jason Kenney fields a question in Calgary

Photo Credit: Itzafineday, Flickr.com

New Anti-Smuggling Act Challenge Canada's Commitment to Human Rights

Micah B. Rankin, LLM Candidate, University of Toronto

The Federal Government's proposed anti-human smuggling legislation raises troubling questions about Canada's commitment to international human rights. Announced in the wake of the arrival of 492 Tamil asylum-seekers aboard the MV Sun Sea last August, Bill C-49 is a key piece in the Conservative Government's new strategy to "crack down on human smugglers". The reality, however, is that the legislation may do more to punish asylum-seekers and refugees than it does to curb human smuggling.

According to the Ministry of Public Safety, the proposed Act—known as the *Preventing Human Smugglers from Abusing Canada's Immigration System Act*— is necessary "to ensure the safety of our citizens and refugees." The government intends to achieve these objectives by, among other things, imposing mandatory minimum sentences on human smugglers and restricting the rights of asylum-seekers if they arrive "irregularly" as part of any designated "human smuggling event." Once designated an "irregular arrival", asylum-seekers will not be allowed to apply for permanent residency for five years, will be processed differently than regular arrivals, and can face up to one year in detention.

The government's approach in the proposed legislation does not square with the real causes of migration or with Canada's international legal obligations.

While human smuggling raises a variety of concerns, the government's response seems to have less to do with human smuggling than it does with fostering a "Law and Order" image. Before the MV Sun Sea arrived in August, the Government had all but decided that the passengers were LTTE terrorists (Tamil Tigers). With little now to substantiate the terrorist thesis, the government has shifted its rhetoric to the fight against migrants flouting what the Prime Minister has called the "normal application process." However, rather than conceiving of this as a security or crime problem, the government should be examining the humanitarian conditions in Sri Lanka that are continuing to prompt people to flee.

The government's approach in the proposed legislation does not square with the real causes of migration or with Canada's international legal obligations. In the first place, the idea that there is a "normal application process" for asylum-seekers is largely a myth. Very often, the only way an asylum seeker can gain protection is by getting smuggled out of or into another country. This is done out of fear and desperation, not out of some desire to "jump the queue." Canada also has a legal obligation to accept refugees who arrive illegally. Article 31(1) of the *International Refugee Convention* prohibits Contracting Parties, like Canada, from imposing "penalties, on account of [a refugee's] illegal entry or presence." This is because the Framers of the *Convention* were well-aware that asylum seekers would often have no choice but to use any means, legal or not, to escape persecution. Bill C-49 clearly runs afoul of this prohibition and penalizes asylum-seekers who themselves are forced to rely on smugglers to stay alive. Human smuggling is indeed a problem, but the solution does not lie in punishing the people smuggled. The real solution lies in addressing the humanitarian conditions that have compelled people to risk their lives to come to Canada. ◆

clusion, Ceding the Rights of Asylum Claimants

ugee Studies, York University

The recent arrival of 490 Sri Lankan asylum seekers on the MV Sun Sea has made the Conservative government acutely aware of the tension between the right of refugee claimants to seek protection and the government's desire to dictate the terms of asylum and control access to the accompanying benefits. The response, in the form of Bill C-49, would seem to reflect an attempt to compensate for the lack of control that results from a commitment to the Refugee Convention. Cracking down on smugglers in an attempt to prevent "illegal" entry through Canada's borders tends to increase the associated risks to those most desperate and vulnerable while doing little to solve the underlying causes. Blunt, national level laws will inevitably fail to keep intelligent refugee migrants from negotiating existing borders. In this context the relevant question that arises is, to what extent are we willing to tolerate infringements of human rights to enforce our borders? As Professor James Hathaway recently argued in an Op-Ed in the *National Post*, human smugglers play an essential role in provisioning refugees with the ability to illegally enter the country and seek asylum, as they are entitled to under the Convention.

Barring any realistic prospect of physically preventing human smuggling, the government's intent is seemingly one of penalizing refugee claimants for exercising agency and successfully claiming their right to seek asylum. That it is essential to separate out a discrete category of refugee – those that fit the Convention definition and are legitimately in need of protection – to maintain the integrity of the immigration system more broadly, does not permit the movement of the metaphysical boundary of rights, by divesting asylum claimants of acquired rights under the Convention. Framing landed asylum claimants as "irregular" to justify such policy not only supposes the existence of a "regular" way in which one might flee persecution, but reflects a desire by the government to control access to rights that international law inherently requires all states grant to those able to claim them. In the face of an effective and nuanced status determination process, attempting to curtail the rights that accompany an asylum claim turns the process on its head, making it about the power of the government to exclude and not about the protection of those facing persecution. ◆

INTERVIEW: Georgette Gagnon

Christine Wadsworth, first year, University of Toronto, Faculty of Law

Georgette Gagnon has had a fascinating career in international law. Gagnon has worked for Human Rights Watch, the Organization for Security and Cooperation in Europe, and the United Nations. Her work has taken her to South Africa, Sudan, Bosnia, Rwanda and Afghanistan. Gagnon currently serves as the Director of the United Nations Human Rights Unit and Representative of the UN Office of the High Commissioner for Human Rights in Afghanistan. I was fortunate to have the opportunity to speak with Gagnon about her work in Afghanistan.

Gagnon worked with the UN on rule of law issues and the development of a national justice strategy in Afghanistan in 2007, and recently decided to return to the country. She has been working in Afghanistan for the last five months with the Human Rights Unit, which is part of the United Nations Assistance Mission in Afghanistan (UNAMA). The Human Rights Unit consists of 70 Afghan and international officers. The staff is a mix of lawyers, judicial officials, academics, researchers, and human rights officers. The unit has a UN Security Council mandate to monitor, publicly report, and carry out human rights advocacy in Afghanistan. It assists Afghan institutions in protecting and promoting international human rights and works to integrate human rights into the UN's work. The unit prepares a quarterly report to the UN Secretary General on human rights in Afghanistan.

Gagnon explained that the Human Rights Unit's role is to "embed" human rights in Afghanistan. The unit has four main priorities: protection of civilians, preventing violence against women, transitional justice and impunity, and detentions. It works closely with members of Afghan civil society such as the Afghanistan Independent Human Rights Commission (AIHRC), domestic and international NGOs, and the Afghan Bar Association on these issues. The team's most high profile and politically sensitive work concerns the protection of civilians. This involves monitoring and publicly reporting on civilian casualties and civilian protection issues. The Human Rights Unit has been a leading advocate for a reduction in civilian casualties and compliance with the law of armed conflict. There has been a reduction in civilian casualties caused by international forces over the last year. The reports produced by the Human Rights Unit receive high level attention from NATO and international military forces, the Afghan government, and other foreign governments involved in Afghanistan. Gagnon has briefed General Petraeus, who is in charge of all NATO and US forces in Afghanistan, on these issues.

The Human Rights Unit is also concerned with the protection of women's rights and the prevention of violence against women. Violence against women is endemic, with some estimates suggesting 80% of Afghan women have faced violence. The Human Rights Unit conducts field work to investigate the extent of harmful traditional practices in Afghanistan and the implementation of women's legal rights. The unit also monitors the implementation of the Elimination of Violence against Women Law.

I asked Gagnon about how negotiations between the Afghan government and the Taliban could affect women's rights. She explained that a significant concern is that progress made in women's rights would be rolled back. Women rights groups in Afghanistan have been vocal about their concerns regarding reconciliation with the Taliban. The Afghan Peace and Reintegration Program mandates that women groups and members of civil society be included at all levels of peace and reconciliation discussions. The Afghan government has publicly said they will include these groups, but Gagnon cautions that whether this happens in practice remains an open question. Gagnon stressed the importance of civil society and communities being represented at all key discussions associated with any reintegration or reconciliation process. Women remain underrepresented on bodies such as the High Peace Council and there have been calls for President Karzai to appoint more women to such positions.

The third priority of the unit is transitional justice and impunity for past crimes. There is an ongoing debate over how seeking justice for past crimes fits into the peace and reconciliation process in Afghanistan. The unit's fourth priority is detentions, both conflict and non-conflict related. Gagnon explained that Afghanistan has a major problem with arbitrary detentions. The unit reports on the treatment of detainees and the application of judicial guarantees on fair trials and due process.

I asked Gagnon about what role Canada could play in Afghanistan after its combat mission ends in 2011. She explained that a focus on ensuring human rights protection is a part of the future Canadian commitment in Afghanistan. Canada is one of the biggest donors to the Afghan Independent Human Rights Commission and other civil society groups. Canada's ambassador in Afghanistan, William Crosbie, is a leading voice on ways to incorporate justice issues into the reintegration and reconciliation dialogue.

Gagnon's advice for aspiring international lawyers is to get out into the field as early as possible to see if you are suited to the living and working conditions. Gagnon believes it is important to work in the field if you are interested in practical "hands on" human rights work. Working for the UN as a UN volunteer (UNV) is a good way to get field experience. ◆

INTERVIEW: Melissa Upreti

Alice Tsier, first year, University of Toronto, Faculty of Law

On February 11, 2010, Justice Muralidhar of the Delhi High Court issued two historic decisions in the cases of *Laxmi Mandal v. Deen Dayal Hari Nager Hospital & Ors W.P.* and *Jaitun v Maternity Home, MCD, Jangpura & Ors W.P.* The court found that the government had failed to protect the reproductive rights of two women, Shanti Devi and Fatima, both of whom lived below the poverty line. Justice Muralidhar concluded that the poor implementation of maternal health schemes contributed to Shanti Devi's death shortly after childbirth, while Fatima was denied prenatal care and forced to give birth outside beneath a tree. The court ordered the government to pay compensation to Fatima and Shanti Devi's family for violations of their rights to life and health and, among other directives, ordered the government to set up a monitoring system to ensure that benefits are provided to women.

On October 14, 2010, Melissa Upreti, Senior Regional Manager and Legal Adviser for Asia at the Center for Reproductive Rights, came to speak at the law school. Upreti spoke about maternal mortality as a human rights issue, public interest litigation in India and the *Laxmi Mandal* decision. She also explained the state-high-court litigation strategy the Center has developed along with its Indian partner in order to hold the government legally accountable for preventable maternal deaths.

AT: *How do you choose your projects?*
MU: We have an institutional strategic framework that guides us. But, we begin by asking, how compelling is the issue? We look for connections between the violations and government action or inaction in order to determine if we can establish non-compliance with international legal obligations. We also ask, what kind of impact can we expect? If we think there's a strong chance of being able to obtain something concrete for the victims, establish norms, and obtain directives for improvements in the health system, we move forward. It is also important to have a strong local partner. Our institutional priorities include advancing the right to safe pregnancy and childbirth, ensuring a woman's right to family planning which includes access to contraceptives, and challenging legal restrictions on abortion. We prioritize marginalized populations.

AT: *Where would you say your greatest successes have been in your projects?*
MU: We've had very positive results in Nepal. In 2000, I led a fact-finding mission to investigate abuses suffered by women imprisoned for abortion. Our findings helped frame abortion as a human rights issue and expose lapses that had occurred during the criminal prosecution of these women. The evidence was used in a campaign to lift criminal sanctions on abortion. Exceptions were created, but now activists want to bring abortion out of criminal law altogether. In 2009, we obtained a landmark judgment establishing greater access to abortion. In India, we have helped launch a wave of state high court cases on maternal mortality and morbidity. This year in the Philippines we released the first ever human rights

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INTERVIEW: Andrea Prasow

Samuel Plett, first year, University of Toronto, Faculty of Law

"As President, I will close Guantanamo, reject the Military Commissions Act and adhere to the Geneva Conventions." This August 2007 announcement, made by then-Senator Barack Obama, breathed new hope into the human rights advocacy community – hope that the "change" embodied in the soon-to-be President Obama would finally close the "legal black hole" that is the Guantanamo Bay detention centre.

More than three years later, as Andrea Prasow, senior counsel in Human Right Watch's (HRW) Terrorism and Counterterrorism program addressed a group of students from the Faculty of Law at the University of Toronto, Guantanamo Bay was still open for business, despite the memorable campaign-trail assurances. Although Prasow was quick to point out that Obama inherited Guantanamo from his predecessor, "early miscalculations about the political environment" in the United States derailed the President's plans to close it down, even as his administration remains committed to the project. Prasow suggested that the Obama administration has been too silent on Guantanamo, thereby failing to keep the issue alive in the public sphere – so much so that many Americans believe Guantanamo has already been closed.

The difficulty of keeping the public engaged with and informed about Guantanamo Bay is one of the primary challenges in Prasow's work for HRW. In an interview following the lecture, she commented: "having been on the inside [I realize] that no matter how hard I try, I cannot possibly convey how defective the military commissions truly are." Indeed, Prasow pointed out that without the knowledge of what goes on behind the scenes, the general public has a hard time understanding the implications of key flaws in the legal system created by the *Military Commissions Act* (MCA), such as allowing evidence obtained by coercion, the use of retroactive legislation, and the lack of independence from the Executive. The problem is that none of the cases heard by the military commissions to date have clearly highlighted the major flaws of the MCA regime, making it easier for them to be "construed as proper trials" by outsiders with a limited understanding of the system.

Protesters at the White House
Photo Credit: futureatlas.com/blog

Despite growing public apathy towards (or, in some cases, open support for) the troubling American detention policies implemented at Guantanamo Bay, Prasow contends that the answer for the Obama administration is simple (albeit politically difficult): "*charge or release*." When asked where these trials should take place, Prasow strongly advocated for the use of existing mechanisms – such as domestic civilian courts – to prosecute alleged terrorists. In Prasow's estimation, there is "no absence of legal authority over transnational actors" such as terrorists, given that their crimes are committed "in territories of states and against citizens of states" – contrary to what some scholars would have us believe.

According to Prasow, those who operate under the assumption that there is something wrong with the existing global counter-terrorism framework are generally commenting specifically on the Bush-era shift in US foreign policy from a "law-enforcement paradigm" to a "war paradigm" – a post-911 mindset that was brought on not by a change in the nature of the global threat posed by

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ICC: Expectations Meet Reality with Jennifer Khurana

Sylvie McCallum Rougerie, first year, University of Toronto, Faculty of Law

The International Criminal Court (ICC) faces such high expectations that critics often lose sight of its achievements. This was the analysis offered by Jennifer Khurana, a former ICC lawyer, when she spoke to students on November 11th, 2010 as part of the International Human Rights Program's speaker series. Khurana began working with the ICC as a legal officer in the ICC's Chambers mere months after its establishment, and later as an External Relations Advisor to the President. These positions gave her unique insight into some of the issues that the ICC faces, both externally and internally.

Almost a decade after its inception, the ICC's main challenges are surprisingly similar to those faced in its early days. In Khurana's view, the biggest hurdles in coming years will involve building credibility and increasing the cooperation of member states. These issues translate directly into the ICC's concrete work, particularly in its reliance on state parties to enforce its warrants and decisions. To illustrate the occasionally faltering support of member states, Khurana reminded the audience that the ICC's issuance of thirteen arrest warrants has led to no more than four arrests.

Dispelling myths will be another key challenge in ensuring the ICC's success. Many countries and their officials continue to question the ICC's legitimacy due to mistaken beliefs, including the widespread misconception that it has universal jurisdiction. Khurana addressed this myth by explaining that the *Rome Statute* offers specific limits on the jurisdiction of the Court, including definitions of the crimes that can be prosecuted, as well as both territorial and temporal restrictions.

In spite of these significant challenges, Khurana is confident that the ICC can improve its image and effectiveness. Thus far, it has been quite successful in performing a purely judicial role, despite the complex political environment in which it operates. In her opinion, remaining independent and apolitical in its daily operations will reinforce its reputation in the long term. Another crucial task will be managing expectations; many observers saw the ICC as a panacea and have consequently been disappointed by its impact. Khurana stressed that a judicial proceeding will never be more than a partial response to a crisis, and that the punishment of criminals cannot be expected to provide a full solution to regions ravaged by conflict. Khurana also emphasized the responsibilities of states who are parties to the Rome Statute. Their support for the ICC needs to be firmly expressed, particularly in response to public rejections of the ICC's authority, such as Kenya's recent refusal to arrest Sudanese president Omar al-Bashir. In addition to operational cooperation, the ICC needs a strong, unwavering public commitment from the international community in the face of such defiance.

Despite these challenges, Khurana remains optimistic that the ICC will continue to build on its success. As the jurisprudence surrounding the Rome Statute grows, the ICC will operate with increased stability, which can only improve its image as a legitimate institution. ◆

Human Cultural Rights—Rethinking Relativity

Alessandra Sztrimbely, second year MSc Biological Anthropology & International Relations, University of Toronto

Debates concerning human cultural rights have recently received wide coverage in the global media, with questions ranging from whether to prohibit the wearing of head scarves in French schools to addressing the influence of Bollywood in Nigeria. Central to these debates are questions of what exactly human cultural rights entail. Unfortunately, no agreed-upon definition seems to exist. In the European tradition, culture has been viewed as capital: works of art and great compositions that can be amassed or created. The current understanding, taken largely from anthropology, is that culture represents a way of life, integral to the functionality of individuals and societies. As the ICESCR and ICCPR establish, it is the right to educate children in conformity with one's convictions, to take part in cultural life and to practice a culture, religion and language without discrimination that currently informs the international community's perception of cultural rights.

Along with this has come an appreciation that nothing exists in a culture-void and that everything is therefore culturally relative. This entails the recognition that all beliefs, practices and values are valid within their cultural contexts and, that removed from these contexts, none are inherently more valid than others. This recognition has been crucial in promoting the understanding and tolerance necessary for intercultural dialogue; however, it can be problematic. If the goal is to secure equal cultural rights for all groups and people, how does one ensure that, where these rights clash, the culture in a stronger position does not infringe on the other? Even the UDHR is a product of historical and cultural contexts and, when removed from these, no more valid than any other system.

What the relativist argument fails to account for is that cultures are not static entities that may be preserved, but are dynamic entities which have always changed and adapted to their surroundings. Anthropologists have shown it is only recently that cultures – including our own – have begun to cling to what is, in fact, the recent past as if it had always been. This is often a response to interaction with other cultures as each tries to solidify its identity.

A widespread appreciation of this particular nuance should theoretically enable the development of a pluralist system of human and cultural rights which still ensures that certain agreed-upon central tenants are uniformly upheld. Unfortunately, this requires the tolerance and willingness to make sacrifices that have been largely absent on all sides. Additionally, attempts to redress the unequal footing of cultures caused by historical situations and current power imbalances will also be necessary.

Although the "Canadian Experiment" is viewed by many around the world as a sure path to national collapse, it has proven successful to date. Canada's willingness to accept cultural differences and incorporate so many cultures into its own with a few minor speed bumps – especially in comparison to European communities – can provide a unique example of how such intercultural dialogue can successfully unfold on the world stage. ◆

Kosovo's Independence *(Continued from page 10)*

other legal consequences to the act of a UDI, such as "whether or not Kosovo has achieved statehood" (par. 51). However, the "legal consequences" of the UDI were deemed to be outside the scope of the question referred to the Court. In that sense, although the Opinion can be considered a political victory for Kosovo, it is questionable whether it is a legal victory, confirming Kosovo's status as a sovereign and independent state.

This limited reading of the question precluded any discussion on the application of the right of self-determination to the Kosovars. Such a discussion would have necessitated an analysis similar to that undertaken by the Supreme Court of Canada (SCC) in the *Quebec Secession Reference*, where the court had extensively dealt with the question of who are the "people" entitled to self-determination. Had the ICJ dealt with the question of self-determination, it would have also entered into the 1975 *Western Sahara* realm, with the complexities of determining "the will of the people", something that has not been resolved until this day. Alternatively, it would have entered into the realm of the 1991 Badinter Commission's recommendations, drafted in the immediate aftermath of the Cold War. The ICJ conveniently avoided such a debacle with all its political consequences and its precedent-setting character pertaining to adopting a legal conceptualization of the right to self-determination in a *post*-post-colonial world.

The Court made a vague reference to the "Kosovo people" when discussing the identity of the authors. It made a quick brushing allusion to the Assembly of Kosovo as representative of the Kosovo people. However, it merely touched the shell here. Otherwise, it would have narrated the traditional textbook interpretation of self-determination - since the *Western Sahara* Opinion - as an expression of the "will of the people". Evidently, such a route would have been quite dated, specifically with the post-Cold War fashion of the so-called "Standards before Status" principle.

As a consequence of the Court's narrow reading,it has conveniently ignored the notion of remedial secession. The idea that the people of Kosovo have a right to remedial secession arising from years of oppression by the Serbian government had been put forward as a potential issue to be discussed by the Court. Notably, the issue of remedial secession raises the question of whether the post-Milosevic Serbia fits such a category. Nonetheless, the Court never discussed the application of remedial secession because it never addressed the legality of Kosovo's secession under international law.
It is questionable whether the Court would have addressed the issues of self-determination and secession had the question been phrased using the common terminology of "the legal consequences". The question was originally formulated by the Serbian delegation, probably in an attempt to avoid any judgment on self-determination. Setting aside any normative evaluation of the Court's handling of Kosovo's independence, the Opinion affirms intellectual cynicism regarding the role of the World Court in unpacking complex legal questions in the face of an equally complicated political scene. The Court has not left any room for normative critique by avoiding the central legal technicalities. ◆

Afghan Police Reform *(Continued from page 1)*

tween the judiciary and the ANP. The inability of the judiciary to successfully prosecute crimes makes Afghans less willing to approach the police with complaints, since they believe pressing charges is futile. Instead, Afghans turn to alternative methods of dispute resolution, which ends up bolstering non-state actors.

The ANP is critically important for rebuilding Afghanistan. Policing is a central part of state building because providing security and justice is one of the government's most important functions. The state's ability to fulfill this role affects its internal and external legitimacy. The ANP is one of the most visible, important state institutions in Afghanistan. The police represent the government on a local level and are the arm of the state that most Afghans deal with on a regular basis. Police have a more permanent presence in communities than the military. In rural areas, the ANP might be the only representative of the central government people interact with. This means the effectiveness of the police affects perceptions of the central government. If the police are viewed as untrustworthy and corrupt, Afghans are more likely to become alienated from the government and turn to alternative sources of protection such as warlords and tribal militias.

The strength of the insurgency and obvious problems with the existing ANP structure has resulted in more recent attention being paid to this critical institution. As the international community looks to transition responsibility for security to Afghan National Security Forces, it is crucial that the ANP be seen as a top priority since it is so fundamentally linked to the security and stability of Afghanistan. ◆

MINING IN CANADA *(Continued from page 9)*

Barrick was a vocal critic of Bill-C-300. The company argued that the bill would result in reputational damage, reductions in competitive advantage, and incentives for relocation. Lawyers James Peterson and Michael Bourassa repeated such complaints at the Bill C-300 panel discussion held at the Faculty of Law. Both men stressed the economic function which mining plays in Canada and described the bill as "opening the floodgates" to frivolous and damaging complaints. These arguments were answered by Catherine Counmans of Mining Watch Canada, who argued that vexatious complaints would be dismissed and that access to public funding is not a right, but a privilege.

Had Bill C-300 passed, companies whose processes are not aligned with international voluntary standards would have faced initial costs. Within Canada, the playing field would have been leveled. Against global competitors, the bill could have been leveraged as competitive advantage, as foreign officials in many developing countries would have been assured of accountability. Furthermore, companies without substantiated allegations could have attracted investors, free from the worry of valuation fluctuations caused by costly litigations.

However, with the current focus on jobs and the economy, the timing was for Bill C-300 was wrong. As was seen in the US Senate and House elections, voters are willing to punish incumbents that pursue anything other than an economic agenda. Neither Harper nor Ignatieff wants to be perceived as pursuing anything other than policies supporting the economy. As a result, MPs voted 140 to 134 against Bill C-300. The conservatives voted virtually unanimously against the bill; 62 liberals voted for the bill, but 14, including Ignatieff, were absent. Neither party leader wanted to be exposed as potentially sacrificing Canadian jobs in such an important industry.

Although the bill failed, we do still have the Office of the CSR Counselor. Therefore, all is not lost for the impassioned Canadians who wish to see human rights and environmental costs internalised by extractive companies, allowing communities abroad to partake in the benefits that can be derived from resource extraction. "Let's just cross our fingers and hope for the best," said Dr. Evans when speaking frankly with the AMCO Working Group about the challenges and the possibilities that exist.

Time will tell whether there is any merit to the complaints process. Perhaps there will still be hope for an alternative bill that is raised in a more appropriate economic climate, or even an alternative to regulation: the development of a business community that proactively leverages the value that can result through awarding sustainability an equal place to the financial bottom line. ◆

PRASOW INTERVIEW *(Continued from page 15)*

terrorism, but by the fact that "a particular attack was very successful." As such, she cautions against trying to create a new international framework for dealing with terrorism. Law-making at any level, particularly at the international level, is "ugly" and "fraught with political components", meaning that any new system would likely be very different from what the goal was at the beginning.

Despite the obvious flaws of the current military commission system, Prasow still believes that domestic prosecutions have been effective, and can continue to be, so long as such efforts do not violate fundamental principles of international law and human rights. For that to happen long-term, however, the Obama administration needs to put in place a legal framework that is very explicit to prevent future governments from reverting to the practices of the immediate post-9/11 era. Indeed, one Prasow's most insightful critiques of the Obama administration is that key figures have been "too confident in their own abilities to control developments...instead of creating a durable system that prevent" future abuses.

That said, Ms. Prasow remains "hopeful" that the recent rhetorical shift in American foreign policy discourse will lead to lasting and meaningful change, both in terms of Guantanamo specifically, but also in terms of its overall counter-terrorism policies more generally. Moreover, she reminded students that there is a great deal of room for creative advocacy on this and other related issues and encouraged students to seize every opportunity to become involved, pointing in particular to the

tremendous opportunity for scholarship on key human rights issues. She appealed to students to research and write about under-studied areas of international human rights law, as practitioners such as herself are constantly looking for new and innovative solutions that can be used to aid advocacy efforts.

Far from being a purely academic matter for those living behind the shield of the 49th parallel, the failure on the part of the Obama administration to bring about the promised change in American counter-terrorism policy has profound implications for Canadians. Only a few weeks after Prasow's visit to the Faculty of Law, news emerged that Omar Khadr, a Canadian citizen who has been detained in Guantanamo since 2002, when he was fifteen years old, has opted to plead guilty to the charges against him in return for the possibility of finally being granted the right to return to Canada. As such, Canadians are forced to face the repercussions of, and our government's complicity in, the ongoing legacy of Guantanamo Bay. Thus, it is imperative that we carefully consider Prasow's message and take up the task of actively promoting the change that is needed rather than passively waiting for promises of change to be fulfilled. ◆

Mine in Potosi, Bolivia

Photo Credit: jennifrog, flickr.com

Concerns with Canada's Overseas Visa Officers

Eva Tache-Green, first year, University of Toronto, Faculty of Law

Last fall, I was working at a refugee rights NGO in Cairo when an Eritrean colleague approached my desk looking concerned. The new visa officer at the Canadian Embassy had rejected some people he knew: Eritrean refugees with private sponsors in Canada. With a file of his own at the Canadian embassy, my colleague had reason to worry. Later that day the refugee law professor at the American University in Cairo called me. Had I heard about the new visa officer at the embassy? She was rejecting people with valid claims.

Overseas visa officers charged with interviewing refugees as part of Canada's resettlement process are not breaking international law if they fail to accept people with valid refugee claims. Resettlement is not a right; it is a privilege. Regardless, unfair hearings serve to undermine Canadian credibility and raise serious concerns about the effectiveness of the process as a whole. In the international community that assesses refugee source country conditions, it is widely accepted that Eritreans risk persecution in their home country. Human Rights Watch calls Eritrea a "giant prison". The UN High Commissioner for Refugees' (UNHCR) guidelines on refugee status determination procedures, which are binding on UNHCR decision-makers, are drafted in such a way that almost guarantees refugee status for Eritrean claimants.

Once considered a hope for democracy in the region, Eritrea has regressed dramatically since independence from Ethiopia in 1993. Shunning democracy in favor of a permanent state of emergency and paranoid military rule, President Isaias Afewerki is a classic dictator. Mandatory military service is virtually unpaid and conscripts are enlisted for an unlimited time period. Young men and women who fail to show up for service or leave without permission are arrested, imprisoned, and often tortured. Conscripts who go missing put their families at risk as the relatives of dodgers and deserters risk detention.

The regime's paranoia can be seen in the treatment of religious minorities. The fear that religious groups not directly under state control could foster resistance led the government to ban most religions in 2002. Practitioners of unauthorized faiths or those suspected of practicing them, risk being arrested, detained, and tortured. The government's thirst for control has made it increasingly difficult to leave Eritrea legally. Exit visas are routinely denied and people caught crossing the border on foot are shot. Failed asylum seekers forcibly returned to Eritrea have largely gone missing.

Overseas visa officers charged with interviewing refugees as part of Canada's resettlement process are not breaking international law if they fail to accept people with valid refugee claims. Resettlement is not a right; it is a privilege.

These factors combine to make Eritrea a "perfect storm" in the field of human rights protection and refugee status determination. As a result, global recognition rates of Eritrean asylum seekers have been steadily increasing, and Canada is no exception. The Immigration and Refugee Board recognized 97 percent of Eritrean cases decided on their merits in Canada in 2008. Given the rising profile of Eritrean refugees and an apparent Canadian consensus on the legitimacy of their claims, last year's spree of rejections by the new officer in Cairo seemed at first to be out of the blue. However, an investigation by the Canadian Counsel for Refugees (CCR) revealed that what went wrong in Cairo last year may in fact be a symptom of a larger problem with the Canadian resettlement process.

Photo Credit: T U R K A I R O , Flickr.com

In a worthwhile report, *Cairo Concerns*, based on analysis of the notes taken by the visa officer during the eligibility interviews, the CCR argues that the visa officer reached erroneous negative credibility findings due to serious misunderstandings of the country conditions in Eritrea and a misapplication of the refugee definition. Her reasons for rejection included the disbelief that military service lasts for an indefinite amount of time and skepticism about the devotional practices of minority religions, while country information about both of these topics is widely available. The visa officer also rejected migrants who based their claims on draft evasion or military desertion. This conclusion ignores the standard view in Canadian and international refugee law that when conscription entails human rights violations, it is a valid basis for a refugee claim.

Accepting that the officer made these mistakes just raises more questions about the Canadian resettlement program as a whole. Why aren't visa officers given adequate training on country conditions and the refugee definition? Where is the oversight to ensure fairness, accuracy and due process? Is there an obligation on the part of government representatives overseas to operate in accordance with the Canadian Constitution and, if so, to whom is this obligation owed? For now, the only legal avenue open to these applicants is the lengthy and uncertain judicial review process. With low success rates and a prohibitively high price tag of a couple thousand dollars, many rejected applicants have given up the chance of coming to Canada. Meanwhile, the CCR's recommendations, which include improvements in training, expanded oversight and the reopening of all of the rejections by the under-qualified visa officer in Cairo, have been largely ignored.

The frustration this engenders is felt acutely by the private sponsors and sponsorship organizations who invested time and money to help their friends and relatives come to Canada – efforts that conform to government guidelines and meant to help Canada reach its international resettlement targets. Given the myriad of illegitimate ways refugees enter Canada, don't those who try to follow the rules deserve a fair chance? ◆

Indefinite Detention *(Continued from page 3)*

orders of continued detention. The RLO has stepped into this gap, helping to bring these cases before the Federal Courts.

Several RLO cases have recently met with success, but only after lengthy legal battles. In one case, for instance, Mr. X had been detained for nearly three years without charge. The federal government was seeking to return Mr. X to his country of origin because of his criminal convictions. That country, however, was refusing to issue a travel document. The Federal Court found that the decision to continue detention was flawed because it failed to properly consider Mr. X's status as a Convention Refugee, the three year length of his detention, and his past compliance with release terms. Soon after the Federal Court decision was made in December 2009, the ID ordered Mr. X's release.

The Department of Justice won an application to stay the release and the expedited judicial review was not heard until February 2010. In June 2010, the Federal Court issued a decision upholding the release. Our client was ultimately released after nearly five years detained in provincial jails, in the summer of 2010. It is very likely that he would have remained detained were it not for the judicial scrutiny brought to his case.

The guidance provided by the Federal Court is having an impact on other long-term detention cases. The ID is finally making release orders without first being required to do so by the Federal Court (though the CBSA seems to invariably be seeking stays and judicial reviews of those releases). Nevertheless, it is a very harrowing situation for those who remain detained.

Despite seeking expedited judicial reviews, the process of review seems to take six months to a year. When a favourable decision is granted by the Federal Court, CBSA attempts to introduce new facts at subsequent hearings in order to argue that the Federal Court decision can no longer apply. In the meantime, our clients remain detained in provincial jails, subject to the violence and degradation that is part of incarceration. As Canadians, we should be proud that our judicial system is operating in these cases as it should, by providing a check on the exercise of government authority and upholding the liberties of individuals. It is distressing that so much intervention is required. ◆

Interested in contributing to the *Rights Review*?

If you would like to join our writing team please contact us at:

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Burmese Elections *(Continued from page 4)*

In addition to passing a military-friendly constitution and manipulative electoral laws, the SPDC engaged in several other activities to ensure its electoral success. The powerful state-run Union Solidarity and Development Association and all of its extensive resources was rolled into the largest government-backed party, the Union Solidarity and Development Party (USDP), headed by current Prime Minister Than Schwe. The USDP has taken over the USDA's offices in almost every region of the country. Paramilitary and government police forces used to crack down on protests in both 2003 and 2007 have been used to monitor the activities of opposition parties and intimidate opposition candidates and supporters. Furthermore, human rights abuses by the military have been committed against ethnic nationalists in various regions of the country. In addition, the government denied international observers access to the country to monitor the election.

Results from the election continue to be processed but the end result is clear: the junta's democratic facade has worked and pro-military groups will continue to hold power in Myanmar. Out of results already tabulated, the USDP has won 214 of 233 seats in both houses of Parliament. Voter turnout was extremely low. It appears as though the government's long campaign of suppressing political dissent through legislation, force, harassment and intimidation has created a climate wherein the Myanmar people are unwilling or unable to risk opposing the military junta.

Two interesting developments have taken place since the election. First, in a move symptomatic of Myanmar's continued struggles, thousands of refugees fled the country in the days immediately after the election following conflict between government forces and ethnic groups. Second, in an attempt to boost the credibility of their fictitious transition to democracy, the government has allowed Suu Kyi, no longer an election threat, to be released after spending 15 of the last 21 years under house arrest. There is little doubt that her actions will continue to be monitored closely and that it would surprise few if she were to be charged, once again, with bogus charges. Already, the government has warned against challenges to election results, while Suu Kyi has said that voting irregularities must be examined.

Although the state continues to oppress opponents and the situation appears as hopeless as ever, activists and organizations dedicated to a more democratic and equitable Myanmar state continue to do incredible work. However, the junta has stubbornly retained and entrenched its dictatorial rule by masquerading as a democracy. The "Road to Democracy" has reached its "successful" conclusion and Myanmar is not one iota more democratic. ◆

Upreti Interview *(Continued from page 14)*

study of the impact of the country's criminal abortion ban.

AT: *You were very involved in the 2005 publication, Women of the World: Laws and Policies Affecting their Reproductive Lives. In the report you listed some leading concerns with respect to women's reproductive rights in Southeast Asia, namely fertility control, inadequate maternal health care, criminalization of abortion, sexual violence, rising prevalence of HIV/AIDS, and a lack of reproductive health care for adolescents. Where are the access points for using the law to address these concerns?*
MU: In terms of access to family planning, we challenged an executive order that effectively bans modern contraceptives in Manila City. Very often, it's a law or a policy, or the non-implementation of it, that's the problem. We develop accountability strategies to address these problems. Legal restrictions on abortion are one example. With regard to maternal mortality, governments tend to have good policies but implementation is very poor. We use evidence of the harmful impact of bad laws or policies or the failure to implement good ones as a basis for our legal strategies which ultimately aim to promote compliance with international law.

AT: *In your opinion, how effective can human rights advocacy be in the face of apathetic governments that are not genuinely concerned with the rights of women?*
MU: The government is the guarantor of rights so it can be hard to advocate with a hostile government. That's where civil society comes into the picture. Accountability requires broad participation and a lot of persistence. However, even when a government is hostile, it's important to generate evidence of human rights violations, because political contexts change all the time. On the point of hostile governments - this is when international accountability becomes important. You need to look at where else can you go if a government is totally uncooperative. Optional protocols that provide for individual complaints and inquiry requests can become crucial redress mechanisms.

AT: *What advice would you give to law students who wish to work in your field?*
MU: The Center for Reproductive rights routinely works with clinics and students. Students can conduct research, legal analysis, and write briefs, as well as participate in fact-finding missions. One of the challenges for those who are interested in reproductive rights is that this subject is not widely taught in law schools. It is also important for students to be proactive in finding opportunities for practical exposure to the work. There are organizations that are doing groundbreaking work on these issues overseas too, but lawyers are really the minority in this field. There is a great need for people with legal skills and knowledge in this area of human rights. ◆

Working Groups

Sexual Orientation and Gender Identity
The SOGI Working Group started the year off by providing training for volunteers (facilitated by adjunct faculty Michael Battista). By October, the group was working on requests related to Oman, St. Lucia, Mexico, Latvia, Uruguay, and Guatemala. Next term, SOGI plans to launch a searchable portal of past research on the IHRP website, and to set up a clearinghouse to summarize news stories related to LBGT refugee rights around the world.

Accountability for Mining Companies Overseas
The AMCO Group is partnered with KAIROS to create a guide for grassroots NGOs in developing countries who wish to access the review mechanism established by the new Corporate Social Responsibility for the Extractive Sector Counsellor's Office. This term, AMCO completed summaries of the international performance standards that will inform the CSR Office's review procedure (IFC Standards and Voluntary Principles on Security and Human Rights), as well as case summaries of complaints brought in regards to each specific performance standard.

After the CSR Office became operational in October, the group met with Dr. Marketa Evans, the CSR Counsellor, to discuss her Office's role, and some of the practical issues that the AMCO Guide will need to address. Next term, students will complete a full draft of a main section of the Guide, which will include: an overview of various grievance mechanisms, a list of practical and logistical issues for communities to consider, a detailed explanation of how to access the process, and an appendix of the condensed performance standards. The remainder of the term will be dominated by practical issues such as editing, design, publishing, promotion, distribution, translations, etc.

Globalization and Human Rights
Together with Professor David Schneiderman, the Globalization and Human Rights Working Group is working towards an empirical study analyzing the presence of human rights issues in international investment arbitration decisions. There are currently 34 students involved in this project, with each student assigned to code 4 to 5 arbitration decisions. These codes will then be input by a statistical student into the SPSS program to draw any correlation or causation results.

Over September and October, the Student Leaders set out to define the various human rights terms and worked with Professor Schneiderman to refine the coding methodology sheet. In October, they students ran two training sessions and, at the end of October, assigned students to code cases. The goal is to codify 5 years of data by mid-March and forward that information to a statistician to run the analysis by the end of the term.

Rights for Prisoners with Disabling Mental Health Issues
This term, the Working Group completed background research and drafted a preliminary memo that found that the Canadian prison system does not offer proper treatment for mental health problems and, in some circumstances, even exacerbates the problems. Early next term, the students aim to complete research on the relevant international human rights obligations and how Canada can be held accountable for any violations.

Clinic Files

Complaints to the Human Rights Committee by the Refugee Law Office
We are working on two files with the Refugee Law Office ("RLO"). One of the files involves a Convention Refugee who is being *refouled.* He has applied to the UN Human Rights Committee ("HRC") claiming denial of his right to life and family. The students are assisting the RLO in drafting their submissions, and also in terms of gathering evidence from his family and experts.

Report on Excessive Pre-Trial Detention in Uganda for Avocats Sans Frontiers
The students spent September getting up to speed on Ugandan criminal and constitutional law, and the international human rights obligations relevant to pre-trial detention. They received a database that compiled information from approximately 2000 prison intake reports and quickly determined that they would require the expertise of a professional statistician to analyze the data in a meaningful way. Professor Jerry Brunner in the statistics department generously offered his assistance pro bono. In the meantime, the students have prepared an outline for a final report which they are aiming to complete in early January. The next phase of the project will involve developing a test case litigation strategy based on our findings.

Ending Impunity for Violence Against Journalists in Mexico
We partnered with PEN Canada to consider possible international advocacy initiatives to end violence against journalists in Mexico. The students spent September and October reading background reports on the issue and analyzing recent government responses. The students quickly realized that they would be unable to proceed without examining the situation on the ground and making links to Mexican NGOs already engaged in work on the issue. In late October, the students travelled to Mexico City to meet with various stakeholders. Through these meetings, they learned about the myriad of international advocacy strategies that various NGOs are already pursuing and how the IHRP and PEN Canada might be able to support this ongoing work. They are completing a background report on the situation and responses to date. The students' second term practicum work willing likely focus on developing a means for us to partner with a Mexican NGO to support their current work on this issue.

Another major issue that the students revealed is the media's mischaracterization of the issue as purely related to drug cartel violence, and failure to expose the Mexican government's complicity in the rights violations. As a result, we are considering putting together a panel on this issue in the Spring.

Equality Effect's "3 to be Free" Marital Rape Campaign in Ghana
Our student spent the first half of the semester learning more about the issue of marital rape (including its unique cultural context in Africa) and researching various African public legal education campaigns aimed at violence against women. Through this work, she was able to focus on two discrete PLE projects for completion by the end of the term. First, she will prepare curriculum on legal reform to criminalize marital rape for a course on criminal law at the University of Ghana. Second, she will work with WIDO to identify and develop a PLE campaign aimed at rural women.

In the second term, our student will be working with Equality Effect and its African partners to determine a litigation strategy related to rape of young girls in Kenya through their "160 Girls Campaign". This will include travelling to Kenya for a conference. We will be hosting a roundtable on the campaign, and hopefully continuing work on the project next year.

Complaint to the Inter-American Commission for Human Rights
Our students have been assisting Andrew Brouwer, a lawyer at Jackman and Associates, with a complaint on behalf of a failed refugee claimant who fears torture if he is *refouled*. The students assisted Mr. Brouwer with drafting an interim measures request to the Inter-American Commission for Human Rights, and are currently conducting research that will inform the application on the merits.