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## International Legal Updates

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## INTERNATIONAL LEGAL UPDATES

### LATIN AMERICA

#### BRAZILIAN JUDICIARY FAILS TO PROVIDE JUSTICE IN CARANDIRU PRISON MASSACRE CASE

On February 15, 2006, Sao Paulo's Supreme Court overturned Colonel Ubiratan Guimarães' conviction. This decision symbolizes the judiciary's failure to uphold international human rights standards and its failure to punish the perpetrator of one of the most disturbing incidents of human rights abuses in Latin America. According to Amnesty International reports, Colonel Guimarães led a contingent of Brazil's Military Police shock troops into Sao Paulo's Casa de Detenção prison (Carandiru) on October 2, 1992, to quell a disturbance, which resulted in the deaths of 111 unarmed detainees. Other human rights groups have claimed that the number of deaths is closer to 300. In 2001 Colonel Guimarães was sentenced to 632 years in prison for his role as commanding officer in the Carandiru massacre.

In a 1993 report, Amnesty International cited numerous shortcomings in the military's chain of command and its attempts to ensure that excessive use of force would not be used during the operation. These procedural failures included "ignoring international codes of practice on the use of force and firearms; allowing military police to enter the prison with their identity tags removed; and sending in police units with past records of multiple fatal shootings to quell the disturbance." Of the 113 members of the police force implicated in these murders, not one is serving a prison sentence for their involvement. Although homicide charges have been brought against 84 officers, none of these officers have ever been brought to trial. Further, the expiration of the statute of limitations will prevent another 29 officers charged with causing physical injury in the massacre from ever being tried in Brazilian courts.

Americas Watch, the Center for Justice and International Law, and the Teotonio

Vilela Commission have brought these issues before the Inter-American Commission on Human Rights. In April 2000 the Court rendered a decision requiring that Sao Paulo and Brazilian authorities implement reparative measures, including compensation to family members and the creation of an oversight body to ensure the rights of detainees. To date, Brazil has implemented none of these measures.

The Supreme Court overturned Guimarães' conviction on grounds that he was acting in accordance with his duties and responsibilities as a Colonel in the military. This ruling accepts that Guimarães was acting within his duties when he failed to prevent the use of excessive force, which implies that his actions provide an acceptable model for a military official's behavior rather than a glaring disregard for the rights of detained individuals. The decision by the Supreme Court and the failure to hold any other officials accountable is a clear indication of the ongoing acceptance of impunity for military officials implicated in human rights abuses, as well as the government's unwillingness to endure the burdens and responsibilities that are a necessary element of the reparations process.

#### COMPOSITION OF ARGENTINE COUNCIL OF THE JUDICIARY ALTERED

The 1994 Constitution of Argentina created the Council of the Judiciary (Council), which is responsible for selecting judges for appointment by the executive branch. According to the Constitution, the Council should be composed of a balance between legislators, judges, lawyers, and academics. The Council was created to protect judicial independence and curtail abuses that resulted from a system in which judges were often chosen for their political affiliation rather than their professional qualifications. Supporters of the Council believed that the most effective means of protecting the judiciary against political interference was the creation of an independent council composed of legislators from both government and opposition

benches, as well as non-elected members from the judiciary, the bar, and academia.

Recently, the Congress of Argentina approved compositional changes to the Council proposed in a bill sponsored by Senator Cristina Fernandez de Kirchner. The new law reduces the Council from 20 to 13 members while increasing the proportional representation of politicians. This is the first time since the Council's inception that politicians will outnumber legal experts and professionals. Amnesty International noted that one concern with this new legislation is that the governing party will also increase its weight on the new Council. Together with the single member who is appointed by the executive branch, the governing party will now hold seven of the 13 votes. Because the Council's decisions are taken by a two-thirds majority when the selection or dismissal of judges is debated, the governing party will be in a position to veto candidates for the judiciary and to block dismissals.

There is also concern about the proposed change in rules governing the quorum in the Council, which could allow it to function without any participation from its non-political members, i.e., judges, lawyers, and academics. This is by far the most damaging aspect of the legislation as it pertains to the political influences surrounding the Council. With this new composition, the six legislators and the representative of the executive branch could hold sessions on their own. In a letter to Argentine President Nestor Kirchner, Human Rights Watch cited recommendations of the European Charter on the Statute for Judges that at least half of those individuals who sit on independent bodies responsible for the selection and dismissal of judges should be "judges elected by their peers following methods guaranteeing the widest representation of the judiciary."

The Argentine government justified its decision by arguing that the majority on the Council should be held by officials elected by popular vote because they are theoretically bound by a "citizens' mandate." Members

of the international community, including Human Rights Watch, see this argument as implicitly rejecting the standard of balance that the European Charter adopted as a method to ensure transparency and preserve an essential check on the executive and legislative branches of government.

This new legislation has been viewed by national and international organizations as indicating a trend toward a more authoritarian approach to government by Argentina's current administration. By essentially eliminating the role of unelected experts in the process of selecting and dismissing judges, the re-structured Council threatens the ability of the judiciary to operate independently and to place limits on executive and legislative authority. Moreover, this change dramatically affects the judiciary's ability to adequately advocate for and protect those individuals whose political views are not represented by the governing party.

#### **UN HUMAN RIGHTS COUNCIL RECEIVES MIXED REVIEWS FROM CUBA AND THE U.S.**

On March 15, 2006, the United Nations General Assembly approved several key elements of the new UN Human Rights Council (Council). The new Council includes improved membership standards and election procedures, as well as universal periodic review of Member Countries' compliance with their human rights obligations.

Initially, the Cuban government expressed strong opposition to the Council. Cuba charged that the Council would enforce imperialist interests under U.S. guidelines and unjustly target developing countries in a manner similar to its predecessor, the Human Rights Commission. On February 24, 2006, Cuba proposed seven amendments to weaken the draft resolution establishing the Council, including an amendment to increase the size of the Council; lower the threshold required for election; remove the human-rights standards for members and the clause allowing their suspension; shorten the time for Council meetings; and make it more difficult for the Council to adopt resolutions condemning rights violations in specific countries.

The United States has also criticized the new Council. U.S. Ambassador to the UN John Bolton expressed concern over the term

limits placed on Council members, which allow a maximum of two consecutive terms of three years. Ambassador Bolton stated his concern that this would preclude the United States from having a continuous presence on the Council, which "will be to the detriment of the Commission." In addition, the United States had sought a two-thirds majority vote and a ban on the election of countries subject to UN trade and economic sanctions due to human rights violations and acts of terrorism. In voting against the proposed Council, Ambassador Bolton stated, "We did not have sufficient confidence in this text to be able to say that the Human Rights Council will be better than its predecessor."

Ironically, the isolationist stance of the U.S. may have prompted Cuba to vote in favor of the new Council. Despite its initial opposition, Cuba voted in favor of the resolution based in part on U.S. criticisms. Cuba's UN Ambassador Rodrigo Malmierca stated that "[t]he attacks of the current U.S. administration to the text being adopted ... prove their arrogance." He went on to note that the United States "lost nothing with this project. On the contrary, they have assured it new means to exert confrontation, hatred and punishment, and if they protest today, it is because they intended to get new concessions." Cuba has also announced it will stand for election to the Council when voting takes place in May 2006.

### **AFRICA**

#### **AFRICAN UNION SUMMIT**

The sixth African Union Summit was held from January 16–24, 2006, in Khartoum, Sudan. The theme of the summit was "Education and Culture." The Assembly of Heads of State and Government (Assembly) appointed eleven judges to the African Court on Human and Peoples' Rights. The Executive Council voted on and recommended the appointees in its Eighth Ordinary Session. Two of the appointed judges are women.

The Assembly adopted a decision to establish a Committee of Eminent African Jurists (Committee) mandated to "consider all aspects and implications of the Hissène Habré case as well as the options available for his trial." Habré, former President of

Chad, has been accused of torture and other atrocities committed from 1982-1990. In September 2005 Belgium issued a warrant for his arrest and extradition from Senegal, where he has resided for the last 15 years. Rather than send Habré to Belgium, Senegalese Foreign Minister Cheikh Tidiane Gadio said that Habré could remain in Senegal until African heads of state at the AU Summit made a decision regarding how to handle his case. The Committee was formed to aid in this decision. It is mandated to take into account "adherence to principles of total rejection of impunity; adherence to international fair trial standards, including the independence of the judiciary and impartiality of proceedings; jurisdiction over the alleged crimes for which ... Habré should be tried; efficiency in terms of cost and time of trial; accessibility to the trial by alleged victims as well as witnesses; priority for an African mechanism." The Committee will submit a report for the Assembly's consideration during its next Ordinary Session in July 2006.

#### **LIBERIAN GOVERNMENT SWEARS IN TRUTH COMMISSION**

The Liberian government officially swore in a Truth and Reconciliation Commission (TRC) on February 20, 2006. The nine-member Commission was created under the 2003 peace agreement that ended Liberia's civil war and was ratified by a June 2005 national law. Its mandate is to "investigate gross human rights violations and war crimes, including massacres, sexual violations, murder, extra-judicial killings and economic crimes (such as the exploitation of natural or public resources to perpetrate the armed conflict)" that occurred between January 1979 and October 2003. Modeled on the South African TRC, the Liberian Commission aims to provide a forum for victims and perpetrators of atrocities to discuss their experiences "in order to create a record of the past and facilitate genuine healing and reconciliation." The TRC does not have the power to convict perpetrators but can order subpoenas and recommend prosecutions. Jerome Verdier, a renowned human rights advocate in Liberia, heads the TRC. Three international technical advisors will provide support. The 15-nation Economic Community of West African

States will appoint two of these advisors and the UN Commissioner for Human Rights will appoint one.

Government officials may find themselves the subject of TRC probes. Liberia's Parliament is comprised of multiple alleged perpetrators of human rights violations, and Verdier stated that no alleged perpetrator will be granted political immunity. Liberian President Ellen Johnson-Sirleaf supported the Commission and stated, "This commission is our hope to define the past on our behalf in terms that are seen and believed to be fair and balanced, and bring forth a unifying narrative on which our nation's rebuilding and renewal process can be more securely anchored." The UN has pledged \$500,000 to the TRC, and the Liberian government promised to contribute \$350,000.

#### POLICE RAID ON KENYAN NEWSPAPER

Just after midnight on March 2, 2006, a group of masked and hooded police armed with AK-47s stormed the Standard Group's Kenya Television Network (KTN) headquarters and the office of its sister newspaper *The Standard*. According to witnesses at the newspaper's offices, police broke down doors and padlocks, forced workers to the ground at gunpoint, and then burned thousands of newspapers. The government denied that police were involved in burning the papers. Transmission equipment and computer hard drives were also seized. The newspaper has since written to the police demanding an inventory of items taken and voicing concern that computer files could be manipulated. The newspaper office and television station managed to re-open on Thursday afternoon, and *The Standard* published a special edition on the attack.

A police statement defended the raid and stated that the Standard Group had plotted to incite ethnic hatred with its articles and threaten national security. It further alleged that reporters for *The Standard* had accepted bribes worth over \$5,000 to fabricate stories designed to destabilize the country. An editorial in the paper responded that this was "laughable fiction." Commentators note that *The Standard* has criticized the President Mwai Kibaki's handling of recent corruption scandals. Further, just days before the raid, three journalists for the

paper were arrested for publishing "alarming statements" when they reported an alleged secret meeting between President Kibaki and senior opposition leader Kalonzo Musyoka.

Internal Security Minister John Michuki claimed that the raid was lawful under the Preservation of Public Security Act. He suggested that *The Standard* had invited the action and noted, "If you rattle a snake, you must be prepared to be bitten by it." Other ministers, however, denounced the raid as "barbaric," and it was widely condemned by opposition leaders and local media who likened it to the highly restrictive era of Kenya's former President Daniel Arap Moi. In response to the nighttime raid, opposition MPs and demonstrators rallied in a protest march from Parliament to *The Standard*'s offices the next day. Western embassies also expressed strong disapproval of the raids.

#### UGANDAN LEADER ACQUITTED

Opposition leader Dr. Kizza Besigye was acquitted of rape charges on March 7, 2006, just two weeks after he lost the presidential election to President Yoweri Museveni. Museveni won a third term in office after a 20 year incumbency. The presiding judge said that state prosecutors had "dismally failed" to prove their case and that police investigations "betrayed the intentions behind the case." Besigye has consistently denied the charges and asserted that Museveni's government fabricated the accusations to prevent or hinder his campaign efforts. Besigye still faces charges of treason in Uganda's High Court and charges of terrorism and illegal possession of firearms before the General Court Martial (GCM). The treason trial was ongoing as of early April. The other charges remain pending until the Supreme Court rules on whether the military has jurisdiction to try a civilian on terrorism and weapons charges.

In the past Besigye served as Museveni's personal physician and the two were close allies. The men split ways, however, when Besigye challenged Museveni in the 2001 presidential elections as head of the opposition party Forum for Democratic Change (FDC). Besigye fled to South Africa shortly after he lost the election and claimed that he feared for his safety. He returned to Uganda in October 2005 to launch his new presi-

dential campaign but was arrested only one month later on the rape and treason charges. The arrest sparked riots in Kampala and there were widespread accusations that the charges were politically motivated. On November 22, 2005, the government banned public protests related to the trial on the grounds that they could prejudice courts and compromise Besigye's constitutional right to a fair trial. The terrorism and illegal possession of firearms military charges followed on November 24, 2005. Besigye has hired a team of ten lawyers and intends to take legal action against the state for what he calls a wrongful arrest with a "serious adverse effect" on himself, his family, and the FDC.

In a separate case, the FDC filed an action with the Ugandan Supreme Court contesting the March 7, 2006, election results. Museveni won another five-year term with a 59 percent majority, while Besigye garnered 37 percent of the vote in the first multi-party poll since 1980. Reiterating the concerns of international observers and analysts about voter intimidation and harassment by government agents, the FDC asserted that the polls were rigged and that voters were kept from casting their ballots. On April 6, 2006, the Court upheld Museveni's re-election by a four-to-seven margin. Without revealing which judges had ruled for or against the petition, the Court noted that although the February election had been marred by "irregularities" and was not conducted in compliance with the Constitution or the Presidential Elections Act, the malpractices cited by the FDC did not affect the outcome of the election in a "substantial manner."

Until recently Museveni was considered a strong and positive African leader. He has been praised for liberalizing the Ugandan economy and for actively addressing HIV/AIDS among his citizens. His decision to amend Uganda's Constitution to allow himself to run for a third term and Besigye's subsequent arrest, however, have raised some doubts within the international community. The European Union and the United States have expressed their concern over the Besigye case and some donors have suspended millions of dollars in aid to Museveni's government.



## MIDDLE EAST

ISRAELI HIGH COURT OF JUSTICE  
FINDS “NATIONAL PRIORITY AREAS”  
DISCRIMINATORY

In February 1998 the executive government of Israel issued Decision 3292, which established “National Priority Areas” for the distribution of social and economic benefits to certain geographical areas. These benefits include extra educational funding, personal income tax benefits, and tax breaks to local industries. Although the stated purpose of Decision 3292 was to bridge community divides and equalize standards of living, only four of over 500 Palestinian Arab residential communities would have received economic benefits as designated high priority areas. On February 27, 2006, the Israeli High Court of Justice unanimously decided in *The High Follow-up Committee for the Arab Citizens in Israel, et. al. v. The Prime Minister of Israel* that the policy unfairly discriminated against Palestinian Arabs who are Israeli citizens. The High Court nullified Decision 3292 due to the absence of clear and consistent criteria for awarding benefits, the lack of statutory authorization for the decision, and systematic exclusion of Arab residential areas from the National Priority Areas. This landmark opinion upheld the principle of equality with respect to individual rights and places the distribution of social and economic benefits within the authority of the Knesset, the Israeli legislature.

High Court Chief Justice Aharon Barak found no satisfactory justification for the designation of National Priority Areas based on geography. He noted that the large number of Jewish communities classified as high priority areas for education purposes compared to the small number of similarly classified Arab communities did not reflect geographic distribution of the Palestinian Arab population in Israel. Further, he argued that priority areas did not reflect the lower matriculation in schools in Arab residential areas, which suggested that socioeconomic need was not the sole consideration in the classification of priority areas. Justice Barak applied the “results test” and determined that Decision 3292 discriminated against Arab citizens of Israel in its effect, irrespective of the government’s intent.

The opinion of Deputy Chief Justice Mishael Heshin indicated that the designation of National Priority Areas required statutory authorization by the Knesset, and that the executive government lacked the authority to unilaterally establish priority areas as it did in Decision 3292. Justice Heshin added that executive interference is prohibited in areas where the Knesset exercises direct or indirect authority. He emphasized that the government cannot use its authority to violate individuals’ rights. Justice Dorit Beinisch wrote that the government cannot use its authority to violate human rights and that the government’s decision to establish National Priority Areas ignored the Arab population, which amounted to a disproportionate violation of the principle of equality.

The High Court’s ruling transferred the issue of the establishment of National Priority Areas to the exclusive authority of the Knesset. Under this ruling, policies with far-reaching social and economic provisions will be subject to the legislative process, where provisions may be debated publicly by opposition parties and civil society. The High Court has given the Israeli government a 12-month-long grace period to discontinue the national priority system and to reorganize its ministries’ budgets accordingly.

ALGERIA CONSIDERS MEMORANDUM OF  
UNDERSTANDING AUTHORIZING  
RENDITION

Mouloud Sihali, an Algerian national residing in the United Kingdom, was arrested in September 2002 in connection with a plot to develop ricin for use in a chemical terrorist attack. Sihali was acquitted and released in April 2005 along with two co-defendants. One month later Sihali received an expulsion order based on national security grounds. Under the terms of a Memorandum of Understanding (MOU) between the United Kingdom and Algeria, Sihali could be deported to Algeria, where government agents are known to use torture, particularly in the interrogation of security suspects. “To seek to deport him to a country where he will be tortured if returned on the basis of the same material again is the height of injustice,” said Sihali’s lawyer, Natalia Garcia.

Sihali is one of many British security suspects whose case will be affected by the outcome of continuing talks between the United Kingdom and Algeria. British Foreign Secretary Jack Straw announced on February 16, 2006, that “good progress” had been made on an MOU between the United Kingdom and Algeria that would provide “diplomatic assurances” that suspects will not be mistreated or tortured upon transfer of custody. The United Kingdom has signed similar MOUs with Jordan, Lebanon, and Libya. These memoranda set forth assurances that the receiving country will not commit acts of torture against suspects deported from the United Kingdom, although these assurances make no references to international legal obligations that offer independent protection from torture. The substitution of diplomatic assurances for binding legal instruments — to which the United Kingdom, Jordan, Lebanon, Libya, and Algeria are all parties — also circumvents legal obligations that would prohibit the United Kingdom from transferring persons to countries where they are at risk of being tortured.

The United Kingdom is a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT), which it ratified in 1985. The UNCAT prohibits in absolute terms the transfer, return (*refoulement*), or expulsion of persons to countries where there are substantial grounds for believing that they would be in danger of being subjected to torture. The MOUs were a specific subject of concern for the United Nations Committee Against Torture in its recommendations to the British government concerning the November 2005 review of the United Kingdom’s compliance with the UNCAT. The United Kingdom is also a party to the European Convention on Human Rights and Fundamental Freedoms, which was incorporated into its domestic law by the Human Rights Act of 1998. These instruments ban acts of torture and transfers to countries where there is a risk of torture. The MOUs, however, “are tacit admissions that torture is practiced,” according to Sarah Leah Whitson, Executive Director of Human Rights Watch’s Middle East and North Africa division. To comply with international law, the British govern-

ment must conduct an independent evaluation for each Algerian suspect to properly determine whether they would face torture or persecution. “The British government should be encouraging Algeria to take positive action to eradicate torture, instead of looking for ways around the obligation not to return people at risk of torture,” Whitson said. “If there is real evidence that these suspects pose a threat, they should be prosecuted in the British courts.” Earlier agreements between the United Kingdom and Jordan, Libya, and Lebanon — countries with documented routine practices of torture — represent similar efforts to circumvent the *non-refoulement* obligations.

The broad scope of the “security suspect” classification as detailed in British legislation increases the number of individuals subject to deportation under the terms of the MOUs. The British Terrorism Act of 2000 criminalizes the incitement of terrorist acts and also membership in, or inviting support for, a terrorist organization. Under the 1976 Race Relations Act, an individual may be prosecuted for publishing or distributing written material or using words that are threatening, abusive, or insulting in a public place or public meeting where they may incite hatred or violence against any racial group. These laws have resulted in numerous detentions and arrests of specially-classified suspects. In 2004 *The Times* reported that the number of “high-security terrorist suspects” was at its highest since the height of the Irish Republican Army’s bombing campaigns in the 1970s.

Algeria became a state party to UNCAT in 1989. Additionally, in 2004 Algeria amended its national penal code to criminalize acts of torture. On February 27, 2006, however, the cabinet enacted the “Decree Implementing the Charter for Peace and National Reconciliation,” a law that effectively sanctions impunity for torture by granting amnesty to all security force members who committed human rights abuses in the 1990s. The British Home Office Country Information and Policy Unit report of April 2004 detailed the practice of torture in Algeria. Human Rights Watch reinforced these observations in a June 2005 visit to Algeria and found that Algerian authorities continue to practice torture, especially in the interrogation of security suspects. The

MOU therefore does not reflect those facts documented by the British government and confirmed by Human Rights Watch, namely that the Algerian government regularly violates domestic and international legal obligations to ban the use of torture.

The MOUs are particularly problematic because both Algeria and the United Kingdom are implicated in the violation of international law, either for the practice of torture or the transfer of a subject at risk of torture, and therefore neither party has an incentive to expose violations of the MOU terms. Because the MOUs are based on diplomatic assurances, they are subject to the limits of diplomacy and there are no effective mechanisms to secure compliance with the memoranda’s terms. Although the language of the British MOUs provides for the establishment of joint bodies to monitor compliance, the lack of incentive to report violations to these monitoring committees renders them ineffective safeguards.

In March 2006 the British Special Immigration Appeals Committee (SIAC), which examines evidence against individuals detained under anti-terrorist legislation, will hear Sihali’s case. Similar MOUs have already resulted in SIAC trials to enforce deportation orders for Libyan, Jordanian, and Lebanese suspects to their countries of origin. After SIAC has made its decisions, detainees may appeal to the Court of Appeals, the House of Lords, and eventually to the European Court of Human Rights.

## ASIA

### UN CALLS FOR NEPALESE GOVERNMENT AND MAOIST REBELS TO RESPECT HUMAN RIGHTS

On February 16, 2006, the UN Office of the High Commissioner for Human Rights (OHCHR) released a report detailing violations of international humanitarian law by the Royal Nepalese Army and the Communist Party of Nepal, commonly known as the Maoist rebels (Maoists). The ten-year conflict between the two parties began in 1996 after the Maoists failed to win a satisfactory number of seats in Nepal’s parliament and launched an insurgency to gain control of the government. The conflict has resulted in the deaths of more than 12,000 individuals.

Since January, violence has escalated after the Maoists terminated a four-month unilateral ceasefire. On the eve of the municipal elections on February 8, 2006, rebels killed two of the candidates and injured others. Maoists have also targeted civilians who have resisted their demands, including government officials, teachers, journalists, human rights defenders, and family members of the security forces.

The Special Rapporteur on Torture concluded from his visit in September 2005 that torture is still systematically used by government forces in Nepal. Although the government denied this charge, the UN report indicated that the OHCHR has received complaints of the routine use of physical abuse, submersion under water, electric shocks, and sexual assault during interrogations of rebel suspects.

The UN report also accused the Nepalese military of careless bombings that failed to distinguish between civilian and military targets. It indicated that violence between the army and the Maoists has occurred in highly populated civilian areas such as schools and health facilities. Years of armed conflict have displaced thousands of Nepalis from their homes and left them in substandard temporary housing. This forced displacement coupled with Maoist threats to humanitarian assistance has exacerbated existing conditions and further hampered the Nepalis’ right to food, health, education, and other basic necessities. The armed conflict has also heightened the discrimination and harassment of indigenous communities like the Dalit, in addition to other vulnerable populations such as women and children.

The UN report called upon both the rebels and the Nepalese government to adhere to international humanitarian law and to respect international human rights. The report explicitly stated that “violations by the [Maoist rebels] cannot excuse breaches by the [Nepalese] State of its international legal obligations.” The UN further urged the government security forces to exercise more effort in investigating and holding accountable those who commit violations of international humanitarian law. According to the UN report, these individuals should be excluded from participating in UN peacekeeping operations.

## URGENT APPEAL FOR BURMA TO RELEASE ITS POLITICAL PRISONERS AND CEASE TORTURE

In the past several months, international organizations, governments, and non-governmental organizations (NGOs) have stressed the urgent need for the international community to pressure the State Peace and Development Council (SPDC), Burma's ruling military regime, to release its political prisoners and to put an end to its egregious human rights abuses. A report by the Assistance Association for Political Prisoners (Burma), an organization based in Thailand, stated that although it could not "conclusively prove [that] the torture in Burma's interrogation centers and prisons rises to the level of crimes against humanity," multiple reports detailing the widespread and systematic use of torture make such a conclusion a likely possibility.

Recent reports show that over the past eight years the SPDC has detained over 5,000 individuals simply on the basis of their political beliefs. This number, however, could be as high as 10,000 because many individuals remain undocumented. Although the SPDC released 249 political prisoners in July 2005, it continues to systematically arrest citizens for the peaceful expression of their political opinions. Currently, there are over 1,100 political prisoners in Burma, including 12 elected members of parliament. A senior Burmese diplomat who sought asylum in the United States confirmed that the SPDC's tactics of arrest and detention are motivated by a desire to eliminate any political dissent, particularly that of the National League for Democracy (NLD), the main opposition party. The SPDC's approach, however, is not a recent development. In 1990 the junta refused to cede power to NLD's leader and Nobel Laureate Aung San Suu Kyi following her election as prime minister. She has remained under house arrest with no access to newspapers, telephones, or any correspondence since 2003.

Many of Burma's political prisoners and detainees have been subjected to torture. At least 80 political prisoners have died in custody from torture and the denial of medical treatment. Moreover, the Assistance Association has documented that political prisoners under 18 years of age have been

tortured during interrogations despite the SPDC's 1991 ratification of the Convention on the Rights of the Child.

Ethnic and religious minorities are also subjected to torture and abuse in extra-judicial detention centers and other holding cells at unknown locations. NGOs such as Human Rights Watch have characterized the military junta's abuses committed against ethnic and religious minorities as "ethnic cleansing on a very large scale." The military junta has destroyed and uprooted over 3,000 villages. Between 500,000 and 800,000 individuals have been internally displaced and an additional one to two million have taken refuge in neighboring countries such as Thailand, Bangladesh, and Malaysia. In particular, more than 140,000 Burmese refugees reside in camps along the Burmese-Thai border.

To improve this desperate situation, NGOs have called upon the UN Security Council to address and monitor the situation in Burma and have urged that a UN Commission on Human Rights resolution be passed condemning these human rights violations. They have also demanded the immediate and unconditional release of all political prisoners and called for the SDPC's ratification of the International Covenant on Civil and Political Rights and the Convention Against Torture.

## CHINA RELEASES TIANANMEN ACTIVIST

On February 22, 2006, the government of the People's Republic of China (PRC) released Yu Dongyue, an activist who participated in the 1989 Democracy Movement in which hundreds of unarmed protestors were killed by the Chinese army at Tiananmen Square on June 4, 1989. Although the international community welcomed Yu's release, human rights groups are concerned with his deteriorating mental health. Yu was imprisoned for 16 years, including two years in solitary confinement. According to a friend who visited him in prison, there were signs indicating that Yu had been tortured; his mental capacity had severely deteriorated and he had difficulty recognizing well-known friends and family. Another prisoner said that Yu was tied to an electric pole and left in the sun for several days.

Yu was detained on May 23, 1989, with Yu Zhijian and Lu Decheng for throwing paint at the portrait of Mao Zedong in Tiananmen Square. At that time he was a journalist and deputy editor of the *Liuyang Daily*. His 20-year sentence for "counter revolutionary sabotage and incitement" was reduced to 18 years following international pressure. Currently, it is likely that more than 250 activists who protested during the Democracy Movement remain imprisoned. Furthermore, the PRC continues to arrest and imprison journalists, Internet activists, and human rights defenders.

The PRC ratified the Convention Against Torture in 1988 and officially outlawed torture in 1996 but continues to commit acts of torture and other human rights abuses, particularly in its prison facilities. After ten years of negotiation with the PRC, UN Special Rapporteur on Torture Manfred Nowak made his first inspection visit to Beijing in December 2005 and found that torture remains widespread. According to a statement on his findings, the UN had received a "significant number of serious allegations" that Chinese authorities have submerged prisoners in sewage, burned them with cigarettes, hooded or blindfolded them, exposed them to extreme heat or cold, used handcuffs or ankle getters for extended periods of time and used numerous other torture methods." The most common forms of torture were "beating with fists and electric batons." To improve human rights conditions, Nowak recommended that the Chinese government abolish the "reeducation through labor system," reform criminal laws, and ratify the International Covenant on Civil and Political Rights. *HRB*

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