

2006

International Legal Updates

Sebastian Amar

American University Washington College of Law

Shirley Woodward

American University Washington College of Law

Sabrina Balgamwalla

American University Washington College of Law

Amy Tai

American University Washington College of Law

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Amar, Sebastian, Shirley Woodward, Sabrina Balgamwalla, and Amy Tai. "International Legal Updates." *Human Rights Brief* 13, no. 2 (2006): 33-38.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in *Human Rights Brief* by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

INTERNATIONAL LEGAL UPDATES

LATIN AMERICA

FUJIMORI EXTRADITION TO PERU

Former Peruvian President Alberto Fujimori was arrested in Santiago, Chile, on November 7, 2005. His arrest has been followed by an emphatic demand that the Chilean authorities expedite his extradition to Peru, where he is suspected of numerous human rights violations. These human rights violations include extrajudicial executions, as well as the use of extortion and intimidation as a means to control the Peruvian judiciary and other state institutions. The convictions of 2,500 individuals by domestic anti-terrorism courts in the 1990s without protection of their due process rights are evidence of Fujimori's control over the judiciary.

Fujimori, who was the president of Peru from 1990-2000, fled to Japan after his government collapsed in the face of a corruption scandal. According to Human Rights Watch, Fujimori is accused, among other things, of providing members of his death squad (the Colina Group) with severance payments of \$15 million for "services to the nation." This and other mounting evidence of moral and political improprieties were enough to cripple the former President's administration. He now faces criminal charges of corruption and human rights abuses, including homicide, acts of torture, and forced disappearances.

After Fujimori's regime collapsed, special prosecutors initiated investigations to ascertain the extent of the human rights abuses committed by his government. Human Rights Watch has reported that there are nearly 1,500 individuals being prosecuted for acts of corruption allegedly committed under the regime, including 40 members of the Colina Group. The charges against Fujimori include the extrajudicial execution of 15 people in 1991, as well as the forced disappearance and murder of nine students and a teacher from La Cantuta University in July 1992.

The potential prosecution of Fujimori for these crimes comes as a result of the Inter-American Court of Human Rights' finding that the amnesty law that had blocked the ex-president's prosecution for years was a viola-

tion of the American Convention on Human Rights. In September 2001 the Inter-American Court determined that the 1995 law, which provided impunity for human rights abuses committed by the military, police, and civilian personnel in the struggle against the Maoist insurgency, was invalid because it lacked judicial effect and impeded the reparations process.

On August 28, 2001, the Peruvian Congress also addressed the matter of Fujimori's impunity and stripped him of protections meant to exempt all former heads of state from punishment. By lifting the amnesty that Fujimori had established during his presidency, the Inter-American Court of Human Rights has helped Peru begin the reparations process by reestablishing the legitimacy of the judiciary, increasing transparency, and ultimately providing the public with the tools required to seek justice through peaceful means.

The Chilean Supreme Court must now determine whether Peru has met all the necessary requirements in its request for the ex-president's extradition. In the past, Chilean courts have found insufficient grounds to grant Peruvian extradition requests concerning cases linked to the Fujimori regime. José Miguel Vivanco, Executive Director of the Americas Division of Human Rights Watch, stated, "The Chilean judiciary did the right thing by ordering Fujimori's arrest.... Now it needs to determine whether his days of evading justice are over."

VIOLENCE AGAINST WOMEN IN CENTRAL AMERICA

Like much of the rest of the world, Central American nations struggle to find solutions to various human rights abuses. Among these Central American nations, El Salvador and Guatemala stand out with respect to their high rates of recorded violence against women and their government's weak response to this phenomenon.

Human rights groups have expressed concern with the lack of thorough investigations of the murder of women in El Salvador, as well as the treatment of the victims' families upon reporting these crimes. Of the last 20 cases of women and girls who

were sexually abused and then brutally murdered in El Salvador, only three have resulted in the prosecution and conviction of the responsible parties. Amnesty International compared the methods used to carry out these murders "to those used by the death squads in the 1970s to terrorize the population." According to the organization, the government of El Salvador fails to exercise due diligence by preventing, investigating, and punishing sexual and gender-based violence, whether perpetrated by state officials or non-state actors. Further, the state has not fulfilled its duty to protect the rights of the victims and to provide them, or their relatives, with an appropriate and effective remedy. This has contributed to "a climate of fear and general mistrust in the justice system," Amnesty International noted.

Attempts by family members to report disappearances, rapes, and murders are often disregarded and at times met with hostility. These reactions serve only to violate the trust of the public and hinder the investigative process as a whole. The judicial system of El Salvador cannot perform its legal and moral obligations if crimes are not reported. Amnesty International has noted, "The government of El Salvador has an outstanding debt to the women of this country, a debt that can only be repaid with justice."

The problem is also prevalent in Guatemala, where violence against women was most pronounced during the 36-year internal armed conflict that ended with the signing of the UN-brokered Peace Accords in 1996. Approximately one quarter of the conflict's 200,000 victims of disappearances or extrajudicial executions were women. This result is not surprising considering that rape and sexual abuse were integral in the Guatemalan military's counter-insurgency plan. By sexually abusing women, the military hoped it would be able to create an atmosphere of fear and intimidation that would allow it to control the population more easily. The psychological effects of these past abuses, coupled with the state's failure to hold the perpetrators accountable, have been overwhelmingly detrimental to social progress in Guatemala. As a result of these government shortcomings, there is significant public distrust of the judicial system and

its ability to achieve justice, which has weakened the rule of law within the country.

Amnesty International has issued reports concerning the systemic flaws in the mechanisms used by the Guatemalan government to protect women from violent crimes. In its latest report, Amnesty stated that “[t]he State’s failure to bring to justice those responsible for the atrocities committed during the internal armed conflict or to provide reparations to the victims and their families has left a terrible legacy.” Moreover, it has become increasingly apparent that this legacy is fueling the ongoing sexual violence and discrimination against women in Guatemala that remains today. The nation’s youth find themselves in an environment that does not regularly punish these crimes, which in turn sends the message that as long as you are male the scales of justice are tipped in your favor.

Although the government has taken some steps to address this issue, including the ratification of international human rights treaties and the introduction of laws and state institutions aimed at promoting the rights of women, their effect has been minimal. These mechanisms have failed in their attempts primarily due to a lack of resources, such as personnel and equipment, and a lack of political will. The UN Special Rapporteur on Violence Against Women found that “the Women’s Office of the Ministerio Público and the special unit of the PNC (Policía Nacional Civil) reported that 40% of the cases are archived and never investigated.” This special unit of the PNC functions with 20 investigators divided into five groups. Each investigator estimates that they have a minimum of 20 cases pending, many of which will never have their day in court.

Due to a lack of cooperation between government agencies and institutions, a majority of the cases that are filed never make it beyond the initial investigation stage. According to the office of the Special Prosecutor for Crimes against Women, only one out of more than 150 cases received by its office for investigation has resulted in a criminal conviction. The Human Rights Ombudsman’s Office estimates that only nine percent of cases have actually been investigated. Of the cases that reach the investigation stage, very few are allotted sufficient resources to conduct a thorough investigation, according to Human Rights Watch.

The international human rights community has acknowledged the desperate state of

women’s rights in Latin American countries. Women are marginalized and have limited opportunities to remedy the situation through their country’s judicial systems. Human rights defenders are calling for the establishment of effective oversight and accountability mechanisms to remedy the many protection-based problems within these governments. Only after these systems are in place and can adequately protect women’s rights will the societal pressures that perpetuate the problem begin to be challenged.

AFRICA

SAME-SEX MARRIAGE RIGHTS IN SOUTH AFRICA

South Africa’s Constitutional Court, the country’s highest court, ruled on December 1, 2005, that same-sex marriages must be given the same legal status as those between men and women. The Court stayed its ruling for one year, during which time the Parliament is supposed to amend the Marriage Act of 1961 to make its provisions gender-neutral. The Parliament is expected to comply with the Court’s decision. If the Parliament fails to make these changes, the words “or spouse” will be added automatically to the Act after the words “or husband.” The Home Affairs Department is expected to use this time to draft recommendations to its Minister on practical steps needed to implement the law.

The decision came in response to a government appeal after the national Supreme Court of Appeal affirmed the marriage of a lesbian couple. The government argued that the Supreme Court had overstepped its bounds and infringed on the Parliament’s authority to make laws. The Constitutional Court, however, stated that the common law’s refusal to grant legal rights to same-sex couples violated the constitutional protection of equal rights. The ruling was unanimous except for one justice who argued that the decision should take effect immediately.

Some South African gay-rights activists expressed frustration with the year-long delay in the decision’s implementation. Others, however, have applauded the ruling as a major step forward. Indeed, the ruling comes after a series of smaller victories for gay rights were secured in the wake of South Africa’s constitutional ban against discrimination on the basis of sexual orientation. In 1998, for example, the Constitutional Court struck down sodomy as an offense, and one year later it approved permanent residency

for foreign partners of gay citizens. In 2002 the Court gave homosexual partners in a committed relationship the same financial status as married heterosexual couples, and ruled that homosexual couples could adopt children. One year later it also ruled that children born to same-sex couples through artificial insemination were legitimate. South Africa is only the fifth country to recognize same-sex unions as equal to those of heterosexual couples.

MASS GRAVES IN NAMIBIA

Mass graves were discovered in Namibia along its northern border with Angola in November. Conflicting reports put the total number of bodies uncovered between seven and eleven. Officials link the graves to a nine-day war fought in 1989 between the South West African People’s Association (SWAPO) and the former South African Defense Forces (SADF) during Angola’s struggle for independence from South Africa. Troops of the armed branch of the SWAPO party, the People’s Liberation Army of Namibia (PLAN), reportedly crossed into Namibia from Angola on March 31, 1989, the night before Angola’s year of transition to independence began. Although over 300 people were reportedly killed in the clash, which threatened the peace process at the time, diplomatic negotiations eventually smoothed over the incident. Namibia became an independent country in 1990. Subsequently, SWAPO won the Namibian elections and has remained in power ever since.

Based on their uniforms, the dead appear to be members of PLAN. The same type of cloth that the former apartheid regime used to murder individuals by suffocation was found in the graves and is further evidence that the SADF may be responsible for the killing. A road worker discovered the first grave on November 9, 2005, and army units were sent to search for additional graves in the area. Government appeals for information have since led to further discoveries.

Upon its election SWAPO instituted a national reconciliation policy and signed an agreement with South Africa’s then apartheid government that it would not take legal action against those responsible for committing atrocities during the liberation war. Namibia’s current government remains committed to this policy and has called for former fighters to reveal both the sites of additional graves and information regarding the identification of bodies without fear of retribution. Critics of the reconciliation policy, however,

note that it has prevented families from learning the truth about their loved ones and moving toward forgiveness. Namibia's National Society for Human Rights (NSHR) and other NGOs have called for a truth and reconciliation commission (TRC) similar to South Africa's to investigate human rights violations committed by both sides during Namibia's struggle for independence. NSHR has relaunched its appeal for a TRC in response to the discovery of the graves.

CONSTITUTIONAL REFORM IN KENYA

Kenyans rejected a proposed constitution on November 21, 2005. According to the Electoral Commission of Kenya (ECK), 57 percent of voters voted against the constitution. Kenyan President Mwai Kibaki and his National Alliance Party of Kenya (NAK) had urged support for the document, but stated in a televised address that his government would respect the people's decision. The issue has proven divisive, particularly because the President's Roads and Public Works Minister and five other cabinet ministers opposed the referendum.

Opponents of the proposed constitution feared that it gave too much power to the President. They preferred an earlier draft, which would have shared executive power between the President and the newly-created post of Prime Minister. Other issues that were under dispute included the devolution of powers, presidential election procedures, and cabinet appointments.

The rejected draft would have replaced Kenya's current constitution, which was written in London after Kenya's independence from Great Britain in 1963. The current constitution was conceived by Kenyan nationalists with little input from the Kenyan people. The constitutional re-writing process began with the Constitution of Kenya Review Act of 1997, which aimed to decrease presidential powers and decentralize the government, and continued in 2000, when the Constitution of Kenya Review Commission (Commission) was appointed to collect citizen input on the revisions. The Commission's findings showed a popular desire to limit the control of Kenya's heads of state due to abuses by former Presidents Daniel arap Moi and Jomo Kenyatta. In 2003 and 2004, delegates from government and civil society met at the National Constitutional Conference. The resulting "Bomas Draft" included presidential power sharing and addressed other rights-based issues, but it caused strong disagreement

among the delegates. Attempts at consensus led to further drafts, which culminated in November's failed ratification. The failed ratification signifies that the current constitution will remain in force.

Despite some mild violence leading up to the vote, the day of the referendum was largely peaceful. Nearly 20,000 local and 150 foreign observers, as well as 60,000 security personnel, oversaw the process. During the announcement of the referendum results, ECK Chairman Samuel Kivuitu urged the public to push for further constitutional review, stating that "[i]t is imperative that we continue to strive for a better constitution, one that seeks to unite us, one that recognizes that the power to govern rests on the people."

MIDDLE EAST

DISTRICT COURT FOR THE HAGUE DECIDES ON IRAQ

The District Court for the Hague decided the first verdict addressing crimes against humanity committed against ethnic Kurds in Iraq. On December 23, 2005, Presiding Judge Roel van Rossum found Dutch businessman Frans van Anraat guilty of complicity in war crimes. The Court sentenced van Anraat to 15 years in prison for selling chemical weapons components to the Iraqi government between 1980 and 1988. Prosecutor Fred Teeven contended that these materials were used by the Saddam Hussein regime in a 1988 chemical attack on the village of Halabja, which killed 5,000 Kurds.

Halabja was among the 40 Kurdish villages used by the Hussein regime as "testing grounds" for chemical weapons in 1987 and 1988. According to the U.S. Department of State, the attacks on Halabja blinded, maimed, disfigured, or otherwise debilitated more than 10,000 people. The Court found that van Anraat "facilitated the attacks" by supplying the regime with thiodiglycol, which he knew or should have known would be used in the production of mustard gas. Office records from van Anraat's firm indicate that he sold over 1,000 tons of thiodiglycol to the Iraqi government. Teeven argued that these shipments were likely the source of the 800 tons of thiodiglycol used to manufacture the weapons in the Halabja attack. Judge van Rossum found that the Hussein regime's chemical weapons program depended on the materials sold by van Anraat and declared him guilty of multiple counts of complicity in war crimes, violating

the laws and customs of war, and causing death and serious bodily harm to the whole or entire Kurdish population.

Van Anraat claimed that he was unaware that the thiodiglycol was intended for use in chemical weapons. The prosecution countered that van Anraat and his business partner Hisjiro Tanaka went to great lengths to circumvent bans imposed on the export of chemical weapons components by mislabeling packages and falsifying shipment documentation. Defense lawyers argued that van Anraat violated only economic guidelines. Tanaka responded that chemical manufacturers told van Anraat that thiodiglycol is used in chemical weapons production. Witness statements that were obtained from the prosecution's investigations in numerous countries suggested that van Anraat could have learned about Iraq's chemical weapons campaign against the Kurds as early as 1984.

Before finding van Anraat guilty of complicity in war crimes, the court first considered whether the 1988 attack on Halabja constituted genocide. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), to which Iraq became a party in 1959, defines genocide as "acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group." Teeven argued that Hussein and former Defense Minister Ali Hassan al-Majid "were both closely involved in policies regarding the production and use of poison gas, the *Anfal* campaign [against the Kurds], and the attack on Halabja." As evidence of genocidal intent, the prosecution cited al-Majid's anti-Kurd radio campaign in 1988, including his statements that people in the Kurdish areas "have to be destroyed ... [and] must have their heads shot off," and that he would "attack them with chemical weapons and kill them all." The Court found that the Iraqi Kurds constitute an ethnic group according to the Genocide Convention, and that "the court has no other conclusion than that these attacks were committed with the intent to destroy the Kurdish population of Iraq." The court, however, acquitted van Anraat of genocide charges upon finding that he was not aware of the genocidal intentions of the Iraqi regime when he sold the ingredients for poison gas, and that the last shipment of thiodiglycol from van Anraat's firm reached Iraq prior to the attack on Halabja.

Hussein and al-Majid, named unindicted co-conspirators in van Anraat's case, face trial by the Iraqi High Criminal Court (formerly the Iraqi Special Tribunal). The

regime is accused of killing over 180,000 Kurds. It is believed that the tribunal prosecution plans to address the Halabja attack, but it is doubtful that the Dutch Court's findings on genocide will play a role in the prosecution. Although the Iraqi High Criminal Court is not required to take into account the judicial reasoning of the Dutch Court, the finding of genocide in the van Anraat case remains noteworthy as the first legal recognition of genocide against Kurds by the Hussein regime.

Although the Hague court sentenced van Anraat to 15 years in prison, Judge van Rossum noted that this sentence was insufficient because his economic activities "made possible a large number of attacks on defenseless civilians." Van Anraat plans to appeal his sentence. The court also awarded 10,000 euros in symbolic damages — the maximum amount of damages awarded to civil parties in criminal cases — to each of the 15 survivors of the Halabja attacks who joined the case. Additional victims are expected to demand higher damages in a civil case following this verdict.

EGYPTIAN AUTHORITIES USE EXCESSIVE FORCE IN POLICE RAID

Between 25 and 28 Sudanese refugees were killed when police forcibly disbanded a continuous three-month sit-in outside United Nations offices in Cairo. Over 3,000 Sudanese demonstrators were gathered to protest grievances with the United Nations High Commissioner for Refugees (UNHCR). The Egyptian government detained 2,174 Sudanese refugees following the assault and has since announced plans to deport 654 of them to the Sudan.

Over 4,000 Egyptian police surrounded the camp on December 30, 2005, at 5:00 A.M., and ordered protesters to leave the premises. After a five-hour standoff, police fired water cannons into the crowd and began indiscriminately beating protesters. Over 2,000 of the refugees were arrested and taken to four detention centers, including a sealed military training camp in Tora Balad, 20 miles south of Cairo. Tora Balad prison officials admitted doctors to treat the detainees' injuries, but deteriorating sanitary conditions and severe crowding have raised concerns. The Egyptian foreign ministry offered no apology for the deaths and stressed that the operation was necessary to disband the illegal protest.

Human rights organizations and local

political parties criticized Egyptian authorities for their disproportionate use of force against protesters. The United Nations Code of Conduct for Law Enforcement Officials states that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The Code's provisions are based on treaties, including the International Covenant on Civil and Political Rights and the UN Convention Against Torture, to which Egypt is a party. Human rights organizations have argued that the early hour of the assault and the violent nature of the police tactics were unwarranted.

The United Nations Basic Principles on the Use of Force and Firearms states that law enforcement officials "shall, as far as possible, apply non-violent means before resorting to the use of force" and may use force "only if other means remain ineffective." When the use of force is unavoidable, law enforcement officials must "exercise restraint in such use and act in proportion to the seriousness of the offence." Joe Stork, Deputy Director of Human Rights Watch's Middle East division, noted that "the high loss of life suggests the police acted with extreme brutality." The Egyptian government responded that the protesters incited violence by using broken bottles as weapons against police officers. Egyptian authorities also maintain that the refugees who were killed died in a "stampede" caused by their fellow protesters. Critics note, however, that indiscriminate beatings and the use of water cannons were likely the direct cause of most of the deaths.

In a letter dated January 4, 2006, Human Rights Watch called for an independent investigation examining all levels of the police command, including the role of Interior Minister Habib al-'Adli. President Mubarak responded that the Attorney General would examine the incident. Human Rights Watch argued, however, that a review by the Attorney General would not meet the objectivity requirement of an independent commission, particularly in light of statements from government officials blaming protesters for provoking violence and directly or indirectly causing injuries. "Previous government inquiries into police violence against Egyptian protesters have consistently exonerated Interior Ministry officials," added Bill Frelick, Deputy Director of Human Rights Watch's Refugee Policy Program. He noted that if witnesses and victims were deported before they could give statements, the lack of testimony would

render the investigation "an empty gesture."

The larger issue is what will become of the detained protesters who face the possibility of deportation to Sudan. There are approximately 30,000 registered Sudanese refugees living in Egypt, and the unofficial migrant population is estimated in excess of two million individuals. The 25 percent unemployment rate has fueled local hostilities as refugees and Egyptians compete for jobs, and many refugees claim to face harassment and discrimination. Although many protesters indicated an unwillingness to return to Sudan, most are discontent with their quality of life in Egypt and desire to be resettled in a third country. UNHCR has facilitated resettlement of several Sudanese families over the course of the 21-year civil war, primarily in the United States, Britain, and Australia. Since the signing of the North-South Peace Accord in January 2005, however, the Egyptian government has been considering the option of returning refugees to Sudan.

Despite the end of the civil war, many human rights organizations maintain that it is not yet safe for refugees to return. Article 33 of the 1951 Convention Relating to the Status of Refugees (Refugee Convention) prohibits the return or expulsion of a refugee to any place "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Human rights organizations have argued that returnees may be identified as "traitors" and persecuted for their initial flight. Those who took part in the protest may also be persecuted for engaging in political activities overseas. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status states that "[a] person may become a refugee 'sur place' as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence." Local human rights advocates have argued that deporting protesters before determining whether they are refugees *sur place* would violate the Refugee Convention.

Astrid van Genderen Stort, a spokesperson for UNHCR in Cairo, addressed these concerns in a January 3, 2006, press conference. "We have received assurances that nobody is forced to return to Sudan," he said. Despite this statement from UNHCR, Sudanese Major General Beshir Ahmed Beshir told Egyptian newspaper *al-Ahram* on January 2, 2006, that the Egyptian gov-

ernment planned to deport at least 650 Sudanese refugees. On January 4, 2006, UNHCR indicated that approximately 1,500 of the protesters had been released.

The Egyptian government delayed the first round of deportations scheduled for January 5, 2006, for 72 hours in response to requests from UNHCR that it be allowed to identify the refugees and asylum-seekers among the detained refugees. Human rights organizations, however, expressed concern that three days was not a sufficient amount of time for UNHCR to make such determinations. Refugee advocates also argued that many refugees lost their documents, including passports, refugee identification cards, and asylum-seekers' registration cards, in the course of the police raid. Without those documents, Egyptian officials could not be certain that they were only deporting individuals whose applications for asylum had been denied. In addition, the police raid separated family members from one another, and many families have not yet been reunited. Individuals who have derivative refugee status through a family member may be among those targeted for deportation. Refugees separated from their dependants are also potential deportees. Human rights organizations have requested that asylum applications be reviewed *de novo* and that families be reunited before any deportations take place.

General Beshir, who chairs the receiving committee for deportees in Sudan, said he expected a group of 13 protesters to arrive in Khartoum on January 9, 2006. As of January 11, 2006, however, UNHCR indicated that no refugees had been deported and an additional 164 refugees had been released. UNHCR has requested a one-month extension to complete interviews with those still detained.

ASIA

CHINA'S *HUKOU* SYSTEM AND ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

At the end of October 2005, the government of the People's Republic of China (PRC) announced plans to abolish the *hukou* household registration system. The PRC government implemented the *hukou* system in the 1950s, which requires Chinese citizens to register either as "non-agricultural" (urban) or "agricultural" (rural) residents. In effect, the *hukou* system prevents equal access to social security, housing, healthcare, education, work benefits, and other essential resources for rural residents and those who

migrate from the countryside to cities.

The *hukou* system is embedded in decades of social, economic, and political control exercised by China's central government. By requiring citizens to register as urban or rural residents, the system originally sought to address issues of resource distribution, migration control, and the monitoring of targeted groups of people. It also restricted rural residents' ability to travel freely to urban areas to find employment and erected numerous obstacles for rural migrants seeking to change their *hukou* status. Over the past few decades, changes in China's economic landscape have prompted the government to reform the system to allow some migrants to hold temporary residence permits. Such reforms have brought more rural residents to urban areas to satisfy increasing labor demand in the cities. Even without temporary or permanent residence permits, there are millions of migrants working in the cities.

China's 140 million migrant population, about one-third of its total urban population, represents the majority of those working in factories and mines. They face significant barriers to becoming urban residents and suffer from discrimination that inhibits their access to public services. Additionally, the country's rapid economic development has brought wealth and better access to resources to some urban residents, but it has left migrant workers without equal access or fair wages despite their significant participation in the work force. As a result, China's widening distribution gap is generating social unrest and instability, which is reflected in recent mass demonstrations. For example, when Sun Zhigang, a university-educated migrant in Guangdong Province, was beaten to death in March 2003 while in police custody, the government was forced to respond by prohibiting the random detention of migrant workers after a significant public outcry.

Under a new pilot program for 11 of its 23 provinces, the Chinese government plans to remove the legal distinction between rural and urban residents to promote further economic growth in its cities and to address the widening social and economic gap between Chinese citizens. Past official announcements and attempts to reform the *hukou* system, however, have not succeeded in addressing problems of discrimination. As the UN Committee on Economic, Social, and Cultural Rights (UNCESCR) reported in May 2005, "The Committee notes with

deep concern the *de facto* discrimination against internal migrants in the fields of employment, social security, health service, housing, and education that indirectly result[s], inter alia, from the restrictive national household registration system which continues to be in place despite official announcements regarding reforms."

One crucial problem is the lack of resources, particularly on the local government level, to handle the influx of migrants. Migrant children's lack of access to adequate education is particularly demonstrative of this problem. Children inherit their parents' *hukou* status and, as a result, fall into the same discriminatory and exclusionary system. Prior to 1998, for example, children without the local *hukou* status were restricted from attending local public schools. In the last two decades, the central government has shifted responsibility to the local government to provide education for its residents without a corresponding increase in funding. As a result, public schools are faced with an additional financial burden, which is shifted to the migrant families when they charge students unauthorized fees that their families often cannot afford. Consequently, there are at least 1.8 million migrant children who are excluded from the country's educational system.

Thus, the effects of the *hukou* system cannot be rectified by simply eliminating the system. Proper monitoring and equal implementation of the system have to be incorporated into proposed reforms to address the major challenges rooted in decades of discrimination against China's 760 million rural residents, who make up approximately 60 percent of the country's 1.3 billion population.

DELAYED RESPONSES TO THE EARTHQUAKE IN SOUTH ASIA

On October 8, 2005, an earthquake measuring 7.6 on the Richter scale struck Pakistan, Kashmir, India, and Afghanistan. The earthquake killed more than 80,000 individuals, injured approximately 75,000, and displaced over three million from their homes. Because of the frigid Himalayan winter, there was an urgent need to provide food, medicine, and shelter to the earthquake's victims to prevent the death toll from rising and to contain the spread of disease at the over-crowded emergency camps.

Kashmir, a disputed territory between India and Pakistan, was the hardest hit. Much of Kashmir's capital, Muzaffarabad, was

destroyed in the earthquake and rebuilding has proven difficult. The region poses significant logistical challenges because its terrain is mountainous and landslides have blocked many of the supply roads. Much of Kashmir's communication and electrical infrastructure were also destroyed, which has added to the difficulties of delivering aid to the region. To facilitate a better exchange of goods and the movement of Kashmiri people, Pakistan's government has opened the "Line of Control." For over 50 years these crossing points in Kashmir between Pakistan and India have been closed. Some observers have predicted that the necessities of the disaster might help improve relations between these countries.

As emotionally charged images of Pakistanis suffering and dying spread throughout the world, Pakistan's government has been criticized for its slow and delayed response. Critics alleged that Pakistan's president and military leader, Pervez Musharraf, spent six years building up and financing the country's military, but when the earthquake hit, he proved unable to mobilize the army fast enough to provide immediate relief. Musharraf's government responded by citing blocked roads and destroyed infrastructure as the cause for such delays and contended that people within its administration and the army were also victims of the tragedy.

The international community was also slow to respond in the first month after the disaster, which prompted UN Secretary General Kofi Annan to criticize its "weak and

tardy" response when compared with the reaction to the Southeast Asian tsunami in December 2004. Pakistan appealed for \$5.2 billion from the international community, but this amount was not met until after there was sufficient public disapproval for the inadequate donations from governments and international donors. Two weeks after the earthquake, only approximately 25 percent of the UN-requested \$550 million had been met. In contrast, 92 countries contributed 99 percent of the UN emergency appeal for the 2004 tsunami. Nonetheless, Pakistan now has \$5.4 billion in pledges, with approximately \$2 million in grants and the remainder in loans. The U.S. government, who considers Pakistan an ally in its war against terrorism, was one of the largest donors at \$510 million, three times as much as its original pledge. Even with the pledges met, most of the money is allocated for long-term reconstruction. According to UN and other aid officials, the current relief funds are insufficient for a six-month emergency operation to keep survivors alive over the winter.

In mid-December 2005 the UN High Commissioner for Refugees (UNHCR) established additional camps in Kashmir to close and relocate inadequate camps. An estimated 2.5 million individuals are temporarily housed in tents in the lower regions, while close to half a million remain in Kashmir's higher altitudes, some of whom have not received any aid at all. Even those who have found shelter suffer from overcrowded conditions and may not receive adequate servic-

es. More camps are needed to promote proper hygiene and to prevent the spread of disease, but Kashmir's rough terrain limits the amount of available land. The procurement of the tens of thousands of tents necessary to protect people is another hurdle to the establishment of refugee camps.

In the meantime Pakistan's government and the UNHCR have begun to set up camps in rural areas so that some survivors can be closer to their villages to rebuild their homes during the spring. The immediate goal is to provide warmth and shelter to refugees to survive the harsh winter conditions.

For more information on relief efforts, visit the UNHCR website at <http://www.unhcr.ch>, the Kashmir International Relief Fund website at <http://www.kirf.org/>, the International Federation of the Red Cross and Red Crescent Societies website at <http://www.ifrc.org/>, and the International Committee of the Red Cross website at <http://www.icrc.org/>. *HRB*

Sebastian Amar, a J.D. candidate at the Washington College of Law, covers Latin America for the Human Rights Brief.

Shirley Woodward, a J.D. candidate at the Washington College of Law, covers Africa for the Human Rights Brief.

Sabrina Balamwalla, a J.D. candidate at the Washington College of Law, covers the Middle East for the Human Rights Brief.

Amy Tai, a J.D. candidate at the Washington College of Law, covers Asia for the Human Rights Brief.

ENDNOTES: Inter-American Justice Comes to the Dominican Republic *continued from page 28*

Cibao," <http://www.hoy.com.do/app/article.aspx?id=51616> (Aug. 16, 2005).

¹⁰ Leopoldo A. Espaillat N., *Listin Diario*, "La ofensa haitiana: tomando el toro por el rabo," <http://www.listindiario.com.do/antes/diciembre05/291205/cuerpos/republica/rep15.htm> (Dec. 29, 2005).

¹¹ Constitution of the Dominican Republic, art. 11 (2002), *available at* <http://www.georgetown.edu/pdba/Constitutions/DomRep/domrep02.html> (accessed Feb. 6, 2006).

¹² It is widely cited within the Dominican Republic that 30 percent of the Dominican population does not have a birth certificate. *See* Eddy Tejeda, Facultad Latinoamericana de Ciencias Sociales, Programa República Dominicana (FLACSO-RD), "La identidad de los niños del batey." *See generally* U.S. Dep't. of State, *Country Report on Human Rights Practices*, <http://www.state.gov/g/drl/rls/hrrpt/2004/41758.htm> (Feb. 28, 2005).

¹³ *See id.*

¹⁴ *Yean and Bosico*, Case 130.

¹⁵ *Id.*

¹⁶ Articles 3, 8, 19, 20, 24, and 25 in conjunction with Article 1.1 and 2 of the American Convention respectively, *available at* <http://www.oas.org/juridico/english/Treaties/b-32.htm> (accessed Jan. 24, 2006).

¹⁷ Articles 5, 12, 17, 18, and 26 respectively. *Id.*

¹⁸ *Yean and Bosico*, Case 130.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Secretaria de Estado de Relaciones Exteriores, "Declaración en torno a una Sentencia de la Corte Interamericana de Derechos Humanos," Santo Domingo, Dominican Republic (October 11, 2005).

²⁶ *El Nacional*, "Vicepresidente niega campaña xenofobia en contra haitianos," <http://www.elnacional.com.do/app/article.aspx?id=40267> (Oct. 8, 2005).

²⁷ *Clave Digital*, "El Estado debe acatar la sentencia de la Corte Interamericana de los Derechos Humanos," http://www.clavedigital.com/Portada/Articulo.asp?Id_Articulo=6777 (Jan. 23, 2006).

²⁸ *Clave Digital*, "El presidente del PNVC respalda eliminación del 'jus solis,'" http://www.clavedigital.com/Noticias/Articulo.asp?Id_Articulo=7737 (Nov. 22, 2005).

²⁹ Suprema Corte de Justicia, Función de Tribunal Constitucional, Fallo sobre Recurso de Inconstitucionalidad de la Ley General de Migración num. 285-04, Santo Domingo, Dominican Republic (Dec. 14, 2005).