

BORDERLINES

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Regional Focus: Japan

Human Rights Issue facing the Practitioner in Japan:

- Burakumin: Caste Discrimination

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ON TRIAL BEFORE THE TALIBAN

Atif Ali Khan is a Pakistani attorney practicing in Peshawar, Pakistan. He represented international aid workers from the United States, Germany, and Australia after they were arrested by the Taliban and put on trial in Kabul, Afghanistan in September 2001. He shares his experience in an interview with LWOB.



The international aid workers' organization

How did you learn of the case involving the international aid workers?

On September 4th, I received a call from the United States Consulate in Pakistan, asking if I would be interested in handling the case of the eight detained international aid workers in Kabul, Afghanistan. I said, yes. In a follow-up call from an American diplomat in Kabul on

September 9th, I learned that my name would be proposed to the aid workers the following day.

Why did the American Consulate contact you regarding this case?

I was, in many ways, the perfect choice. I have a degree in Islamic law as well as an L.L.M. in International

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Christina Storm

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FROM THE DIRECTOR'S DESK:

With this first issue of BorderLines, Lawyers Without Borders launches what we hope will become a resource for the practicing lawyer's experience in the field in human rights projects, rule of law initiatives and a variety of internship programs. The launch of this newsletter, as well as Lawyers Without Borders itself, signals the commitment by members of the legal profession from around the world, to join in a global effort to resolve conflicts and together rebuild societies emerging from turmoil.

LWOB intends to embrace every lawyer and fraternal association of lawyers, every non-profit organization in need of service and counsel, and global human rights issues and initiatives with the particular goal of assembling all available pro bono resources to address the compelling conflict scenarios facing society. LWOB is and has been during this last year, the second since its creation, a work in progress. What has evolved in the two years

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ON TRIAL BEFORE THE TALIBAN (CONTINUED)

Human Rights from American University in Washington, DC. I previously had been retained by the United



Atif Ali Khan In Kabul

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States Consulate in Pakistan to assist them with matters related to a new Consulate office. As a result, my professional credentials were well known to them. In addition, my cultural heritage resembles that of the Taliban.

When did you learn that the aid workers had accepted you as their legal counsel?

few hours before the attack on the U.S., I was told that the aid workers had accepted me as their counsel and that a legal statement to that effect had been submitted to Supreme Court officials. I was asked to prepare to leave for Kabul immediately. With news of the attack on the U.S., however, everything came to a halt. It was extremely difficult to travel to Kabul. No

On September 11th, a

Continued next page

*For the Burakumin
in Japan,
discrimination
defines daily
existence.*

JAPAN: CASTE-BASED DISCRIMINATION

Japan, outwardly homogeneous, nonetheless harbors an ancient and severe form of discrimination: caste-based discrimination. Historically entrenched, caste-based discrimination today affects a minority of Japanese known as Burakumin.¹ For the Burakumin in Japan, discrimination defines daily existence.

Caste-based discrimination emerged from the early social organization of Japan. During the Edo period, from the early 1600s until 1867, Japanese society was stratified into various classes, each of which was assigned a certain occupation. For those relegated to the lowest social class, occupations involved tasks such as the slaughter of animals and execution, tasks considered by Buddhist and Shinto religious scriptures to be unclean

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RULE OF LAW INITIATIVES — PETER BACH

Introduction

As pointed out by Thomas Carothers, "One cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles."² This statement reflects the fact that since the end of the Cold War, legal reform and rule of law projects have be-

come increasingly popular with international agencies assisting developing nations in transition. This justice ministries. In emerging democracies, courts often enjoy limited independence as a result of executive branch control over budgets and, in some countries, historical practices and traditions.



Continued next page

The Author

ON TRIAL BEFORE THE TALIBAN (CONTINUED)

flights into Afghan air space were permitted, and the only way into Kabul was via a hazardous land route. Finally, on September 28th, an associate, Mr. Bismillah Jan, and I were able to travel from Pakistan to Kabul, carrying letters authorizing me to represent the aid workers and clothing and food from the aid workers' parents.

What did you do upon

arriving in Kabul?

My associate and I went directly to the Supreme Court.

Is it common for a case of this nature to be heard by the country's Supreme Court?

Under the governing law of the Taliban, the Shariah, the country's ruling authority has the power to assign cases to any court in Afghanistan. In this case, it

is likely that international pressure caused the case to be referred directly to the Supreme Court.

Were you successful in meeting with members of the Supreme Court when you first arrived in Kabul?

No, the Supreme Court already had closed for the day, so we went directly to the detention center. We were allowed

Continued next page

No lawyer in his proper state of mind would have opted to travel to Kabul at this time of the year.

RULE OF LAW INITIATIVES (CONTINUED)

Autocratic or semi-democratic development is based in part on the notion that promoting the rule of law and human rights is fundamental to a democratic society and in part on the belief that such a development will foster a free market economy.

This article examines the practical aspects of judicial reform and rule of law initiatives. The article does not purport to be an exhaustive account, but merely highlights several political obstacles that often are encountered in legal reform and rule of law projects, obstacles that can undermine their success.

Legal reform may be defined as writing new or amending existing legislation to better match an emerging political and economic reality. The focus is on substan-

tive law. Reform initiatives may aim at civil and/or criminal legislation.

For instance, legislation to foster and promote a free market economy might establish more effective procedures for collecting unsecured debts to protect against corruption. As another example, legal reform may focus on laws to enhance compliance with international human rights standards, such as laws to strengthen protections of property rights. In post-war Bosnia-Herzegovina, for example, a complex set of property laws is being implemented to enable internally displaced persons to return to their home of origin.

Legal reform initiatives usually originate out of collabora-

tion among domestic interest groups, international donors, and international human rights groups, although the actual designs of such programs vary greatly. Some projects consist of small-scale technical support while other project seek to redesign an entire judicial system. Legal reform initiatives range in length, but often span several years. Funding generally consists of a patchwork of resources, including loans, one-time start-up grants, and grants for on-going operational support. Resources may be provided by both governments and international organizations.

Judicial reform, unlike legal reform, aims at improving judicial institutions. The focus is on process.

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difference.*



MY EXPERIENCE IN THE BATEYS SARAH ROQUE

During my undergraduate studies, I became absorbed in learning about International Human Rights law. I deferred my law school studies and spent the year volunteering with a small non-profit organization in a Haitian immigration work camp, called a "batey", in the Dominican Republic. The bateys are small villages composed of one-room shacks. They were built for Haitian men to live in temporarily while working for menial wages in the sugar canes and mines. Many of the men brought their families with them and settled there illegally to escape the even bleaker conditions in Haiti.

During orientation, I was told that the bateys were among the poorest regions of the Western Hemisphere, second only to Haiti.

I was well informed as to the poverty in which I would live and work, but nothing could have prepared me for the living conditions in the batey. These people had little, often surviving on the nearby mango and grapefruit trees for sustenance, and yet were so generous and shared with each other and with us all that they had.

While there, I spent much of my time teaching reading and math to the mothers and children in the batey. They were eager to learn, and welcomed the break in their day to take their minds off of their all too real fears of starvation and deportation.

Witnessing the resilience of these Haitian people, their positive



© Dave Tycz

attitude, and endurance of a life of seemingly endless labor, discrimination and squalor, I learned so much more than my math lessons could have taught them. I gained a first-hand perspective of the poverty and human rights abuses that people living in a developing country endure on a daily basis.

This awareness has strengthened my pursuit of a profession in human rights.



ON TRIAL BEFORE THE TALIBAN (CONTINUED)

to meet with the eight aid workers -- first the men, then the women. Although it had been a very difficult day for us, the expressions of happiness and relief on their faces rejuvenated us. We promised to meet with them for a longer period of time the next day.

Were you successful in meeting with the Supreme Court shortly thereafter?

Yes. We met with the Chief Justice, Mr. Noor Mohammed Saqib, the next day (September 29th).



A typical road in Afghanistan.

Photo© Luke Powell, 2001

I found him to be a friendly man and the fact that my associate was an old student of his helped break the ice as well. He assured us of his complete cooperation during the

trial and told us that the process would be fair and transparent. The first hearing was held on September 30th. We arrived to find a jam-packed courtroom. The

Continued next page

... TALIBAN (CONTINUED)

aid workers arrived shortly thereafter, and the proceedings began. My eight clients and I, as required, imprinted our thumbprints on the official record book and stated that we had agreed that I would represent them. The Chief Justice then spoke, stating that no rights would be violated and the trial would be fair. The official languages of the Supreme Court were Dari/Persian and Pashtu and the charges against my clients were read in Dari/Persian. Because of the Court's limited translation and computer resources, we did not receive an English translation of the charges until October 4th.

What were the charges against the aid workers?

The charge sheet was very ambiguous. It could be determined, however, that at least four of my clients were presumed to be guilty by association with the organization for whom they were working, Shelter Now International, which, interestingly, was not itself charged. The main charge was proselytizing Christianity along with ancillary matters, such as visiting Afghan women.

How did you begin preparing the defense of the aid workers?

I informed the aid workers that we would need to prepare their defense in Pakistan, as we did not have any access to the legal material required for a proper defense. One of the American families in Pakistan was quite concerned about our leaving Kabul. We also deemed it necessary to leave immediately because of credible information that the U.S. was about to attack. We left Kabul on October 5th. The United States attacked Kabul on October 7th.

Under the circumstances, were you willing and able to return to Kabul?

Although urged by family and friends to remain in Pakistan, Mr. Jan, my associate, and I returned to Kabul on October 10th. Our clients were extremely surprised to see us, as they did not expect us to return while Kabul was being bombed. I briefed them regarding my strategy and began drafting a reply to the charges for their review.

What was your defense strategy?

I had earlier reviewed the statements made by the aid workers and filed with the Supreme Court. The statements contained their responses to questions about written materials in their possession and whether they used these materials to proselytize. Almost all aid workers had given satisfactory replies to the questions posed by the prosecution, their answers made clear that there was no nexus between the materials they possessed and their interactions with the Afghans. My strategy focused on explaining the facts and clarifying the position of the Shariah on the matter. We primarily argued that the aid workers were not proselytizing, and we explained how the Shariah ruled on the matter. We also argued about the kind of sentence that might be passed if, at all, it appeared to the Court that my clients had proselytized.

What happened next?

I filed the reply on behalf of my clients on October 13th and we returned to Pakistan on October 14th. We expected to receive communication from the Chief Justice if there were any ambiguities in our reply that required clarification. On October 15th, however, as a result of the bombing by the United States, the telecommunications system was damaged and all contact with Kabul was lost.

After unsuccessfully attempting to make contact for five days, we decided to return to Kabul. Because of the intense bombing taking place, we planned to leave early one morning and return the evening of the same day.

Did you succeed in meeting with the Supreme Court when you arrived in Kabul?

No. When we arrived, we learned that the Supreme Court had closed early that day due to a bomb threat.

The Supreme Court was no longer sitting on a regular basis. We also were told that the Chief Justice, being one of the most senior officials in Kabul, was also very busy with war meetings. We went to the Foreign Embassy where the Chief of Protocol assured us that he would make every attempt to arrange a meeting for us with the Chief Justice. We also asked him to obtain permission for the aid workers

Continued next page

... TALIBAN (CONTINUED)

to call their families on the satellite phone that the United States Embassy had provided to me. From there, we went to the jail and met with the male aid workers.

What happened at the jail?

While my associate and I were meeting with the male aid workers, a jailer approached us and demanded that we leave. Previously, there had been no objection to our meetings with our clients. I refused to obey such an irrational order on the part of the jailer, and the situation became tense. I informed the jailer that I would complain to the Supreme Court about his conduct. Nonetheless, he angrily insisted that we leave.

When we returned the next day, the prison guard told us that the deputy jailer, who had been extremely helpful to us and to our clients, was not present. We also were told that we could not enter the jail. Again, the situation became quite tense. I insisted that I be allowed to enter the jail because I had Afghan currency to give to my clients and I needed to leave for Pakistan that day, following a meeting with the Supreme Court. When I made a few steps toward the women's compound, the guard held up his gun and stopped me. I told him that I was going immediately to the Supreme Court to complain about the situation, and we left the jail. After we had driven only a few hundred meters, the guard ran out and shouted for us to return. We refused to do so.

How did you attempt to resolve the problem?

We decided to first go to the Foreign Ministry and report the incident. The initial reaction was not positive. I was accused of dishonoring a senior jail official and was told that a case might be filed against me for my conduct. I also was told that I would be booked for carrying an unauthorized satellite phone. Subsequently, however, we were assured that the jailer would be informed that he should not hinder our visits with our clients in any way.

Did you also attempt to meet with the Supreme Court that day?

Yes. We were not able to meet with the Chief Justice, but we met with other judges who had been present at the first hearing. They assured us that the trial was progressing and our presence was not required for the remainder of the trial. They also made clear that the Chief Justice would make the final decision on the matter.

Is the presence of defense counsel not required at trial?

Under Taliban law, the prosecution presents the charge to the Supreme Court and the defense presents its written reply. The Supreme Court reviews both the charge and the defense reply and requests clarification, if needed. If the Court does not require additional information, defense counsel does not customarily make a further appearance until the verdict is announced.

Before the actual commencement of the proceedings before the Supreme Court, the prosecution had questioned the defendants and recorded their testimony. Our inspection of the testimony recorded before our arrival did not reveal any alteration to the answers voluntarily made by my clients.

After speaking with the justices, did you return to the jail to see your clients?

Yes, we returned to the jail and were confronted by the jailer with whom we had had the original difficulty. He expressed anger that we had lodged a complaint against him. We provided him with our authorization papers to visit our clients, and he directed the sub-jailer, who accompanied us, to allow only a 10-minute visit. I refused to conduct a meeting with my clients under such circumstances and simply went in and informed my clients of the situation. At that point, almost all of the aid workers asked me to contact their respective diplomats and press their governments to make humanitarian appeals. I felt at that point that they were giving up hope.

Did you contact diplomats from the aid workers' countries?

I spoke with diplomats from the United States, Germany, and Australia that night, October 22nd, and requested that they make humanitarian appeals.

You mentioned earlier that you had sought permission for the aid workers to call their families. Was permission given?

Yes, on October 23rd, the aid workers were given permission to use the satellite telephone to call their families. It was one of the happiest days for the aid workers, and their elation gave me the satisfaction of knowing that if nothing else, my efforts in this regard were fruitful.

Continued next page

... TALIBAN (CONTINUED)

Did you remain in Kabul?

No, I again returned to Pakistan after we finished the telephone calls. I did not expect to return to Kabul unless the Supreme Court asked me to make a personal appearance. At the time of the verdict, I remained very optimistic that the aid workers would be freed. A week passed, however, and I received no word from the Court. I asked an associate, Ahmed Shah, to travel to Kabul with applications to the Supreme Court and the Foreign Ministry, requesting them to inform us of the status of the case and whether we should return. Mr. Shah returned from Kabul on November 9th with no replies from the Supreme Court or the Foreign Ministry. The parents of the aid workers and the diplomats with whom I was in contact urged me to return to Kabul, stating that the trial was about to end and my personal presence was required. I applied for a visa to return to Kabul and planned to leave on November 12th.

And did you return?

Because of a delay in issuing the visa, my departure was delayed by a day. We were issued the visa on November 13th, and we planned to leave the next day. However, news came that night that the Northern Alliance had taken control of Kabul, and that the Taliban had retreated. As they left the capital, the Taliban took the aid workers with them.

We all recall learning that the aid workers had been released. How did you learn about what had happened?

On November 14th, I began receiving telephone calls from reporters regarding news that the Taliban had released the aid workers to the International Committee of the Red Cross and that the workers were being brought to the Afghanistan-Pakistan border. Early the next morning, a reporter called and told me that the aid workers would arrive shortly in Islamabad, Pakistan.

Were you there to greet them when they arrived in Islamabad?

No. I called the United States diplomat with whom I had been working and, much to my great surprise, he told me that he could not divulge any information about the status of the aid workers and that my presence in Islamabad would serve no purpose. Nevertheless, I drove from Peshawar to Islamabad to meet the aid workers. Upon arriving, I learned that they had already been brought to

their respective embassies. I was not allowed to meet with any of them. The response from the embassies was one of indifference, and dejected, I returned home to Peshawar. Two of the aid workers, however, did call me the night before they left Pakistan, thanking me for all that I had done for them.

You obviously made many sacrifices in representing these aid workers. Why did you become involved in this case?

I became involved out of a bond of humanity and the desire to show that there are Muslims who will honor their word even, if necessary, at the expense of their lives. When the bombing started, I could have easily ended my involvement in the case. What made me carry on was the fact that I was the only person in that situation to help my clients.

Given all that happened, particularly the embassies' ultimate treatment of you, would you accept a similar case in the future? What would you advise other attorneys who might be considering taking such a case?

Taking this type of case is extremely dangerous. The lawyer wears the hat of an attorney, a diplomat, a stunt man, and, most importantly, a normal being with a heart that goes out to those he or she is trying to help. This case was much more than a trial. I could have lost my life. I could have damaged the case if I did not conduct myself extremely diplomatically at all times during my stay in Kabul. My role extended far beyond legal representation. For example, I sought out doctors in Kabul to care for my clients. But, my efforts were all worthwhile because my work was for a good cause. Although my treatment toward the end was unexpected and very disappointing, I would be willing to accept a similar case in the future. In fact, I have already expressed my willingness to act as defense counsel for the detainees in Guantanamo Bay.

As for advice to other attorneys, everything comes to priorities. If one has the courage to fight for principles in difficult situations, then one must dare destiny.



... BURAKUMIN (CONTINUED)

because of the contact with death. Members of this lowest social class were also forced to live in certain areas, known as Buraku. Residents of these areas became known as Burakumin. The Burakumin, tainted by their profession, were unable to move beyond their class and thus became confined to Buraku areas and their harsh living conditions.

Japan has sought, at various times, to abolish the Burakumin "underclass." In the 19th century, Japanese society underwent a reformation and the Burakumin was officially abolished with the Meiji Emancipation Edict of 1871. In practice, however, discrimination continued to affect those from the Buraku areas. More recent efforts to ameliorate the discrimination against Burakumin also exist. Since World War II, there has been a conscious effort on the part of the Japanese government to diminish the differences in the standard of living between Burakumin and other Japanese. This policy, known as *Douwa*, has been criticized as forcing the assimilation rather than the liberation of Burakumin. With discrimination continuing, and perhaps worsening, the policy has clearly not been successful.

For the Burakumin today, discrimination is multi-faceted. The quality of life in Buraku areas is much lower than in other areas in Japan, particularly in areas of health care, employment and education. Students from Buraku areas have a lower likelihood of completing tertiary education than other Japanese students, and this hinders employment prospects for many Burakumin. For those who do complete their education, they must face the prejudice in the workplace exhibited by employers. Many large companies have bought lists of names so they can easily identify people from Buraku areas. Even if employed,



Meat processing plant where only Burakumin work.

© www.geocities.com/gaijindo4dan/

Burakumin further suffer wage discrimination, with the average Burakumin household income being only 60% of the national average.²

Discrimination permeates social interactions. The existence of lists identifying Burakumin means that it is easy to check on the background of a person, particularly a potential spouse. Private investigators have reported that in 90% of pre-marriage inquiries, they are asked to ascertain whether the potential spouse is from a Buraku area. In many cases, this information leads to the cancellation of a wedding.³

Allegations of discrimination also extend to the justice system. The Sayama case in the 1960s focused attention on the right to a fair trial, as the belief held by the police that someone from a Buraku community was responsible apparently led to a false confession to a murder charge.⁴

Discrimination against the Burakumin is deeply entrenched. Anti-Buraku sentiments are manifested not only in actions inhibiting the lives of the Burakumin, but also more vocally, in graffiti. Japan clearly must work toward a solution to the problem of caste-based discrimination. Suggestions of relocating Burakumin to non-Buraku areas of Japan are simply not workable.

In practice, Burakumin are often unable to move, as non-Buraku Japanese

DIRECTOR'S DESK (CONCLUDED)

since LWOB's founding is an organization concerned with every aspect of the protection of the integrity of legal process - from systems in the highly developed nations to systems emerging in developing nations. Our overriding goal is to provide a solution oriented and non-traditional approach to conflict resolution from a neutral perspective that serves to bridge rather than exacerbate or polarize positions.

Among the projects that are in development within LWOB is a project we have termed: NICTO, Neutral Independent Court Trial Observer Project. Currently we have two lawyer-members who are on location in Tehran and Pakistan, seeking permission to observe closed trials there.

My recent visit to Israel and the Palestinian Territories in the Middle East gave LWOB some international exposure which triggered an increase in our membership as well as inquiries from several lawyers interested in working with NGOs there. Unfortunately, it also regrettably resulted in loss of some members to LWOB. LWOB intends to pursue relationships with both Israeli and Palestinian NGOs in an effort to work with them in the coming months as we all look to the potential for resolution.

LWOB's spring-term internships are coming to a close and two interns have been selected for summer internships. One of those internships will be funded by an outside entity. Our interns are a valuable resource to us and we welcome the opportunity to give them hands on experience with issues they would otherwise only read about in books.

On the fundraising front, LWOB is about to actively pursue funding for both the NICTO project and Internet Technology projects (creating of a database for matching projects with volunteers). We are continuing our outreach to law firms in New England in the hopes of creating a base of partners not only for financial support, but also a working foundation to assist with the continued development and direction of LWOB.

Currently LWOB operates with a world-wide base of volunteers. There are approximately 35 volunteers with diverse backgrounds: internet savvy, design, marketing, publication and editing and legal specialists...all committed to making a difference. We hope you enjoy *BorderLines* and look forward to our next issue, already in the works.

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RULE OF LAW INITIATIVES (CONTINUED)

Judicial reform typically seeks to modernize and up-grade the court system by reducing corruption, and enhancing efficiency, accountability, predictability and transparency. In addition, some programs seek to ensure that individuals and groups who traditionally have been denied access to the courts are provided with the opportunity to obtain legal aid and redress through the judicial system. Over the past two decades, efforts to implement legal and judicial reform have demonstrated that there are two key factors, which determine whether such programs will succeed or falter. Legal reform depends on the existence or absence of genuine domestic political commitment to reform. Judicial reform depends on the readiness of judges, prosecutors and court personnel to adapt their routines and attitudes. Absence of these elements can prove detrimental to any meaningful lasting reform.

The Commitment to Reform

Domestic political resistance to reform often originates from a small, but powerful elite that has little to gain and potentially a great deal to lose from the implementation of laws that more effectively address economic and social realities. Perhaps one of the most striking examples of the way in which influential interests can hinder legal and judicial reform initiatives relates to organized crime. It is well known that the international community has sought to curb corruption and organized crime in the Balkans. Organized crime groups reportedly are involved in a wide array of illegal activities, including narcotics, human trafficking, and weapons trading. Observers point out that it is ironic that in a region where ethnic hatred fuelled four wars within the last decade, organized crime groups seemingly have few difficulties obtaining inter-ethnic cooperation. Such groups seem to thrive largely because they remain focused on two goals: maximizing illegal profits and keeping government institutions weak so that an environment conducive to crime can be maintained.

Another example of interest groups impeding legal reform is banking corruption in countries in transition. Autocratic or semi-democratic regimes often view domestic banks as an extension of government and regularly use their influence to maintain support for their regimes by ensuring that a small group of “entrepreneurs” and cronies are granted loans on favorable conditions. The “entrepreneur” typically defaults, not because of insolvency but because there never was an intention to repay in the first place. The money from such loan arrangements often leaves the country long before a new and reform-minded government takes control and begins investigating such transactions. Such groups often oppose any legislative efforts to tighten debt collection because such laws would create financial problems for those who benefited from previous practices. Opposition may be particularly strong if debt collection reform efforts are combined with reform of and/or better implementation of existing bankruptcy, tax, and banking laws and regulations.

Resistance from Within

Significant internal resistance is also encountered from the justice system – not only from the courts and prosecutors, but also, occasionally, from justice ministries. In emerging democracies, courts often enjoy limited independence as a result of executive branch control over budgets and, in some countries, historical practices and traditions. Autocratic or semi-democratic regimes often hold the judiciary in a tight grip and use the judiciary as a tool for achieving political objectives against political opposition and/or the press. Understandably, judges in these circumstances may be reluctant to wholeheartedly embrace reform, especially if they have ruled in favor of the former regime on dubious legal grounds or if it is unclear which political faction will eventually prevail. For example, judges in Serbia who were loyal to the Milosevic regime often were granted better accommodations than their colleagues who were less eager to please the regime. This incentive was particularly powerful because most property in Serbia is state owned, there is an extreme shortage of apartments, and judges are poorly paid. Judges who benefited from this incentive are now a liability to the current, more reform-oriented government that is promoting rule of law.

Understandably, judges in these circumstances may be reluctant to wholeheartedly embrace reform, especially if they have ruled in favor of the former regime on dubious legal grounds or if it is unclear which political faction will eventually prevail. For example, judges in Serbia who were loyal to the Milosevic regime often were granted better accommodations than their colleagues who were less eager to please the regime. This incentive was particularly powerful because most property in Serbia is state owned, there is an extreme shortage of apartments, and judges are poorly paid. Judges who benefited from this incentive are now a liability to the current, more reform-oriented government that is promoting rule of law.

Resistance from the judicial system also arises because in countries with a poor economy and high unemployment rates, the State often becomes the “last opportunity” employer. Nepotism and favoritism in the hiring process often result in a public sector that is a bloated and inefficient bureaucracy. The Ministry of Justice, the courts, and the prosecutors’ office often are burdened with their “quota” of politically appointed personnel who obviously view reform efforts as a threat to their jobs.

Conclusions and Observations

The success of donor-supported judicial and legal reform programs depends on the commitment of the government in the receiving country to reform. International assistance can foster, promote, and facilitate change, but it cannot substitute domestic political will. Ideally, such programs should be implemented under the auspices of a popular and stable government. Unfortunately, this situation is rare. More likely, the political reality includes all or most of the following components: political and economic turmoil, fragmentation of society, large scale corruption, and political elites and/or organized crime groups operating de facto above the law.

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**RULE OF LAW INITIATIVES
(CONCLUDED)**

These realities exist in almost every country that is emerging from a bloody civil war.

To be successful, managers of judicial and legal reform programs in such environments must acquire considerable understanding of the domestic political situation and the history of the country/region. When successful, these managers become an integral part of the struggle for reform. They can anticipate that they will be approached regularly by groups seeking support in on-going political battles over priorities, disputes regarding competencies, and debates about allocation of resources. It is imperative that these managers establish consensus between domestic authorities and donors regarding priorities and a realistic strategy for achieving objectives that ensures that the program does not become entirely donor driven. This observation is particularly true in countries where the international community has become extensively involved. In such circumstances, the complexities of legal and judicial reform may be further intensified by the differing objectives and strategies of the international agencies seeking to provide assistance.

¹ Law degree, 1984, University of Copenhagen, Denmark; LL.M International Law, 1996, Washington College of Law, Washington D.C. Among other projects, the author has worked on judicial reform initiatives and rule of law projects in Ethiopia as Program Coordinator, Legal Sector Development (1994-1995) and in the Balkans as Head of the Human Rights/ Rule of Law Development (1999-2001).

² Thomas Carothers: *The Rule of Law Revival*, Foreign Affairs, March/April 1998.



...BURAKUMIN (CONCLUDED)

are typically unwilling to live in Buraku areas. Moreover, such a move is often met with accusations from neighbors and colleagues of pretensions to be non-Buraku. Instead, what is necessary to combat this continuing cycle of discrimination is the education of the Japanese people, the securing of legal safeguards to the rights of the Buraku. With such internal measures, when combined with international pressure, the plight of the Burakumin may be, at last, relieved.

¹ Estimated to number about 3 million, or about 2% of the population, www.blbri.org/blbri/somu/Tebran/English1.htm.

² "The Reality of Buraku Discrimination in Japan" Pamphlet, Buraku Liberation Research Institute, p16.

³ A survey conducted in the early 1990s showed that 60% of respondents said they would try and stop the marriage of a relative to someone from a Buraku area. <http://www.imadr.org/tokyo/ishikanareport.html>

⁴ See Japan Times, January 26 2002, <http://www.japantimes.co.jp>.



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