

RIGHTS REVIEW

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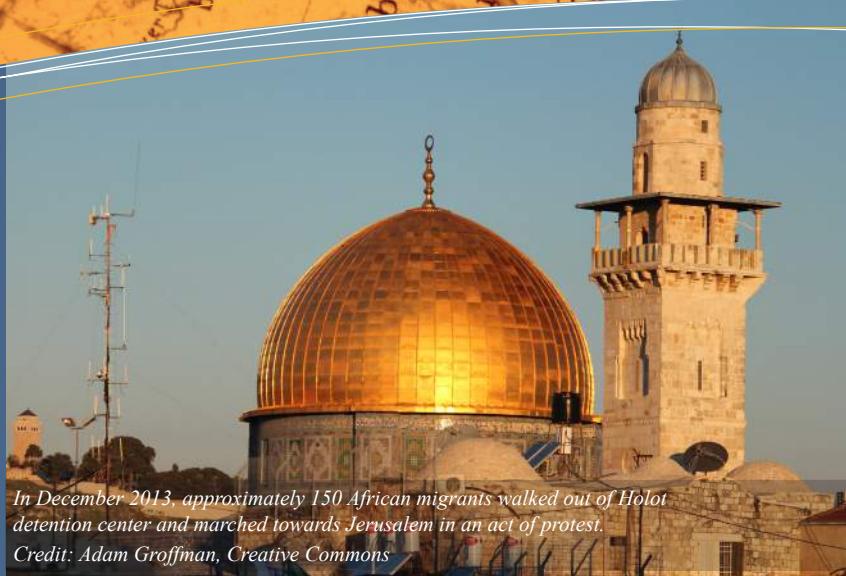
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In December 2013, approximately 150 African migrants walked out of Holot detention center and marched towards Jerusalem in an act of protest.

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ISRAELI LAW PERMITS INDEFINITE DETENTION OF ASYLUM SEEKERS IN “OPEN” PRISON

Lisa Wilder, third year student, Faculty of Law, University of Toronto

A law passed by a large majority in the Knesset (the Israeli Parliament) on December 10, 2013 allows asylum seekers in Israel to be detained indefinitely in Holot, an “open” detention center in the middle of the Negev desert. Under a previous law that was struck down by the Israeli Supreme Court in September 2013, asylum seekers could be detained in closed prison facilities for up to three years.

These legislative changes represent the latest development since Sudanese and Eritrean asylum seekers began entering Israel in large numbers in 2006. There are approximately 55,000 asylum seekers currently in Israel. Of those, 66 percent are from Eritrea, 25 percent are from Sudan, and 9 percent are from other countries. Asylum seekers primarily arrive on foot through Israel’s southern border with Egypt.

In January 2012, at the peak of the flow of asylum seekers into Israel, the Knesset passed an amendment to the *Prevention of Infiltration Law, 1954*, which granted authority to detain “infiltrators” for up to three years. The definition of infiltrator was amended to include any non-resident of Israel who

entered Israel illegally – namely, those who did not enter Israel through a designated border crossing. Consequently, almost all asylum seekers from Sudan and Eritrea fall under the definition of infiltrators because they arrived in Israel illegally.

In response to the amendment to the *Prevention of Infiltration Law*, a coalition of human rights organizations petitioned the Israeli Supreme Court. In Israel, government decisions can be directly appealed to the Supreme Court, since the Supreme Court can also sit as a court of first instance.

On September 16, 2013, the Court released its judgment on the petition, unanimously striking down the part of the law that allowed for three-year detention. In a lengthy decision, the nine justices on the panel held that the three-year detention period violated Israel’s *Basic Law of Human Dignity and Liberty* which enshrines the most basic human rights in Israel. Two of the nine judges suggested that while a three-year detention period was unconstitutional, a shorter period of detention might not be. The Court

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INTERNATIONAL
HUMAN RIGHTS
PROGRAM

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In mid-February, as the *Rights Review* editors were putting this issue to bed, I was on a research trip in India with two IHRP clinic students, Drew Beesley and Amy Tang. We were learning about freedom of expression issues in India, meeting with writers, artists, journalists, and members of government. (Read more about this project in Drew and Amy’s article on page 19). In our conversations, we talked about challenges to human rights and free expression in India, of course. But we also talked about the gradual erosion of rights in Canada, as well. It was an important reminder that protecting and advancing international human rights starts here, at home.

This issue of *Rights Review* examines challenges to human rights protections both in Canada and abroad. In their articles, Dharsha Jegatheeswaran and Catherine Thomas discuss Canada’s immigration and refugee system and how it works (or in some cases, doesn’t) to protect human rights, while Hanna Gros considers some of the challenges South Sudan has faced post-independence. There are also articles from IHRP working groups and clinic students, highlighting their projects from this past year and showcasing the broad range of advocacy and research being conducted by our students.

Many thanks to this year’s editors for their hard work and to all of the contributors for such fascinating reading. As the year draws to a close, I would also like to extend my thanks on behalf of the IHRP to all of our student volunteers and community partners for their commitment to the Program. It is due to their generosity that the IHRP is able to accomplish all that it does. I will be handing the keys to the IHRP back over to Director Renu Mandhane at the end of March, so thank you all for a terrific year and for making me a part of the IHRP family.

Carmen Cheung, Acting Director of the IHRP

FROM THE EDITOR'S DESK

Welcome to the 2014 Spring Edition of *Rights Review*! As we enter our seventh year of publication, we are excited to showcase the perspectives of U of T Law's budding human rights practitioners, scholars, and activists. In this issue, you will find a number of pieces on migrant issues, including the tragic deaths of African migrants crossing the Mediterranean Sea, and the troubling developments in Israel's so-called "anti-infiltration" laws. You will also find articles covering human rights developments in states in transition, including Iran under a new president, and South Sudan post-independence.

This past year, we have been privileged to work with Carmen Cheung, the IHRP's acting Director. Carmen joined us for this year from the BC Civil Liberties Association, and has shared invaluable insight and expertise with us. Her presence at the law school will be missed - but we are sure we will hear from her in *Rights Review* in the near future.

We would also like to take this moment to thank Carmen and Andrea Russell, our Faculty Editors, for their guidance and continued dedication to making this publication a success. We are also grateful to the tireless efforts (and long hours) put in by our student Editorial Board.

As we both approach the final weeks of our law school career, it is a time – inevitably – for reflection. Through the many years we have worked on *Rights Review*, we have seen the publication grow to become what it is today – a central part of the IHRP's work in the field of human rights. We are certain that a new generation of writers and editors will continue to tell stories about workers, migrants, detainees, activists and many more who are subject to – and fight against – human rights violations. We will surely be reading closely from wherever we are!

Sofia Ijaz and Teresa MacLean (third year students)



2013-14 Rights Review student Editorial Board. From left to right: Drew Beesley, Teresa MacLean, Sofia Ijaz, Dharsha Jegatheeswaran, Katie Bresner, Amy Tang.

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MIGRANT RIGHTS

THE RISK OF TORTURE FACED BY SRI LANKAN RETURNEES

Dharsha Jegatheeswaran, second year student, Faculty of Law, University of Toronto



MV Ocean Lady traveled from Sri Lanka to the west coast of Canada in 2009, not long before the MV Sun Sea in 2010
Credit: Michael Chu, Creative Commons

"I was tortured very badly in jail. I was punched and kicked in my face and body. I was beaten with plastic pipes and no food for many days. My body was thirsty for water and when I asked for water they beat me. They blindfolded my eyes and I was locked in a small cage with my hands tied up behind my back and no clothes for many days."

Sathyapavan Aseervatham was one of 492 Sri Lanka asylum-seekers who arrived in Vancouver aboard the “MV Sun Sea” in 2010. In July 2011, he became the first person from the ship to be deported back to Sri Lanka after he was deemed inadmissible due to his criminal record, which contained a gun smuggling conviction in Thailand. The quote above is from a notarized affidavit he signed in October 2012, a year after his return to Sri Lanka, during which time he was allegedly detained and tortured by

Sri Lankan intelligence officials. The affidavit only became public knowledge after his death (which some allege was a murder involving the military) in September 2013.

In 2009, the 30-year conflict in Sri Lanka between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) came to an end. However, since the end of the war, the country has descended further into authoritarianism, with the human rights situation continuing to be deplorable. Nonetheless, following the war, the Canadian government and judiciary seemingly adopted the view that the risk to Sri Lankan Tamil asylum-seekers had decreased in their home country, and between 2010 and 2012, 261 Sri Lankan asylum-seekers were deported.

Ironically, despite the Canadian government’s treatment of Sri Lankan asylum-

seekers, Canada has taken the lead on criticizing Sri Lanka’s human rights record. Notably, Prime Minister Stephen Harper led the movement to boycott the Commonwealth Heads of Government Summit hosted by Sri Lanka in November 2013, citing concerns about the human rights situation there during and after the war.

In the same month as Aseervatham’s death, Justice Harrington of the Federal Court issued a severe reprimand against Citizenship and Immigration Canada in *B135 v Canada (Minister of Citizenship and Immigration)* for failing to disclose Aseervatham’s torture to the courts, despite knowing of it since October 2012. Unfortunately, Aseervatham’s story is not unique, nor is it the first case of documented torture of a Sri Lankan returnee.

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HUMAN RIGHTS IN ERITREA: WHY TRAGEDIES LIKE LAMPEDUSA WILL CONTINUE

Sara Ghebremusse, LLM student, Faculty of Law, University of Toronto

On October 3, 2013, a boat capsized off the coast of Lampedusa, Italy. Over 350 African migrants died. Most were from Eritrea and Somalia.

Calls were made in the wake of the tragedy to reform Europe's immigration laws. Some argue that if migrants are able to file immigration applications closer to their home countries, they would not attempt the perilous journey to reach European shores. Such temporary solutions however ignore the root cause of the problem, namely, the human rights situation in the countries these migrants are fleeing from, particularly Eritrea.

Thousands of Eritreans have fled the country in recent years. As of mid-2013, Eritrea's total refugee and asylum population was over 300,000 from a population of approximately 6 million. In 2012, between 2,000 and 3,000 Eritreans fled the country each month, many to refugee camps in Ethiopia and the Sudan. This is in spite of the government's "shoot-to-kill" policy at the border. Once inside Ethiopia and Sudan, many also attempt the journey across the Sahara to Libya, Egypt, or Israel, paying smugglers thousands of dollars while facing the risk of kidnapping and extortion from those same individuals.

The extent and nature of the risks Eritreans are willing to face when fleeing suggest that the situation inside the country is bleak. Indeed, the UN Special Rapporteur on Eritrea, Sheila B. Keetharuth, described the situation in Eritrea to the UN General Assembly in October 2013 as "alarming... with extrajudicial killing, enforced disappearance and incommunicado detention, arbitrary arrest and detention, torture, inhumane prison conditions, indefinite national service, and lack of freedom of expression and opinion, assembly, association, religious belief and movement."

The human rights crisis grew steadily in the years following Eritrean's independence from Ethiopia in 1991 after a 30-year war.

Since that time, elections have not been held, the constitution (ratified in 1997) was never implemented, and the country remains under the power of a single party – the Peoples' Front for Democracy and Justice (PFDJ). The PFDJ operates under the leadership of Eritrea's only head of state in over 22 years, President Isaias Afewerki.

One of the most worrying characteristics of Eritrea's post-independence period is the high level of militarization. Since independence, Eritrea fought wars with both Yemen and Ethiopia, and was accused of invading Djibouti. The unresolved border conflict with Ethiopia keeps Eritrea in a heightened state of militarization, which has resulted in a system of indefinite forced military service for young Eritreans. While in the service, conscripts are subjected to harsh conditions, military punishment and torture. Evading military service is known to be a reason why many young Eritreans are fleeing the country. However, anyone caught attempting to evade conscription is subject to deplorable detention conditions and torture; their families are

also put at risk of facing heavy penalties.

Freedom of expression is also severely suppressed in the country, which has limited political engagement and vocal dissent. The independent press was banned in Eritrea in the early 2000s. Many journalists were imprisoned, and several still remain in state custody, their locations unknown. Year after year, Eritrea continues to be ranked last in press freedom surveys, behind such countries as North Korea, Burma, China, and Iran.

Migration is not unique to Eritrea; individuals from across Africa leave their countries in search of a better future. Those fleeing Eritrea however are not simply seeking a better tomorrow: they are escaping the deplorable conditions that characterize life in Eritrea today. If the world wants to see less tragedies like the one off the shores of Lampedusa in 2013, more has to be done to press for change within Eritrean borders. European immigration reform alone does not offer the long-term solution. ♦



Migrants arriving on the island of Lampedusa in August 2007

DISRUPTING THE DOMINANT NARRATIVE REGARDING CANADA'S TEMPORARY FOREIGN WORKER PROGRAM

Catherine Thomas, second year student, Faculty of Law, University of Toronto

Labour lawyer and human rights advocate Fay Faraday argues that, according to dominant discourse, temporary labour migration presents a “win-win-win” scenario. According to her report, “Made in Canada: How the Law Constructs Migrant Workers’ Insecurity,” released in partnership with the Metcalf Foundation, three parties benefit from temporary labour migration: (a) Canada, because Canadian employers are able to respond to domestic labour shortages by accessing a flexible labour force; (b) labour-exporting countries, because of remittances and the transfer of skills; and (c) individual migrant workers, because of higher incomes. However, as Faraday points out, this narrative is incomplete and obscures the significant gap between the patchwork of rights and duties that govern temporary labour migration in Canada, and the practical realities of those rights.

Canada’s Temporary Foreign Worker Program (TFWP) establishes specific requirements with which employers seeking to hire temporary foreign workers must comply. The TFWP recognizes several categories of workers, including agricultural workers, live-in caregivers, lower-skilled occupations, and higher-skilled occupations. Each category has different program requirements, wages, working conditions, etc. For instance, employers hiring workers as part of the Seasonal Agricultural Worker Program can only hire workers from certain countries, such as Mexico and a number of Caribbean countries. No such requirement exists for live-in caregivers. Despite the differences between the categories of employment, all temporary foreign workers are vulnerable to rights violations. This shared reality makes it possible to speak in general terms about certain issues facing many temporary foreign workers in Canada.

Part of the reason temporary foreign workers in Canada are particularly vulnerable is because the work permits they receive are “tied” rather than “open.” Tied work permits limit the worker to performing a specific job, for a specific employer, in a specific location, and for a specific period of time. Thus, tied permits inhibit a migrant worker’s ability to leave an employment situation where their rights are violated. If, for instance, a temporary foreign worker is paid less than the statutory minimum, or is forced to work long hours in conditions that jeopardize his or her health and safety, the worker is technically free to seek work elsewhere. However, temporary foreign workers are only legally entitled to work for another employer that has received a positive “labour market opinion” (LMO) from Human Resources and Skill Development Canada. This restrictive barrier, although important for the political viability of the Program, is a disincentive for workers who are put in a situation of instability and job insecurity.

For those who find another employer willing to hire them, the process to obtain a LMO decision can take up to six months to complete. Forgoing income in the interim is simply unfeasible for many migrant workers. This is only exacerbated by the fact that

many temporary foreign workers arrive in Canada already heavily indebted to recruiters. Relatedly, many migrant workers live in housing provided by the employer as a term of the employment contract. This is especially true for live-in care providers. If the present employment comes with housing, the consequences of leaving are that much more disruptive. These examples show the way in which particular vulnerabilities of migrant workers can render formal rights insufficient.

Temporary foreign workers who seek to enforce their rights while remaining in their current employment situation also face significant barriers. In Ontario, the *Employment Standards Act* (ESA), which provides minimum substantive protections for employees, creates a formal complaint mechanism for alleged rights infringements. Investigations are triggered by formal complaints brought by employees. Although nothing in the ESA prevents employees from filing complaints while employed, the practical reality is that non-unionized employees very rarely do so. A central reason for this is the pervasive power imbalance between worker and employer, especially in light of the latter’s dismissal powers. This imbalance is only worsened in the situation of temporary migrant workers who are ever-more vulnerable due to factors such as a lack of fluency in an official language, social exclusion, and most importantly perhaps, their dependence on the continuance of a work permit to preserve their legal status in Canada.

Manitoba provides an interesting example of a province which has found innovative ways to couple the short-term economic benefits of temporary migration with long-term development goals and meaningful respect for migrant rights. For instance, temporary workers who have worked in Manitoba full-time for at least six months, and whose employers have offered a full-time long-term job, are eligible to apply to be nominated by the Manitoba Provincial Nominee Program. The government expedites the processing of nominees’ Permanent Resident visa application, thereby providing swifter access to a greater bundle of rights. Faraday points to Manitoba’s *Worker Recruitment and Protection Act, 2008* (WRAPA) as another positive development. WRAPA is directly aimed at addressing the particular vulnerabilities faced by migrant workers, including a system to recover improperly charged recruitment fees, as well as greater oversight of employers through a mandatory registration scheme.

Despite instances of legislative innovation in specific provinces, there continues to be a more general lack of attention towards the need to remedy the deficiencies of Canada’s temporary foreign worker program. Before we can agree with the dominant narrative that the presence of a “flexible” and “temporary” workforce is a “win-win-win” situation, we must first address the precarious situation of those in the most vulnerable position – the workers themselves. ♦

UNAUTHORIZED IMMIGRANTS AND ACCESS TO HEALTH INSURANCE: DISCUSSION WITH NORMAN DANIELS

Michael da Silva, SJD Candidate, Faculty of Law, University of Toronto

In November 2013, the IHRP, along with the Health Law, Ethics & Policy Workshop Series and the Asper Centre for Constitutional Rights, co-hosted a talk by Professor Norman Daniels, Professor of Ethics and Population Health at Harvard School of Public Health. His lecture, entitled “The Ethical Basis for Excluding Unauthorized Immigrants from the *Affordable Care Act*,” was partly based on a draft paper co-authored with Keren Ladin.

Professor Daniels cast a philosophical lens on contemporary American health and immigration law and criticized the exclusion of unauthorized immigrants from the universal health insurance scheme under the controversial *Patient Protection and Affordable Care Act of 2010* (ACA, sometimes popularly referred to as ‘Obamacare’). Rather than using traditional human rights arguments, Professor Daniels argued for the inclusion of unauthorized immigrants based on the idea that community membership and reciprocity imply a “presumption of coverage.”

Reciprocity demands that everyone who contributes to a scheme of social cooperation deserves to see its benefits. Despite some popular misconceptions, unauthorized workers contribute to society in the form of labour, as well as the taxation of income derived from that labour. Further, in what Professor Daniels suggests is a “stronger argument,” those who do not

work still contribute to society in other ways. As such, these individuals are presumptively deserving of the same benefits as other community members – even without their shared status as citizens. As Professor Daniels explained in an interview prior to the event, “there is a large number of cooperating members in a society who needn’t be working – they might be unemployed, might never have worked, might have been disabled.... They might have been non-contributing in the work function, but arguably they are entitled to fair quality of opportunity in that society.” He added that by this logic, “longstanding community members such as unauthorized immigrants also are entitled to those benefits.”

These benefits to community members include access to health insurance under the ACA. As Professor Daniels said in our interview, “being an ongoing, contributing member (in the sense of working) is not the basis for being entitled to health care.” He pointed to the example of elderly individuals: “Many elderly are not working and yet they have health needs greater than the working population.... One couldn’t make sense out of including health care for the elderly, let alone people with disabilities that keep them out of work...[without] a broader view of every one being entitled to something like fair equality of opportunity.”

Professor Daniels believes that the exclusion of unauthorized immigrants from the ACA actually undermines the law’s purported justifications. In his view, “one of the reasons for supporting the ACA is the idea that it’s a step towards universal coverage in the US.... This principle or condition is supported by concerns about social justice.” The goal of achieving universal coverage is undermined by the large number of exclusions under the ACA: “The ACA, in accepting this exclusion of undocumented or unauthorized immigrants, had a large exclusion of 12 million people – bigger than the country of Norway. This is not a minor population that is being excluded. It undercuts the idea that this intended to be a step towards universal coverage.”

Although Professor Daniels did not use a human rights approach to advocate for a more inclusive healthcare regime, he said that he “would welcome efforts to show that exclusions of the sort that we see in the US are not defensible in terms of international law.” Ultimately though, in his view, without much-needed political will for such reforms, it is difficult to imagine a day when the ACA will be brought in-line with either human rights or broader social justice norms.

A recording of this event is available at <http://www.law.utoronto.ca/events/health-law-ethics-policy-workshop-speaker-norman-daniels.◆>

Interested in contributing to Rights Review?

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ISRAELI LAW PERMITS INDEFINITE DETENTION... (*Continued from page 1*)

struck down the three-year detention period and ordered the government to examine the cases of all asylum seekers in detention at the time according to the previous law governing illegal immigrants.

Any celebration of the decision was short-lived. In response to the judgment, the governing coalition (led by Prime Minister Benjamin Netanyahu) rushed a new amendment through the Knesset, which came into effect on December 10, 2013. The new amendment reduced the period of detention of infiltrators from three years to one year – an improvement from the former law. However, the new law also authorized the indefinite detention of infiltrators in a partially open facility.

“Open” however may not be an accurate description of the new facility. The facility is located in a remote part of the Negev desert. Detainees are allowed to leave, but they are required to check in three times a day and return at night. According to Knesset legal adviser, Eyal Yinon, the new law would not likely be approved by the Supreme Court because the open detention center is too similar to a prison – labelling it “open” does not make it so.

Human rights organizations in Israel were also highly critical of the new amendment. The Association of Civil Rights in Israel called the new amendment even more unconstitutional than the previous. Within five days of the new amendment coming into effect, a coalition of organizations filed a new petition challenging the amendment.



Credit: Ben Kelmer, Physicians for Human Rights - Israel, Creative Commons

Eritrean asylum seekers protesting in Tel Aviv, Israel

At the same time, the Israeli Prison Service began transferring asylum seekers in existing detention centres to the new “open” facility. To protest their detention in the new facility, approximately 150 men walked out on December 15, 2013 – and kept walking. The men walked in the desert for two days until they reached Jerusalem, where they were arrested and returned to detention.

The detainees’ march of protest was the beginning of a series of protests that gained widespread media attention in recent weeks.

Beginning on January 4, 2014 tens of thousands of asylum seekers, joined by some Israelis, participated in a series of protests in Tel Aviv. Hundreds of protesters also took buses to Jerusalem to protest in front of the Knesset.

In the ongoing dialogue between Parliament and the Supreme Court, asylum seekers may have the last word, as they protest, go on hunger strikes, and voice their opposition to the denial of their rights. ♦



Credit: Ben Kelmer, Physicians for Human Rights - Israel, Creative Commons

Eritrean asylum seekers protesting in Tel Aviv, Israel

CORPORATE SOCIAL RESPONSIBILITY

A CALL FOR ACTION: CANADA AND THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Daniela Chimisso dos Santos, SJD candidate, Faculty of Law, University of Toronto

On November 1, 2013, for the first time, the Inter-American Commission on Human Rights (the Commission) of the Organization of American States addressed in a public hearing the responsibilities of “home states” for the activities of mining companies in the Americas. In contrast to the “host state,” where the mining operations take place, the home state is where a corporation’s headquarters are located. At the hearing, Canada was a central focus of the petitioners. The hearing, titled “Human Rights of People Affected by Mining in the Americas and Mining Companies’ Host and Home States’ Responsibility,” took place in Washington DC, with many NGOs and other interested organizations taking part.

In 2008, over 75 percent of the world’s exploration and mining companies were headquartered in Canada, with investments by these companies in over 100 countries around the world. In Latin America, Canadian mining companies account for more than 60 percent of total mining in the region, and in 2012 the estimated mining revenues flowing from Latin America were US\$19.4 billion. It is not surprising that *The National* called Canadian mining companies “the New Conquistadores.”

The question raised by petitioners at the Commission hearing was whether Canada, as a mining powerhouse, should take responsibility for human rights violations by mining companies headquartered in its territory. According to petitioners at the Commission hearing, the Canadian government’s economic, financial and political support for its mining companies has “crossed a line.” They urged discussions on the ethical and moral limits of “the intervention of Canadian government representatives in the elaboration and/or modification of national laws on mining and environmental matters in several of the countries” in the region.

The petitioners presented the results of a three-year study of 24 cases of human rights violations throughout Latin America, including Argentina, Brazil, Chile, Colombia, Guatemala, El Salvador, Mexico, Peru, and Panama. The petitioners consisted of representatives from a diverse group of interests such as Brazil’s Justiça Global, Due Process of Law Foundation of Washington DC, and Centro de Promoción y Desarrollo of Honduras.

Unlike the Inter-American Court of Human Rights (the Court), which only accepts petitions from member states or by the Commission, the Commission may accept petitions from individuals alleging breaches of the *American Convention on Human Rights* (the Convention). The Commission may refer or recommend a case to the Court for a binding decision on the matter. In addition, the Commission can make recommendations to the government of the member state which committed the alleged breach. For example, it can recommend the adoption of progressive measures in favour of human rights within the framework of domestic law and

constitutional provisions.

A panel of three commissioners heard the petition: José de Jesús Orozco Henríquez, Rose-Marie Belle Antoine, and Dinah Shelton. Mr. Henríquez requested precedents to be included in the written material, but the petitioners acknowledged none would be brought forward because their request was an expansion of existing interpretations of the Convention. Ms. Shelton also asked questions about the limits of the legal test of “effective control,” requiring the home state to have effective control of non-state actors, and whether it could be stretched as far as the petitioners requested. An example was whether home state liability for non-state actors could be imposed on Canada for acts undertaken by Canadian tourists. In other words, where does international law draw the line with regards to the liability of non-state actors?

It is important to note that Canada has not yet ratified the Convention. This is in spite of a recommendation to Parliament in 2003 by the Standing Senate Committee on Human Rights “that the Government of Canada take all necessary action to ratify” it by July 18, 2008. Reasons raised by the Canadian government for not ratifying the Convention included the fact that the Convention regulates matters of provincial jurisdiction; as such the Federal government could not proceed without support from the provinces.

The hearing before the Commission begs the question of whether Canada should reconsider its position on the Convention. In light of the slogan of Canada’s Department of Foreign Affairs, International Trade and Development – “The Americas: Our Neighbours, Our Priority” – should Canada review how it treats its neighbours, especially in respect of the damages caused by Canadian mining companies abroad? From an economic standpoint, Canada is benefiting from such activities, since six of its ten free trade agreements in force are with Latin American countries. Perhaps the time has come for Canada to harness the economic power of its mining companies in order to ensure accountability for human rights violations.

The Commission is expected to publish its recommendation in the near future. In the meantime, the question remains whether Canada will take responsibility for, and not simply reap the economic benefits from, its position as a global mining leader.

A video of the November 1, 2013 public hearing on mining by the Inter-American Commission on Human Rights of the Organization of American States can be viewed on Youtube (Title: “Audencia: Situación de derechos humanos de las personas afectadas por la minería en las Américas y responsabilidad de los Estados huéspedes y de origen de las empresas mineras”; Author: ComisiónIDH): <https://www.youtube.com/watch?v=6M7gXIsnfCQ>. ♦

INDIGENOUS PEOPLES IN COLOMBIA: THE THREAT OF ARMED CONFLICT AND THE ROLE OF CANADIAN MINING COMPANIES

Alison Mintoff, second year student, Faculty of Law, University of Toronto

In 2009, the Constitutional Court of Colombia (the Court) handed down a landmark ruling in which it found that more than one third of the country's Indigenous groups are threatened with "physical and cultural extermination." The very survival of Indigenous peoples in Colombia has been threatened by the ongoing armed conflict plaguing the nation for decades. The statistics are staggering: of the over 100 Indigenous groups in the country, 66 have been formally declared as being at high risk of disappearance, and 36 are at risk of extermination by the armed conflict and forced displacement.

Colombian Deputy Justice Federico Guzmán Duque helped author the Court's 2009 decision. On February 3, 2014, he

spoke at the University of Toronto Faculty of Law about the crisis facing Indigenous peoples in Colombia, and Canada's role as the home country for major mining companies operating in Colombia. Canada, Duque said, has an obligation to take action based on its close economic ties to Colombia. According to Duque, Canadian corporations benefit from the abuses inflicted on Indigenous peoples, including a systematic campaign to displace them and to grant mining concessions on their land.

Colombia is home to more than 100 different, culturally distinct Indigenous groups with a combined population of approximately 1.5 million persons. These groups have developed diverse and sustainable ways of living, sophisticated legal systems,

and a long history of political organization and empowerment. Despite these strengths, Indigenous communities are vulnerable due to a "legacy of centuries of subjugation and dispossession, which continues today."

In his presentation, Duque traced the recent history of the Colombian armed conflict, and painted a complex and violent picture of the abuses affecting Indigenous peoples in a disproportionately harsh manner. The parties to the conflict – namely, the Colombian armed forces, ultra-right paramilitary groups, and leftist guerillas (such as the FARC and ELN) – have all been involved in crimes against Indigenous peoples. The result has been violent incursions into Indigenous-owned land, forced internal

(Continued on page 24)

Credit: Dawn Paley, Creative Commons



Canadian mining companies have a presence throughout Central and South America. The above photo was taken during a fact-finding mission into the case of Blackfire Exploration Limited, a Calgary-based company that obtained mining concessions in Chiapas, Mexico in 2005. For further information, see the Mining Watch report: "Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy," available online at: http://www.miningwatch.ca/sites/www.miningwatch.ca/files/blackfire_embassy_report_eng_0.pdf

TEXTILE TRAGEDY: BEYOND RANA PLAZA

Bhuvana Sankaranarayanan, third year student, Faculty of Law, University of Toronto



Credit: Andrew Birai, Creative Commons

A relative holds a picture of a missing garment worker who was working in Rana Plaza when it collapsed in Savar, Bangladesh

For low-income Bangladeshi workers in the textile industry, an industry plagued by safety failures and factory disasters, the November 2013 increase in minimum wage was much needed. However, recent surveys indicate that this wage increase has been denied to many of the workers who form the backbone of the Western world's clothing supply chain. Nearly 40 percent of textile factories in Dhaka, and many more in Chittagong, are failing to pay the new minimum wage of \$68 per month, according to figures released by the Bangladesh

Garment Manufacturers and Exporters Association.

In April 2013, the eight-story Rana Plaza complex in a sub-district of Dhaka, which housed several factories manufacturing clothing for American and European companies, collapsed, killing over 1,100 people. It is considered the deadliest accident to date in the garment industry. In 2012, a fire at Tazreen Fashions killed more than 110 people. Prior to that, in December 2010, another clothing factory fire killed

at least 25 people in Dhaka. With ubiquitous Western retailers like Walmart, Gap, and H&M relying increasingly on clothing manufactured at potentially unsafe factories, safety regulations in the developing world are increasingly scrutinized. Although there have been attempts at improving working conditions, including the 77 percent increase in minimum wage this past November and legislated safety regulations, meaningful change has yet to come.

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FALSE HOPE? THE PLIGHT OF POLITICAL PRISONERS UNDER IRAN'S NEW LEADERSHIP

Roxana Parsa, first year student, Faculty of Law, University of Toronto

In June 2013, Hassan Rouhani became the surprise victor of the presidential elections in Iran. His win created a feeling of hope after a long period of discontent amongst the Iranian population regarding his predecessor, Mahmoud Ahmadinejad. Rouhani ran his campaign on the basis of “moderation,” calling for more transparency and promising reform within international and domestic arenas. In his campaign statements, he called for the protection of personal freedoms and human rights within Iran, especially for political prisoners. While there have been glimpses of progress, the new leadership has been slow to improve Iran’s domestic human rights situation. The ill-treatment and ongoing detention of political prisoners remain of central concern.

Although Rouhani has had diplomatic successes in the area of foreign policy, the same cannot be said on the domestic front. Despite the fact that judicial affairs are generally beyond the scope of the president’s powers within the Iranian political structure, Rouhani still has the ability to advocate for fair trials and the rights of prisoners. Currently, hundreds of political prisoners remain in jails throughout Iran, many of whom are journalists, lawyers, activists, or members of opposition political parties. Others were detained

following the disputed 2009 presidential election, which saw mass protests (commonly termed the “Green Revolution”) in support of the opposition candidate, Mir Hossein Mousavi.

Many hoped that under Rouhani’s presidency, efforts would be taken to expand political freedoms. Though progress overall has been slight, on the eve of Rouhani’s visit to the UN in September 2013, 11 prominent political prisoners were unexpectedly released. Among the released prisoners was Nasrin Sotoudeh, a prominent human rights lawyer in Iran who was jailed for allegedly “endangering national security” and “misusing her profession as a lawyer.” Other released prisoners included Feizollah Arab-sorkhi, a reformist political activist and former Deputy Minister of Commerce, and Mahsa Amrabadi, a journalist who worked for an opposition newspaper.

While the prisoner release may be seen as a positive step, its timing may suggest otherwise. Rather than an indication of genuine political reforms, the strategically timed release suggests that it

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Thousands gather in Axadi Square in Tehran to show support for 2009 presidential candidate, Mir Hossein Mousavi
Credit: Wikimedia Commons

ENDING THE “WAR ON TERROR” - AN IHRP PANEL DISCUSSION

Dharsha Jegatheeswaran, second year student, Faculty of Law, University of Toronto

In May 2013, US President Barack Obama gave a speech at the National Defense University in which he pledged a winding down of the “war on terror” and a narrowing of its scope. This past November, the IHRP organized a panel of experts to discuss the important question that this speech gave rise to: is it possible to end the “war on terror”? The panel was moderated by UofT Law’s Kent Roach and featured David Cole, professor of law at Georgetown University; Sarah Knuckey, Research Director at the Centre for Human Rights and Global Justice at the New York University School of Law; and Wesley Wark, visiting professor at the University of Ottawa Graduate School of Public and International Affairs and Associate Professor of History at UofT. The panelists provided a variety of perspectives on the so-called war on terror and how (or if) it will come to an end. This article highlights two of the key issues debated and discussed by each of the three panelists: the threat (or non-threat) of al-Qaeda and the issue of drone strikes.

Is al-Qaeda still a threat?

A central point in Obama’s speech was the need to define the scope and targets of this “war.” While stating that the US still had to “defeat” al-Qaeda, Obama outlined the current threat of terrorism against the US as broader. It includes the “lethal yet less capable al-Qaeda affiliates; threats to diplomatic facilities and businesses abroad; [and] homegrown extremists.”

All three panelists agreed that setting boundaries limiting the scope of the “war on terror” was imperative, but disagreed on what exactly the current threat of terror was. According to Wark, the threat of al-Qaeda no longer exists; rather, al-Qaeda served merely as a “bogeyman” distracting attention away from other pressing non-terrorism related threats in the world, such as cyber-security, global climate change, and global espionage. Cole and Knuckey,

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Credit: DoD Photo by Chad J McNeeley, Released, Creative Commons

US President Barack Obama at the Pentagon

SOUTH SUDAN POST-INDEPENDENCE: "WHEN ELEPHANTS FIGHT, IT IS THE GRASS THAT SUFFERS"

Hanna Gros, first year student, Faculty of Law, University of Toronto

South Sudan gained its independence in 2011, after decades of civil war between the Sudan People's Liberation Movement (SPLM, now the ruling party in South Sudan) and the Sudan Armed Forces. However, not even three years later, the South Sudanese are encountering a crisis that many fear is escalating into civil war. In July 2013, President Salva Kiir dismissed Vice President, Kier Machar, along with other senior government officials. In December, Machar responded with an alleged coup attempt, and soon after, fighting broke out between government forces and troops loyal to Machar. After thousands of deaths and even more displacements within a matter of weeks, peace talks began in Addis Ababa.

In early January, I had the privilege of speaking with Laku Bil, a South Sudanese political activist and refugee. Bil was born in South Sudan, and fled to Khartoum during the civil war. He was educated in the north, and became a journalist for opposition newspapers, where he earned a reputation for his fierce activism for human rights. After numerous threats, detainments, and the assassination of his close friend and colleague, Bil fled Sudan and sought refuge in Canada in 2004.

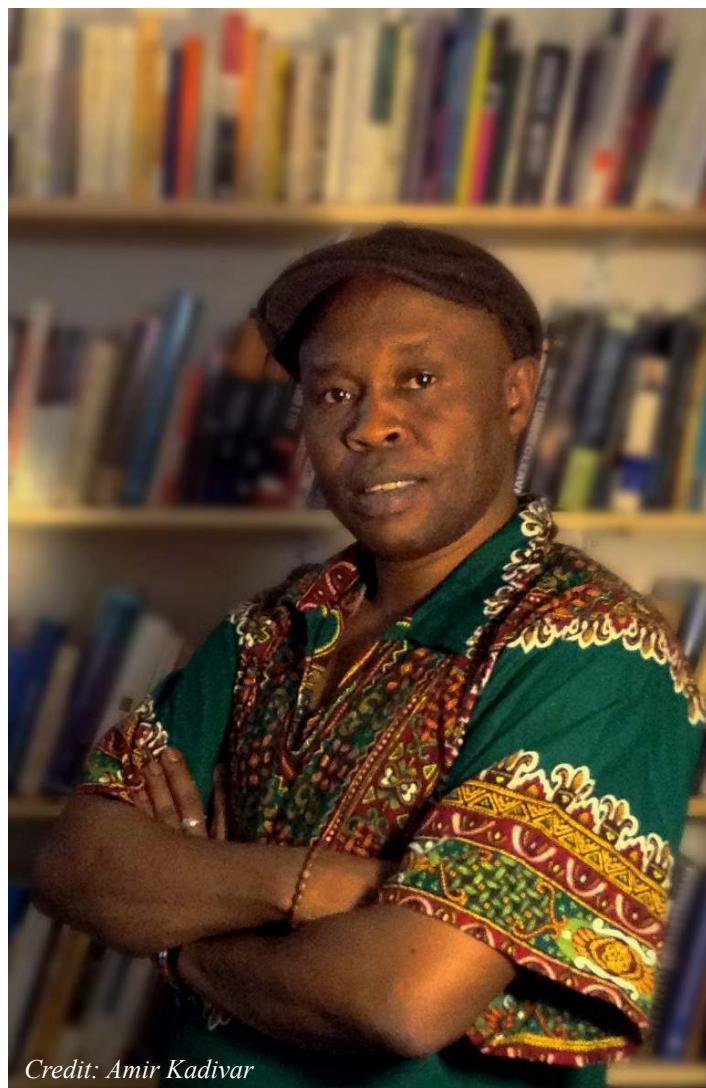
In discussing the current escalation in South Sudan, Bil emphasized that the situation is far from being a simple ethnic conflict, and requires a more analytical evaluation. However, because the media faces many challenges in effective reporting on the conflict, accurate information (necessary for such an evaluation) is hard to come by. South Sudanese journalists continue to face heavy government censorship and work at great personal risk, while Western journalists, parachuted into the conflict zone, often lack the contextual understanding needed for accurate reporting. To make things worse, politicians often exploit the lack of press freedom in order to portray the conflict in ways that serve their interests. Ultimately, according to Bil, "the story is simplified, with great consequences for the local population."

The current crisis arose out of a deeply rooted power struggle within the SPLM. The struggle worsened between President Kiir and former Vice President Machar, particularly after Kiir dismissed Machar, along with other senior political leaders, in July 2013. The dismissal destabilized the party and undermined its accountability. Kiir and Machar are from the two largest ethnic groups in South Sudan, Dinka and Nuer respectively, and have significant support from these groups. Each have accused the other of inciting ethnic conflict. According to Bil, this "politicization of ethnicity can have profoundly serious consequences," and is particularly problematic because, before this crisis (and post-independence), "the common South Sudanese suffered most not from ethnic tensions, but from poverty, disease, and lack of education." The politicians' framing of the conflict along ethnic lines can deepen divides, infuse the crisis with a sense of inevitability, and (like most violent conflicts)

shift attention away from the problems that the South Sudanese commonly face.

Bil emphasized that the political struggle must be understood against the backdrop of the process of state building. Although there is a progressive constitution in place, it is profoundly difficult to implement its ideals in a state that lacks the pre-conditions to democracy: namely, respect for the rule of law, a genuine and transparent judicial system, and an independent press and civil society. According to Bil, the SPLM leadership failed to recognize that "the ideology used to unite South Sudanese against the common adversary

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Credit: Amir Kadivar

Laku Bill, a South Sudanese journalist, political activist, and refugee

ARGENTINA'S "DIRTY WAR" AND THE SEARCH FOR ACCOUNTABILITY

Kaitlin Owens, second year student, Faculty of Law, University of Toronto

In October 2013, the IHRP hosted a panel discussion entitled “A long path to justice: Firsthand accounts from survivors of Argentina’s ‘Dirty War’ and a 30-year search for accountability.” The panel featured Rosa Gomez and Antonio Savone, two survivors of the “Dirty War.” Lorne Waldman, a prominent Canadian human rights lawyer, moderated the panel. The following article is based on the discussion during this event.

In 1976, the Argentine military took control of the country and instituted military rule. From 1976 to 1983, a period known as the “Dirty War,” an estimated 30,000 people were “eliminated.” In most cases, they became “desaparecidos”: the disappeared. Individuals deemed “subversive,” often as a result of their political, social, religious, economic and/or cultural backgrounds, were abducted, held in detention, tortured and never seen again.

To Lorne Waldman, one of Canada’s lead-

ing human rights lawyers, the term “Dirty War” is a misnomer. It suggests that there were two sides fighting, when that was in fact never the case. As survivors of this so-called war, Rosa Gomez and Antonio Savone know this better than most.

Gomez was 26 years old and living with her partner and their three month old son when security forces abducted her. Her partner was taken the same day, and became one of the disappeared. Gomez spent nine months in a cell, and was tortured and raped by her captors. She says that “torture, electric shocks fade over time. The rape never goes away.” Gomez was released in 1980. Although she reported her rapes in an attempt to secure justice, no prosecutor would take her case because she did not know the names of her rapists.

Security forces also abducted and tortured Savone. He spent 112 days in a tiny cell, across the hall from where Gomez was imprisoned. Eventually, security forces put

him on trial in front of a military court, accusing him of arms possession. His defence lawyer was given only 10 minutes to speak. The court declared Savone incompetent, and sent him back to jail

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Mural in Plazuela Bomberos Voluntarios painted in 2011 by Lucas Quinto and Professor Leonardo Retiman. The walls pay tribute to las Madres de Plaza de Mayo
(Credit: Hamed Saber, Wikimedia Commons)

SOUTH SUDAN POST-INDEPENDENCE... (Continued from page 15)

of the north is no longer viable post-independence.” Having gained their knowledge and expertise primarily on the battlefield, “many South Sudanese leaders lack the frame of reference necessary to establish a strong basis for a civil society.” In order to be effective, the “SPLM must undergo a process of democratization, and transform from a revolutionary movement into a civil political force.”

While it is important to accurately identify the political struggle as the root of this crisis, the reality of ethnic violence cannot be sidelined. Hilde Johnson, the head of the United Nations mission in South Sudan, reported that there is “evidence of ethnic [violence] or targeting of South Sudanese citizens on ethnic grounds,” mainly between Dinka and Nuer. By mid-January, the UN estimated that 468,000 people had fled their homes, and up to 10,000 people were feared to have been killed.

International support is necessary to prevent South Sudan from becoming yet another breach of the global promise to “never again”

idly stand by in the face of mass atrocity. However, the most critical solutions must arise domestically. According to Bil, while ethnic tensions have clearly become the focus of both the media and politicians, “South Sudanese leaders must internalize a paradigm shift towards uniting their citizens against the common challenges found in poverty, disease, and lack of education.” Most importantly, as Nelson Mandela so eloquently articulated: “Hating clouds the mind. It gets in the way of strategy. Leaders cannot afford to hate.” It is essential that SPLM leaders prevent their political differences from disintegrating into ethnic rivalries.

An East African proverb says, “When elephants fight, it is the grass that suffers.” South Sudanese are once again the grass beneath the feet of belligerent leaders. South Sudan’s independence was not the final destination in the nation’s walk to freedom. The sooner political leaders internalize their new mission, the sooner the grass across South Sudan will be able to grow into the democratic state its constitution envisions. ♦

RECRIMINALIZING HOMOSEXUALITY IN INDIA

Amy Tang, second year student, Faculty of Law, University of Toronto

On December 11, 2013, the Supreme Court of India, in a disappointing and regressive decision, upheld the validity of section 377 of the *Indian Penal Code* (IPC) and set aside the Delhi High Court judgment that had decriminalized adult consensual same-sex conduct.

Section 377 of the IPC reads:

"Unnatural offences. – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

In 2001, Naz Foundation (India) Trust, represented by Lawyers Collective, challenged the constitutional validity of section 377 on the ground that it violated the following rights under the Indian Constitution: the right to privacy, dignity and health (Article 21); the right to equality and non-discrimination (Articles 14 and 15); and the right to freedom of expression (Article 19 (1)(a)).

The Delhi High Court in 2009 ruled that section 377 violated Articles 14, 15 and 21 of the Constitution as a result of its criminalization of consensual sex between same-sex adults. In reaching this decision, the High Court recognized the crippling effect of section 377 on HIV/AIDS prevention efforts, which are driven underground as a result of the provision. While on its face, section 377 is applicable to individuals of all sexual orientations, the provision has perpetuated discriminatory attitudes, abuse, and harassment of specific groups, and has impeded access to health services and information.

Following the High Court judgment, 15 Special Leave Petitions were filed in the Supreme Court appealing the decision. One of the interveners argued that section 377 was gender neutral and thus no particular class was targeted. Another intervenor claimed that allowing homosexuality

would detrimentally affect India's social structure. India's central government, however, did not appeal the judgment, and, in 2012, the Attorney General stated that the government found no legal error in the High Court ruling.

The Supreme Court bench of Justice G.S. Singhvi and Justice S.J. Mukhopadhyaya has now overruled the Delhi High Court and has chosen to defer to the government to amend the law. Their judgment emphasizes the low rate of prosecution under the impugned provision and asserts that only "a minuscule fraction of the country's population constitute lesbians, gays, bisexuals or transgenders." Moreover, the Supreme Court goes on to say that "the mere fact that the section is misused by police authorities and others is not a reflection of the vires of the section." As such, in their view, the Delhi High Court had no sound basis for declaring section 377 to be unconstitutional.

The Supreme Court judgment has been harshly criticized for over-looking the ways in which section 377 can be used to threaten, harass, and blackmail the LGBT community. Anand Grover, Senior Counsel and Director of Lawyers Collective, represented Naz Foundation in both the Delhi High Court and the Supreme Court. At the time of the ruling, he stated "I am extremely disappointed with the judgment. The Supreme Court has taken 21 months to tell the lesbian, gay, bisexual and transgender persons that they are criminals in the eyes of the law. The movement for LGBT equality is unstoppable, rooted as it is in the dignity and resilience of the LGBT persons."

The Indian government and Lawyers Collective sought review of the Supreme Court judgment; in India, a Supreme Court decision can be reexamined through a review petition or a curative petition, if the former is dismissed. Unfortunately, both review petitions were dismissed in January 2014. Lawyers Collective now intends to file a curative petition.

The struggle for LGBT rights continues in India with persistence and a steadfast determination to fight for equality. People around the world have expressed their outrage and solidarity online and in protests. At a section 377 Verdict Press Conference hosted by Lawyers Collective, LGBT rights activist Gautam Bhan declared "[o]ur rights come to us from our sense of dignity, our sense of self, our sense of humanity. No single judgment has the ability to take that from us." When asked whether it is daunting to fight the Indian Supreme Court, Bhan responded, "[d]o you know what's daunting? It is that moment when you are 15 and you are terrified of who you are. If we have survived that, the Supreme Court does not know what fear looks like." ◆



Credit: Hamed Saber,
Wikimedia Commons

Protesting section 377 of India's Penal Code

IHRP CLINIC PROJECTS

The IHRP clinic provides experiential learning opportunities for students and exposes them to the practice of international human rights law. It focuses on professionalism and the tools of international human rights advocacy, including research and fact-finding, litigation in domestic and international forums, grass-roots mobilization, and media engagement. The clinic encourages critical reflection on international human rights lawyering, including exploration of legal, procedural, strategic, ethical and theoretical issues. Wherever possible, the course provided students with the opportunity to interact with international human rights advocates.

HUMAN RIGHTS VIOLATIONS BROUGHT HOME: KAZEMI ET AL V REPUBLIC OF IRAN ET AL

Megan Pearce, IHRP Clinic Student, LLM student, Faculty of Law, University of Toronto

For most Canadians, the possibility that torture would ever touch their lives is unimaginable. However, in 2003, Zahra “Ziba” Kazemi, a dual-citizen of Canada and Iran, was tortured, beaten and sexually assaulted by Iranian prison authorities. Kazemi, a photojournalist, was arrested while taking pictures of protesters near Evin prison in the capital city of Tehran. She suffered internal bleeding and a brain injury as a result of the beatings. Eventually, she was taken to a military hospital where she was in a coma. She died shortly thereafter.

Kazemi’s son, Stephan Hashemi, brought a civil claim before the Quebec Superior Court (QSC) in June 2006 against the government of Iran, the Iranian Supreme Leader, the Chief Public Prosecutor, and former Deputy of Intelligence for Evin Prison (the Defendants) for damages arising out of his mother’s abuse, sexual assault, torture and death in Iran. Hashemi brought his claim in his own capacity and on behalf of his mother’s estate (the Plaintiffs). In their response to the claim, the Defendants argued that, under Canada’s *State Immunity Act* (SIA), Canadian courts did not have jurisdiction to hear the claim or to grant relief. Specifically, they argued that section 3 of the SIA prohibits, as a general principle, proceedings from being brought in Canadian courts against any foreign state.

The QSC examined a number of issues to determine this jurisdictional question. The QSC confirmed that the SIA codified the principle of state immunity within Canada, and that there existed no implied exceptions to such immunity in cases of torture in a foreign state. However, the

SIA contains some statutory exceptions, including for death and personal or bodily injury that occurs in Canada. The QSC held that Hashemi’s psychological and emotional trauma could amount to “bodily injury” and therefore allowed this part of the claim to proceed. The QSC affirmed the constitutionality of the SIA, finding that Act does not deprive the Plaintiffs of their fundamental rights; rather, it simply bars proceedings from taking place in Canada. Thus, the QSC held that barring a civil claim for damages does not amount to a violation of constitutional rights.

The Defendants appealed to the Quebec Court of Appeal (QCA), which rejected the lower court’s finding on personal injury. The QCA held that psychological and emotional trauma did not amount to “personal injury.” However, the QCA agreed with

the lower court that the SIA was constitutional, and thus dismissed the entirety of the claim. Hashemi subsequently appealed the QCA’s decision to the Supreme Court of Canada (SCC), which is set to review the case in March 2014.

Hashemi’s claim before the SCC rests on a constitutional argument, namely, that the SIA violates both section 2(e) of the *Canadian Bill of Rights*, which protects the right to a fair hearing, and section 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*), which protects the right to life, liberty, and security of the person. The SCC must consider whether these constitutional guarantees are violated by the SIA insofar as it prevents Hashemi and his mother’s estate from being able to seek a civil remedy against Iran in Canada.

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Credit: Marc Lostracci, Wikimedia Commons



SILENCED: LIMITS TO FREE EXPRESSION IN THE WORLD'S LARGEST DEMOCRACY

Amy Tang and Drew Beesley, IHRP Clinic Students, second year students, Faculty of Law, University of Toronto

India has undertaken to protect freedom of expression under Article 19(1)(a) of its own Constitution and has ratified the *International Covenant on Civil and Political Rights*. Despite these commitments, Reporters Without Borders' 2013 Press Freedom Index ranked India 140th out of 179 countries due to increasing impunity for violence against journalists and growing Internet censorship. Amidst the many cultures, religions, languages, and ethnicities that make up the Indian subcontinent's pluralistic society, there are inevitable challenges to freedom of expression. Some non-state actors are unwilling to hear from alternative religious, political, social, and cultural perspectives. It is not uncommon to express discontent with another's opinion in India by way of individual or group violence and intimidation.

However, it is the country's legal landscape that facilitates intolerance by allowing the powerful and ordinary alike to curb speech. These laws are often broadly drafted to effectuate direct or indirect censorship. Human rights organizations have reported on the use of sedition laws to arrest human rights defenders, artists and activists. For example, in September 2012, a freelance cartoonist was arrested and charged under section 124A, the law which defines sedition in the *Indian Penal Code* (IPC), for his satirical cartoons criticizing political corruption. Other provisions in the IPC criminalize expression which promotes "disharmony or feelings of enmity, hatred or ill-will" between different groups on grounds of "religion, race, place of birth, residence, language, caste or community."

Expression that has the intention of promoting hard feelings between classes is criminalized under sections 153A and 153B. There is no defence of truth for these crimes. Sections 295A and 298 prohibit "deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion" or "uttering words, etc, with deliberate intent to wound religious feelings." These provisions are often invoked to silence speech, leading to immediate arrests and protracted court proceedings.

Legal restrictions on Internet content are also on the rise, with recent legislation permitting the government to block content that, in its view, can endanger "public order or national security." Under the *Information Technology Act*, the central government possesses sweeping powers to shut down websites or censor content for such vague justifications as being "grossly offensive" or having a "menacing character." In recent years, authorities have repeatedly used the law to arrest people for posting comments on social media that are critical of the government, and to pressure both websites and intermediaries to filter or block content by imposing liability.

India's *Contempt of Courts Act* has also been used to insulate the judiciary from criticism by criminalizing any speech that "tends to scandalize" or "tarnish" the image of the court. It has been levelled

against journalists and publishers who criticized the Chief Justice of India and a former Indian Army General who criticized another court's reasoning behind an adverse judgment brought against him.

Other laws that have been used to curtail dissent include the *Foreign Contribution (Regulation) Act*, which has been used by governments who threaten to cut foreign funding from local activist organizations. Book bans, as well as film and TV censorship, are also commonplace in India. They are often used as tools to avert flaming tensions between rival cultural, religious, or political groups.

India's national security laws add a further legal dimension to the issue of free expression. Due to the threats of terrorist groups, regional secessionists groups, and a national Marxist insurgency, draconian national security laws have been introduced to address the precarious security situation. However, counter-terrorism laws are often directly or indirectly used to clamp down on free speech. For example, India's main security law, the *Unlawful Activities (Prevention) Act*, gives sweeping powers of arrest and detention to security forces and government. Amnesty International and the UN Special Rapporteur on Freedom of Religion or Belief have noted that the law has been grossly misused to arbitrarily detain young Muslim men who express dissent against the Government. It has also been used to target leftist-sympathising intellectuals, journalists, and aid workers. This has likely had a chilling effect on religious and ideological expression. In addition, the *Official Secrets Act* outlaws the communication of state secrets. A senior journalist and outspoken government critic, Iftikhar Gilani, was arrested under the act after police found him in possession of a "highly sensitive document." Gilani is the New Dehli bureau chief for the *Kashmir Times* and is a regular contributor to a number of media outlets, including the German broadcaster Deutsche Welle and Pakistani newspapers, *The Friday Times* and *The Nation*. The document for which he was arrested was a widely available research paper. He was imprisoned for seven months before the courts ordered his release.

The above provides only a glimpse of the variety of laws that have sheltered an environment of intolerance and led to an erosion of freedom of expression India. Without reforms to such laws, public debate will continue to be stifled. This culture of censorship is ultimately damaging to the pillars of democracy – transparency, open debate, and free expression.

In partnership with PEN Canada, IHRP students Drew Beesley and Amy Tang are currently drafting a report on the challenges to freedom of expression in India. By the time this issue goes to press, they will have completed a research mission in India under the supervision of Tasleem Thawar, Executive Director of PEN Canada and Carmen Cheung, acting Director of the IHRP. ♦

OTHER IHRP CLINIC PROJECTS

DOCUMENTING CSIS PRACTICES AND NATIONAL SECURITY ACCOUNTABILITY

Partner Organizations: BC Civil Liberties Association (Vancouver) / David Asper Centre for Constitutional Rights (University of Toronto)

This project focuses on one of the most pressing challenges in international human rights – how to ensure that counter-terrorism and national security measures are effective and do not unnecessarily infringe on fundamental rights and freedoms. Canada's national security certificate cases offer a unique opportunity to view the workings of a national security intelligence agency and to consider Canada's own compliance with international human rights law and principles. Since 2000, immigration security certificates have been issued against five men – Mohammad Mahjoub, Mahmoud Jaballah, Adil Charkaoui, Hassan Almrei, and Mohamed Harkat. The application of the security certificate mechanism to their cases has generated two Supreme Court of Canada decisions

and over 140 decisions from the Federal Court and the Federal Court of Appeal. These judgments present a unique opportunity to examine the workings of Canada's public safety and national security apparatus, and for the courts to make pronouncements of the legality of CSIS practice and conduct.

Students from the IHRP clinic are currently undertaking an examination of the security certificate cases relating to these five men to produce a research report analyzing national security practices as documented in these cases, and to consider these practices in the context of international human rights law. ♦

KAZEMI ET AL V REPUBLIC OF IRAN ET AL... (Continued from page 18)

The IHRP and the David Asper Centre for Constitutional Rights (Asper Centre) were granted leave to intervene before the SCC in the case. As a student in the IHRP Clinic, I worked with two other students from the Asper Centre Clinic (Keith Crawford and Tali Green) to prepare a draft of the intervener factum to be filed before the SCC. Our focus was on the second constitutional issue, namely, whether the SIA infringes section 7 of the *Charter*. Like all other rights in the *Charter*, the section 7 right to life, liberty, and security of the person is not absolute. Individuals may have this right infringed, but only in accordance “the principles of fundamental justice.” These are principles that are foundational to the Canadian legal system, such as human dignity, the rule of law, and the protection of basic human rights. The position of the IHRP and the Asper Centre in this case is that the right to a remedy is a principle of fundamental justice. Thus, the state may only infringe an individual's section 7 rights if the infringement is in line with this principle. Accordingly, the IHRP and the Asper Centre will argue that the SIA violates the *Charter* to the

extent that it prevents access to an effective remedy for gross human rights violations, and particularly in respect of torture.

To establish that the right to a remedy is a principle of fundamental justice, the IHRP and the Asper Centre focused on the legal maxim *ubi jus ibi remedium* – where there is a right, there must be a remedy. As a clinic student in the IHRP, one of my main tasks was to research the relevant international law doctrines and instruments to support this point. From my research, I learned that international law has long recognized that protecting human rights requires individuals to have access to remedies. The right to an effective remedy is also recognized in numerous international human rights instruments, including Article 2(3) of the *International Covenant on Civil and Political Rights* and Article 8 of the *Universal Declaration of Human Rights*. Moreover, meaningful access to an effective remedy has been repeatedly affirmed by the Inter-American Court of Human Rights as “one of the basic pillars” of the rule of law in a democratic society. The IHRP and the Asper Centre will argue that

the right to a remedy is a fundamental principle of international law that must be taken into account when interpreting the *Charter*.

The right to a remedy is not only recognized in international law. My counterparts at the Asper Centre Clinic focused their research efforts on the right to a remedy found in Canadian and US jurisprudence and legal theory. Together, our research established that there exists a clear consensus in international law, domestic law and legal theory, that for a legal system to operate fairly, and for human rights to be meaningful, individuals must have access to effective remedies. By barring Hashemi's access to an effective remedy for his mother's abuse, sexual assault, torture and death in Iran, the SIA encroaches on democratic principles and undermines the rule of law.

In March 2014, the Asper Centre clinic students and I will travel to Ottawa with counsel for the IHRP and the Asper Centre, to watch oral argument before the SCC on this critical point of law – one which will have dramatic implications for Canada's legal system. ♦

TEXTILE TRAGEDY... (Continued from page 12)

The precedents set in Bangladesh matter. The small nation is the world's second-largest garment exporter with an industry worth about \$20 billion per year, as well as some of the world's lowest labour costs. Exports of textiles and clothing accounted for up to 80 percent of Bangladeshi exports.

The economic importance of this industry can mean that the government is reluctant to intervene on behalf of its citizens against international corporate pressures. According to an April 2013 report by Human Rights Watch, officials in the Ministry of Labour's Inspection Department explicitly indicated that they considered it a priority to maintain good relations with factory management. As a result, normal practice is to give factories advance notice of a visit. Additionally, many factory owners are well-connected politically, and over 10% of members of parliament have ownership stakes in garment factories.

Poor regulation also plays a role in factory disasters. In the Rana Plaza tragedy, cracks in the building structure resulted in an evacuation the day before the incident. When workers hesitated to enter the building the morning before the collapse, their salaries and jobs were allegedly threatened. The four upper floors of the eight-storey complex were later found to be constructed illegally without permits and had substandard building foundation. Furthermore, the Inspection Department, responsible for overseeing adherence to Bangladesh's *Labour Act*, is chronically under-resourced. It is reported that the repercussions of non-compliance are insufficient to compel performance, as violations typically result in a fine of approximately US \$13 per case. Even after disasters, violators are rarely charged and even more rarely found guilty.

Stakeholders, such as the retailers involved, are often apathetic and many showed initial reluctance to take on responsibility for the conditions of the factories. Eventually, many corporations agreed to take part in international agreements to reduce worker

accidents, which was seen as a positive sign at the time. However, there are now two separate agreements: the Alliance for Bangladesh Worker Safety (largely American) and the Accord on Fire and Building Safety in Bangladesh (largely European), with split allegiances and slightly different priorities. Moreover, the two groups, have often not met their own goals and the actual extent of companies' commitment is unclear. Between the two groups, less than half of garment factories in Bangladesh are actually affected by the agreements.

Existing domestic law does not adequately protect workers. Domestic law contains many protections for factory owners, but for workers, protections are weak and poorly enforced. Although international law is comprehensive, its enforcement mechanisms are also not particularly effective. Bangladesh falls under the scope of the International Labour Organization's *Declaration on Fundamental Principles and Rights at Work*; however, there appear to have been violations of Conventions 87 and 98 on freedom to bargain collectively and Conventions 29 and 105, which

abolish forced labour. Due to the lack of mechanisms under international law to ensure compliance, effective change may prove difficult if other countries do not use alternative measures to encourage compliance. One example of this is the US suspension of Bangladeshi trade benefits in June 2013 because of insufficient progress in affording workers internationally recognized labour rights. However, this move has been decried as being largely symbolic, given that garments are ineligible for U.S. duty cuts anyways.

The citizens of Western nations rely heavily on the working poor in Bangladesh to manufacture their clothing, and recent tragic revelations have only scratched the surface of the dangerous working conditions for textile workers. More than 4 million workers need the assistance of their government to ensure their work safety and minimum wages. If the government continues to be ineffective in such enforcement, it is time for retailers to demand more from their suppliers – and for consumers to demand more from their retailers. ♦



Credit: Jaber Al Nahian, Creative Commons

Dhaka Savar Building Collapse, Savar, Bangladesh

IHRP WORKING GROUPS

The IHRP working groups are an important means of providing experiential learning opportunities for students, cultivating student leadership, and providing legal expertise to civil society, outside of the formal clinical setting. Working Groups are led by upper year J.D., LL.M., or S.J.D. students.

THE INTERNATIONAL HUMANITARIAN LAW WORKING GROUP

The International Humanitarian Law (IHL) Working Group has been proud to carry on the work started last year, when the IHRP established a partnership with the International Committee of the Red Cross (ICRC) Library in Geneva, Switzerland. In recognition of the importance of increasing awareness of the rules and norms of IHL and accessibility to literature on these topics, the IHL group has been providing to the ICRC Library summaries of IHL academic articles. The ICRC makes these summaries available through a quarterly publication known as the IHL Bibliography.

The ICRC and its Library have played major roles in the development of IHL since the ratification of the first *Geneva Convention* in 1864. The ICRC's mission is humanitarian in nature, requiring it "to protect the lives and dignity of victims of armed conflict and other situations of violence and to

provide them with assistance." The Library was founded in order to organize and maintain a collection of documents published by the ICRC, as well as other sources related to IHL. Its staff manages more than 140,000 documents on IHL, humanitarian work and ICRC activities.

The IHL Working Group helps the ICRC with the management of this extensive collection. As the Library acquires new materials, it requires abstracts of these documents in order to make the materials more easily accessible. This year, the IHL Working Group located and summarized 62 different articles, on topics ranging from the relationship between IHL and international human rights law, the regulation of private military companies within the framework of IHL, and the development of the laws governing war crimes, to name a few.

In drafting the abstracts, members of the IHL Working Group gained valuable experience reading and synthesizing legal and academic arguments. Many members of the group had no previous experience with IHL, and so had the opportunity to be exposed to a new and exciting area of law. Working Group leaders provided the students with feedback on their work throughout the process, allowing the students to incorporate edits and strengthen the quality of their work product. Alumni editors Rebecca Sutton and Ryan Liss, and IHRP acting Director Carmen Cheung, also provided feedback, for which the working group leaders and members are very grateful.

The IHL group members look forward to applying their new knowledge and skills to their summer positions and throughout the rest of their legal education. ♦

THE WOMEN'S HUMAN RIGHTS RESOURCES PROGRAM DATABASE WORKING GROUP

In 1995, Professor Rebecca Cook and Ann Rae, former Chief Librarian of the Bora Laskin Law Library, established the Women's Human Rights Resources (WHRR) database to provide free and accessible scholarship related to women's human rights. Professor Cook discovered a need for increased resources in the area of international women's rights when she compiled a bibliography of existing publications on the topic and found that it filled a mere one page.

Today, the database consists of hundreds of articles, documents and links on women's human rights law in Canada and abroad. It is accessible to anyone with Internet access and is completely free to use. The database is divided into 15 subjects, with built in search filters to browse by subject, authors, or keywords. It receives over 15,000 hits from around the world on a monthly basis.

Following funding cuts in recent years, the database has been kept

up to date by students at the University of Toronto Faculty of Law, who volunteer for the WHRR database working group, under the leadership and supervision of law librarian Susan Barker. Every year a group of students searches recent publications for articles related to women's human rights that are relevant in an international context. Students provide annotated citations for these resources, which are used to update the database.

The WHRR database allows individuals and organizations fighting for the furtherance and recognition of women's human rights to freely access resources, regardless of their location in the world or their financial means. In addition, participation in the WHRR database working group allows law students to engage with scholarly work related to women's human rights, to learn how to conduct legal research, and to evaluate and articulate the significance of the resources they identify to an international audience. ♦

SEXUAL ORIENTATION AND GENDER IDENTITY ("SOGI") WORKING GROUP

This year, SOGI is continuing to update research reports from previous years that may have since become dated, and is proactively

beginning new research reports either on countries not yet covered in our previous reports or on particular fact situations. ♦

THE RISK OF TORTURE FACED BY SRI LANKAN RETURNEES... (*Continued from page 4*)

Between May 2009 and February 2013, Freedom from Torture, Human Rights Watch, and Tamils Against Genocide collectively reported 99 cases of Sri Lankans who had returned to Sri Lanka from the UK and faced torture and/or cruel and unusual treatment. The reports identified several factors that increased the likelihood of a returnee being tortured, based on the cases documented. These factors include: being Tamil; having actual links to the LTTE; being perceived as having links to the LTTE; participation in political activity abroad; and in some cases, simply having lived abroad.

While a similar study examining the fate of returnees from Canada to Sri Lanka has yet to be conducted, it is clear that returnees from Canada are likely facing a similar fate. Another passenger from the MV Sun Sea, identified as B005, was deported to Sri Lanka in the fall of 2012 and was detained immediately upon arrival, never making it out of the airport. His whereabouts are currently unknown.

It is indicative that the only two passengers of the MV Sun Sea who are known to have been deported to Sri Lanka have both been detained and/or tortured. As the reports on asylum-seekers deported from the UK indicate, torture in Sri Lanka is a systemic issue, one that is facilitated by the use of ongoing ‘emergency’ powers under the Sri Lankan *Prevention of Terrorism Act*. In addition, Sri Lanka’s politicized judiciary and repression of free speech contribute to a lack of accountability for perpetrators of torture, as well as the non-availability of recourse for victims seeking to effectively challenge their treatment.

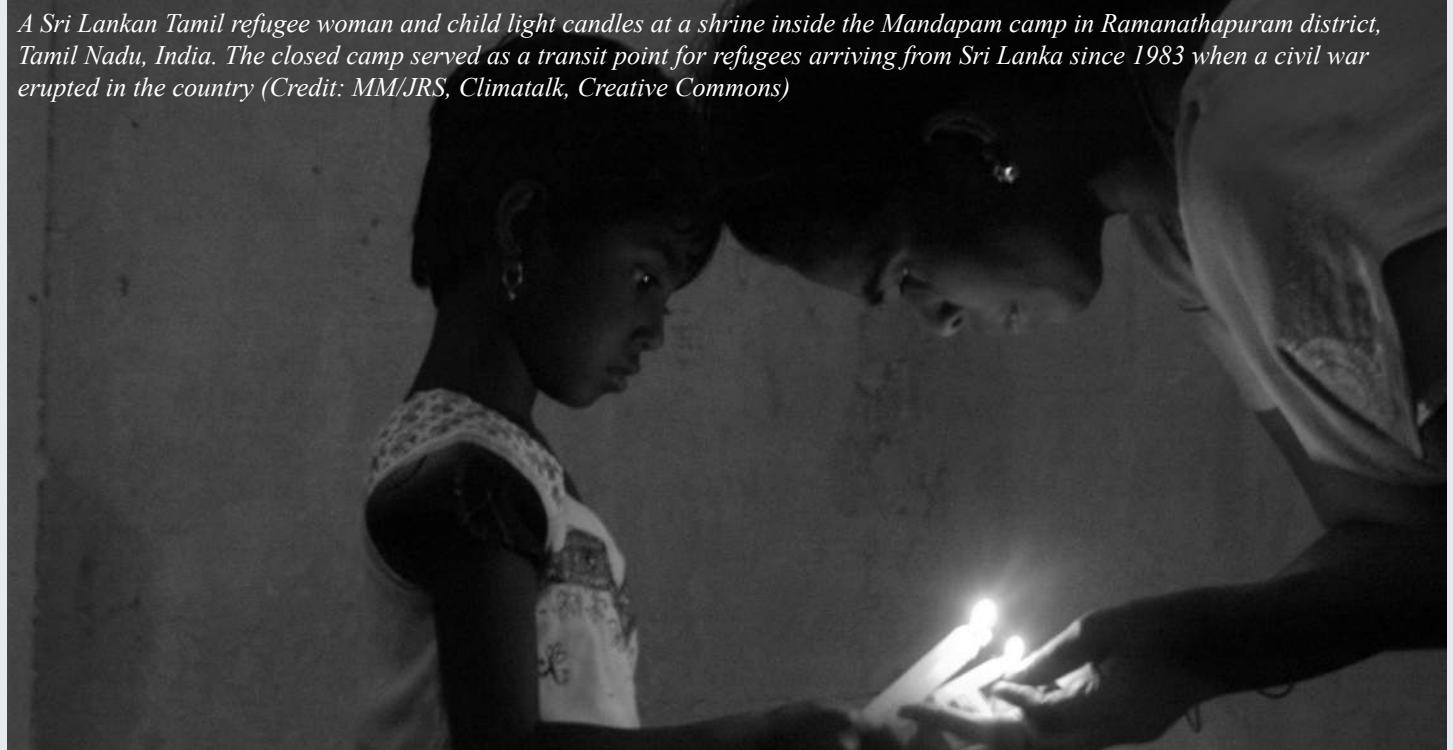
Canada’s *Immigration and Refugee Protection Act* prohibits the government from returning any “protected person” or Convention refugee to the place where he or she faces persecution or a risk of torture or cruel and unusual treatment (the principle of “non-refoulement”). However, the Act contains an exception to this principle in the cases of those who are found to be “inadmissible” to Canada on grounds of security or serious criminality. As a signatory to

the *UN Convention against Torture*, Canada’s obligations are nonetheless broader: it is explicitly prohibited from returning *any* individual “to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The question of whether Canada is violating international law by deporting Sri Lankan asylum-seekers, including individuals from the ships, is a serious one that must be considered by policy-makers and the judiciary. Ultimately, Canada’s treatment of Sri Lankan asylum-seekers will undermine its credibility on the global stage as an advocate for human rights. It will also call into question the legitimacy of Canada’s attempts to hold Sri Lanka accountable for crimes committed during the decades-long war.

The IHRP Clinic has partnered with Amnesty International to conduct research relating to asylum-seekers from Sri Lanka in Canada. ♦

A Sri Lankan Tamil refugee woman and child light candles at a shrine inside the Mandapam camp in Ramanathapuram district, Tamil Nadu, India. The closed camp served as a transit point for refugees arriving from Sri Lanka since 1983 when a civil war erupted in the country (Credit: MM/JRS, Climatalk, Creative Commons)



INDIGENOUS PEOPLES IN COLOMBIA... (*Continued from page 11*)

displacement, kidnappings, targeted killings of Indigenous leaders, sexual violence against women and girls, and forced recruitment of children and youth by armed groups.

Duque pointed to four “war processes” which produce differential impacts on Indigenous communities. First, Indigenous-owned territory often serves as the “ideal,” remote place to conduct military operations. Second, parties to the conflict often incorporate Indigenous peoples into the violence through, amongst other things, recruitment, selective murders, and use of communities as human shields. Third, resource-rich ancestral lands are threatened by the extractive economic activities related to the conflict, including mining, oil, timber, and agribusiness. And fourth, the conflict worsens the pre-existing poverty, ill-health, malnutrition, and other socio-economic disadvantages suffered by Indigenous peoples.

It is the third “economic war process” which is of particular relevance to Canada. Duque pointed out that non-Colombian companies may be associated with parties to the armed conflict. For instance, armed groups at times provide protection to those working on mining project sites. In addition, according to Duque, Canada plays a part “simply [by] profiting from the forced displacement and violence.”

Canada’s economic ties to Colombia are evident in the *Canada-Colombia Free Trade Agreement* (the CCOFTA), which was brought into force in August 2011. The Canadian Trade Commissioner Service stated in an overview of the CCOFTA on its website that “Canada already enjoys a significant presence in the Colombian mining industry” and that the trade agreement “will ensure that Canadian service suppliers in the mining industry will enjoy secure, predictable access to the Colombian market.”

Interestingly, the human rights implications of their close economic ties were recognized by Colombia and Canada in the *Agreement concerning Annual Reports on Human Rights and Free Trade between Canada and the Republic of Colombia*. Under the Agreement, Canada and Colombia are required to produce an annual report on the effect of the CCOFTA on human rights. Despite this formal agreement, Duque maintains that Canada has remained silent on the issue of human rights abuses in Colombia. Canada’s first annual report, tabled in 2012, claimed that there was insufficient trade data to conduct a full analysis of the relationship between human rights and trade. The 2013 report was also inconclusive, stating that “[i]t is not possible to establish a direct link between the CCOFTA and the human rights situation in Colombia. There is no evidence of a causal link between reductions in tariffs by Canada in

accordance with the CCOFTA, and changes in human rights in Colombia.” Duque and other human rights activists argue that these reports are not in the spirit of the CCOFTA. More action can, and should, be taken by Canada, he said.

Canada’s next annual report on human rights in Colombia is expected to be released by mid-June of this year. Undoubtedly, Duque, along with other human rights activists, are waiting and hoping for Canada to increase pressure on the Colombian government to address human rights abuses of Indigenous groups. Canada cannot ignore the bitter reality that its mining companies may be profiting from a conflict which has threatened the very survival of Colombia’s Indigenous population. ♦



Credit: Martin St. Amant, Wikimedia Commons

Colombian flag from San Felipe de Barajas fortress, Colombia



Credit: Piers Calvert, Creative Commons

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A girl from the Nukak indigenous community in Colombia. The Nukak people were “uncontacted” by the outside world until the 1980s. During the armed conflict, their territory has been occupied by guerillas, the state army, and paramilitaries, which, along with the spread of disease, has reduced their population to less than 550 today.

ENDING THE WAR ON TERROR... (*Continued from page 14*)

however, disagreed. Both thought that based on available intelligence, it remains unclear whether the threat of al-Qaeda has completely dissipated. This is especially so when considering affiliate organizations in countries like Yemen, Syria, and Mali. However, Cole also stated that “we must recognize that we cannot eliminate terror, we cannot eliminate risk, we cannot even eliminate al-Qaeda. Rather the war with al-Qaeda ends when al-Qaeda no longer poses a threat that requires military force.” He added that it is the “insistence on zero tolerance of risk” that pushes the “war paradigm.”

For the “war on terror” to ever truly come to an end, the US administration must clearly define what they would consider its end. Obama recognized as much in his speech when he said that “[w]e must define the nature and scope of this struggle, or else it will define us.”

Drone Strikes

A key component of the US counterterrorism strategy since at least 2004 has been the use of lethal drone strikes, a strategy that has dramatically escalated under the Obama administration. Of the 381 drone strikes that have reportedly occurred in Pakistan since 2004, 330 happened after Obama took office.

Both Knuckey and Cole agreed that from a legal and human rights perspective, the legality of the use of lethal force in the form of drone strikes would be seriously questioned if the “war on terror” were declared to be over. For instance, while some collateral damage is permitted by international law during wartime, no arbitrary detention or taking of life is permitted during peacetime. This means that drone strikes would not be permitted outside the context of war.

In Knuckey’s view, Obama’s May 2013 speech had no real impact on the use of drone strikes. Cole disagreed, however, pointing to a decline in drone strikes in the past year. Obama’s speech, he pointed out, had set out more stringent criteria than required by international law on the use of such force. Whether the speech has had an effect or not, the end of the “war on terror” would unmistakably raise serious questions around the legality of continuing to utilize the drone strike program.

If in fact there will be a winding down of the “war on terror,” as indicated in Obama’s speech, there will be serious legal and human rights implications that follow. The IHRP’s panel discussion brought to light several of these key issues, which no doubt will continue to pose interesting and disturbing legal questions for academics, lawyers, and law students. ♦



Credit: Mike Benedetti, Creative Commons

“Guantanamo street theatre” in Washington, DC. Image adapted by truthout.org

THE PLIGHT OF POLITICAL PRISONERS UNDER IRAN'S NEW LEADERSHIP... *(Continued from page 13)*

was used to soften human rights criticisms before Rouhani's first appearance before the UN. Indeed, since the release, and his return from the UN, there has been minimal effort to improve the state of political prisoners at home.

Further evidence of the lack of progress on the issue of political prisoners is the continued house arrest of several key political figures. In February 2011, Iranian officials put former presidential candidates Mehdi Karroubi and Mir Hossein Mousavi, as well as Mousavi's wife, political activist Zahra Rahnavard, under house arrest because they had called on Iranians to dem-

onstrate in support of the uprisings taking place throughout the Arab world. More than 1000 days have passed since their arrest, without charge or trial.

The arrests of Karroubi, Mousavi, and Rahnavard are in violation of both Iranian and international law, according to a 2012 opinion by the UN Working Group on Arbitrary Detention, which called for their immediate release. Although it was stated by Iran's police chief in December 2012 that Supreme Leader Ayatollah Khamenei had pre-approved the arrests, the government has yet to provide a legal justification for their continued detention. Moreover,

despite calls for their release from Iranian activists and international bodies such as the UN, there has been little response from Rouhani. On the anniversary of the 2009 protests, he failed to mention any of the arrested opposition figures.

Rouhani's election victory quickly led to celebrations in the streets of Tehran. However, the initial praise may have been made too hastily. With Rouhani's diplomatic progress overshadowing Iran's domestic human rights situation, it remains to be seen whether he will make any real improvements at home. ♦



Credit: Hamed Saber, Wikimedia Commons

Iranian protestors during the contested 2009 presidential election, which ultimately saw incumbent president, Mahmoud Ahmedinejad, remain in power

ARGENTINA'S "DIRTY WAR" AND THE SEARCH FOR ACCOUNTABILITY... (Continued from page 16)



Credit: Archivo personal de Fotos de Mariana Slemenson, Wikimedia Commons

Above: Claudio A. Slemenson was a student at the Colegio Nacional de Buenos Aires and a leader of the Unión de Estudiantes Secundarios. He was "disappeared" in 1975.

Below: Members of Madres de Plaza de Mayo, a group of mothers whose children were "disappeared" during Argentina's "Dirty War," participating in a rally. Beginning in 1977, the mothers began non-violent demonstrations, calling for the return of their children. They are still active today.

Credit: Meghan Hess, Creative Commons



where he was kept in complete isolation, only allowed outside for two hours a day. The Italian embassy negotiated with the Argentine Army and Savone, an Italian citizen, was exiled to Italy. He ultimately settled in Canada.

Now, over 20 years later, Gomez and Savone may actually obtain justice. In 2005, the Supreme Court of Argentina declared the country's 1986 amnesty laws to be unconstitutional. Prosecutors met with Gomez, and she was able to identify her rapists through photographs. In Canada, Savone read about her case online and learned that Gomez's testimony would not be enough to secure a conviction. He, however, had also seen the men who raped her and realized that he could testify to support her story. He flew to Argentina to do so. Because of Gomez and Savone's persistence and bravery in seeking justice for these atrocities, the men involved in her rapes were put on trial at the end of 2013.

The aftermath of the Argentine "Dirty War" and the stories of Gomez and Savone epitomize the problems associated with transitional justice. Prosecutions bring accountability, but have the potential to sow discord. As such, many states transitioning from a violent past choose to institute truth and reconciliation commissions and/or enact amnesty laws instead. These amnesty laws promote reconciliation, yet may be a hollow remedy for those whose rights have been blatantly violated. As Savone asks, how can there be reconciliation when those involved with the violence will not say what happened to the disappeared? Neither Savone nor Gomez desires revenge. What they want is the truth, so that what happened to them and to others like them will not be forgotten.

The prosecution of Gomez's rapists is a meaningful step in that direction. Yet both Savone and Gomez point out that the majority of people involved in the atrocities are free. They see these individuals walking in the streets. Many still deny that they did anything wrong. As a result, Savone and Gomez question whether there can ever be true reconciliation within Argentina. ♦