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Harvetta M. Asamoah

Lea Browning

Myra Frazier

Lois A. Gochnauer

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# International Human Rights

HARVETTA M. ASAMOAH, LEA BROWNING, MYRA FRAZIER, LOIS A. GOCHNAUER,  
JENNIFER HUMKE, ALYA Z. KAYAL, AND MARK E. WOJCIK\*

## I. Introduction

With ceremonies and conferences throughout the world, the Universal Declaration of Human Rights marked its fiftieth anniversary in 1998. The protection of human rights in that same year, however, showed a mixture of incremental improvement, relative stability, and unfortunate regression. Space limitations prevent us from discussing many of these developments, including developments before the War Crimes Tribunals for Rwanda<sup>1</sup> and Yugoslavia, the promises of justice for human rights victims under the proposed International Criminal Court,<sup>2</sup> the legal saga of the arrest of Chilean General Augusto Pinochet, and the continuing struggle throughout the world to promote human rights as part of the rule of law. With hope that these issues will receive discussion elsewhere, we reluctantly confine our selection of significant human rights developments to items that others may overlook or undervalue.

## II. U.S. Implementation of Human Rights Treaties

On Human Rights Day (December 10), President Clinton declared it to be the "policy and practice" of the U.S. government "fully to respect and implement its obligations under the

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\*Harvetta M. Asamoah, author of the sections on children's rights and international trade and investment human rights issues, is an attorney in Washington, DC. She received a J.D. in May 1988 from Georgetown University Law Center. Lea Browning is President of W.E. A.R.E. for Human Rights, a non-governmental human rights organization. Myra Frazier is counsel for the National Council of Churches. Lois A. Gochnauer is the U.S. State Department's Senior Advisor on Violence Against Women. Views expressed in this article are not necessarily those of the State Department. Jennifer Humke is a consultant with W.E. A.R.E. for Human Rights, a non-governmental human rights organization. Alya Z. Kayal is a Social Research Analyst with the Calvert Group in Washington, D.C. Mark E. Wojcik is an Assistant Professor of Law at the John Marshall Law school in Chicago, Illinois.

1. See, e.g., *Rwanda War Crimes Tribunal Finds Former Mayor Guilty of Genocide and Crimes Against Humanity*, 1 AM. SOC'Y INT'L L., INTERNATIONAL LAW IN BRIEF 1 (Oct. 1998); *Rwanda War Crimes Tribunal Sentences Former Prime Minister to Life Imprisonment*, 1 AM. SOC'Y INT'L L., INTERNATIONAL LAW IN BRIEF 2 (Oct. 1998).

2. Statute of the International Criminal Court, (adopted July 17, 1998) <<http://www.un.org/icc>>.

international human rights treaties to which it is a party."<sup>3</sup> The order also declared that the U.S. government should "promote respect for human rights" and support human rights efforts being made by organizations, including the United Nations, the International Labor Organization (ILO), and the Organization of American States.<sup>4</sup>

While the order creates neither substantive nor procedural rights,<sup>5</sup> it is a welcome policy statement to guide executive departments and inspire further implementing legislation for human rights treaties. For example, legislation passed in October implements the Convention Against Torture by prohibiting the involuntary return of persons to countries where they may face torture.<sup>6</sup>

### III. Protecting the Rights of Women and Children

#### A. VIOLENCE AGAINST WOMEN

The U.N. Special Rapporteur on Violence Against Women has helped bring international attention to issues of gender violence worldwide since her post was created at the 50th Commission on Human Rights in 1994.<sup>7</sup> Rhadika Coomaraswamy from Sri Lanka was appointed to the position and is currently serving her second term.<sup>8</sup>

Each year the special rapporteur prepares and presents a report to the U.N. Commission on Human Rights covering a general area of violence against women with recommendations for action.<sup>9</sup> This global report is accompanied by one or more related, country specific reports documenting a particular incidence of gender violence.<sup>10</sup> In the special rapporteur's report to

3. Exec. Order No. 13,107, 63 Fed. Reg. 68,991 (1998). The Executive Order specifically identified the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and "other relevant treaties concerned with the protection and promotion of human rights to which the United States is now or may become a party in the future." *Id.*

4. *Id.*

5. See *id.* at 68, 993.

6. See United States Policy With Respect to the Involuntary Return of Persons in Danger of Subjection to Torture, Pub. L. No. 105-277, § 2242 (Oct. 21, 1998), reprinted in 1999 U.S.C.C.A.N. 942, 943. This law implements Article 3 of the U.N. Convention Against Torture, which the United States signed more than ten years ago.

7. *Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women*, U.N. Comm'n on Human Rights, Res. No. 1994/45, OHCHR Res. 1994/45 at paras. 6-7, Comm'n on Human Rights, 51st Sess., 56th Meeting (1994). The Commission on Human Rights created the post in response to the World Conference on Human Rights. *Vienna Declaration and Program of Action of the World Conference on Human Rights*, U.N. Doc. A/CONF. 157/23 (1993), reprinted in 32 I.L.M. 1661.

8. Rhadika Coomaraswamy is the Director of the International Centre for Ethnic Studies in Colombo, Sri Lanka. She is a graduate of Yale University with honors in political science. She received her Ph.D. from Columbia University in 1977. She has a diploma with honors from the Parker School of International and Comparative Law and received her LL.M. from Harvard Law School in 1982. In 1997 at the 53rd Session of the Commission on Human Rights, the mandate of the Special Rapporteur on Violence Against Women was renewed for a second three-year term. OHCHR Res. 1997/44, Comm'n on Human Rights, 53rd Sess. (1997).

9. In her first report to the Commission on Human Rights in 1995, the rapporteur presented a survey of issues on violence against women, in which she identified themes she would cover during her first three-year mandate. See U.N. Doc. E/CN.4/1995/42. In 1996, her global report covered violence against women in the family, see U.N. Doc. E/CN.4/1996/53; and, in 1997, violence against women in the community, see U.N. Doc. E/CN.4/1997/47.

10. In 1996, there were two addendum reports: one on the SRVAW's mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime, see U.N. Doc. E/CN.4/1996/53/Add. 1, and a second providing a framework for model legislation on domestic violence, see U.N. Doc. E/CN.4/1996/53/Add. 2. In 1997, there were three addendum reports: the first on the SRVAW's mission to Poland on the issue of trafficking and forced prostitution of women, see U.N. Doc. E/CN.4/1997/

the U.N. Commission on Human Rights in 1998, Coomaraswamy focused on state sponsored crimes against women, including violence against women in armed conflict, custodial violence against women, and violence against refugee and internally displaced women.<sup>11</sup> This report contained specific cases and testimonies from women victims of state sponsored violence, as well as an outline of the existing legal framework used to protect women from the various forms of state sponsored violence. The rapporteur made recommendations to state and non-state actors on methods to enhance and expand the legal frameworks and their application to better protect women.

As part of her investigation into women and armed conflict, Coomaraswamy visited Rwanda on a fact finding mission and filed this information as an addendum report at the Commission in 1998.<sup>12</sup> She looked at four aspects of the genocide in Rwanda, including women during the genocide, the status of women post-genocide, progress achieved in punishing perpetrators at the national and international levels, and the conditions of women in detention. She also visited the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania to observe the tribunal's handling of gender crimes.<sup>13</sup> Coomaraswamy stated her concern for the seeming invisibility of sexual violence cases both at the national and international levels. She reported that the Ministry of Justice in Rwanda attributed this invisibility at the national level to the total lack of a judicial infrastructure in the country, including trained persons to function as judges and lawyers. The rapporteur also pointed out that women were reluctant to come forward out of fear of reprisal.

At the 1999 Session of the U.N. Commission on Human Rights, the special rapporteur will report on her investigation into state sponsored violence by focusing on domestic violence and assessing state compliance with the recommendations contained in her 1996 report.<sup>14</sup> She also will present information from a fact finding mission to the United States in June 1998 in which she investigated the situation of women in detention. In the United States she looked at sexual violence in prison, women's access to medical care in prisons, and the issue of fractured families as a result of women's imprisonment. She will also report on her visit to Indonesia to gather information on rape and present to the Commission an appendix on violence against women and reproductive health.<sup>15</sup>

## B. FEMALE GENITAL MUTILATION (FGM)

Female genital mutilation (also called female genital cutting and female circumcision) is the cutting or removal of all or a portion of the female genitals for cultural rather than medical

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47/Add. 1; the second covering the Rapporteur's mission to Brazil on the issue of domestic violence, see U.N. Doc. E/CN.4/1997/47/Add. 2; and the third reporting on the Rapporteur's mission to South Africa on the issue of rape in the community, see U.N. Doc. E/CN.4/1997/47/Add. 3.

11. U.N. Doc. E/CN.4/1998/54.

12. Report of the Mission to Rwanda on the Issues of Violence Against Women in Situations of Armed Conflict, see U.N. Doc. E/CN.4/1998/54/Add. 1.

13. Coomaraswamy reported that the tribunal had been dismissive of sexual crimes. By late 1998, only two persons had been indicted on charges of gender-based crimes at the Rwanda Tribunal. However, in an article by Kelly D. Askin entitled "*Sexual Violence in ICTY and ICTR Indictments and Decisions: The Current Status of Prosecutions Based on Gender-Based Crimes Before the Yugoslav and Rwandan Tribunals: Developments in the Protection of Women in International Humanitarian Law*," to be published in 1999, Askin points out that the Akaseyu trial at the Rwanda Tribunal has been monumental in that it recognized that rape was an integral part of the genocide.

14. See Exec. Order No. 13, 107, *supra* note 3.

15. The 1998 reports from the Special Rapporteur on Violence Against Women can be found on the Internet at <<http://www.unhcr.ch/html/menu4/chrrep/98chr54.htm>>. Her 1999 reports will be available at the U.N. website.

reasons.<sup>16</sup> FGM continues to be a violation of women's human rights and a serious health issue.<sup>17</sup> Estimates of the number of females who have been subjected to FGM range from 115 million to 130 million worldwide. Two million girls are believed at risk each year.<sup>18</sup>

The U.S. State Department established an interagency working group to coordinate U.S. government efforts and to work closely with African and U.S. non-governmental organizations. The U.S. government continues to fund local projects aimed at eradicating FGM.

Federal legislation outlaws FGM on a person under the age of eighteen.<sup>19</sup> Several states also outlaw the practice, including California,<sup>20</sup> Delaware,<sup>21</sup> Illinois,<sup>22</sup> Maryland,<sup>23</sup> Minnesota,<sup>24</sup> New York,<sup>25</sup> North Dakota,<sup>26</sup> Rhode Island,<sup>27</sup> Tennessee,<sup>28</sup> and Wisconsin.<sup>29</sup> In Africa, the nations of Togo<sup>30</sup> and Côte d'Ivoire<sup>31</sup> enacted new laws in 1998 forbidding FGM, adding to laws

16. The procedure takes a variety of forms, including clitoridectomy, excision, and infibulation, the most severe form and the one most damaging to the health of women and girls. It is generally performed without anesthesia unless carried out in a hospital or medical clinic. The World Health Organization and many non-governmental organizations have resisted medicalization of the practice, as that would help to legitimize the practice in the country. Rather, these organizations want the practice outlawed altogether.

17. See Harvatta Asamoah et al., *International Human Rights*, 32 INT'L LAW. 559, 569-71 (1998).

18. Nahid Toubia, *Female Genital Mutilation: A Call for Global Action*, RAINBO 5 (1995). The origins of this practice are unknown. It existed before the beginning of Christianity and Islam. It is not required by the Bible or the Quran. It crosses religious, ethnic, and cultural lines. See U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) I (Jan. 15, 1999).

19. The penalty is a fine or imprisonment for not more than five years, or both. See 18 U.S.C. § 116(a) (Supp. III, 1997).

20. See CAL. PENAL CODE § 273.4 (West, 1997).

21. See DEL. CODE ANN. tit. 11, § 780 (1986).

22. See 720 ILL. COMP. STAT. ANN. 5/12-34 (West 1998).

23. See MD. CODE ANN., HEALTH-GEN. I § 20-601 (1998).

24. See MINN. STAT. § 609.2245 (1996).

25. See N.Y. PENAL LAW § 130.85 (McKinney 1998).

26. See N.D. CENT. CODE § 12.1-36-01 (1997).

27. See R.I. GEN. LAWS § 11-5-2 (1996).

28. See TENN. CODE ANN. § 39-13-110 (1996).

29. See WIS. STAT. ANN. § 146.35 (West 1997); see also CENTER FOR REPRODUCTIVE LAW AND POLICY, LEGISLATION ON FEMALE GENITAL MUTILATION IN THE UNITED STATES 4-7 (1997).

30. Excision is practiced in Togo. It crosses religious and ethnic lines. While practiced by Muslims and Christians, most of the groups practicing it in Togo happen to be Muslim. A U.S.-funded study by Togo's University of Benin found that 12 percent—or one female in eight—had undergone excision. In some ethnic groups such as the Tchamba and the Peul, 85 to 98 percent of the women had undergone the procedure. In other groups, such as the Gourma, the figure was only 12 percent. Two of Togo's largest ethnic groups, the Adja-Eve and the Akposso-Akebou, do not practice excision. On October 30, 1998, the National Assembly of Togo unanimously voted to outlaw excision. Penalties under the new law include a prison term of two months to ten years and a fine of approximately USD \$175 to \$1750. During deliberations on the law, legislators called for a widespread information campaign on the harmful health effects of excision. No cases have yet been brought under this law. See U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) IN TOGO 1, 4 (1999).

31. Excision is practiced in Côte d'Ivoire. Estimates put the percentage of women and girls who have been subjected to excision at approximately 60 percent. It is deeply rooted in Animist initiation rites and is also prevalent among Muslim women. It crosses regional, ethnic, and socioeconomic lines throughout the country. A law passed on December 18, 1998 bans excision and provides for imprisonment of the practitioner for one to five years and a fine of approximately USD \$400 to \$4000. Imprisonment is five to twenty years if the victim dies and up to five years' prohibition of medical practice, if the procedure is performed by a doctor. Despite earlier provisions of the criminal code that might have been used to challenge this practice, there has never been a court case challenging excision. U.S. DEP'T OF STATE, REPORT ON FEMALE GENITAL MUTILATION (FGM) OR FEMALE GENITAL CUTTING (FGC) IN CÔTE D'IVOIRE 1-3 (Jan. 15, 1999).

already in Burkina Faso, the Central African Republic, Chad, Djibouti, Ghana, and Guinea.<sup>32</sup> Although these laws prohibit FGM on the books, they are difficult to enforce.<sup>33</sup>

Heads of state and government, at a June 1998 meeting of the Organization of African Unity (OAU) in Burkina Faso, endorsed the 1997 Addis Ababa Declaration on Violence Against Women, a document which calls for the end of FGM.<sup>34</sup> A religious and medical symposium held in July 1998 in The Gambia on FGM as a form of violence was organized by The Gambia Chapter of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children. The declaration from that conference confirmed that the practice of FGM has neither Islamic nor Christian origins or justifications and condemns its continuation.<sup>35</sup>

### C. RIGHTS OF CHILDREN

#### 1. *Efforts to Address Economic and Sexual Exploitation*

The International Labor Organization (ILO), the United Nations Children's Fund (UNICEF), national governments and non-governmental organizations continue to urge national governments to regulate the employment of young children. The number of children between the ages of five and fourteen working full-time is 120 million, increasing to 250 million, including children working part-time.<sup>36</sup> Among many efforts underway to protect children from economic exploitation, the ILO's International Programme on the Elimination of Child Labor (IPEC) now operates in thirty-three countries, and conducts preparatory work in nineteen countries.<sup>37</sup> In addition, the ILO and the Organization of African Unity (OAU) supported a February 1998 meeting in Kampala, Uganda to address abusive child labor in Africa. The conference, attended by government, employers' and workers' representatives of twenty-two countries, resulted in cooperation between the OAU, the ILO, UNICEF and non-governmental organizations to prepare positions for the 1998 and 1999 International Labor Conferences on child labor.

Article 36 of the U.N. Convention on the Rights of the Child (CRC) requires State Parties to protect children against all forms of exploitation that are prejudicial to any aspects of their welfare. Article 32:1 establishes the right of the child to protection from economic exploitation; and work that is likely: (a) to be hazardous; (b) to interfere with education; or (c) to be harmful to the health or physical, mental, spiritual, moral, or social development of children, and Article 35 requires appropriate action to prevent child abduction, sale, and trafficking.<sup>38</sup> On June 18, 1998, the International Labor Conference resolved to discuss a proposed international convention and a recommendation to be adopted by the ILO General Conference concerning the immediate elimination of the worst forms of child labor at its 87th Session in June 1999. Article 3 of the proposed convention states that the expression "the worst forms of child

32. The first country to outlaw the practice of infibulation (but not the forms of clitoridectomy and excision) was Sudan in 1946. However, the 1991 Sudan Penal Code does not mention any form of FGM.

33. There have been at least two convictions of practitioners of excision in Ghana, but the opinion of some in Ghana is that the law has driven FGM underground and made it more difficult to control.

34. Information provided to Lois A. Gochbauer by Berhane Ras-Work, President of the Inter-African Committee on Traditional Practices Affecting the Health of Woman and Children (Geneva, Switzerland).

35. See *id.*

36. See *Child Labour: Targeting the Intolerable*, International Labor Office Geneva, International Labor Conference, 86th Session 1998, Report VI(1), <<http://www.ilo.org/public/english/child/documentation/etexts/target/index.htm>>.

37. See *id.* at 7; IPEC <<http://www.ilo.org/public/english/90ipecl/index.htm>>.

38. U.N. Convention on the Rights of the Child, G.A. Res. 44/125, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/736 (1989), reprinted in 28 I.L.M. 1456 (1989) [hereinafter CRC]. Of all the states in the world, only the United States and Somalia have not yet ratified the Convention on the Rights of the Child.

labour” comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage, and serfdom; (b) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring, or offering of a child for illegal activities, in particular for the production and trafficking of narcotic drugs and psychotropic substances as defined in the relevant international treaties; and (d) any other type of work or activity which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children.<sup>39</sup> The proposed convention makes explicit that international law and legal principles prohibit such practices.<sup>40</sup>

International organizations and non-governmental organizations continue to address responses, including extraterritorial legislation, within the CRC framework to the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic performances. Articles 34 and 35 of the CRC commit parties to the CRC to: (1) protect children from all forms of sexual exploitation and sexual abuse; and (2) prevent the abduction of, the sale of, or trafficking in children.<sup>41</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) is coordinating a global offensive against pedophilia on the Internet. In 1998, UNESCO Director-General Federico Mayor denounced the commercial exploitation of children as “crime against humanity” and pledged to establish a system to alert national authorities about abuses. The ILO hosted a South Asian Subregional Consultation on Combating Trafficking in Children for Labor Exploitation in Nepal in 1998.

## 2. *Efforts to Address Use of Children in Armed Conflict*

An estimated 250,000 to 300,000 children under age eighteen are combatants in armed conflicts, and the U.N. Special Representative for Children in Armed Conflict states that two million children have been killed, and six million seriously injured, in the last decade. Article 38 of the CRC obligates States Parties to undertake to ensure respect for international humanitarian law and to ensure that children under age fifteen are not directly involved in armed conflicts.<sup>42</sup> In 1993, the U.N. General Assembly requested the appointment of an expert to study the problem, and in 1996, the General Assembly adopted a resolution recommending the appointment of the Special Representative.<sup>43</sup> On June 29, 1998, the U.N. Security Council condemned the abuses, but failed to reach consensus on a resolution. On June 30, 1998, a group of non-governmental organizations (NGOs) announced their intention to promote an optional draft protocol to the CRC that would raise the minimum age under the CRC for involvement in armed conflicts from fifteen to eighteen years of age. To this end, the NGOs plan to hold

39. *Child Labour*, International Labor Office Geneva, International Labor Conference, 87th Session, Report IV(1) (1999) <<http://www.ilo.org/public/english/10ilc/ilc87/rep-iv-1.htm>>.

40. The law and legal principles include: (1) the CRC; (2) the Convention and Recommendation concerning Minimum Age for Admission to Employment, 1973; (3) the Copenhagen Declaration on Social Development and the Program of Action of the World Summit for Social Development, 1995; (4) the Beijing Declaration and Platform for Action of the Fourth World Conference on Women, 1995; (5) the Forced Labor Convention, 1930; (6) the U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956; (7) the Labor Inspection Convention, 1947; (8) the Human Resources Development Convention and Recommendation, 1975; and (9) the Declaration on Equality of Opportunity and Treatment for Women Workers, adopted by the International Labor Conference in 1975. *See id.*

41. *See CRC, supra* note 38, arts. 34-35.

42. *See id.* art. 38.

43. G.A. Res. 48/157, U.N. GAOR, 48th Sess., 85th mtg., U.N. Doc. A/RES/48/157 (1993); G.A. Res. 51/77, U.N. GAOR, 51st Sess., Agenda Item 106, U.N. Doc. A/RES/51/77 (1997).

international conferences in 1999.<sup>44</sup> The optional draft protocol, which would obligate States Parties to the CRC to make use of underage combatants a crime, refers to the recent statute of the International Criminal Court, which makes such use of children a war crime.<sup>45</sup> In the United States, the Defense Appropriations Authorization Act of 1999 contains a statement condemning such practices and supporting the U.N.'s efforts.<sup>46</sup>

#### IV. International Trade and Investment: Human Rights Issues

##### A. THE AFRICA GROWTH AND OPPORTUNITY ACT

The Africa Growth and Opportunity Act sponsored by Representative Philip M. Crane (R-IL) passed in the House of Representatives on July 21, 1998. The act would authorize a new trade and investment policy for sub-Saharan Africa. Section 4 of the act would limit eligibility for financial assistance and trade benefits to countries that meet certain criteria. Under Section 4, the president must determine that eligible countries do not engage in gross violations of internationally recognized human rights.<sup>47</sup> The Clinton administration is committed to ensuring that the act becomes law in the 106th Congress.<sup>48</sup>

##### B. SELECTIVE PURCHASING LAWS AND SANCTIONS AFFECTING TRADE WITH BURMA (MYANMAR)

Burma was an original signatory to the Universal Declaration of Human Rights (UDHR). In September 1988, the State Law and Order Restoration Council (SLORC) seized control of Burma, which it renamed Myanmar in July 1989. In 1998, opposition leader Aung San Suu Kyi, stated that: "The international community should recognize the fact that the present regime in Burma is breaking every single article of the Universal Declaration of Human Rights and they should take action in accordance with this knowledge."<sup>49</sup> In accordance with Article 26 of the International Labor Organization (ILO) Constitution, the ILO reported on forced labor in Burma and urged the government to comply with the ILO Forced Labor Convention

44. See Amnesty International, International Secretariat (June 30, 1998) <<http://www.amnesty.org/news/1998/A6000198.htm>>; Human Rights Watch <<http://www.hrw.org/campaigns/crp>>; Child Rights Information Network (CRIN), <<http://www.crin.org>>.

45. See *Report of the Open-ended Working Group on a Draft Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts*, Annex 1, Draft Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts <<http://www.unhcr.ch/html/menu4/chrrep/98chr102.htm>>; United Nations: Rome Statute of the International Criminal Court, July 17, 1998, 37 I.L.M. 999 (1998); see also *Children in Armed Conflict and Displacement, The Convention, Treaties and International Agreements* <<http://www.crin.org/war/warcrc.htm>>.

46. See Department of Defense Appropriations Act of 1999, Pub. L. No. 105-262, § 8128(a), 112 Stat. 2279 (1998).

47. See Africa Growth and Opportunity Act, H.R. 1432, 105th Cong., § 4 (1997).

48. See Official Statement on Africa Growth and Opportunity Act by Joe Lockhart, White House Press Secretary (Oct. 23, 1998).

49. Aung San Suu Kyi says all human rights violated in Myanmar, AGENCE FRANCE PRESSE, Dec. 11, 1998, 00:15 GMT, available in LEXIS World Library, Allwld File; *Universal Declaration of Human Rights*, G.A. Res. 217A (III), at 71 U.N. Doc. A/81 0 (1948). Nobel laureate Aung San Suu Kyi and the National League for Democracy won the 1990 general election, but the SLORC ignored the election results and brutally suppressed political activities of Suu Kyi and other members of the National League for Democracy.

(1930).<sup>50</sup> In October 1998, a U.N. envoy met with Aung San Suu Kyi and a military official, and the U.N. issued a report sharply critical of the government's human rights abuses.<sup>51</sup>

Firms doing business in Burma are listed in the publication, "Multinational Businesses in Burma," published by the Investor Responsibility Research Center in Washington, D.C. Massachusetts and several local government selective purchasing laws provide that the debarment of contractors shall be determined based on this list.<sup>52</sup> As a result, some companies reportedly left Burma in order to win local government contracts in the United States, but other companies remained in Burma. As of January 11, 1999, the state of New York is considering the adoption of a selective purchasing measure. U.S. municipalities and the Commonwealth of Massachusetts have adopted selective public procurement laws, effectively placing potential contractors that have business ties in Burma at a competitive disadvantage. A consortium of U.S. business interests, USAENGAGE, and the National Foreign Trade Council challenged the constitutionality of the laws. On November 4, 1998, a federal district court struck down the Massachusetts law deciding that it impermissibly infringes on the federal government's power to regulate foreign affairs.<sup>53</sup> Massachusetts has appealed the decision. In December, 1998, the Los Angeles City Council voted unanimously to ban companies that do business in Burma from bidding for city contracts.<sup>54</sup>

The European Union (EU) and Japan have asserted that the Massachusetts selective purchasing measure violates U.S. government obligations under the World Trade Organization (WTO) Agreement on Government Procurement with respect to non-discrimination for qualified suppliers and awarding of contracts in accordance with criteria and essential requirements in the tender documentation. Massachusetts is subject to the agreement. The EU argues the law nullifies benefits accruing to it under the agreement and impedes attainment of the objectives of the agreement, including maintaining a balance of rights and obligations under the agreement. In response to a complaint from the European Union (WT/DS88/1), the WTO Dispute Settlement Body established a dispute resolution panel in October to review the issue.<sup>55</sup>

### C. HOLOCAUST FUNDS

In 1998, New York City and the states of New York, California, and Massachusetts had imposed a moratorium to sanction Swiss banks doing business in their jurisdictions as a protest against Swiss banks that had done business with the Nazis and held accounts and gold belonging to Holocaust victims. Since the 1940s, Swiss banks have been accused of building their postwar prosperity on the base of Jewish assets and Nazi reserves. Hearings helped focus attention on the issue, and in March 1998, the Swiss banks negotiated a "global resolution of holocaust-era

50. See Forced Labor Convention, June 28, 1930, 39 U.N.T.S. 55, as modified by the Final Articles Revision Convention, October 9, 1946, 38 U.N.T.S. 3.

51. See *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories, Situation of Human Rights in Myanmar*, Report of the Special Rapporteur, Mr. Rajsoomer Lallah, submitted in accordance with Commission on Human Rights Res. 1997/64, U.N. ESCOR, U.N. Doc. E/CN.4/1998/70 (1998) <<http://www.unhcr.ch/html/menu4/chrrrep/98chr70.htm>>. General Assembly resolutions are available at the website.

52. See MASS. GEN. LAWS ANN. ch. 7, §§ 22G-22M (West. Supp. 1998).

53. See *National Foreign Trade Council v. Baker*, 26 F. Supp. 2d 287 (D. Mass. 1998).

54. See Jim Lobe, *Rights-U. S. L. A. Bans Trade Ties To Burma Despite Federal Ruling*, INTER PRESS SERV., Dec. 16, 1998, available in LEXIS, World Library, Allwld File.

55. Japan reserved its third-party right under the WTO Dispute Settlement Understanding. See World Trade Organization, *Overview of the State-of-play of WTO Disputes* (Jan. 14, 1999) <<http://www.wto.org/wto/dispute/bulletin.htm>>.

issues." This "global resolution" was given to an executive committee of five U.S. state and city financial officers to determine whether the moratorium should be allowed to expire. Three main Swiss banks have also set up a voluntary Holocaust victims relief fund composed of contributions from the banks, the Central Bank, and Swiss corporations. There is also much pressure on certain U.S. companies, as well as those in Germany and Italy, regarding Holocaust assets.

#### D. APPAREL WORKERS' RIGHTS

As businesses increasingly locate their manufacturing and production abroad, there is great concern regarding the exploitation and harassment of workers. After more than two years of talks, the Apparel Industry Partnership<sup>56</sup> agreed in November 1998 to create the "Fair Labor Association" to monitor an industry based code of wages, work standards, independent monitoring, and public disclosure. Supporters of the agreement invited other companies to join this collaborative effort,<sup>57</sup> while those opposed to the agreement warned that there could be no meaningful decision to eliminate sweatshops without a commitment to paying a living wage.<sup>58</sup>

#### E. SHAREHOLDER RESOLUTIONS

In a major victory for concerned shareholders, the Securities and Exchange Commission (SEC) voted 4-0 on May 20 to reverse its 1992 "Cracker Barrel" ruling allowing companies to exclude all shareholder resolutions that raised workplace issues. This change came after the SEC was deluged by over 2,000 letters from concerned shareholders. This unprecedented outpouring of public opposition prevented the SEC from destroying one of the most important tools for encouraging corporate accountability—the shareholder resolution process.

This decision halts an erosion of shareholder rights that began in 1991, when Cracker Barrel Old Country Store restaurant chain formed a policy against hiring gays and lesbians, and then prevented its shareholders from introducing a resolution on employment policies. In 1982, the SEC ruled in Cracker Barrel's favor that employment practices are not subject to shareholder resolutions. The next attack on shareholder rights came after Congress directed the SEC in 1996 to "improve shareholder access to proxy statements."<sup>59</sup> The SEC developed new regulations in 1997, but these could have restricted shareholders' powers.

56. The AIP was created by President Bill Clinton in 1996 to address concerns about sweatshops in the United States and abroad, and to let consumers know which companies are participating in the process. AIP members are from a broad-based coalition of: (1) apparel and footwear companies; (2) human rights, labor, and religious organizations; and (3) consumer advocates.

57. This agreement was supported by L.L. Bean, Patagonia, Nicole Miller, Kathie Lee Gifford, Liz Claiborne, Nike, Reebok, Phillips-Van Heusen; as well as the Lawyers' Committee for Human Rights, the National Consumers League, the International Labor Rights Fund, Business for Social Responsibility, and the Robert F. Kennedy Memorial Center for Human Rights. Michael Posner, Executive Director of the Lawyer's Committee for Human Rights, stated that: "This is a precedent-setting agreement in an industry where there have been wholesale violations of human rights. This agreement is structured to protect the rights of workers worldwide and to give the public information it needs to make informed purchasing decisions."

58. The agreement was not supported by three AIP members: the Union of Needletrades and Industrial Textile Employees (UNITE), the Retail, Wholesale and Department Store Union, and the Interfaith Center on Corporate Responsibility. The labor unions expressed concern that there can be no meaningful decision to eliminate sweatshops without a commitment to paying a living wage. In addition, the groups questioned which company plants would be monitored for human rights violations and how voting of the Fair Labor Association would be structured.

59. See National Securities Markets Improvement Act of 1996, Pub. L. No. 104-290, § 510, 110 Stat. 3416, 3450-51 (1996).

The SEC's 1998 decision to restore shareholder actions has been hailed as a great victory for human rights and corporate responsibility.<sup>60</sup>

## V. Sexual Orientation and Gender Identity

### A. ANTI-GAY VIOLENCE

In 1998, the murder of a gay man in Wyoming brought calls for new hate crime legislation in the United States.<sup>61</sup> In Afghanistan, men accused of having sex with other men were murdered by their government in public spectacles where walls were bulldozed over the men.<sup>62</sup> If the men survived after half an hour under the rubble, they were allowed to live. Few, however, survived.

### B. CONSTITUTIONAL DEVELOPMENTS

"Sexual orientation" is an expressly protected category under the constitutions of South Africa and Fiji. The new constitution of Ecuador, which took effect in August 1998, is also broad enough to include sexual orientation in the category of "difference of any other type."<sup>63</sup> These new protections follow Canada, where the Charter of Rights and Freedoms<sup>64</sup> was interpreted to cover sexual orientation.<sup>65</sup>

### C. EMPLOYMENT DISCRIMINATION

President Clinton issued an executive order on May 28 to protect all federal government employees from employment discrimination based on sexual orientation.<sup>66</sup> His order survived an attempt by the U.S. House of Representatives to overturn it.<sup>67</sup> In another stunning victory for gay rights in the United States, the Oregon Court of Appeals ruled that the equal protection clause of the state constitution required equal treatment for lesbian and gay couples.<sup>68</sup>

### D. SODOMY LAW REFORM

Chile legislatively repealed its sodomy law, leaving only Nicaragua, Puerto Rico, and the United States as places in the Western Hemisphere still with sodomy laws.<sup>69</sup> Cyprus purported

60. The new rule became effective on June 29, 1998. See HUMAN RIGHTS CAMPAIGN, LAW BRIEFS 3 (Aug./Sept. 1998).

61. See, e.g., P.J. Engelbrecht, *Wyoming Gay Student Dies After Brutal Bashing—Gay and Straight Leaders Nationwide Call for Hate Crimes Legislation*, OUTLINES, Oct. 14, 1998, at 7; Lisa Neff, *Hate Crimes Reform Likely to Pass 106th Congress*, WINDY CITY TIMES, Jan. 14, 1999, at 1.

62. Lisa Neff, *Men Buried Alive for Sodomy in Afghanistan*, WINDY CITY TIMES, Apr. 30, 1998, at 11.

63. Article 23(3) of the new constitution states that "All persons will be considered equal and will possess the same rights, freedoms and opportunities without discrimination by reason of birth, age, sex, ethnicity, social origin, language, religion, political affiliation, economic position, sexual orientation, health status, disability, or difference of any other type." ECUADOR CONST. of 1998, art. 23(3) (1998).

64. The Charter of Rights and Freedoms is an annex to the 1982 Constitution.

65. Section 15 provides: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability." CAN. CONST. of 1982, sched. B, art. 15 (1994).

66. Exec. Order No. 13,087, 63 Fed. Reg. 30,097 (June 2, 1998).

67. The "Hefley Amendment" to the Appropriations Bill for the U.S. Departments of Commerce, Justice, and State would have gutted the Executive Order, but it failed on August 5, 1998, by a vote of 252-176.

68. *Tanner v. Oregon Health Sciences Univ.*, 157 Or. App. 502 (1998); see also Louis Weisberg, *Oregon Gays Get Benefits: State Becomes 11th to Ban Employment Discrimination*, WINDY CITY TIMES, Dec. 17, 1998, at 1.

69. See Paul Varnell, *Chile Repeals Sodomy Law*, WINDY CITY TIMES, Feb. 4, 1999, at 14.

to repeal its sodomy law, under threat of expulsion from the Council of Europe if it did not do so; some activists believed that the minor modification to the sodomy law was insufficient to satisfy the Council of Europe.<sup>70</sup> Kyrgyzstan repealed its Soviet-era sodomy law, joining most of the other former republics.<sup>71</sup> Judicial repeals of sodomy laws also continue; 1998 saw declarations that the sodomy laws of South Africa<sup>72</sup> and the U.S. State of Georgia<sup>73</sup> were unconstitutional.

#### E. GAY AND LESBIAN FAMILY LAW

Hawaii's voters approved a "Marriage Amendment" to the state constitution giving the state legislature "the power to reserve marriage to opposite-sex couples."<sup>74</sup> The amendment was a response to a Hawaii Supreme Court ruling that the equal rights amendment to the state constitution required a compelling reason to deny marriage licenses to same-gender couples.<sup>75</sup> Because the state could not prove a compelling reason to restrict marriage (other than "tradition"), opponents of same-sex marriage orchestrated the amendment to the state constitution. The Hawaii Supreme Court is considering how the amendment affects the still pending case.

The issue of same-sex marriage also arose in Alaska, where a trial court ruled that the denial of marriage licenses to same-sex couples violated the privacy clause of the Alaska Constitution. This ruling was also overturned at the ballot box.<sup>76</sup> A pending case before the Vermont Supreme Court still holds out the promise of authorizing same-sex marriages for the first time in the United States.

While the issue of gay marriage has had troubles in the United States, Western Europe has produced a variety of gay partnership laws that approach the full rights of marriage. In the first ten months of 1998, almost 2,800 same-sex couples in the Netherlands utilized a new registered partnership law that affords most of the rights of matrimony except for adoption.<sup>77</sup> Denmark, Iceland, Norway, and Sweden have specific partnership laws for gay and lesbian couples, which generally grant all rights of marriage except adoption, artificial insemination, and church weddings.<sup>78</sup> Hungary recognizes a common-law gay marriage, but without the right to adoption.<sup>79</sup> Gays and lesbians in these nations are confident that the denial of adoption rights is only temporary and will fall in future years.<sup>80</sup>

70. See Kai Wright, *Cyprus Alters Sodomy Law, Sort Of: Gay Activists Hope Council of Europe Will Press for Full Repeal*, WASH. BLADE, June 5, 1998, at 14. Cyprus repealed its sodomy law on May 21, just eight days before a deadline set by the Council of Europe for it to comply with a 1983 ruling from the European Court of Human Rights that found its sodomy law to be a violation of human rights.

71. See Rex Wockner, *World Roundup*, OUTLINES, Jan. 14, 1998, at 11; see also Michael Jose Torra, *Gay Rights After the Iron Curtain*, 22 FLETCHER F. WORLD AFF. 73 (1998).

72. See National Coalition for Gay and Lesbian Equality v. Minister of Justice, 1998 (CC); Lisa Neff, *South Africa High Court Rejects Sodomy Laws*, WINDY CITY TIMES, Oct. 22, 1998, at 11.

73. See *Powell v. State*, No. S98A0755, 1998 Ga. LEXIS 1148 (Nov. 23, 1998).

74. HAW. CONST. art. 1, § 23 (amended 1998).

75. See *Baehr v. Lewin*, 74 Haw. 530, 852 P.2d 44 (Haw. 1993).

76. See *Brause v. Bureau of Vital Statistics*, 1998 WL 88743 (D. Alaska 1998).

77. See Rex Wockner, *World Roundup*, OUTLINES, Jan. 20, 1999, at 10 (reporting that in the first 10 months under the new registration law that took effect in January 1998, the Dutch Central Bureau for Statistics had registered 1,507 male-male couples, 1,198 female-female couples, and 1,291 opposite-sex couples).

78. See *id.*

79. See *id.*

80. The Vatican has urged governments not to expand marriage or adoption rights for gay and lesbian couples. See, e.g., Kai Wright, *Vatican Slams Recent Family Law Initiatives*, WASH. BLADE, Dec. 25, 1998, at 12.

While legislation expressly authorizing gay marriages is still slow in coming, activists have turned their attention to creative alternatives to marriage. For example, two men "married" in Colombia on December 11 by signing a "joint-ownership-of-property contract" (*patrimonio comun*), affirming that they are homosexuals, love each other, and desired economic union."<sup>81</sup>

#### F. GENDER IDENTITY

The European Court of Human Rights ruled that its member states "have no positive obligation under the European Convention on Human Rights to recognize for legal purposes the new sexual identities of post-operative transsexuals."<sup>82</sup>

#### G. SAME-SEX SEXUAL HARASSMENT

Adopting a plain language reading of the Civil Rights Act, the U.S. Supreme Court applied Title VII of the act to a same-sex sexual harassment claim.<sup>83</sup> In Slovenia, a new employment law explicitly sanctions same-sex harassment in the workplace.

### VI. Conclusion

Although we have not been able to address all of the recent developments in human rights law, what we have surveyed here shows a mixture of incremental improvement, relative stability, and unfortunate regression. It is our hope that the coming year will see more improvement than regression, and that the relative stability that we see will translate into greater respect for the rule of law and the protection of human rights for all persons.

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81. Rex Wockner, *World Roundup*, OUTLINES, Dec. 30, 1998, at 10.

82. *Sheffield v. United Kingdom*, No. 31-32/1997/815-816/1018-1019 (July 30, 1998), as described in 1 INTERNATIONAL LAW: IN BRIEF, AM. SOC'Y INT'L L., 7 (1998).

83. *Oncala v. Sundowner Offshore Serv.*, 118 S. Ct. 998 (1998). The decision is not discussed further here because of space limitations and our confidence that it will be subjected to extensive scholarly analysis in the coming year. See, e.g., John Davidson Miller III, Note, *Same-Sex Sexual Harassment Is Actionable Under Title VII of the Civil Rights Act of 1964: Is This the End of Horseplay as We Know It?*, 29 SETON HALL L. REV. 787 (1998).