



Photo Credit: Vince Wong

## THIS ISSUE:

Development and Rule of Law **P.4**

Children's Rights **P.6**

Right to Health **P.8**

International Justice **P.10**

Labour Rights **P.16**

Refugee Rights **P.18**

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## THE ONES LEFT BEHIND: RURAL CHINA'S STRUGGLE FOR LAND RIGHTS

Vince Wong, 3L, University of Toronto, Faculty of Law

They say that the brightest lights often cast the darkest shadows. China's spectacular economic growth since Deng Xiaoping's 'reform and opening' in the late 1970s has arguably been the brightest economic story in modern history. Yet those who observe the shadows make startling observations. Since 1978, an estimated 50-60 million rural Chinese have lost their land due to government expropriations. Roughly half of those dispossessed have become desperately impoverished and have lost their livelihoods at a time when the state is cutting back dramatically on social security.

While civil and political rights, such as freedom of speech, are the focus of most China-observers from the West, it is economic and social rights, such as land and housing rights, that are the focus of most domestic observers. Unsurprisingly then, given their tremendous scale and pervasive effect, land disputes have become the *de facto* number one social grievance in China.

To understand this phenomenon further, I interned at the Centre for Comparative and Public Law at the University of Hong Kong Faculty of Law. The Centre, directed by IHRP alumnus Professor Simon Young, provided me with a home base in order to conduct my research. Hong Kong was also an excellent city from which to research this topic, as it has long been a nexus for scholars conducting critical analysis on sensitive Chinese issues.

It wasn't long before I was hopping between the law faculties of the University of Hong Kong, the Chinese University of Hong Kong and City University of Hong Kong, meeting with a variety of Chinese legal experts. My research also took me into the mainland, travelling across Guangdong province and into Guangxi province, from the sprawling metropolises of Shenzhen and Guangzhou to the bustling villages of Baguang and Dongfeng. While the beauty of China's landscapes and cityscapes were captivating, the substance of my interviews and research brought me back to a much harsher reality.

To combat what many Chinese feel to be unjust and illegal land expropriations, evictees have employed a variety of different methods to protect their land. Many have gone to the courts, seeking to avail themselves of remedies under China's Administrative Procedural Law. Others have sent letters and petitions to various levels of government, hoping to attract a sympathetic ear. Tech and media savvy Chinese have gone online to elicit support from China's massive microblogging sphere as well as domestic and foreign media outlets. Some band together in mass protests and demonstrations, while others choose to write open letters to Beijing (such as an open notice representing 70,000 evicted farmers in Shaanxi province, attempting to reclaim a large tract of forcibly expropriated land).

(Continued on page 6)



UNIVERSITY OF TORONTO  
FACULTY OF LAW

INTERNATIONAL  
HUMAN RIGHTS  
PROGRAM



## GREETINGS FROM THE IHRP DIRECTOR

Welcome to the 2012 intern edition of *Rights Review*,  
the International Human Rights Program's  
Signature publication.

### INSIDE THIS ISSUE:

|   |    |
|---|----|
| Timor-Leste: A Promising Display of Multi-Sectoral Development            | 4  |
| The Duty to Consult and Natural Resource Extraction in Peru               | 5  |
| Advancing Children's Rights in Canada                                     | 6  |
| Ongoing Rights Violations by the Burmese Government                       | 7  |
| The International Community's Commitment to Reproductive Rights           | 8  |
| Is there a Right to Drug Efficacy and Safety Information?                 | 9  |
| A Constitutional Challenge in Kenya                                       | 10 |
| Protecting the Human Rights of the Criminally Accused                     | 11 |
| A Time of Transition and Reflection at the ICC - Office of the Prosecutor | 12 |
| When Work Meets Life: My Summer as an International Litigator in Croatia  | 13 |
| Biological and Chemical Warfare During World War II in Asia               | 14 |
| Reflections from the International Criminal Tribunal for Rwanda           | 15 |
| Accountability for Forced Labour During World War II In Asia              | 16 |
| Representing Employers at the International Labour Organization           | 17 |
| "Refugee" Rights in Israel  | 18 |
| Managing a Refugee Influx in Uganda                                       | 20 |

One of the highlights of my job is living vicariously through the adventures of our summer interns. Each year, as I sit at my desk in Toronto, through student emails, reports, and stories, I am transported all over the world and remember fondly the jumble of emotions, highs and lows, that come with submerging oneself in a new culture and work environment. I hope that you enjoy the reflections contained in this edition of *Rights Review*, stories from places as diverse as Peru, Timor-Leste, Tanzania, and the Hague. Through their internships, our students are working to advance the field of international human rights law in cutting edge areas such as corporate accountability for human rights, reproductive rights, and international criminal law, while gaining invaluable practical legal skills.

I am pleased to announce that, for 2013, we will be continuing our partnership with Toronto ALPHA to allow our students to conduct humanitarian law research related to World War II in Asia (see Cicie Deng and Glenn Brandys' articles). We will also be continuing our partnership with the UN High

Commissioner for Refugees to place students at field offices in Africa (see Lane Krainyk's article). Finally, we are pleased to announce new partnerships to allow our students to work alongside the UN Special Rapporteur on the Right to Health, Anand Grover, in India; and the UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in the U.S. We will also be placing a student with War Crimes Prosecution Unit within Canada's Department of Justice in Ottawa.

Through this month and into the new year, I will be meeting with many, many students who see the tremendous value that our internship program offers and who are keen to get their feet wet in the field. I encourage them to view the stories in this edition as an illustration of the limitless opportunities available through our unique program.

**Renu Mandhane**

## From the Editors' Desk

Welcome to this year's Intern Edition of *Rights Review*! In this edition, we focus on the unique stories and experiences of our 2012 IHRP interns. This past summer, the IHRP sent students from the law school to places as diverse as Uganda, Switzerland, and China. These students contributed to the field of human rights through research and advocacy on issues ranging from international criminal law to reproductive health rights.

Our hope is that through these stories, you, our readers, will get a taste of the broad range of opportunities that the IHRP provides, and of the types of work we as law students are engaged in. We also hope to inspire our fellow peers to take advantage of this unique

opportunity at the Faculty of Law to travel and work in the field, to connect with an NGO or tribunal, and to contribute to the fascinating and important field of human rights law.

We would also like to take this opportunity to thank all of the writers who contributed, as well as to our student Editorial Board and Faculty reviewers, Renu Mandhane and Andrea Russell, who made this edition possible. Their work and sustained passion is what drives *Rights Review* every year and we are honoured to be part of that team. We look forward to working together on our upcoming Spring 2013 edition and hope you enjoy reading this issue of *Rights Review*!

**Sofia Ijaz (2L) and Vince Wong (3L)**

## 2012 IHRP Interns

**Jennifer Bernardo** - International Labour Organization (Geneva)

**Glenn Brandys** - Toronto ALPHA (Canada, China, Korea)

**Xijun (Cicie) Deng** - Toronto ALPHA (Canada, China, Korea)

**Sofia Ijaz** - International Criminal Court, Office of the Prosecutor (The Hague)

**Lane Krainyk** - United Nations High Commissioner for Refugees (Uganda)

**Charu Kumar** - United Nations Development Programme (Timor Leste)

**Aria Laskin** - International Criminal Tribunal for Rwanda, Office of the Prosecutor (Tanzania)

**Janet Lunau** - Legal Education and Action Fund for Women (Canada) (Joint IHRP-Asper Centre intern)

**Teresa MacLean** - Action Canada for Population and Development (Canada) (Joint IHRP-SLS Intern)

**Bruce McRae** - Group for the Analysis of Development (Peru)

**Sonja Pavic** - INTERIGHTS (Croatia)

**Aleena Reitsma** - Equality Effect (Canada) and Federation of Women Lawyers (Kenya)

**Marianne Salih** - International Bridges to Justice (Switzerland)

**Krista Stout** - Plan Canada and the IHRP (Canada)

**Kelly Tai** - Open Society Foundations, Access to Essential Medicines Initiatives (United States)

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*Rights Review* student editorial team from left: Sofia Ijaz, Teresa MacLean, Aria Laskin, Katherine MacDonald and Vince Wong.

*Absent:* Marianne Salih

# *Development and the Rule of Law*

## **TIMOR-LESTE: A PROMISING DISPLAY OF MULTI-SECTORAL DEVELOPMENT**

*Charu Kumar, JD/MGA student, University of Toronto*



**Photo Credit:** Charu Kumar

Development work is slow-moving, especially when it pertains to multiple sectors in a post-conflict society. Complications concerning planning, coordination, acquisition of funds, and the management of human resources can lead to standstill projects and obscure results. When enough of these arrested projects are strung together over a considerable period of time, it is tempting to believe that things are never going to change. In fact, many skeptics assert that the glacial speed of development indicates its overall ineffectiveness. This summer, I had the chance to evaluate the veracity of this sentiment first-hand while interning at the United Nations Development Programme (UNDP) in Timor-Leste.

Previously a Portuguese colony, the Democratic Republic of Timor-Leste is a small half-island making up the eastern half of the island of Timor. It is a tiny nation that houses an extremely diverse population of just over 1.1 million. Following the end of colonial rule in 1975, the nation momentarily celebrated its independence. However,

later that very year, Indonesian military forces violently invaded and occupied Timor-Leste. The egregious 24-year occupation that followed reduced the nation to rubble and cost thousands of Timorese their lives. After a long-awaited referendum, the nation finally restored its independence in 2002.

Once the euphoria of independence subsided, a grim reality became clear: due to significant infrastructural damage, Timor-Leste was in a state of near-complete destruction. For instance, judicial institutions in Timor-Leste were virtually non-existent. The nation was not home to a single judge, and only a handful of individuals had any legal training.

Ten years later, this nascent nation is still one of the most underdeveloped and impoverished in the world. The short car ride from the airport to my hotel gave me an immediate glimpse of Timor Leste's penury. Unstable shacks, partially-clothed children, aimlessly wandering youth, and destroyed buildings lined many unpaved roads, which in

turn were densely trafficked by many aged and unsteady vehicles.

Through numerous interactions over the following weeks, I noted a lingering skepticism among both locals and foreigners regarding Timor-Leste's future development. To substantiate their pessimism, many pointed to corrupt political figures, underdeveloped legal institutions, lackluster law enforcement, the inadequacy of the education system, and the absence of employment opportunities. Surrounded daily by these concerns and observing first-hand the deficient living conditions of many Timorese, it was admittedly tempting to give weight to such cynical claims.

However, after spending the summer working with the UNDP's Access to Justice Unit, I do not agree that—at least as far as the reconstruction of Timor-Leste's legal system goes—progress, however slow, is as insignificant as some claim. I worked on various projects, all of which contributed to ongoing development initiatives that have had positive impacts on the country.

One of my assignments, for example, involved drafting a proposal requesting that the three primary legal institutions in Timor-Leste permit select law students to participate in the country's mobile justice initiative, part of a broader attempt to improve access to justice for those residing in the country's rural areas. Because Timor-Leste, a nation comprised of 13 districts, only has four district courts, many individuals lack access to legal institutions, and thus to justice. The mobile court initiative addresses this issue by taking courts and necessary personnel to the people.

Another assignment I worked on involved conducting exploratory research on a recent initiative to codify the nation's local-level laws. There are currently two systems of justice in Timor-Leste – formal and informal. While the formal system promulgates laws advanced by the state, the informal one

relies on enforcing largely uncodified and oral laws constructed at the local level. In many instances, the laws advanced by the two systems blatantly contradict each other—a situation which has for many years stunted the progress of Timor-Leste's legal reconstruction. However, over the past several years, recognition of this legal plurality has grown, and efforts are now being made to reconcile the two legal systems.

These initiatives demonstrate the developmental advancements Timor-Leste has made over the past decade. While the nation lacked any legal capacity in 2002, it now houses four district courts, one appeal court, and a commendable mobile justice initiative that seeks to temporarily bridge institutional gaps until more legal insti-

tutions are established throughout the country. Furthermore, while Timor-Leste had only a handful of legally trained individuals ten years ago, that number has gradually increased. And despite long-standing hostility between the formal and informal systems of justice, the present state of affairs reveals many positive reconciliatory efforts.♦

I learned this summer that, although development work is slow-moving and presents many challenges, especially when it concerns multiple societal sectors, it is important not to be discouraged by short-term impediments, and to remain mindful of long-term progress.♦

## THE DUTY TO CONSULT AND NATIONAL RESOURCE EXTRACTION IN PERU

Bruce McRae, 2L, University of Toronto, Faculty of Law

Peruvian society is still grappling with its multicultural identity and colonial past. In a country where political dialogue has not always been peaceful, it can be challenging to find common ground between communities and mining companies that have divergent interests in the same land. The resulting social conflict, at times violent, has led to changes in Peru's legal landscape, namely through a newly enacted community consultation requirement.

Mining projects are a major cause of land-based social conflict in Peru, yet natural resources account for 60% of exports, making it a crucial sector of the Peruvian economy. While the costs of mining remain high, international mining companies, including many Canadian companies, are nonetheless flocking to Peru.

Social conflict over mining projects is high. In the city of Cajamarca, social tensions have mounted such that the city has been subject to two periods of emergency law in order to restore order. Since November 2011, five people have died in mining-related protests in this region.

Social conflict results from mining developments that are increasingly intensive and remote, enhanced awareness within affected communities of the possible risks, shifting legal norms, and widely publicized and sometimes violent protests. There is wide recognition that mining projects can pose a threat to basic human rights, such as the right to health and freedom of association.

Working with GRADE (*Grupo de Análisis para el Desarrollo*), a development-focused think-tank based in Lima, I was able to work on projects aimed at informing international mining actors who are interested in investing in Peru that community consultation at the earliest stage of a project's development is necessary to mitigate potential social unrest and human rights violations.

The 2011 Prior Consultation law is Peru's national implementation of its obligations under the International Labour Organization (ILO) Treaty 169: Indigenous and Tribal People's Convention. The Prior Consultation law obliges the government to carry out good-faith consultations with Indigenous communities prior to government action that directly affects them. However, the law does not apply to projects pre-dating the April 2012 enactment of the law, and it is also unclear whether campesinos or peasants, distinct from Indigenous peoples, are meant to be included under the law's consultation process.

Regardless of the legal requirements of the new law, my work at GRADE made it clear to me that the consent of the communities - the so-called social license - remains necessary for the development of mining projects in Peru.♦



Photo Credit: Bruce McRae

# **Children's Rights**

## **ADVANCING CHILDREN'S RIGHTS IN CANADA: THE IMPORTANCE OF POLICY CHANGE**

*Krista Stout, LLM student, 2012, University of Toronto, Faculty of Law*

This summer, I co-authored an advocacy report entitled *A Girl's Right to Learn Without Fear: Preventing Gender-Based Violence at School*. The report was a collaboration between Plan Canada, a child's rights organization based in Toronto and part of the Plan International network, and the IHRP. The report grew out of Plan's *Because I am a Girl* campaign, which is focused on overcoming the barriers to girls' successful completion of a quality education. *A Girl's Right to Learn Without Fear* focuses on one major barrier to that goal: the prevalence of gender-based violence in and around schools.

School-related gender-based violence refers to acts of sexual, physical or psychological violence inflicted on children in and around schools because of stereotypes and roles or norms attributed to or expected of them because of their sex or gendered identity. In most societies, unequal power relations between adults and children, and the gender stereotypes and roles attributed to girls, leave schoolgirls especially vulnerable to sexual harassment, rape, coercion, exploitation, and discrimination from teachers, staff, and peers. Boys and girls who do not conform to dominant notions of heterosexual masculinity or femininity are also vulnerable to sexual violence and bullying.

In Canada, sexual violence remains a serious and prevalent issue affecting nearly a quarter of Canadian girls and at least 15% of boys under the age of 16 years. While we only have a snapshot of the violence suffered by children from marginalized communities, the lowest estimate is that 25% of Aboriginal adults have been sexually abused before reaching age 18, and an estimated 40-70% of girls with intellectual disabilities will be sexually abused before their 18<sup>th</sup> birthday. Canadian school children also struggle with peer-to-peer bullying, which disproportionately affects marginalized girls – Aboriginal and disabled girls – as well as LGBTQ children.

The pervasiveness of gender-based violence is not inherently a failure of the law on the books. The main international instruments,

including the *Convention on the Rights of the Child*, and the *Convention on the Elimination of All Forms of Discrimination Against Women*, as well as a variety of regional human rights treaties, emphatically provide that all children must be protected from all forms of violence, including within school, and that girls must be equal beneficiaries of this right.

The pervasiveness of gender-based violence in and around school is in many ways a failure to give substance to these legal rights by implementing progressive policies. Drawing on the expertise of Plan offices across the world, and through collaboration with a number of Canadian and international human rights NGOs, our team produced a report that not only outlines the pervasive nature of the problem and its socio-economic roots and consequences but also offers a concrete strategy for policy change by governments across the globe.

The report also provides targeted recommendations for the Canadian government, namely, to start a national dialogue on this issue and work collaboratively with the provinces to help end a form of violence that is limiting to so many lives, and also to strengthen development assistance focused on the right to education. This report will be presented to the Canadian government in November and the ground-work is currently being laid to ensure that the government moves on the policy recommendations contained within the report.

On a personal level, through this opportunity, I was able to broaden my conception of advocacy from an exclusive focus on legal accountability to the potential power of shaping and influencing policy. My experience this summer has reinforced my sense of the critical importance of speaking the language of law effectively. Tackling the problem of gender-based violence in schools both at home and abroad requires a measured, consistent, but hopeful approach to 'voicing' concerns and pressing for real change.♦

### **THE ONES LEFT BEHIND (Continued from page 1)**

While in some instances these avenues can be successful in procuring more favourable resettlement and compensation terms, too often these protests are put down through harassment, intimidation and outright violence by hired thugs or local police. During my travels to Beihai in Guangxi province, locals of (former) Baihutou village described how hundreds of fellow villagers were indiscriminately beaten by armed police while resisting the demolition of their homes. For his part in advocating for villagers' rights, the former village chief was arrested and convicted on seemingly trumped up charges of operating an illegal business and using a false name

to sign in at a hotel. It is widely acknowledged that these are not isolated incidents, but common occurrences in contemporary China.

Why is this happening? The law itself is partially to blame. China currently employs a dual land tenure system, which is affirmed by China's Property Law and Land Administration Law. Urban land is owned by the State, while rural and suburban land is owned by collective economic organizations – ordinarily corresponding to a village or group of villages. Individuals are then issued 'land use rights' which allow holders to use plots of land for a pre-defined number of years.

## DOMINANT NARRATIVE FAILS TO CAPTURE ONGOING RIGHTS VIOLATIONS BY THE BURMESE GOVERNMENT

Lane Krainyk, 3L, University of Toronto, Faculty of Law

The dominant narrative on Burma in recent months has focused on advances that have been made by the Burmese government with respect to the democratic rights of its citizens. Even critics of the government have expressed optimism that these developments will lead to increased protections for political rights and freedoms and will decrease the influence wielded by the military leaders that have dominated Burma for decades.

This narrative, however, fails to capture ongoing human rights violations by the Burmese government. In reality, many people in Burma continue to have their fundamental human rights violated by the government. The ongoing violence perpetrated against the people of Kachin state, which has forced thousands to flee their homes as villages such as Nam Sam Yung are burned to the ground, is but one example of the government's continued disregard for the rights of its citizens.

Another example of the government's unwillingness to protect the rights of its citizens can be found in its treatment of children. On the whole, the Burmese government has failed in meeting its international obligations under the *Convention on the Rights of the Child*, as the UN Committee on the Rights of the Child concluded in March 2012.

Burma is a signatory to the *UN Convention on the Rights of the Child*. Every seven years, signatories to this Convention come up for review by the Committee. In the run-up to Burma's 2012 review, the Committee accepted shadow reports from multiple non-governmental organizations working on Burmese issues. These reports highlighted issues such as the use of child soldiers, forced labour, insufficient protections for children in domestic law and ongoing exploitation of children throughout Burma. One report, submitted by the Child Rights Forum, included a portion on legal issues that was drafted primarily by the Burma Lawyers' Council.

*Lane was an IHRP intern at the Burma Lawyer's Council in 2011.*

In early 2012, the Burmese government made its own submissions. It was then left to the Committee to make its "Concluding Observations" on the status of children in Burma.

The Committee made a number of significant observations that reflected the submissions made in various shadow reports submitted to the Committee. In particular, the Committee adopted a number of the concerns and recommendations that had been raised in the Burma Lawyers' Council's submission.

First, the Committee noted that the Burmese government has failed to extend protections for children under domestic law to all children under the age of 18. As a result, not all children can benefit from legal protections aimed at preventing exploitation and trafficking.

Second, the Committee noted significant gaps in existing legislation that have the effect of depriving non-citizens residing in Burma, including Rohingya children, the rights afforded under the Convention. Consequently, stateless children are not protected under Burmese domestic laws.

Third, the Committee pointed to the government's failure to make requisite changes to its juvenile justice system. Among the implications of this failure is that children continue to be imprisoned alongside adults, exposing them to increased risks of violence and exploitation.

Fourth, the Committee noted that the fundamental rights of children, including freedom of expression and freedom of association and peaceful assembly, continue to be disregarded by the Burmese government.

*(Continued on page 9)*

Unfortunately, rural land use rights are vastly inferior to urban land use rights. They cannot be developed for non-agricultural purposes, have a shorter duration, are highly restricted in terms of transfer, and generally cannot be collateralized. While urban development is facilitated through a robust land use market, rural land remains 'dead capital' while in the hands of villagers. This has exacerbated China's urban-rural income disparity to a record high 3.33 to 1 ratio.

The only legal way to develop rural and suburban lands is for the Chinese government to expropriate, convert and resell the land to private developers. However, unlike their urban counterparts, rural

landholders are compensated based on past agricultural output rather than market value. On average, rural compensation amounts to roughly 5% of realizable market value – the rest is appropriated by governments and developers.

The current land rights system is manifestly unfair for a rural Chinese population that is increasingly being left behind in China's rush towards economic growth and prosperity. Until this system is reformed, the vanguard of the old socialist revolution, the farmers and peasants, will continue to disproportionately bear the burdens of a capitalist reality. ♦

# Right to Health

## ASSESSING THE INTERNATIONAL COMMUNITY'S COMMITMENT TO REPRODUCTIVE RIGHTS

Teresa MacLean, 2L, University of Toronto, Faculty of Law

At the 1994 International Conference on Population and Development (ICPD), states officially recognized for the first time that reproductive health and rights are critical for the empowerment of women and necessary for the achievement of population and development programmes. In 1995, the international community built on the gains of the ICPD by creating the *Beijing Declaration and Platform for Action* (BPfA), where it was recognized that the "human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence." At these conferences, states committed both to ensuring that the sexual and reproductive health needs of their populations are met, and to focusing on the rights of people—in particular women and girls—as opposed to demographic targets. The outcome documents of these conferences, as well as the *Millennium Development Goals* (MDGs), are nearing their final reviews in 2014 and 2015. The international community will then turn its attention to a new development agenda, which will likely be premised on sustainability. As such, this is a pivotal time to reflect on the MDGs, their impact and the international status of reproductive health and rights more generally.

This past summer I had the pleasure of working at Action Canada for Population and Development (ACPD). ACPD is an organization based in Ottawa that advocates for sexual and reproductive rights at the United Nations (UN) Human Rights Council (HRC). ACPD works to ensure that sexual and reproductive health and rights are included in future development agendas. ACPD also works to ensure that the requisite political will is put forward to hold states accountable for the obligations that they undertook at these world conferences. ACPD does this by creating reports, interacting with diplomats, and holding side conferences regarding sexual and reproductive rights at the UN HRC, including a conference held in June 2012 on Criminal Laws and Women's Right to Health.



A view of Parliament Hill in Ottawa

Photo Credit: Kevin Gallinger

During my internship at ACPD, I conducted research on and wrote about a variety of sexual and reproductive health and rights issues, including access to safe and timely abortion services, access to contraception, family planning, youth rights, sexual orientation and gender identity rights, and the criminalization of HIV transmission. I also created advocacy tools and drafted an advocacy report that will be used to promote the inclusion of sexual and reproductive rights in future international development agendas.

My work with ACPD reinforced for me the importance of protecting sexual and reproductive health and rights. These rights and access to health services are essential for people, particularly women, to fully realize their human rights. Improving access to such services will not only provide immediate health benefits by reducing mother and child mortality and sexually transmitted infections, but it will also empower women and couples to decide freely on the number and spacing of their children. This will improve standards of living, slow population growth and promote the full and active participation of women in economic, social and political life.

It is clear that the goals made to recognize and realize sexual and reproductive health at

the ICPD, at the Fourth World Conference on Women in Beijing and the Millennium Summit will not be fully met by 2014 or 2015. Further, one major criticism of the MDGs was that they are not rights-based. States are not obliged to provide disaggregated data in terms of minority groups or poorer segments of their populations, and in some cases, they can meet MDG targets without improving the situation of these populations at all. Hence, the needs of the most vulnerable segments of populations are often not adequately addressed. It is my hope that the report I created will communicate the importance of sexual and reproductive health and rights, as well as the necessity of taking a human rights-based approach that focuses on the needs of all segments of populations.

My internship provided me with an amazing opportunity to learn more about international law and how the UN system actually operates, from the treaty monitoring bodies to the inner politics of the HRC. It was an incredibly rewarding experience which immersed me in the practice of international human rights law. I am grateful to the IHRP, the Students' Law Society and ACPD for providing me with this opportunity. ♦

# IS THERE A RIGHT TO DRUG SAFETY AND EFFICACY INFORMATION?

Kelly Tai, 3L, University of Toronto, Faculty of Law

The lack of transparency and accountability in pharmaceutical regulations has generated considerable media interest as a public health issue. Over the last decade, a number of incidents have occurred in which drug companies have concealed or misrepresented clinical trial data that revealed that their products can cause lethal harm. This has had disastrous consequences. The painkiller Vioxx caused an estimated 88,000 to 139,000 heart attacks and strokes in the US prior to its withdrawal from the global market in 2004. In addition, the drug Trasylol, used to control bleeding, is estimated to have caused over 20,000 deaths before a whistleblower revealed that the drug's manufacturer had concealed negative findings from an observational study.

The US Food and Drug Administration (FDA) has led the way in implementing legislation to improve public access to drug safety and efficacy data. In particular, the *FDA Amendments Act of 2007* introduced new reporting requirements for clinical trials. However, some commentators argue that transparency requires the complete segregation of industry from the drug testing process. Financial conflicts of interest further complicate the drug approval process. Regulatory agencies such as the FDA and European Medicines Agency rely heavily on industry user fees to fund their drug review processes. In addition, some committee members of advisory panels, on which agencies rely for recommendations, have financial ties to drug companies.

Although some health policy literature has recognized the importance of access to drug safety and efficacy information, the issue has received little attention in human rights discourse. My internship at the Open Society Foundations (OSF) Public Health Program in New York City arose through a collaboration between the OSF and Faculty of Law Professor Trudo Lemmens, and was initiated in order to explore a human rights based approach to addressing these accountability and transparency issues.

A human rights based approach to drug safety and efficacy information has several advantages. First, there is a growing body of evidence implicating regulatory officials in culpable behaviour. Governments have arguably failed to enact and enforce regulations that compel drug companies to disclose the dangers of their products, leaving room for a new approach. Second, a human rights based approach shifts the focus from the fraudulent practices of drug companies to the harmful consequences of these practices. It places power imbalances at the centre of the debate surrounding drug safety and efficacy data. Finally, a human rights based approach can be a powerful tool for "naming and shaming" governments and corporations for their fraudulent behavior.

During the course of my internship, I drafted a working paper on a human rights based approach to advocating for full public disclosure – by both government and industry – of drug safety and efficacy information. In addition to implicating human rights such as the right to life, this issue also encompasses other areas of law such as drug regulation and access to information. Since corporations cannot be held directly legally accountable under existing international human rights mechanisms, which are focused on almost exclusively on state accountability, my research also focused on corporate social responsibility instruments such as the Organization for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises.

Through my internship, I became more aware of the advantages of using human rights based litigation as a strategy to enhance accountability. I have also gained an appreciation for other human rights strategies, such as media campaigns and community mobilization. The internship was an invaluable opportunity for me to explore my interest in health and human rights. It was a privilege to work with and learn from the staff at the Public Health Program, and I am grateful to the IHRP and OSF for enabling me to have this opportunity.♦

## ONGOING RIGHTS VIOLATIONS BY THE BURMESE GOVERNMENT

(Continued from page 7)

Taken as a whole, the Committee's findings make it clear that the Burmese government has fallen far short of meeting its international obligations with respect to the Convention. The government's failures have left Burma's vulnerable youth at a greatly heightened risk of exploitation.

It is certainly important that the international community welcomes progressive changes in Burma. The official inclusion of the opposition National League for Democracy (NLD) and its leader Daw

Aung San Suu Kyi (who attended at parliament for the first time as an elected politician on July 9<sup>th</sup>, 2012) in Burma's political scene and the loosening of restrictions on freedom of speech and mobility rights are examples of long-awaited changes that will have positive implications for the Burmese population. However, this optimism must be tempered by the real challenges that continue to be faced by many in Burma. It is important for human rights advocates and supporters of the pro-democracy movement to remain vigilant in assessing the Burmese government's treatment of all those residing within the country's borders and its obligations under international law.♦

## A CONSTITUTIONAL CHALLENGE IN KENYA: THE JOURNEY BEGINS

Aleena Reitsma, JD/MSW student, University of Toronto

This summer I spent three months in Kenya interning for a Canadian NGO, The Equality Effect, which has partnered with a Kenyan organization (who wishes to remain anonymous) to hold the Kenyan government accountable for impunity for sexual violence against girls ("defilement"). I worked with the dedicated staff of a temporary shelter for physically and sexually abused girls run by the Kenyan NGO in the small rural town of Makutano, Meru County in Kenya's Central Highlands.

The girls' shelter opened in response to the increasing number of sexual assaults perpetrated against women and girls in Kenya.

Many girls come to the shelter because, for a variety of reasons, they can no longer remain in their communities. Amongst these reasons is the fact that in some instances, the perpetrator remains free in the community or is a family member. In other cases, families and community members are hostile and threatening to the girls and their families.

Kenya has a robust new Constitution and extensive sexual assault laws, which, in theory, should offer protection for victims. In practice, however, the Kenyan laws are not enforced. State officials, particularly the police, often refuse to undertake investiga-

tions into allegations of rapes against girls. When they do investigate, it is often inadequate. The Equality Effect and its Kenyan partner have come together to bring a constitutional challenge against the Kenyan police for their failures. My internship focused on preparing this constitutional challenge.

During the course of my internship, I learned about the myriad ways that the police fail in their duty to investigate rape. In some instances, the police claim that without witnesses to corroborate the complainant's report, they cannot make an arrest. In others, police officers may request money to carry out an arrest or to release medical forms required to file a rape claim (which are supposed to be free). A further problem recounted to us by a local leader was that many are reluctant to report sexual offences because they believe their reports will be made in vain.

Over the summer, I met Jenna (her real name is not used in order to protect her anonymity), a girl at the shelter who was impregnated as a result of rape. At the time of the rape, the police informed her that they could not make an arrest until the child was born in order to collect DNA evidence. In another case, a girl's blind father pushed the police to investigate, causing them to finally act; however, when they did, they issued him with a document allowing him to make the arrest, leaving him to find means to arrest the perpetrator himself.

Throughout the internship, I shadowed the social workers, accompanying them to hospitals, police stations, homes, and, most critically to the courts. While attending court, I observed the proceedings, and kept extensive field notes. One case I witnessed was that of Jill (whose real name has also not been used), a girl who was raped by her father. When she attended court to testify, her father's family were present. They were



Girls playing with lollipops  
Photo Credit: Aleena Reitsma



Photo Credit: Aleena Reitsma

(Continued on page 19)

# PROTECTING THE HUMAN RIGHTS OF THE CRIMINALLY ACCUSED

Marianne Salih, 2L, University of Toronto, Faculty of Law

This summer I interned with International Bridges to Justice (IBJ) - an international NGO dedicated to enhancing criminal justice in developing countries. IBJ works in several countries around the world, partnering with defence lawyers, police, and government officials to design sustainable programs for criminal justice reform. The organization has Defender Resource Centres in several countries in which they work; these Centres train defence attorneys to provide legal defence services at the earliest possible stage of a criminal proceeding. IBJ also works to enhance cooperation and understanding between various stakeholders by arranging roundtables to promote best practices in the field of criminal justice.

The failure to uphold the rights of the accused has pervasive social consequences: causing and deepening poverty, stunting economic development, and undermining democracy and the rule of law. A criminal justice system that safeguards the rights of the accused has a tremendous impact on the fundamental rights and freedoms of all members of society, including the rights to life, liberty, and security of the person; health; and freedom from torture, and cruel, inhuman, and degrading treatment.

Since its inception, international human rights law has guaranteed the right to a fair trial in instruments such as the *International Covenant on Civil and Political Rights*. However, for the most part, the international human rights movement has focused on the fair trial rights of prisoners of conscience. There is, however, a much larger category of prisoners who are perhaps more vulnerable due to the anonymity under which they suffer - ordinary citizens, accused of non-political crimes. Every day, millions of ordinary citizens around the world are arbitrarily arrested, held at length in pre-trial detention, wrongfully convicted, sentenced to excessive prison terms, and even executed. Others are detained indefinitely in secret jails and labour camps, or involuntarily hospitalized in 'psychiatric' wards. Many of these people are innocent, or

have committed only petty crimes, but they are often denied access to legal counsel, and can suffer severe punishment.

Investigative torture designed to coerce confessions is perhaps the largest human rights concern in respect of these accused persons. Indeed, the UN Special Rapporteur on Torture, Manfred Nowak, has confirmed that the most common victims of torture globally are 'ordinary' citizens suspected of 'ordinary' crimes, who are being held in pretrial detention. As the cheapest form of investigation, torture is practiced widely, and many countries lack sufficient legal safeguards that exclude evidence obtained by torture. The experience of arbitrary arrest, detention, torture, wrongful conviction and sentencing affects not only the accused person, but can also cause extreme emotional and financial hardship on families, and undermine overall confidence in the rule of law.

My internship was based at IBJ's headquarters in Geneva. There, I developed criminal justice reform projects for IBJ's programs in Asia and Africa. This work primarily involved researching individual countries' criminal laws and procedures. I used my findings to create learning modules designed to train defence lawyers in developing countries, as well as to develop online content for IBJ's 'Criminal Defense Wiki' - a Wikipedia-style encyclopedia of criminal law.

The idea that a first-year student like me could design e-learning modules which would be used to train practicing defence lawyers seemed daunting at first, but, as I quickly learned, the challenges that defence lawyers in developing countries face are great. Many of these countries lack standard legal training programs, especially in remote areas. Moreover, a surprising number of defence lawyers lack access to basic criminal law materials - including copies of the criminal and procedural laws of the countries in which they practice. Those who do have access to these

Photo Credit: Marianne Salih



Photo Credit: Marianne Salih



Photo Credit: Marianne Salih

(Continued on page 13)

# International Justice

## A TIME OF TRANSITION AND REFLECTION AT THE INTERNATIONAL CRIMINAL COURT - OFFICE OF THE PROSECUTOR

Sofia Mariam Ijaz, 2L, University of Toronto, Faculty of Law

This summer, I worked for the Office of the Prosecutor at the International Criminal Court. Specifically, I worked with the Immediate Office of the Prosecutor (IOP) and the Public Information Unit (PIU). During the course of my internship, the 9-year term of the ICC's first Prosecutor, Luis Moreno Ocampo, came to an end. Madame Fatou Bensouda from The Gambia, who was elected by the Assembly of States Parties, was sworn in on 15 June 2012, taking her place as the Court's new Prosecutor.

During this unique period of transition, the Court also marked its 10 year anniversary. It was a special time at the ICC, one which invoked reflection on the progress made thus far. A decade ago, it was not a given that the Court would be a relevant entity in the newly emerging field of international criminal law. When the Court first opened its doors, it had no cases, no investigations, and a prosecutor with only a handful of staff. Today, 121 countries have ratified the *Rome Statute* (the treaty establishing the Court), and sixteen cases in seven situations have been brought before the ICC, including two

referrals by the UN Security Council (Darfur and Libya).

Some argue that the statistics are indicative of the Court's failures – only one conviction in 10 years. However, what speaks more than simple numbers and statistics is the fact that the Court has now taken its place as a central institution in the area of international criminal justice. The speed with which the UN Security Council referred the Libyan case to the ICC is a testament to this development. So is the fact that three states – Uganda, the Democratic Republic of the Congo, and the Central African Republic – have themselves requested the ICC's intervention.

This moment, however, is not just one to reflect on the progress made, but also to take note of the work that is left to be done. The Court is only a relevant body in the fight against impunity insofar as it can in fact deliver justice in an effective and efficient manner. If it cannot, whether by virtue of its inability to secure arrests or its inability to secure evidence due to a lack of state coop-

eration, it may lose its relevance. The Court's continued existence is not a guarantee; it is subject in large part to the political will of state parties, and the cooperation of states which have control over suspects and evidence.

In addition, the Court is still going through growing pains (and will likely continue to do so for some time). It will learn lessons from its first conviction in the case against Thomas Lubanga, from the first major diplomatic row over detained staff in Libya (which took place this summer), and from the experiences of its first Prosecutor.

I was provided with an incredible and unique opportunity this summer to work closely with both of the Court's Prosecutors to date. I learned not only about substantive international criminal law and the Court's internal procedure, but also about the numerous challenges facing the Court in general, and the Prosecutor in particular, including how to protect his/her investigators, witnesses, and staff, how to secure arrests, and how to ultimately translate prosecutions and convictions into an end to massive atrocities.♦



Office of the Prosecutor  
interns in front of the ICC,  
Summer 2012  
Photo Credit: Sofia Ijaz

**Interested in contributing  
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# WHEN WORK MEETS LIFE: MY SUMMER AS AN INTERNATIONAL LITIGATOR IN CROATIA

Sonja Pavic, 3L, University of Toronto, Faculty of Law

A few years ago, I had the typical, movie-inspired idea of being a ‘Lawyer’: pressed collared shirts, skyscraper-high offices, and polite debates over expensive cocktails. I loved law school and (dare I say) I loved the law, but somewhere in between OCIs and law school gossip, I began thinking that a lawyer had to look, talk, and act a certain way. I became insecure about my ability to fit the mould, and whether I had anything unique to offer a somewhat structured profession. It’s a good thing I had African printers and Croatian feminists to remind me of the creativity, diversity, and dynamism inherent in the wonderful world of law!

Last summer, I had the opportunity to undertake a firm-funded IHRP internship in Arusha, Tanzania, at the United Nations International Criminal Tribunal for Rwanda (ICTR) for the Office of the Prosecutor. All of a sudden, there I was, fighting with printers during week-long disclosure reviews, summarizing cases that were in languages I didn’t think I could speak, and all the while trying to come to grips with the fact that most of our evidence was two decades old. It was an extremely humbling experience and it greatly increased my understanding of international litigation.

On the other hand, the internship was very much confined to the four walls of an office and, understandably, I had little to no interaction with the clients themselves. That is why this summer was such a special experience for me. Shortly after arriving back from Tanzania, I moved to London, UK, for my last year of law school. I was on a letter of permission at the London School of Economics, where I was energized by the breadth of both legal and human rights opportunities. I was particularly curious about INTERIGHTS, a non-governmental organization that specializes in strategic human rights litigation. I had read about the organization in Canada because they had brought several very publicized and important cases to the European Court of Human Rights. Luck was on my side when I contacted them because they just happened to be in need of a Serbo-Croatian speaker. I telepathically hugged my grandmother across the ocean for continuing to speak the language

with me all these years.

During my internship at INTERIGHTS, I was involved in the early stages of a complaint against Croatia relating to domestic violence. INTERIGHTS had identified several problems with Croatia’s international obligations to enact effective laws on domestic violence and have procedures in place to protect victims. What started off as a straightforward research project on the current state of domestic violence laws in the country turned into an intensive whirlwind of a field research trip throughout Croatia. I travelled around Croatia to collect research and gain an accurate understanding of what was really going on. I met with local NGOs and professors, and staff at government-run shelters and international organizations. Each institution had its own view of what the problems were and how they should be fixed. The real challenge was balancing all of those perspectives and assessing what changes would have the most impact. All of the skills we learned in law school became vitally important – analyzing and critiquing legislation, as well as being able to rewrite legislation to better reflect social reality. The experience revealed to me once again what it really means to be a lawyer. A large part of it lies in that intense, nerdy joy of finding the right case, of analyzing and re-analyzing an issue from every perspective possible, and of pouring over minute details before pressing ‘send’.

On a more personal level, the experience was extremely gratifying because I was part of the process of improving a particular aspect of my culture of which I have never been very proud.

Sometimes work, life, and passion fall into place – for me it truly did with INTERIGHTS this past summer. I was given the opportunity to be a real-life international litigator, on an issue that is very dear to my heart, in a country that I feel very connected to. INTERIGHTS was an incredible organization to work for, and I encourage anyone interested in strategic litigation to get involved or read about the work that they do.♦

## PROTECTING THE HUMAN RIGHTS OF THE CRIMINALLY ACCUSED (Continued from page 11)

materials find that they quickly become outdated. Accordingly, the modules provide an invaluable source of information and training for lawyers, both through online access and through IBJ’s on-the-ground training sessions and workshops.

My experience with IBJ not only exposed me to a niche area of human rights law which proved exciting and challenging, but also provided me with invaluable experience working in an NGO set-

ting. My work was unpredictable, challenging, and largely independent. When the deadlines for grant applications approached, we all had to pull together and improvise – covering shifts, temporarily switching projects, and even pulling all-nighters. Every day presented the opportunity to work on several projects, and in different teams. New interns – and even staff – came and went on a weekly basis, and funding for new programs could fluctuate greatly from year to year. For all that uncertainty, however, one thing at IBJ remained constant: the commitment and passion that volunteers and staff alike brought to their work to uphold the human rights of the criminally accused.♦

# *International Justice*

## **THE UNFORGOTTEN HISTORY: BIOLOGICAL AND CHEMICAL WARFARE DURING WORLD WAR II IN ASIA**

Xijun (Cicie) Deng, 2L, University of Toronto, Faculty of Law

During World War II, the Japanese Imperial Army launched an invasion of China that developed into a full-scale war, lasting for more than ten years. At the time, the Japanese military contemplated the use of biological and chemical weapons, which were considered desirable because of their relative cost-effectiveness, despite being prohibited by international law.

Two secret units, Unit 731 and Unit 516, were established in north-eastern China, which was then under Japanese colonial rule. Unit 731 was dedicated to research on biological warfare, production of bacteriological weapons, and human experimentation, while Unit 516 focused on research into chemical warfare. Unit 731 was infamous for its use of human subjects for various lethal experiments involving bacterial infection, burning, freezing, animal-human blood transfusions, sexually transmitted diseases, and vivisection.

From 1940 to 1942, the Japanese Army employed these bacteriological weapons in Southern China and caused widespread epidemic outbreaks that killed hundreds of thousands of civilians. Chemical weapons were used even more widely during battles against the Chinese army, as well as being used to massacre civilians. At the end of the war, Japanese troops abandoned more than 2 million chemical shells in various locations in China, which subsequently caused injuries to countless more civilians.

Despite committal of these atrocities by the Japanese Army, the officers of Unit 731 and Unit 516 were never prosecuted by the post-war International Military Tribunal for the Far East. From documents subsequently released by the U.S. government, we now know that the chief of Unit 731, Ishii Shiro, submitted four reports to U.S officials on the Japanese biological warfare program, and surrendered to the U.S. thousands of pathological specimens obtained from human experimentation, in exchange for war-crimes immunity for Japanese officers. This act was a blatant violation of international law and is one of the great injustices in modern legal history.

I conducted my internship with Toronto ALPHA. Toronto Association for Learning and Preserving the History of World War II in Asia, and had the opportunity to travel to the U.S. National Archives to look through the declassified files from the U.S. Department of State, which recorded the secret deal struck between the U.S. Army and Unit 731. I then studied at Unit 731 Institute in Harbin, China, learning about the historical background of Japanese biological warfare activities.

While studying at the Institute, I toured the sites of the original Unit 731 complex, which put me face-to-face with this dark chapter of history. During my stay in Harbin, I participated in physical examination sessions for victims of abandoned chemical weapons that



Photo Credit: Glenn Brandys

were organized by a group of Japanese physicians who had volunteered their services. I had a chance to speak to survivors and learn about their painful experiences and hardships in life, as the effects of chemical weapons are long-lasting and very difficult to cure.

I later travelled to the city of Quzhou in Southern China, an area that suffered severe losses from plague epidemics caused by Japanese biological warfare attacks. I met with family members of those who died of plague, and survivors who contracted anthrax from walking on soil contaminated by the Japanese Army. The anthrax victims have been suffering from open wounds on their legs, or “rotten legs,” without any hope for a cure.

All of these victims have participated in lawsuits against the Japanese government demanding compensation and apologies for their suffering. However, all of these claims have ended in failure, with Japanese courts supporting the Japanese government’s denial of legal responsibility. One of the most prevalent arguments cited in the courts’ decisions is that individuals’ claims for compensation were waived in the post-war peace treaties. However, this argument reveals many weaknesses when assessed critically in light of current developments in international law.

One of the most memorable experiences during my summer was my conversation with one of the victims of abandoned chemical weapons. Even though his health was deteriorating rapidly, he still seemed very optimistic. He told me: “even if I have only one more day to live, I will live that day happily.” His comment made my heart heavy, and I began to appreciate deeply the peaceful life enjoyed by our generation. I hope to contribute towards promoting awareness of these past atrocities and the importance of humanitarian law in the future, and I believe that with the combined efforts from the international community, justice, reconciliation and peace may not be far away.♦

# JUSTICE TOO LATE?

## REFLECTIONS FROM THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Aria Laskin, 2L, University of Toronto, Faculty of Law

In approximately 100 bloody days in 1994, 800,000 people were murdered in Rwanda. Neighbours turned upon neighbours, and the international community seemed unwilling to stop the bloodshed. Following this atrocity, the United Nations International Criminal Tribunal for Rwanda (ICTR) was formed in November 1994 to hold the perpetrators responsible and to put an end to impunity for these horrific crimes. Nearly 20 years later, as the Tribunal's work draws to a close, I had the privilege of working in the Appeals and Legal Advisory Division of the ICTR's Office of the Prosecutor. Given the approaching end of the Tribunal's work, this past summer entailed much reflection by both the local and international community on the ICTR's efficacy and legacy.

In my role at the ICTR, I learned how a complex criminal appeal works in an international legal context. My arrival at the ICTR coincided with the filing of a major appeal by an accused who was convicted of a host of crimes in 2011. As a result, I was able to work on an appeal from its first stages up until the submission of our written brief nearly two months later. My work alerted me to some of the most contentious

matters in ICTR jurisprudence and forced me to reflect on the limitations of international criminal law.

One of the most fascinating contributions of the ICTR to international criminal legal doctrine is in the area of Joint Criminal Enterprise (JCE). In the commission of genocide, many of the "guiltiest" people – powerful politicians, businessmen, military officials and media personalities who helped orchestrate and facilitate genocide – did not directly commit genocidal acts.

The issue of how to appropriately and meaningfully ensure that such indirect perpetrators are held accountable for their actions first arose in the aftermath of World War II. Faced with thousands of war criminals and various modes of participation in the atrocities committed, the American administration proposed reliance on a "broad criminal enterprise" approach, largely premised on the doctrine of conspiracy. While some representatives of particular legal traditions viewed the conspiracy doctrine as foreign and overly vague, the international legal community eventually accepted the doctrine as a mechanism for at-

tributing liability to criminals engaged in a common criminal enterprise. This mode of

liability was effectively adopted by the ICTR as JCE.

There are a number of key differences between the doctrine of conspiracy and JCE. For instance, the actus reus for JCE requires the accused to take an action in furtherance of a common plan, whereas the actus reus for conspiracy requires only the formation of the agreement. However, the doctrine of JCE remains controversial. While its proponents argue that it is often the only way to hold powerful perpetrators liable, the many critics of the JCE doctrine allege that it is too fluid, and erodes the fair trial rights of the accused.

While I do not have a strong opinion on the JCE mode of liability myself, working with this doctrine did allow me to appreciate the myriad challenges faced by practitioners of international criminal law. Since its inception, the ICTR has faced the impossible challenge of holding prominent national

(Continued on page 19)

Photo Credit: Aria Laskin



Photo Credit: Aria Laskin

# **Labour Rights**

## **ACCOUNTABILITY FOR FORCED LABOUR DURING WORLD WAR II IN ASIA**

*Glenn Brandys, 2L, University of Toronto, Faculty of Law*

I recently completed an IHRP internship with Toronto ALPHA, the Association for the Learning and Preserving of the History of World War II in Asia. Toronto ALPHA promotes global awareness and recognition of the history of WWII in Asia. My internship involved studying the use of forced labour during WWII in Asia, and the legal redress movement that followed. I focused on civil claims by forced labour survivors against Japanese corporations in charge of the work camps. During the course of my internship, I interviewed professors and legal scholars, worked with lawyers who had served as counsel for forced labour claimants, and perhaps most importantly, met survivors of forced labour and heard their stories first-hand.

This was far from being a purely historical endeavour, as forced labour victims and their families continue to seek legal redress to this day. Since a diplomatic solution has yet to materialize, victims and their families have resorted to litigation. During my internship this summer, a major South Korean Supreme Court decision was handed down in favour of the claimant forced labourers which represents the first court victory for any such claimants against a Japanese corporation or government that hasn't been overturned on appeal.

The legal issues at play in seeking damages for events that took place over a half-century ago are numerous. The causes of action draw on both domestic and international law. Interestingly, courts rarely address the merits of the claims, and defendants generally do not challenge them. Instead, defendants rely on technical defences such as statutes of limitations, state immunity, and waivers of claims through international treaty agreements. Although statutes of limitations would seem to be an impervious bar to recovery given the amount of time that has passed since WWII, judges frequently choose not to apply them for a variety of reasons. These include the timing of the restoration of diplomatic relations between Japan and the claimant's country, as well as fundamental principles of fairness and justice.

Reliance on waivers of claims has been both the most successful and most controversial form of defence. Neither China nor South Korea was a party to the

*(Continued on page 17)*

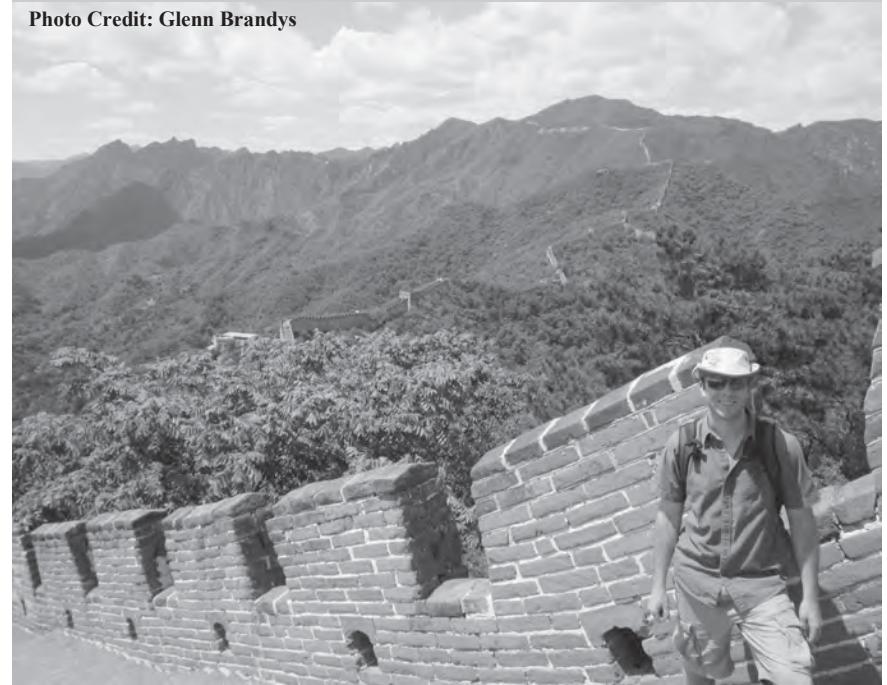


**Photo Credit:** Glenn Brandys

**Top:** Students sitting in the Moot Court Room in Shanghai

**Bottom:** Glenn Brandys standing in front of the Great Wall of China

**Photo Credit:** Glenn Brandys



# REPRESENTING EMPLOYERS AT THE INTERNATIONAL LABOUR ORGANIZATION

Jennifer Bernardo, JD/MGA student, University of Toronto

In September 2012, the Ontario government passed Bill 115, the *Putting Students First Act*, which imposes regulations on the activities of the province's teachers' unions. The new bill has revived a long-standing debate about workers' rights to collective bargaining and strike action – rights which, some argue, are protected by both international law and our domestic *Constitution*.

These debates are particularly resonant for me, as I recently completed an internship with the International Labour Office in Geneva, Switzerland, which is the permanent secretariat of the International Labour Organization (ILO). Having attended the 101<sup>st</sup> annual International Labour Conference, I came to realize that Canada's difficulties with protecting and promoting workers' rights are shared, to some degree, by almost every country around the world. My three-month internship also provided me with lessons on the efficacy of international organizations, the role of business vis-à-vis human rights, and the complexity of international law.

The ILO is a unique UN agency because of its tripartite structure incorporating government, employer, and worker representatives. The ILO can create binding international treaties with the cooperation and consent of government delegates. However, the ILO's Conventions are unique compared to most other treaties, in that representatives of workers and employers from each of the ILO member States, in addition to the government members, are allowed to vote on their adoption. I interned with the Bureau for Employers' Activities (ACT/EMP) which serves as the first point of contact for employers' organizations and individual employers. ACT/EMP's responsibilities to employers are three-fold: to keep them informed, to assist them in responding to labour rights-related issues, and to ensure that their priorities and opinions are communicated to the ILO.

I had two primary tasks during my time at the ILO. First, I assisted

the Employers' Group delegates who participated in the Committee on the Application of Standards (CAS) during the Conference. CAS forms a crucial part of the overall supervisory machinery of the ILO in that it examines cases of alleged labour rights violations, and makes recommendations to the countries in which they occur. For the first time in the ILO's history, CAS was unable to complete the bulk of its work, because of an impasse between the delegates on the issue of the right to strike within the context of Convention No. 87, the *Freedom of Association and Protection of the Right to Organize Convention*. The controversy led to an agreement to hold informal negotiations in mid-September, in order to decide a way forward.

My second task was to draft commentaries on selected ILO Conventions. Since many of the employers' organizations represented by ACT/EMP are not comprised of lawyers, I had to work on ensuring that the rights and obligations outlined in the various treaties were set out in a way that non-lawyers could understand.

Representing employers in an organization dedicated, in large part, to advancing workers' interests was not always an easy task. I had to reconcile my own commitment to development and rights protection with the realities of global capitalism. I realized that progress in international labour law requires constructive dialogue and compromise amongst the relevant parties to balance the interests of those concerned. We must not turn a blind eye to the many forms of exploitation and discrimination that still exist in the world of work. However, it is also necessary to recognize advancements where they occur and to take account of the needs of sustainable enterprise and investment. As the global business landscape changes, international labour law must also evolve. While the process of reform may not always be smooth, the continued engagement of those most directly affected will help to ensure that the effort will be worth it.♦

## ACCOUNTABILITY FOR FORCED LABOUR (Continued from page 16)

1951 *Treaty of San Francisco*, which settled war reparations between Japan and the Allied Powers and contained a stringent waiver of claims for both the state and individuals. Instead, both countries signed independent treaties with Japan much later. These later treaties included a waiver by the state for reparations against Japan, but it is unclear whether this covered individual claims against corporations as well. In a highly controversial decision in 2007, the Japanese Supreme Court found evidence of a waiver for individual Chinese claimants, despite the treaty being silent on the matter. However, following the interpretation guidelines from the *Vienna Conventions on the Law of Treaties*, legal scholars argue that China had not waived the claims of individuals. Although litiga-

tion has been at a standstill in Japan since the 2007 Supreme Court decision, with every successful claim being overturned on appeal at some point, the recent victory for victims of forced labour in the South Korean Supreme Court decision earlier this year suggests a new wave of litigation could begin.

Perhaps the biggest impact of working with those involved in this issue was seeing first-hand the importance placed on legal accountability. Those with whom I spoke, whether they were lawyers, activists, or survivors, stressed that the resort to litigation, as opposed to other means of redress, has little to do with monetary compensation, and everything to do with wanting perpetrators to be held accountable under the law for their actions.♦

# Refugee Rights

## “REFUGEE” RIGHTS IN ISRAEL

Lisa Wilder, 2L, University of Toronto, Faculty of Law

This summer I spent five weeks at The Clinic for Migrants’ Rights in Israel. The clinic is one of nine human rights legal clinics at the Academic Centre of Law and Business near Tel Aviv. During my internship, I had the opportunity to watch and learn from my supervisors as they sought *amicus curiae* status in a refugee appeal at the Supreme Court of Israel.

I also was able to go to the Supreme Court and watch my supervisor argue against a proposal by the municipality of Eilat for separate schools for the children of migrants. During the case on segregated schools, I heard very encouraging remarks from the bench (my supervisor provided me with live Hebrew-English translations during the hearing so that I could follow the proceedings). For instance, one of the judges used the Hebrew word for “refugee” when describing the children who would be

sent to separate schools. Most of the children come from families of asylum seekers. This is significant as he could have referred to them as “migrants,” which glosses over the fact that many of them are legitimate refugees, or instead, as “infiltrators,” the word of choice of many right-wing politicians. More importantly, the panel of three judges made it clear that they would not condone the proposed segregation. They pointed out that if Jewish people were subjected to such discriminatory treatment in schools, it would not be tolerated, and as such, would not be tolerated here.

It’s hard to say that the lawyers I worked with practise refugee law *per se*, since asylum seekers rarely achieve refugee status in Israel. Since 1951, only 157 asylum seekers have been recognized as refugees by Israel under the *Refugee Convention*. Israel’s refugee recognition rate is less than 1 percent.

As of March 2012, about 58,000 asylum seekers had arrived in Israel, most of them from Sudan and Eritrea. Many of these people live in South Tel Aviv - a place which many tourists and locals pass through as the Central Bus Station is located there. Across from the station is a park where many male asylum seekers sleep during the day. Some are homeless, but many wait there for work.

The most interesting moments of my internship took place outside the office. For instance, one weekend, my supervisor invited me to a demonstration in Tel Aviv to show solidarity with refugees. The organizer of the demonstration was a 16-year-old girl who was there with her grandmother, a Holocaust survivor. With eloquence and maturity, the girl talked about how Israel loses its culture when it loses its compassion towards refugees. Outside the realm of a demonstration like this, it is rare to see such compassion from the general public for asylum seekers. Violent attacks are a more extreme reaction to the growth in the number of asylum seekers found in South Tel Aviv. Such attacks have made it so that many asylum seekers are afraid to go out at night. Fear is quite common in South Tel Aviv – with Israelis worrying about being robbed (or worse), and refugees fearing being targeted or rounded up by police.

Through my internship, I observed the deep impact on refugees who face hatred and misunderstanding. However, I also saw the positive impact that can be made by those who are making efforts to help protect the rights of refugees, such as dedicated lawyers who provide assistance with refugee and visa applications, and challenge problematic immigration procedures in court. The passion – and compassion – that is found in these lawyers’ practice is something I hope to bring back with me.♦

Photo Credit: Lisa Wilder



**A CONSTITUTIONAL CHALLENGE  
IN KENYA**  
*(Continued from page 10)*

there to support her father and to intimidate her. We requested the Magistrate to have everyone in the courtroom, including the family members removed, while she testified.

Attending court gave me an insight into the Kenyan legal system. In addition to defilement cases, I witnessed numerous other cases involving public drunkenness, theft, child neglect, assault and numerous other crimes. In Kenya, the prosecutors at the lower courts are usually members of the police force and often lack intricate knowledge of legal arguments. Furthermore, the accused, who in most cases had no legal training, usually represent themselves. In the case of the girls from the shelter, a self-represented accused could cross-examine girls themselves, making testifying even more intimidating.

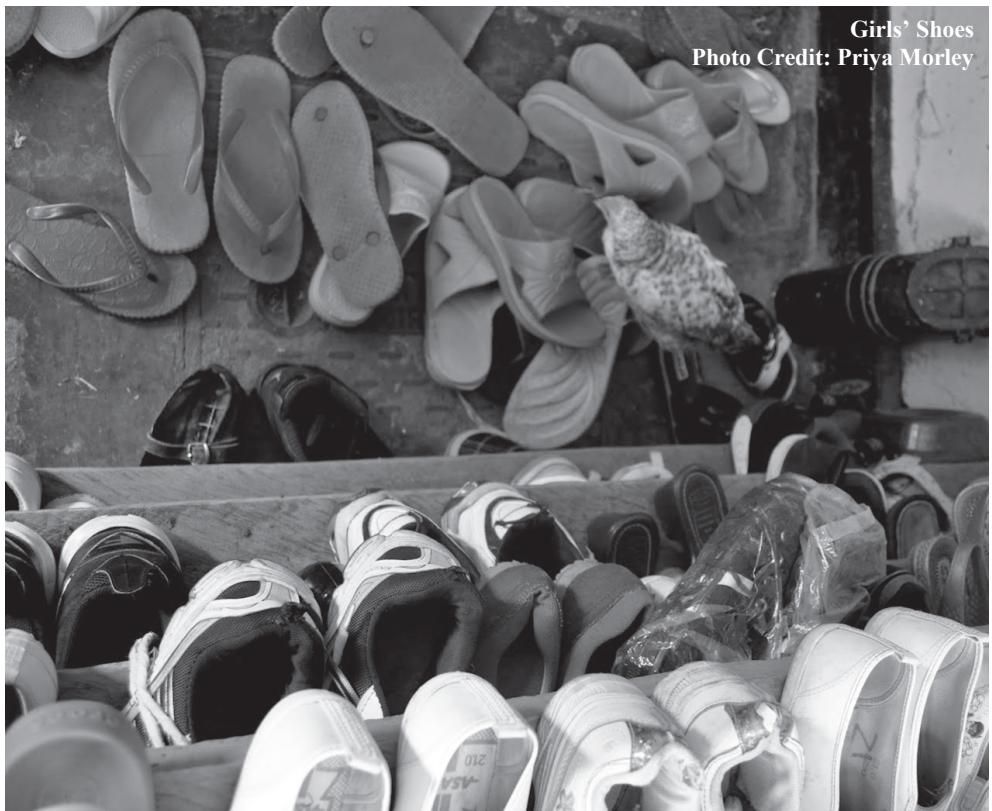
The shelter is the only one of its kind in the area and is overwhelmed by the number of girls who require assistance. There is certainly a long journey ahead to ensure that girls are protected from sexual violence. Police failures and corruption result from systemic issues, meaning that the elimination of such problems will be very challenging. However, the acknowledgement of such issues and the efforts by NGOs, such as the Kenyan shelter, is a good start to bringing about much needed change.♦

**JUSTICE TOO LATE? (Continued from page 15)**

figures accountable for their often geographically and temporally removed contributions to atrocities. Further, unlike in national jurisdictions, there was no coherent or significant body of international criminal law for ICTR lawyers to rely on in developing their cases. Finally, and unsurprisingly,

the ICTR had to function in an often-challenging political context, figuring out how to carve a role for justice in a post-conflict process that is equally concerned with healing and regeneration.

For a young law student, the ICTR is an amazing place to gain exposure to complex criminal proceedings. My work this summer enabled me to reflect both on the capacity of international law to deliver justice as well as the adequacy of any legal body to respond to an event as inhumane and atrocious as genocide. The ICTR has made major contributions to international criminal law jurisprudence and working there was extremely rewarding. However, I do believe that in response to neighbors killing neighbors and countries torn to shreds, post-facto international criminal law can be simultaneously effective and problematic; crucial but too late.♦



**Girls' Shoes**

**Photo Credit: Priya Morley**

# Refugee Rights

## MANAGING A REFUGEE INFUX IN UGANDA

Lane Krainyk, 3L, University of Toronto, Faculty of Law

When 492 Tamil asylum seekers arrived on the British Columbian coast aboard the MV *Sun Sea* in 2010, the Canadian government decried the cost of processing them, publicly cast doubt on the legitimacy of their claims, and set to work writing new laws that would make it more difficult for refugees to seek safe asylum in this country. Canada, it was argued, could simply not manage this type of refugee influx.

Through my internship with the United Nations High Commissioner for Refugees (UNHCR) in Uganda, I had the opportunity to learn what a real refugee influx looks like. As a result of recent conflict in the neighbouring Democratic Republic of the Congo (DRC), Uganda's refugee population increased dramatically in the first half of 2012. Tens of thousands of refugees poured over the border, bringing the total number of refugees in Uganda to around 200,000. In cooperation with UNHCR and other organizations, the government of Uganda processed these refugees and provided them safe transit to settlements where they were given land to farm.

Uganda's refugee population is extremely diverse. For many years, Uganda has welcomed refugees fleeing persecution and conflict in Somalia, Sudan, Ethiopia, Eritrea, Burundi, Rwanda and the DRC. Refugees in Uganda are able to choose between living in settlements or relocating to cities. Many move to Kampala - Uganda's largest city, as well as the centre of UNHCR's operations in Uganda and the site of my IHRP internship.

I worked with the Protection Unit of UNHCR's Kampala office. The Protection Unit deals with the protection concerns of refugees and asylum seekers residing in the city. I was responsible for meeting with refugees to assess the protection issues they faced and to make recommendations on what UNHCR could do to assist them. The types of assistance provided included helping refugees follow up with local police on security concerns, developing strategies for decreasing their vulnerability on a day-to-



Photo Credit: Lane Krainyk

day basis and, in some cases, recommending them for resettlement to a third country. In addition, I had the opportunity to visit one of Uganda's refugee settlements, giving me perspective on the scope of the refugee situation in Uganda. I also drafted daily and weekly updates on the refugee influx from the DRC.

Through my internship with UNHCR, I learned just how fortunate Canada is to be able to generally control the number of refugees that come through the border. Since Canada does not border any countries that typically produce large numbers of refugees, Canada is rarely the first country of asylum. Instead, a huge percentage of Canada's refugees are received through a resettlement process that takes refugees from their original countries of asylum (like Uganda) and resettles them elsewhere (like Canada). Through this process, the Canadian government can determine, to a large extent, how many refugees are let in, where those refugees come from, and who, specifically, they are.

Uganda, on the other hand, has very little control over the population seeking refuge within its borders. In fact, for much of 2012, the equivalent of one *Sun Sea* full of refugees was arriving in the country every day. Uganda could not determine how many people would arrive or from where they came. Uganda has an obligation, borne of necessity and international law, to protect refugees who seek asylum. The opportunity to see how UNHCR and the Ugandan government manage Uganda's refugee population, particularly when its resources are stretched, provided an extremely interesting comparison on how different countries approach and manage refugee issues. My internship with UNHCR was a fantastic opportunity for me to learn more about refugee migration, processing, resettlement, and protection issues, as well as the opportunity to learn about the countries from which Ugandan refugees flee, and international migration law. I am extremely grateful for the support of the IHRP, Fasken Martineau, and the staff at UNHCR.♦



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