



## ISSUE 5: JANUARY 2009

### EDITORIAL

In the last month of 2008, the world celebrated the 60th anniversary of the Universal Declaration of Human Rights. We are reminded not only of the legacy of this fundamental document but of our continued responsibility as active students to uphold the meaning of the words carefully constructed within it.

Article One states that, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." We at the SHRP find ourselves increasingly dedicated to these words.

And we all find our own reason and conscience tested now as violence and disparity threaten stability and equal freedoms once again in the Middle East. On 27 December, Israeli rockets rained down in the Gaza Strip, opening anew, a deep and vital wound. As students and as the generation that is presented with the task of carrying the torch of the UDHR into the future, we must not turn away from what we face now. We walk into the New Year this month and we must confront this most urgent struggle in our journey, working hard to ensure that dignity and equal rights are preserved for all, every step of the way.

### CONTACT

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## Human Rights News

### **Brazil's Supreme Court upholds rights of Indigenous Peoples**

A recent vote in the Supreme Court of Brazil recognized the protection of the constitutional rights of indigenous peoples to their ancestral lands in Raposa Serra do Sol. Amnesty International hails this as a milestone victory for all indigenous peoples in Brazil. The spacious reservation is home to 20,000 indigenous people. However the recent vote has received a lukewarm response from Brazil's military establishment that views the reservation as a threat to the nation's sovereignty. Moreover a final decision on the demarcation of the land has been postponed following stiff resistance from the state government, and the delay means that eviction proceedings against illegal settlers cannot be initiated, leaving the indigenous people vulnerable to attacks from nearby farmers who do not recognize the rights of the native inhabitants. Amnesty calls for full protection to be afforded to these people pending the final decision of the Supreme Court.

### **Rwanda Tribunal Should Pursue Justice for RPF Crimes**

Since its creation to prosecute those responsible for committing war crimes and crimes against humanity during the Rwandan genocide of 1994, the International Criminal Tribunal for Rwanda has had a mixed record. The Rwandan Patriotic Front, currently Rwanda's ruling party, was responsible for thousands of deaths during the genocide. To date, the ICTR has failed to prosecute any members of the RPF for war crimes and crimes against humanity. According to Human Rights Watch, this omission could tarnish the legacy of the Tribunal and undermine its past achievements. The ICTR's mandate is set to expire at the end of 2009. Whether the Security Council will grant an extension is yet to be discussed. Should none be granted, it is highly unlikely that the Tribunal will effectively accomplish its mission.

### **Human Rights rules that UK police DNA database breaches human rights**

In a decision welcomed by civil liberties campaigners, the European Court of Human Rights in Strasbourg has ruled that keeping the DNA records of innocent people on a criminal register is a breach of Art.8 of the ECHR on the right to respect for private and family life. The Court ruled that keeping the DNA records of individuals never convicted of an offence and therefore 'entitled to the presumption of innocence' carried 'the risk of stigmatisation.' Judges attacked the 'blanket and indiscriminate nature' of the police's power to retain data. Now police forces all over the UK could be forced to destroy the DNA details of those with no criminal convictions. The Association of Chief Police Officers has said that this ruling would have a 'profound impact' on policing.' At present, the DNA database for England, Wales and Northern Ireland consists of approximately 4.4 million records.

### **China City checks dissidents into mental hospital**

According to Beijing News at least 18 petitioners were held in a mental asylum in Shangdon in Eastern China. The victims were bringing complaints to the local or Beijing petitions and appeals offices. The local authorities, fearing embarrassment and pressure to keep their area under tight control, often forcefully intercept those complaints. San Fawu, 57, had campaigned for years to get compensation for farmland spoiled from mining. During a twenty-day stay in the local mental hospital in Xintai, he was force-fed drugs and injections. Sun was released only after he had signed a paper stating that he was mentally ill and would not petition again. Once a citizen is certified as mentally ill by either a psychiatrist or the police, he loses all his legal rights and can be held indefinitely. Lao Shi, 84, who was sent to Xintai mental hospital in 2006 counted 18 petitioners over the last 2 years..

## Cases: Recent Human Rights Developments in the Courts

**R (Wellington) v Secretary of State for the Home Department House of Lords.**

The appellant, who had killed two people in Kansas City and was arrested in London, sought the quashing of the order for his extradition to the US. He appealed to the House of Lords, alleging that his likely punishment, a sentence of life imprisonment without eligibility for parole, would constitute 'inhuman or degrading treatment,' rendering his extradition order a violation of Art.3 ECHR (prohibition of torture and of inhuman and degrading treatment).

The House of Lords unanimously dismissed the appeal and held that even an irreducible life sentence would not contravene Art.3 if proportionate to the crime committed and that in cases of extradition, Art.3 did not apply as if the extraditing State were responsible for the punishment inflicted in the receiving State.

However, dissenting opinions found that the approach to 'inhuman or degrading treatment' should be analogous to the *Chahal v. UK* approach to torture: no one can be expelled if he would then face the risk of treatment or punishment which is properly to be characterised as inhuman or degrading.

**Dogru v France (Application no. 27058/05)****European Court of Human Rights: Fifth Section**

The case concerned the applicants' exclusion from school as a result of their refusal to remove their headscarves during sports classes.

The domestic court held that, by attending physical education and sports classes in dress that would not enable them to take part in the classes in question, the applicants had failed to comply with the duty to attend classes and thus their expulsion from the school had been justified and proportionate.

Relying on Art.9 ECHR (the right to

freedom of thought, conscience and religion), the applicants complained to the ECHR of an infringement on their right to practice their religion.

The ECHR held that there had been no violation of Art.9. The Court referred to earlier judgments in which it had held that the national authorities were obliged to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion.

**TV Vest AS & Rogaland Pensjonistparti v. Norway (Application no. 21132/05) European Court of Human Rights: First Section**

TV Vest, a television broadcasting company and Rogaland Pensjonistparti, a political party, brought an application against Norway under Art.34 of the convention claiming a violation of Art.10 ECHR (freedom of expression).

TV Vest agreed to broadcast Rogaland Pensjonistparti's political advertisement. Aware of the statutory prohibition in Norway on broadcasting political advertisements, TV Vest broadcasted the advertisement anyway, arguing it was entitled to do so by the protection provided by Art.10. The Media Authority decided to impose a fine on TV Vest.

The applicants complained that the fine imposed by the Media Authority constituted a violation of Art.10 of the Convention. The Court held unanimously that there had in fact been a violation. The restriction which the prohibition and the imposition of the fine entailed on the applicants' exercise of their freedom of expression could not be regarded as proportionate to the legitimate aim of protecting the rights of others and therefore was not necessary in a democratic society, within the meaning of paragraph 2 of Art.10.

**INTERVIEW****Sif Thorgeirsson**

Business & Human Rights Resource Centre

I initially became interested in human rights during my undergraduate studies through classes in international development. After my first year of law school, I attended the Human Rights Programme offered by Oxford University and George Washington University, which solidified my interest in human rights, especially in corporate responsibility. I attended this course the summer after Ken Saro Wiwa was executed. His brother and several other Ogoni activists came and spoke at the programme about the Ogoni struggle and the role Shell played in that struggle. The words and images left an indelible mark on my consciousness.

I manage the Corporate Legal Accountability Project, within the Business and Human Rights Resource Centre. This project was launched to establish an online "hub" for information on lawsuits against companies alleging human rights abuses. The aim is to create a resource for lawyers and non-lawyers and to show the breadth of cases being brought worldwide. We recognize the importance of the Alien Tort Claims Act cases that have been brought against companies in the US, but we also want the project to provide information on corporate human rights cases from other regions, such as Europe, Latin America, Asia, Africa.

My advice to someone who has studied law would be to get a good general background in legal practice before specializing. Also, I would recommend that students pursue volunteer opportunities because these experiences provide valuable insight into the type of day-to-day work that people do in this field. Lastly, I would encourage students to engage with professors who work in the field of their interest and maintain contact with them after they finish university. It is often precisely through such contacts that one can learn of job opportunities in the field of one's interest.

**The full version of this interview is available at [www.uclshrp.com/bulletin](http://www.uclshrp.com/bulletin)**