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International Legal Updates

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International Legal Updates

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INTERNATIONAL LEGAL UPDATES

LATIN AMERICA

**HOMOSEXUAL CIVIL UNIONS
RECOGNIZED IN MEXICO CITY**

On November 9, 2006, Mexico City's legislature voted to legally recognize homosexual civil unions. In response to requests by gay activist groups, the left leaning Democratic Revolution Party (PRD), which dominates the legislature, has been promoting the measure for several years. Although the measure falls short of legalizing gay marriage, it does grant homosexual couples numerous social benefits, including inheritance and spousal rights. Under the law, homosexual couples, as well as heterosexual couples who are not legally married, can voluntarily register their union with civil authorities.

The legislature signaled its approval of the measure in a 43-17 vote, with five abstentions. The opposition to the measure came entirely from the conservative National Action Party (PAN). Mexico City Mayor Alejandro Encinas signed the bill into law on November 13. The city's official gazette published the law on November 16, and the law will take effect 120 days after publication.

PAN and conservative nongovernmental organizations criticize the new law. One PAN lawmaker signaled her disapproval by saying the law simply "conceals a marriage between people of the same sex." PAN is exploring whether they can challenge the law on constitutional grounds. Article four of the Mexican constitution, which covers the rights of spouses, children and the family, states that "men and women are equal before the law [and] ... [t]his will protect the organization and development of the family." PAN argues this provision defines marriage as between a man and a woman. Mexico City legal counsel María Estela Ríos counters PAN's argument by pointing out that the law acknowledges civil unions, not marriage, between homosexual couples. Mexico City civil law continues to prohibit gay marriage. In addition to PAN's attacks, the National Pro-Life Committee said the organization would consider filing an injunction to prevent the law from going into effect.

Human rights and gay activists, however, praise the passage of the bill. One of Mexico City's leading homosexual activists, Tito Vasconcelos, said the law represents "Mexico's entrance into the first world of democracy, along with other countries that recognize this type of union." In Latin America, the Argentine capital of Buenos Aires and the Brazilian state of Rio Grande do Sul also approve civil unions. Lawmakers in Costa Rica and Colombia have debated similar measures at the national level.

**ABORTION COMPLETELY OUTLAWED
IN NICARAGUA**

President Enrique Bolaños, Nicaragua's outgoing president, signed one of the most restrictive abortion laws in Latin America on November 17, 2006. Abortions in Nicaragua are now completely illegal. Abortion was illegal for more than a century, but a legislative loophole allowed a woman to obtain a legal abortion if three doctors certified the woman needed the abortion to save her own life. Women could also terminate pregnancies resulting from rape or incest or when the fetus had grave, fatal defects. The new law eliminates the clause containing the loophole, making all abortions illegal, and forcing all women to seek abortions at underground clinics.

President Bolaños said the new law aligns the Penal Code with Nicaragua's political constitution. The constitution establishes the inviolability of the right to life and the importance of family as the fundamental nucleus of society. The law notes the reform was necessary so "there will not continue in Nicaragua any criminal acts under the excuse of therapeutic abortion, by which innocent children are daily executed in their mother's wombs and in open violation of the Constitution which completely protects the unborn child."

Conservatives pushed the bill through Parliament during the election season. Four out of five presidential candidates supported the bill. Daniel Ortega, the incoming president and the leader of the Sandinista party, dropped his ideological stance and supported the law to gain support from the Roman Catholic Church. Conservatives needed

Sandinista support to pass the law because the Sandinistas had blocked similar measures in the past. Nicaragua's National Assembly approved the law on October 26 with 52 votes in favor, zero against, and nine abstentions.

Human and women's rights groups hoped President Bolaños would not sign the bill because it did not include the stricter sentences he wanted for women who had illegal abortions and medical personnel who performed abortions. The president wanted a 30-year prison term similar to its Central American neighbor, El Salvador, which actively enforces its absolute abortion ban with 30-year prison sentences. Instead, the six-year prison term remains unchanged.

Several local women's groups, the country's association of gynecologists, the United Nations, the World Health Organization, Human Rights Watch, and other non-governmental groups all severely criticized the proposed law. Juana Jiménez, the leader of the Women's Autonomous Movement in Nicaragua, commented, "This is a throwback to the Middle Ages for women's rights." José Miguel Vivanco, the director of the Americas division for Human Rights Watch said, "The new penal code doesn't just go against basic human rights: It goes against fundamental legal principles of humanity." Not only did women in Nicaragua lose the right to choose, they lost the right to protect their own lives in the case of a dangerous pregnancy. Health experts and women's organizations predict that Nicaragua's already high maternal mortality rates will rise. Instead of deterring illegal abortions, activists fear women who cannot afford visits to underground clinics will try dangerous procedures at home. Doctors may fear to help women hurt from home procedures because the doctors will not want to become accomplices to a crime.

Human rights activists are preparing to seek a legal injunction against the ban based on constitutional and medical arguments. They are also monitoring women who may need a therapeutic abortion to develop a case for presentation to the Inter-American Commission on Human Rights.

PERUVIAN NGO RESTRICTION BILL

At the beginning of November, the Peruvian Congress, with a comfortable majority, approved a new bill restricting the activities of non-governmental organizations (NGOs) operating in Peru. In response to widespread criticism of the bill, the Peruvian Congress continued its intense debate of the bill despite its initial approval. However, on December 8, 2006, Congress passed the bill into law. According to the new law, NGOs and their international donors must register with the Peruvian Agency of International Cooperation (APCI). APCI has the power to supervise NGOs "in accordance with national development policy and the public interest." The NGOs and their donors must separately register all projects and activities with the APCI as a condition for the transfer of funds from the donor. The law also includes a list of infractions punishable by fines and other penalties. If an infraction is serious, APCI can permanently cancel an NGO's registration and prohibit the NGO's directors and legal representatives from participating in another NGO for five years.

Before passing the bill into law, the Peruvian Congress added a number of amendments. One positive amendment exempted internationally funded NGOs from the law, but these NGOs must still report their projects, donors, and funds spent. A significantly more negative amendment provides penalties for NGOs that cause public disturbances, damage public or private property, or contravene "proper behavior."

Human rights organizations, civil society organizations, the press, and religious institutions strongly criticize the terms of the law. They argue the law violates Peru's international obligations to protect the freedoms of expression, association, and assembly. NGOs play an important social role in Peru by filling the void left by the state in some areas of the country. Many critics believe the law is a disguised attempt to undermine the importance of human rights groups and silence environmental groups that frequently clash with economic interests, particularly the mining sector. As of December 12, Peruvian NGOs were gathering Congress members' signatures to argue the law was unconstitutional.

Human rights organizations also object to tactics used by President Alan Garcia's party, the American Popular Revolutionary Alliance (APRA), to gain support for the bill. APRA allied itself with pro-Alberto Fujimori legisla-

tors. Considering the poor democratic record of Fujimori's regime (1990-2000), human rights activists believe the alliance seriously undermines President Garcia's, and APRA's, image.

VENEZUELA REFUSES TO RENEW TV LICENSE

Venezuelan President Hugo Chávez announced at the end of December 2006 that he did not intend to renew the broadcasting license of one of Venezuela's oldest television stations. Chávez accused Radio Caracas Television, RCTV, of supporting attempts to overthrow him, including a coup in 2002 and a general strike in 2003. Venezuela's Vice President, however, argued that the decision not to renew the license is a "right of the state for justifiable reasons," and not an act of political retaliation.

José Miguel Insulza, Secretary-General of the Organization of American States (OAS), criticized Chávez's decision as "a form of censorship against the freedom of expression." In response, Venezuela demanded a retraction of the statements by the OAS, accusing the OAS of improperly meddling with Venezuelan affairs and making false statements. Other organizations, such as the Inter American Press Association, Reporters Without Borders, and the International Association of Broadcasting have also spoken out against Chávez's decision.

Recent pro-Chávez legislation allows the government to restrict criticism by the media through legal action or threats of persecution, leading to self-censorship among several of the major Venezuelan news agencies. A 2004 law allows heavy fines for broadcasts deemed to "condone or incite" public disturbances, and other legislation increased the penalties for libel and defamation. Private media is one major area of society out of Chávez's control, but Chávez's increasing restrictions and increasing control of media outlets are clear attempts to bring the media within the government's sphere of influence.

AFRICA

ZIMBABWEAN GOVERNMENT CONDONES POLICE BRUTALITY AGAINST PROTESTERS

In response to increased protests against deteriorating social and economic conditions, the Zimbabwean government intensified its abuse against peaceful protesters. A 28 page

report by Human Rights Watch entitled, "You Will Be Thoroughly Beaten," highlights the Zimbabwean government's brutal campaign to discourage peaceful protests. Over the past year, the government has reacted to protesters by beating them with batons or rifle butts and arbitrarily arresting and detaining them. Government officials have used the same force to silence and punish those who report the abuses.

In Zimbabwe's past, the main forces behind violence and intimidation against opposition supporters and civil society activists were war veterans, youth militias, and supporters of the ruling party. In the past three years, however, human rights violations have been carried out by uniformed army and police personnel, and state security agents. Police have also used such domestic laws as the Public Order and Security Act and the Miscellaneous Offences Act to justify their actions. Civil society activists told human rights organizations that they were often held in overcrowded and filthy conditions, with human waste on the floors, and were given blankets infested with lice. The activists were also sometimes denied legal counsel and access to food, water, and medical assistance. In detention, police subjected the activists to severe beatings that involved punching, kicking, striking with batons, and banging the detainees' heads against walls.

In September 2006, many incidents occurred in Zimbabwe involving police brutality. On September 13, police arrested close to 130 members of the Zimbabwe Congress of Trade Unions (ZCTU), during peaceful demonstrations throughout the country protesting poor working conditions. Video footage obtained by Human Rights Watch shows police beating unarmed trade unionists with batons before bundling them into a van and truck. On September 20, up to 180 members of the National Constitutional Assembly (NCA) were arrested during a demonstration in Mutare city center. According to the account of one NCA member, police forced the activists to sit on the ground, and then they beat them with batons before taking them to Mutare Central Police Station. On September 25, police violently disrupted a peaceful march by some 500 activists from the National Constitutional Assembly in Harare. The violent disruption caused panic and led to a stampede that injured about 24 people, seven of them seriously.

Human rights organizations have called on the Zimbabwean government to take all necessary steps to ensure that police, armed forces, and other security forces in Zimbabwe abide by Zimbabwe's obligations under international law and acknowledge and condemn excessive use of force on the part of police and other security officials. Zimbabwe is a party to the UN International Covenant on Civil and Political Rights, of which Article 9 would apply to these incidents. The Zimbabwean government has also been called upon to ensure that all persons taken into custody are brought before a judge within 48 hours, in accordance with the Zimbabwean constitution, and publicly condemn the use of torture and cruel, inhuman, and degrading treatment by police officers and other law enforcement agencies.

SOUTH AFRICAN PARLIAMENT APPROVES SAME-SEX UNIONS

In November 2006, the South African parliament voted 230 to 41 to pass the controversial Civil Union bill. The bill does not grant gays and lesbians the right to marry, but instead allows for "civil partnerships," which are defined as the "voluntary union between two adult persons of the same sex to the exclusion, while it lasts, of all others." Since the bill does not grant full marriage rights, some human rights organizations argue that the bill codifies and confirms inequality for gays and lesbians by denying them equal status to that of heterosexuals. Critics of the bill also argue that it is inconsistent with the South African Constitutional Court's findings which emphasized that the legal recognition of gay and lesbian relationships must acknowledge not only "all the practical consequences of exclusion from marriage," but the injury to human dignity that follows from that exclusion.

While some organizations may have thought that the bill did not go far enough, the South African Catholic Bishops thought that the bill's passage was a disappointment. Cardinal Wilfrid Napier, president of the South African Catholic Bishop's Conference, said that Catholic priests would not preside over same-sex marriages because they were not empowered by the church to do so. Mufti Zubair Bayat, Secretary General of the *Jamiat-ul-Ulama* (Council of Muslim Theologians), in KwaZulu Natal (KZN) responded to the legislation that under Islamic law, marriage is defined as a union between a man and woman. Nevertheless, the

civil partnerships is a first step, as this ruling makes South Africa the first African country to approve such unions.

MIDDLE EAST

DEATH PENALTY IMPOSED ON FOREIGN MEDICS IN LIBYA

On December 19, 2006, a Libyan court found six foreign medical workers guilty of purposely infecting 426 Libyan children with HIV. The five Bulgarian nurses, Nasya Nenova, Kristiana Valceva, Valentina Siropulo, Valya Chervenashka, and Snezana Dimitrova; and one Palestinian doctor, Ashraf Ahmad Jum'a, have been detained in a Libyan prison since February 1999, shortly after the children's cases were made public.

A Benghazi court first found the medics guilty of the same charges in March 2004, and sentenced them to death by firing squad. The basis for the guilty verdict in this earlier case was the medics' individual confessions. Yet subsequent interviews with Human Rights Watch and other organizations revealed significant defects in the ruling. Four of the six medics claimed their confessions were obtained through torture. Additionally, medical experts testified during the trial that the children likely had contracted HIV from poor hygienic conditions at the hospital, and that this had occurred prior to the arrival of the medics in Libya in March 1998. Following the sentencing and the allegations of torture, Libyan authorities faced significant pressure to overturn the verdict, which the Libyan Supreme Court did in December 2005, noting certain irregularities. The case was then referred to a lower court in Tripoli.

In the most recent trial, the government once again introduced the confessions into evidence, and the court refused to hear testimony from international experts or from the defendants concerning their torture and coerced confessions. Just as in the first trial, the most recent verdict triggered protest by the international community, including from human rights organizations. Human Rights Watch and Amnesty International both objected to the unfair trial and the imposition of the death penalty, and called upon Libyan authorities to overturn the verdict. Malcolm Smart, Middle East and North Africa Programme Director at Amnesty International said, "We deplore these sentences and urge the Libyan authorities to declare immediately that they will never be carried out. The death penalty is the ultimate cruel,

inhuman and degrading punishment, and in this case it has been imposed after a grossly unfair trial."

In recent years, Libyan leader Moammar Gadhafi has sought to renew ties with Western countries, including the United States and United Kingdom, and has announced efforts towards political reform, including greater respect for human rights. International anger over these prosecutions has hampered the Libyan government's efforts to improve its image in the West. At the same time, at home, the Gadhafi government faces intense public pressure for a guilty verdict. This case is particularly sensitive because of the involvement of children and the tragedy of the HIV infections. The children's families have demanded the death penalty for the medics. News sources report that clashes broke out in Benghazi, Libya's second-largest city, when the Supreme Court first ordered a retrial for the medical workers and there is concern that an innocent verdict could fuel opposition to the government — particularly if conditions at the hospital were to blame for the infections. Gadhafi has reportedly tried to reach a deal whereby Bulgaria would pay compensation to the victims' families, but Sofia has rejected this, stating that it would imply the nurses' guilt.

CONDITIONS OF MIGRANT WORKERS IN THE UNITED ARAB EMIRATES

In November 2006, Human Rights Watch (HRW) released a comprehensive report on the status of labor rights for migrant construction workers in the United Arab Emirates (UAE). The unprecedented report, "Building Towers, Cheating Workers," is based on extensive interviews with workers, government officials, and business representatives. Although it commends the UAE for its relatively progressive labor laws, the HRW report reveals that in practice, government and business practices are often illegal.

Over the past two decades, Dubai has seen extraordinary growth as an international business, media, entertainment, and financial hub. Skyscrapers compete with each other for height and office space, while hotels, shopping malls, golf courses, and villas spread across the emirate. Yet while businesses in Dubai recruit skilled foreign labor from the Middle East, East Asia, Europe, and the United States for management and executive positions, Dubai's booming construction and service industries are wholly dependent on

unskilled, cheap migrant labor, primarily from South Asia.

In the past year, there have been a number of large demonstrations by migrant workers to protest their working conditions and lack of rights. Among other grievances, these protests were directed against the government ban on strikes and labor unions, the failure to implement a minimum wage, the withholding of wages, and the confiscation of workers' passports by employers. Since 2000, the United Nations Special Rapporteur on the Human Rights of Migrants, Gabriela Rodríguez Pizarro, has issued a number of letters to the UAE's government inquiring into the deaths of migrant workers and seeking greater compliance with international standards.

Human rights and labor rights organizations have called upon the UAE to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, and to fulfill its responsibilities as a member of the International Labor Organization (ILO). The UAE has thus far refrained from ratifying two of the eight core ILO Conventions — No. 87, on Freedom of Association and Protection of the Right to Organise, and No. 98, on the Right to Organise and Collective Bargaining. Notwithstanding these abstentions, however, according to the ILO's 1998 Declaration of Fundamental Principles and Rights at Work, all member states must implement and respect fundamental workers' rights within the ILO framework. The Declaration specifically states that all members are required to allow freedom of association and the right to collective bargaining.

HRW makes a number of recommendations to the UAE government. These include: the establishment of an independent commission to publicly report on the status of migrant worker conditions in the UAE; the prohibition of companies from doing business with recruitment agencies that charge workers fees for visas, travel or anything else; the aggressive investigation and prosecution of employers that violate UAE labor law; the establishment of a minimum wage in accordance with a 1980 UAE labor law; and the allowance of independent human rights and workers' rights organizations.

THE EXECUTION OF FORMER IRAQI PRESIDENT SADDAM HUSSEIN

Former Iraqi President Saddam Hussein was hanged in the early morning hours of December 30, after a November 5 verdict by the Iraqi High Tribunal (IHT) sentenced him, and two of seven co-accused, to death for crimes against humanity. Human rights groups have widely condemned the execution, citing a deeply flawed and unfair trial, an inadequate appeals process, and opposition to the use of the death penalty. In addition, many argue that the hasty execution eliminated the possibility of holding Mr. Hussein accountable for many other alleged crimes, including the 1988 Anfal campaign, where thousands of Iraqi Kurds were gassed, tortured, and subjected to other gross abuses.

Saddam Hussein was tried and convicted of willful killing, forcible deportation, and torture in connection with an alleged retributive attack against the population of the small village of Dujail in the aftermath of a 1982 assassination attempt against him. In the days after the attack, hundreds of residents of Dujail were reportedly detained and tortured, and over 100 male detainees executed. The Dujail trial represented the first attempt by the newly established IHT, created under U.S.-led occupation, to prosecute those responsible for grave human rights violations committed in Iraq under the Ba'ath regime. According to most human rights bodies, including Human Rights Watch and the International Center for Transitional Justice — two groups that formally observed the trial proceedings — the Dujail trial was marred by numerous irregularities, resulting in procedures that failed to meet key fair trial standards and produced an unsound verdict.

In a November 2006 report entitled "Judging Dujail," HRW details serious administrative, procedural and substantive legal defects in the conduct of the case. The defects include, among others, political interference that undermined the independence and impartiality of the court; numerous shortcomings in the timely disclosure of incriminating evidence, exculpatory evidence and important court documents; violations of the defendants' right to confront witnesses against them; failure of the IHT to take adequate measures to protect witnesses and defense lawyers, three of whom were assassinated during the course of the trial; and serious violations of the defendants' right to have adequate time and facilities to prepare a defense.

HRW concluded that the "court's conduct ... reflect[ed] a basic lack of understanding of fundamental fair trial principles, and how to uphold them in the conduct of a relatively complex trial." Moreover, the IHT "struggled to competently perform administrative functions that are essential to a fair and effective trial."

In addition to denouncing the fairness of the trial itself, human rights organizations also criticized the haste with which the Iraqi Appeals Court upheld the trial court's sentence and the subsequent imposition of the death penalty. Instead of conducting a thorough legal review of the verdict, the appeals chamber reviewed the 300-page trial court decision, written submissions by the defense, and considered all relevant issues in a mere three weeks, announcing its decision on November 27. According to Malcolm Smart, Director of Amnesty International's Middle East and North Africa Programme, "[T]he Appeals Court provid[ed] little more than a veneer of legitimacy for what was, in fact, a fundamentally flawed process."

Saddam Hussein's expedited execution also dealt a major blow to the important process of establishing legal accountability in Iraq. Ascertaining truth and criminal liability is a crucial element in the healing process of countries emerging from dictatorship and repression.

EUROPE AND CENTRAL ASIA

FRENCH HOUSING CRISIS

Responding to the tactics of a high-profile lobbying group that recently pushed the housing crisis to the forefront of French politics, the French cabinet adopted a new French law making housing an enforceable right. Since 2005, when fires in crowded apartment buildings killed over 50 people, housing remains a contentious issue in French politics. In mid-December a group called the Children of Don Quixote put up dozens of red tents along Paris's Canal Saint-Martin, encouraging Parisians to sleep outside in solidarity with those who have no access to housing. Within weeks tent cities sprung up in Marseilles, Lyon, Strasbourg, Bordeaux, and Toulouse. The government has already increased its housing budget from \$11 million to \$92 million and pledged to place 27,000 of the most needy in shelters.

With a population of 63 million, France has a homeless population of over 86,500, a

quarter of which live in Paris. The Abbé Pierre Foundation, however, contests these 2001 numbers from the French government's National Institute for Statistic and Economic Studies and estimates that the true figure is closer to 150,000 with much of the growth coming from North African immigration. In comparison, the UN Human Settlement Program reports that the European Union currently has about three million homeless. According to the UN Habitat Report, approximately one-third of the world's city-dwelling population live in slum districts.

Courtesy of Amy Tai



Children of Don Quixote tents pitched in protest along Paris's Canal Saint-Matin

Moreover, homelessness is just one aspect of this complex situation. Aid groups estimate that three million of those with housing still face serious problems because they live in run-down hotels, trailers, or in apartments without bathrooms or heating.

French Prime Minister Dominique de Villepin stated that, "This [bill] ... will put the right to housing on the same level with medical care and education," making France one of the most advanced countries in the area of enforceable social rights. The plan would include measures to provide housing for the homeless, poor workers, and single workers by the end of 2008. By 2012 the right would be extended to all those living in unfit conditions.

With two rounds of Presidential elections approaching in April and May, candidates from all parties are promising to adopt the plight of the homeless. President Jacques Chirac announced that the right to housing had to become a reality. Conservative candidate, Interior Minister Nicolas Sarkozy, vowed that he would eradicate homelessness within two years of taking office, while the Socialist candidate Ségolène Royal has urged that France needs "a vast plan to fight economic insecurity." Polls show these two candidates are currently tied to become the new French president. In December, many organ-

izations rushed to ensure that homeless citizens were registered to vote by the December 30, 2006 registration deadline.

TORTURE AND ILLEGAL DETENTION BY RUSSIAN FORCES IN CHECHNYA

As part of its three week fall session, the UN Committee against Torture expressed concern about reports of unofficial places of detention in Russia's North Caucasus region. The Committee found consistent allegations that public officials instigated torture or cruel and inhumane or degrading treatment, as well as abductions and enforced disappearances of persons in the Chechen Republic. While the new Russian Code of Criminal Procedure limits detention of suspected criminals to 48 hours, many of those detained in the North Caucasus are brought to unofficial or unlawful detention centers, thereby circumventing this protective provision. In a recent report, Human Rights Watch documented 82 cases in which Chechen forces, under the control of Chechen Prime Minister Ramzan Kadyrov, detained and tortured prisoners in order to obtain information concerning information on Chechen rebel forces.

Since the outbreak of the second Russian-Chechen conflict in 1999, thousands of persons are believed to have been "disappeared" during *zachistki* — literally "clean-ups," Russian parlance for military raids where Russian authorities conduct house-to-house document checks. The Russian non-governmental organization Memorial estimates that between 3,000 and 5,000 Chechens have been abducted, disappeared, or taken to unofficial detention centers.

The Committee recommended that Russia prevent those detained from being brought to any unofficial place of detention under its effective control. The Committee further recommended that unofficial places of detention be disclosed and that all measures be taken to prevent abductions and enforced disappearances in any territory under Russian control. Finally, the Committee stated that an inquiry should be conducted into the methods used in questioning prisoners in holding facilities operated by the Russian Interior Ministry's investigative bureau in the region.

One hundred and forty-two states are Parties to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Signatories are bound by the terms of the treaty to submit reports to the Committee periodically to

ensure that human rights violations do not occur on their territories and to send delegations before the Committee's ten independent experts to answer questions. In October 2006, Russia refused entry to the UN Special Rapporteur on Torture who sought to conduct unannounced prisons visits and to meet with detainees.

KYRGYZSTAN GOVERNMENT RESIGNS

Prime Minister Felix Kulov and the Kyrgyz government resigned on December 19, citing an inability to work with parliament, specifically due to new constitutional amendments that diminish presidential powers and augment parliamentary authority. These amendments were approved by President Kurmanbek Bakiyev on November 9 in response to weeklong demonstrations. The November demonstrations were the largest since Kyrgyzstan's Tulip Revolution in March 2005 when then president Askar Akayev fled as a result of public frustration with widespread fraud in that month's parliamentary elections.

Subsequent to the March 2005 Tulip Revolution, Bakiyev won a July 2005 presidential election with 88 percent of the vote. However many Kyrgyz citizens, particularly those living in the mountainous regions, still consider the country too poor, corrupt, and undemocratic. On November 2 protestors organized by the For Reforms coalition gathered in Ala Too Square in Bishkek to support opposition members of parliament seeking to transfer more power to the parliament by amending the constitution.

Initially, Bakiyev's representatives announced that Bakiyev would not accept parliament's planned changes but would submit his own, arousing fears of a violent confrontation. Opposition lawmaker Isa Omurkulov stated, "The President has cheated us again. Bakiyev is pushing our society toward a civil war. If he thinks that opposition supporters on the square have gotten tired, he's deeply mistaken." The situation continued to escalate; by the middle of the week about 7,000 anti-government protesters were assembled in the square, many of whom refused to leave and slept in small tents and yurts. Close to 1,000 presidential supporters gathered at the parliament for a rally, protected by armed police officers. Small fights broke out between the two crowds at which point Interior Ministry troops separated the fighting groups using smoke bombs and tear gas. Six people were hospitalized, many of whom sustained

injuries from shrapnel and gun grenades. By the end of the week of protests, the number of demonstrators calling for Bakiyev's resignation grew to more than 10,000.

The standoff ended on November 9 when the Kyrgyz parliament swiftly approved a new constitution submitted by Bakiyev but heavily influenced by the parliament. The new constitution curtails some presidential powers and, for the first time, allows the dominant party in parliament to choose a prime minister and government. The size of the parliament was enlarged from 75 to 90 seats, half of which will be filled by proportional representation. The opposition felt that the parliament's new arrangement would reduce the chance of fixing elections in advance.

In the interest of stability, the new constitution provides for the current government and parliament to finish out their terms. Political analyst Nur Omarov considers the cabinet's actions, led by Kulov, to be part of a plan to speed up parliamentary elections in order to replace the current parliament, elected while Akayev was still in power, with one more amenable to President Bakiyev. However, it is not clear how the government's resignation might achieve a change in parliament.

ASIA

CHINA: PUBLIC SHAMING INCITES CRITICISM

Police in China's southern city of Shenzhen, which is designated a special economic zone bordering Hong Kong and is one of the busiest ports in China, put approximately 100 women and men arrested in connection with prostitution on display in the middle of a major intersection for public humiliation in late November. Prostitution is illegal but omnipresent in China and has become increasingly visible since the start of China's free market economic reforms in the late 1970s. Previous attempts to crack down on the sex industry have had inconsistent results. In 2006 thousands of armed police were deployed to quell a protest by 3,000 people who were left without jobs after the closure of massage parlors and discos in Shenzhen, and in 2003 organizers of a sexual debauchery involving 200 Japanese tourists and local prostitutes were sentenced to life imprisonment.

A national television broadcast about prostitution in the city's Futian district, where

sex is openly traded, appeared to have shamed the local authorities into initiating a two-month anti-prostitution campaign. After raiding karaoke bars, saunas, and barber-shops, officers paraded those accused of being prostitutes and pimps, handcuffed and wearing bright yellow prison tunics, in the street. Police used loudspeakers to read out their names, hometowns, dates of birth, and crimes they were accused of committing, and hauled them to prison without trial. Thousands of residents lined up along the street to watch.

The events prompted nationwide outrage as citizens, lawyers, academics, and the All-China Women's Federation criticized police for violating the rights of these men and women. Lawyers defending those accused of prostitution cited legal reforms in 1988 that banned acts of public chastisement. Yao Jianguo, a Shanghai lawyer, wrote in a public letter to the National People's Congress, "These people were just alleged criminals. It was not yet determined that they had violated the law ... This brutal form of punishment [public humiliation] has long been abandoned by our society with the development of civilization and a legal system."

On the Internet, Chinese citizens expressed concern about how brutal Cultural Revolution-era tactics of the 1960s and 1970s could reappear in today's China. Over one hundred million Chinese lives were destroyed and at least one million were killed over the course of ten years during the Cultural Revolution, which was led by the Chinese government. During the Cultural Revolution, "rectification campaigns" were everyday occurrences when "class enemies," including people accused of being intellectuals or reactionaries, were routinely paraded and beaten in front of crowds, forced to make confessions, and sent to work camps for reeducation.

Chinese citizens also criticized the government for not acting against the wealthy operators of the sex trade or prostitutes' customers. "Looming in the background of this case is the fact that the sex trade emerged along with China's [economic] reforms themselves," said Li Jian, a prominent Beijing human rights activist who has called for organized action to defend the arrested women. These economic reforms have impelled masses of mainly young men to move from rural areas to work in factories in urban areas such as Shenzhen. "If you say that prostitution is illegal, there is an administrative backdrop to the issue. To

punish the prostitutes in such a crude manner is a way of avoiding responsibility on the part of the administration and the police."

In Shenzhen, the municipal Public Security Bureau told local reporters it had nothing to do with the public humiliation of sex-workers in the Futian district, but declined to say whether the public act was illegal or whether any police officers would be reprimanded. Xu Desen, the Futian district Communist Party secretary, endorsed the parade as a good way to discourage prostitution and said the crackdown by police would continue.

INDIA: GROUNDBREAKING DOMESTIC ABUSE LAW ENACTED

In October 2006, India passed its first law enacted by parliament that provides women protection against domestic abuse. According to India's National Crime Records Bureau, domestic abuse occurs every three minutes in India, and every six hours, a young married woman is burned, beaten to death, or driven to commit suicide. The United Nations Population Fund reported that up to 70 percent of married women ages 15 to 49 in India are victims of beatings or coerced sex. Despite the scale of the problem, there had been no specific legislation to deal with actual abuse or the threat of abuse at home.

The new law defines domestic violence as "actual abuse or the threat of abuse whether physical, sexual, emotional or economic," and provides protection to women from violence at the hands of husbands, live-in partners, or family members. To address the thousands of cases of women being beaten or burned to death because their families did not provide a large enough dowry, the law also bans husbands from harassing their wives for larger dowry payments. Punishment for abusers consists of a jail term of up to one year and/or a fine of up to 20,000 rupees (approximately U.S. \$450). The law provides the woman a share of her abuser's property and salary and medical damages, as well as the appointment of protection officers and private service providers to help abused women access medical and legal aid and safe shelter. It also includes provisions for abused women to report directly to judges instead of to police, who often side with alleged abusers and rarely act on the complaints. Significantly, the law ensures women's rights to remain in the family home, regardless of whether or not they own the property.

Women's rights groups assert that preventing domestic abuse also requires a change in the mindsets of people. A survey by the International Institute for Population Studies showed that 56 percent of Indian women believed domestic violence is justified in certain circumstances, such as leaving the house without permission or cooking a bad meal. Advocates hope that the law will set a precedent to distinguish between what is acceptable behavior and what is a crime against women. Although the law is a step forward in protecting the basic rights of women in India, women's rights groups, such as the Center for Social Research based in New Delhi, acknowledged that "it will only be meaningful if the government sets aside funds to provide shelter and protection to a woman against further abuse."

NORTH KOREA: REPORT SHIFTS FOCUS FROM NUCLEAR THREAT TO EGREGIOUS HUMAN RIGHTS SITUATION

A report commissioned by former President of the Czech Republic Vaclav Havel, former Prime Minister of Norway Kjell Magne Bondevik, and Nobel Peace Prize laureate Elie Wiesel, was released in October 2006, drawing attention to the severe human rights abuses in North Korea. Many in the international community, including the United States, have argued that focus on North Korea's human rights abuses would prompt the country to avoid an open discussion of its nuclear program. Recent actions of the country's leader Kim Jong Il, however, demonstrate that this approach has had little bearing on his decisions with respect to the nuclear program, nor has it aided North Koreans who continue to suffer from poverty and starvation. The report, titled "Failure to Protect," alleges that North Korea has neglected its responsibility to protect its citizens, and its policies toward food distribution and political prisoners amount to crimes against humanity.

The report, authored jointly by attorneys of the law firm DLA Piper and the U.S. Committee for Human Rights in North Korea, exposes the failure of the North Korean government to fulfill its responsibility to protect its own citizens in two major areas: food policy and famine, and the treatment of political prisoners. More than one million North Korean citizens died during the famine in the 1990's, caused mainly by the govern-

ment's diversion of international assistance resources from food aid to its military and nuclear program. Despite the harsh reality that more than 57 percent of North Koreans are without sufficient food to stay healthy, and 37 percent of children are chronically malnourished, the government denies the World Food Program access to much of the country. Human rights organizations predict that millions of North Koreans will face severe hardship this winter, and that the country is on the brink of another famine.

Additionally, North Korea holds as many as 200,000 people in its "gulag," the country's political prison camps. Those accused of being "dissenters" and their relatives, including the elderly and children, are imprisoned under a guilt-by-association system instituted by Kim Il Sung, the founder of the communist state of North Korea. Those accused of political offenses are not arrested or informed of the offense, but are instead abducted and placed in an interrogation facility. Prisoners in the gulag are provided starvation-level rations, forced to work under brutal conditions, and often tortured or executed for trivial offenses. It is estimated that more than 400,000 have died in the gulag over a 30-year period.

The few attempts by the international community to engage with North Korea on human rights and humanitarian concerns have been unsuccessful. Resolutions adopted by the UN General Assembly and the Commission on Human Rights have been repudiated by North Korean representatives and ignored. North Korea refuses to recognize the legitimacy of the United Nations Special Rapporteur on Human Rights and has denied his numerous requests for access to the country.

The report calls for the UN Security Council to act under the "Responsibility to Protect" doctrine adopted by the UN General Assembly and endorsed by the Security Council last year. Key language adopted as part of this doctrine affirms that UN leaders "are prepared to take collective action, in a timely and decisive manner, through the Security Council ... [if] national authorities are manifestly failing to protect their populations from ... crimes against humanity." (S.C. Res. 1674, S/RES/1674 (2006)). The doctrine endows the UN with a new international and multilaterally established basis to use the traditional powers of the Security Council to alleviate the suffering of innocent

civilians. Specifically, the report urges the Security Council to adopt a non-punitive resolution insisting on open access to North Korea for humanitarian relief, the release of political prisoners, access for the Special Rapporteur, and engagement by the United Nations. The report also urges the incoming Secretary-General, Ban Ki-Moon, to brief the Security Council on the dire situation.

The DLA Piper and U.S. Committee for Human Rights in North Korea report is available at <http://www.dlapiper.com/nkreport>. *HRB*

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