



# Human Rights Advocates

Volume 47

Summer 2006

## The Dedication of the Frank C. Newman International Human Rights Law Clinic

On April 17, 2006, USF School of Law hosted a dedication ceremony to name the Frank C. Newman International Human Rights Law Clinic. The dedication followed student presentations on their work at the U.N. this Spring. It was made possible by the generosity of Frances Newman, his wife, and Holly Newman, his daughter. Ms. Newman made the following statement for the occasion:

“I know how greatly pleased – and honored – Frank would have been by the advent of this new center. With gratitude, our daughter Holly and I look forward to the years ahead, assured that, with the expert guidance of Professor Connie de la Vega and her successors, members of the younger and future generations will continue Frank’s worldwide pursuit of human rights as dedicated and effective torch-bearers.

(On a lighter note --) Thinking about Frank’s dedication I’m reminded of a defining moment with a group of young colleagues at a Greek theater in Siracusa, Italy. An adjoining cave, “The Ear of Dionysis”, possesses uncanny sound effects, which in ancient times were used to enhance stage performances. As spectators in the theater, we stood quietly admiring the scene, when suddenly out of the blue a booming voice broke the silence: NEWMAN RIGHTS!

(One from our group had sneaked out to take possession of the Ear – A future cheer or mantra?)”

Sandra Coliver from the Open Society Justice Initiative spoke fondly about Frank. Professor Connie de la Vega read statements from various other colleagues and former students from around the world who had not been able to attend. Their remembrances follow.

Cruz Melchor Eya Nchama was a refugee from Equatorial Guinea. Frank hooked up with him in the late 1970s. Eya, as we all knew him, now works for the City of Geneva helping foreigners assimilate and is the President of the Board of the Grand Saconnex Council. He recalls asking Frank why the U.S. voted against the resolution

condemning apartheid in South Africa when the U.S. Congress already had imposed sanctions against that government. Frank answered that the U.S. Executive Branch is free to vote as it wants as long as its vote has no financial implications. This, noted Eya, was what helped him understand how the U.S. government works.

Professor David Weissbrodt, a former student and co- author with Frank of the international law textbook used by numerous law schools, and former member of the U.N. Sub-Commission on Promotion and Protection of Human Rights wrote:

“Frank Newman was my teacher, mentor, co-author, friend, and skiing partner. He inspired a generation of human rights scholars and activists. Frank Newman taught by word and example not only human rights law and legal analytical skills, but also how to be both a lawyer and a human being. His example should inspire all who participate in the Frank Newman Clinic.”

Paul Hoffman, the lead attorney in numer-

### Contents

U.N. Human Rights Council .....	3
U.N. Human Rights Committee .....	4
More HRA Advocacy at the U.N. ....	5
Advancing Women’s Political Participation .....	5
The Role of Militaries in Trafficking .....	7
Combating Trafficking in Persons .....	8
CSW and U.N. Reform .....	10
The Right to Water & Corporate Accountability....	12
Promoting Juvenile Justice.....	13
Migrant Worker Rights Along State Borders .....	14
The Right to Vote .....	15
Arbitrary Detention in the Dusk of the CHR .....	17
The Labor Rights of Migrant Workers .....	18
Litigation .....	19

ous cases filed under the Alien Tort Claims Act noted that “Frank Newman was an inspiration to generations of human rights activists. He was the most important mentor I had as a young professor and activist. No one had a more important influence on my career and I am sure there are many others who feel the same way. His infectious enthusiasm for human rights and everyone he worked with have left a lasting legacy for all Newmanites. I am proud to consider myself a Newmanite.”

Virginia Leary, Professor Emeritus, SUNY at Buffalo, sent a few vignettes which included: “Every spring Frank would arrive in Geneva with several students to attend the Human Rights Commission annual meeting. Usually the students knew nothing – Frank just had a student ask him a question about human rights and he would reply, “Come with me to Geneva.” Unsuspectingly they arrived and were thrust into the complexities of the U.N. activities with no introduction – those students are today the committed human rights activists and scholars like Connie.... and so many others. His influence continues throughout the activities of so many he inspired. ... Frank’s influence lives on here in Geneva. So many of us will never forget him and we see a reminder every year when Connie arrives with her students and others come with theirs.

Tanya Smith who works at the Office of the High Commissioner for Human Rights wrote: “I am very proud to have been a student of Frank Newman, and was very happy to hear USF’s Clinic was being named for Frank. Frank for me was a professor in the very best sense. He made his students feel important and valued. He would give me cuttings of articles in my areas of interest, and would invite me to meetings where he, as former Supreme Court Justice and professor had been invited, but for me as a student such encounters would have been inaccessible. For me Frank was a great teacher and as for many, an inspiration. He was someone who believed in our dreams to work on human rights ... and he did not seem to be able to imagine that people would not be interested in human rights. When I was a student, it seemed most people in law school thought that law students could only be focused on a corporate career, Frank made me feel it was completely normal to want to work in human rights.”

Diane Griffith, Chief Counsel of the California Assembly Rules Committee remembered:

“I first met Frank the day I started work for him at the California Supreme Court. I’d interviewed with him by phone from Alaska where I was clerking for the Supreme Court there. I walked into the main lobby of the court’s chambers for the first time and coincidentally

out bounced Frank on his way to talk with court staff about an issue he was concerned with before his first round of oral arguments. He promptly hugged me and decided I might know the answer to his question of the moment: Do the justices wear their suit jackets under their robes! I should have known then that it would be a wild ride! But such a fun one.

Frank Newman was the first person who made me feel that I could do anything I wanted in the legal world. (Certainly the rest of the faculty at Boalt didn’t!) I came from a family with parents who hadn’t graduated from college. And I had a father who told me, “You’re such a smart girl. You should be a legal secretary.” But Frank made me feel like I could be a public defender, a legislative lawyer, a Speaker’s chief of staff -- or anything else that I wanted along the way. I know he helped many, many of his students and clerks to pursue their dreams just as he did me. So it is only fitting that what is to be named for him is an institution that will similarly inspire many more students in years ahead.”

Julianne Cartwright Traylor spoke about the fact that she was a graduate student in Political Science at UC Berkeley when her advisor recommended that she make an appointment with Frank to speak about taking classes and doing research with him in the field of international human rights law and policy.

As one of his earliest human rights students at the dedication, she recounted how he was one of the pioneers in the U.S. working and teaching international human rights law and was instrumental in advising members of Congress in the early 1970s “pre-Jimmy Carter”, who wanted to incorporate human rights provisions into the U.S. “Foreign Assistance Act. She said he always encouraged students to be bold and creative when devising strategies and tactics to deal with human rights issues.

When we would get bogged down in these discussions, he would ask us “how is this going to help people’s human rights?” For him that was the bottom line! This mantra has served us all well in all of these years! She thanked Frannie Newman for all of the support that she had given Frank and us in our work. She said that it was a great pleasure to see a new generation of students, such as those at USF, discover the U.N. as many in the room had done a generation before, and that it was fitting to have the International Human Rights Clinic named in Frank’s honor.

Kathy Burke, an immigration and employment attorney and former student of Frank’s, offered four suggestions for carrying out their work truly in the spirit of Frank Newman:

1. Be at least a little outrageous in the way you

think about human rights issues, law and procedures! That is how progress gets made;

2. Be generous in encouraging others who work for international human rights. Frank let us all know he believed in our ability, and he was lavishly generous with his encouragement to go out and use that ability to help others' human rights;

3. Be sure you have fun! No matter what great work you do in international human rights law, you won't really be doing it in the spirit of Frank Newman unless you have fun; and

4. Be tenacious! This is a quality she admired both in Frank *and* Connie.

She recalled Connie's work on the juvenile death penalty and migrant workers' rights and said that obviously Connie's dedication and perseverance are the reason the Clinic exists at USF – one that carries on the work of her mentor, Frank C. Newman.

## U.N. Human Rights Council

*By Connie de la Vega*

On 3 April 2006, after almost a year of negotiations, the General Assembly adopted a resolution creating a Human Rights Council to replace the Commission on Human Rights. (GA Res. 60/251, A/RES/60/251 (2006).) The Commission on Human Rights held its last meeting in a two and a half hour session on 27 March 2006, taking no substantive action. It is helpful to understanding what changes may result from the creation of the Human Rights Council to summarize the how the Commission functioned.

The Commission on Human Rights was created in 1946, by the Economic and Social Council (ECOSOC), a body that reports to the General Assembly through its Third Committee. Its 53 members are elected by ECOSOC by regions. Each region was responsible for electing the members from each group. It met for six weeks in March and April and initially was focused on drafting the major human rights treaties.

Over the course of its existence it created a number of mechanisms to review countries accused of gross violations of human rights, regardless of whether they were party to the treaties. These included both a public procedure under ECOSOC Resolution 1235 and a confidential procedure under ECOSOC Resolution 1503. It also developed procedures to examine human rights issues based on themes, which included working groups (with five members) or Special Rapporteurs. Both of these mechanisms became effective in addressing vio-

lations of individual rights by their ability to respond quickly to complaints.

The Commission also created the Sub-Commission on Promotion and Protection of Human Rights (known prior to 1999 as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities). This body is unusual in that its expert members are elected to act in their individual capacity instead as government delegates. Both the Commission and Sub-Commission had developed very transparent procedures and allowed for full participation of NGOs.

In addition to its success in drafting the main human rights treaties, the Commission was also successful in addressing human rights violations. Examples include the calling of economic sanctions against South Africa because of apartheid, the development of procedures that assisted in ending the massive numbers of disappeared persons in South America, and its resolutions and statements affirming the prohibition of the juvenile death penalty which were cited by the U.S. Supreme Court in the case holding that the juvenile death penalty was unconstitutional. However, over the past few years, there were charges that the Commission had become too political, that its procedures had become unmanageable, that it could not act quickly to address emergency situations, and that among its members were human rights violators. These reasons led the call for reform. Rather than reform the Commission, the General Assembly decided to create a new body, the Human Rights Council. In the preamble of Resolution 60/251, there is a reaffirmation of the indivisibility and universality of human rights as well as non-discrimination. The right to development is mentioned and the principle of non-selectivity is noted. The importance of the role of non-governmental organizations (NGOs) is acknowledged.

Following is a summary of the relevant operative paragraphs:

**Paragraph 1** – the Council will be a subsidiary organ of the General Assembly (and thus will enjoy higher status than the Commission);

**Paragraphs 2-3** – the Council will be responsible for promoting universal respect, address situations of violations of hrs including gross and systemic violations and make recommendations, and promote effective coordination and mainstreaming of human rights within the U.N. system;

**Paragraph 5** – Council activities are to include promotion of human rights education, advisory services and capacity building; serve as forum for dialogue on thematic issues; promote implementation of obligations and follow-up on goals; undertake periodic review of all

States which shall be based on an interactive dialogue with full involvement of the country concerned and with consideration of capacity building, and it is not to duplicate the work of the treaty bodies;

**Paragraph 6** – the Council is to rationalize mandates and mechanisms with one year;

**Paragraphs 7 - 9** – the Council's 47 members are elected by secret ballot of majority of GA; countries serve for 3 years and cannot be eligible for immediate re-election after 2 consecutive terms; members can be suspended by 2/3 vote of GA if a member commits gross and systematic violations of human rights. (The distribution of the members are distributed equitably by regions: the African Group will have 13 members; Asian Group 13; Eastern European Group, 6; Latin American and Caribbean Group, 8; and Western Europe and Other Group, 7.) Members will be reviewed during their term of membership (terms of first Council will be staggered by the drawing of lots taking into account geographical distribution);

**Paragraph 10** – the Council will meet regularly throughout the year, no fewer than 3 times for no less than 10 weeks with one main session;

**Paragraph 11** - the Council is to apply rules of procedure established for Committees of the General Assembly and shall include participation of non-member states, specialized agencies and other intergovernmental organizations (ILO, UNICEF, etc.), national human rights institutions, and NGOs based on procedures of ECOSOC and practices of the Commission, "while ensuring the most effective contribution of these entities";

**Paragraph 16** – the Council will be reviewed after five years.

Under the resolution, the Council has the potential for some strengths as well as weaknesses. More sessions will make it easier to deal with emergency situations as they arise, and presumably the requirement that members be elected by the General Assembly rather than by the regional groups of ECOSOC should keep some of the major violators of human rights off. However, it would be naïve to think that this body will be able to avoid politics altogether as it is after all a body of government delegations. This is demonstrated by the first Council which includes Pakistan, Saudi Arabia, Cuba, and Algeria though it is hard to argue that any country is free of human rights abuses. Further, there should be some concern that the lack of transparency in the drafting of the resolution could spill over to the functioning of the Council.

Another concern is that the focus on periodic review could take up all the time of the Council and that

the interactive dialogue with governments that continue to violate human rights might make it difficult to put pressure on States through the mobilization of shame as it has in the past. (It is also likely that the first reviews will involve only members of the Council as they obligate themselves to review by becoming members.

There is also concern regarding the role of NGOs, as the last clause of the paragraph 11 could be used to limit NGO participation, despite the acknowledgement of the importance of their role. At the end of the Commission meeting, NGOs were told that they had to be prepared for presentation of joint statements – something that has been encouraged but not required in the past. Joint statements can result in the watering down of interventions and favor NGOs who are based in Geneva.

Apprehension also exists that the special rapporteurs and working groups that have been effective for developing standards and addressing individual complaints will not be continued, as well as continuation of the Sub-Commission as it has made valuable contributions as a body of independent experts. However, at the end of its first session in June 2006, the Council decided to extend all mandates, mechanisms, and functions of the Commission for a year, as well as the Sub-Commission which will meet for three weeks starting on 31 July 2006. (A/HRC/1/L.6 (2006).) It also decided to establish an open-ended intergovernmental working group to review and rationalize, if necessary, those procedures. (A/HRC/1/L.14 (2006).) The group is supposed to have transparent and well scheduled consultations with all stakeholders. A similar working group was created to develop the modalities of the universal periodic review mechanism. (A/HRC/1/L.12 (2006).)

João Moreira, a Frank C. Newman Intern from U.S.F. Frank C. Newman Clinic in the Spring 2006, represented HRA at the first session of the Human Rights Council. His report on the session will appear in the next HRA newsletter.

## **U.N. Human Rights Committee Hears Violations of the International Covenant on Civil and Political Rights by the U.S.**

*By Anne Wagley*

**T**he United Nations Human Rights Committee held hearings in March for NGOs to comment on the United States compliance with the Internation-

al Covenant on Civil and Political Rights. This was a unique opportunity for NGOs as the report will not be formally reviewed until July in Geneva. Human Rights Advocates was among the thirty NGOs to participate. Our testimony concerned juvenile sentencing, specifically sentences of life without parole for juvenile offenders, voting rights, freedom of association and the right to life, concerning the high incidence of migrant deaths on the U.S.-Mexico border, attributable to the changes in U.S. border policy.

While many NGOs concentrated their testimony on the civil rights violations stemming from the “War on Terror,” the Committee demonstrated concern with all articles of the ICCPR, in particular immigration and youth issues, gender and reproductive concerns, and disparities in school and health funding.

Sir Nigel Rodley, member of the Committee from the UK, was particularly concerned with the issues raised by HRA concerning the 2002 Supreme Court decision in *Hoffman Plastics* and its violation of Article 22’s right to freedom of association, including the right to form and join trade unions. Hipolito Solari-Yrigoyen of Argentina asked several questions on the treatment of minorities in the U.S. and raised concerns regarding the proposed Border Wall between the U.S. and Mexico. Members of the Committee were clearly concerned with the deterioration of civil rights since the first review of U.S. compliance with the ICCPR in 1995, and they were also pleased with the active participation of so many NGOs. Committee member Wieruszewski cautioned that the Committee was overloaded with information, and urged NGOs to prioritize issues and present solid evidence before the hearings in July.

Eric Tars, a human rights consultant from Philadelphia, deserves credit for organizing the NGO presentations, and for successfully arranging for additional time with the Committee members. Eric has also been coordinating all the Shadow Reports from NGOs and these and other documents are available on the website: <http://www.ushrnetwork.org/page210.cfm>.

## More HRA Advocacy at the U.N.

*By Connie de la Vega*

Three students from the University of San Francisco School of Law (USF) attended the Commission on the Status of Women (CSW) in March, Aly Beck ‘06, Cari Nutt ‘07 and Eren Goren, an LLM student. They were supervised at the meetings by Julianne Traylor, Human Rights Advocates’ President of the Board of

Directors.

Six students were prepared to attend the Commission on Human Rights. However, during the course of the semester, there were on-going negotiations on whether to replace the Commission with a Human Rights Council and the status of its meetings was uncertain until the week before we were scheduled to leave. We did not find out until days before the Commission meetings were supposed to start how long the session would last. As a result of last minute negotiations, only Professor de la Vega and João Pinheiro Moreira, also an LLM student, were present to attend the last two and a half hour session of the Commission. Nonetheless, the six students kept busy during their stay in Geneva.

In addition to João, Jeannine Bell ‘06, Trisha Fulliwinder ‘06, Kim Irish ‘06, Yasmin Khayal ‘07, and Kristina Zinnen ‘06, were kept busy attending meetings of the Aarhus Convention, a European treaty that provides for public participation on environmental matters, meeting staff at the U.N. Office of the High Commissioner on Human Rights and the International Labor Organization, and meeting with government delegates and non-governmental organizations (NGOs).

---

## COMMISSION ON THE STATUS OF WOMEN

---

### Quota Systems for Advancing Women’s Political Participation

*By Eren Gonen*

At the 50th session of the Commission on the Status of Women (CSW), I worked on the equal participation of women in decision-making processes, which was the 2nd agenda item.

In order to strengthen my knowledge regarding the advancement of women’s participation in decision-making, I researched a number of articles written by academicians, various nongovernmental and intergovernmental organizations, newspapers, and governmental institutions. I soon became aware of the importance of quota systems in increasing women’s participation in decision-making processes.

Despite significant progress, which has been

made especially in the last decade, women are not sufficiently involved in political life. As of February 2006, the world average of women represented in national parliaments is 16.4 per cent and only 19 countries attained the critical mass of at least 30 per cent in women's representation.<sup>1</sup>

Many countries adopted special measures in order to increase the number and the role of women in political life. Quota systems and reserved seats for women are viewed as one of the most direct and effective means in accelerating de facto equality between men and women. To date, 81 nations include such provisions in their constitutions, elections laws, or political party laws, which seek to increase women's political participation at the local or national levels.

In 1995, Uganda established a reserved seats system, which increased female representation in the Parliament from 1 per cent to a high of 18 per cent in 5 years. Today, 10 years after the introduction of this system, the percentage of women in the parliament is 24.7. South Africa also increased women representation from 2 to 30 per cent in the same period by the help of quota systems. Rwanda, by adopting a quota system, which was first implemented in the 2003 parliamentary elections increased women's representation in the Parliament to 48.8 per cent. These two post-conflict countries, Rwanda and South Africa, are good examples that demonstrate how quota systems instituted as part of peace processes can increase women's representation.

Alternatively, countries that abolished quota systems witnessed a dramatic decline in women's representation in their national parliaments, including Albania, Hungary and Romania.

In my report regarding the advancement of women's political participation, I recommended the Commission adopt a specific language in its final resolution to urge governments as well as political parties to adopt all necessary measures, including quota systems for all elective and non-elective positions, for increasing the number and the role of women in decision-making.

Along with my report, I went to the U.N. with a hope of making a positive impact on the delegates and getting their support on my recommendation about quota systems.

It was really an exciting time to be at the U.N. headquarters. Aly, Cari, Julianne, and I participated in a lot of caucuses and panels. In almost every caucus and panel the immediate need to increase women's representation and quota systems as one of the most effective

means for this purpose were stated. I tried to address my thoughts on this particular issue in some of the caucuses.

In addition, I lobbied country delegates to find sponsors and to ensure that my particular issue was addressed in the final resolution. Within these activities, I contacted the delegations of Armenia, Belgium, Canada, Germany, Hungary, Iceland, Netherlands, South Africa, and Turkey, all of which have been members of the Commission. In addition, I found the opportunity to talk to the Austrian delegation. This was very important since Austria holds the presidency of the European Union. It was interesting to listen to all these delegates and also to learn their countries' positions on quota systems.

While most of the delegates were supportive in person, it was not easy to get their countries' official support. I was glad to see that most of the European Union member states and African countries were receptive to quota systems. On the other hand, it was disappointing to see that some delegates from countries where women are really underrepresented were not even interested in the subject.

On my last day at the U.N., I had a phone call from one of the Austrian delegates informing me that the delegations from European Union member states agreed on including a specific language on quota systems in their common recommendations package. As a consequence of all the efforts made by the NGOs, some delegations, and the Commission itself a specific paragraph on candidate quotas was introduced in the Agreed Conclusions, by which governments, national parliaments, and political parties were urged to adopt temporary special measures, including quotas, for achieving equitable representation of women candidates in elected positions.<sup>2</sup> Though it doesn't suffice to ensure gender equality in political life, it is good to see that specific language was devoted for quota systems for women.

I think our participation in the 50th Session of the CSW was successful and it was a very valuable experience for me.

1. Source: Inter-Parliamentary Union, ([www.ipu.org](http://www.ipu.org)).

2. The Commission on the Status of Women draft agreed conclusions, 50th session, E/CN.6/2006/L.9, para.17 (y).

# The Role of Militaries in Creating Demand for Trafficking

By Alyson Beck

The Role of Militaries in Creating Demand for Trafficking. I was honored to represent Human Rights Advocates and the USF Frank C. Newman International Human Rights Clinic at the 50th Commission on the Status of Women (CSW). I used my research to lobby resolution language concerning the continuing role of government military, U.N. peacekeepers, and private military companies in the human trafficking crisis.

The CSW is at once daunting and inspiring. It becomes immediately apparent that one cannot save the world in one session. However, with patience, skill and dedication, there is an abundant potential for positive legislative change.

At the CSW, I quickly learned that lobbying is an elegant legislative calculus, requiring a fine balance of diplomacy and assertiveness. You have to be aggressive tracking down delegates, but once you have captured their attention, you cannot risk scaring them away!

The importance of teamwork in the process is also paramount. Just as there is no magic bullet that will cure the human trafficking crisis, there is no single advocate that changes the human rights landscape in one fell swoop. Instead, working with the HRA team of Connie de la Vega, Julianne Traylor, Cari Nutt, and Eren Gonen was inspiring because we carried about both our individual messages and our collective voice on behalf of HRA. We used our individual talents to navigate U.N. mechanisms skillfully and in a way that efficiently and respectfully distributed our important messages. As a result, our group's short statement, including the military demand issue, was published as an official U.N. document by the CSW.<sup>1</sup>

## The State of Current U.N. Anti-Trafficking Legislation

U.N. progress in the human trafficking crisis has faltered because of issues of form versus substance. Although the U.N. enacted a groundbreaking anti-trafficking protocol in 2000<sup>2</sup>, it has been plagued with problems of effective implementation and enforcement.

This is largely because an institutional "culture of dismissiveness" has prevented the U.N. from acknowledging its role in procuring trafficking until very recently.<sup>3</sup> Despite the adoption of a "zero tolerance policy" towards trafficking in 2002, it was not until May 2005 that the Security Council held its first ever meeting to address and

condemn "in strongest terms" all acts of sexual abuse and exploitation by global U.N. peacekeeping personnel.<sup>4</sup>

Substantial questions also remain about the efficacy of the zero tolerance policy. The number of complaints of sexual violence against peacekeepers received by the Office of Internal Oversight Services (OIOS) in 2004 was more than double the number reported in the previous year. In 2005, the OIOS reported 295 peacekeeping personnel complaints, including 191 military personnel, 84 civilians, and 21 police.

We should use the momentum of the U.N.'s new era of acknowledgement of complicity by peacekeeping personnel to extend zero tolerance norms to private military companies as well.

## U.S. Policy on Military Demand for Trafficking

Our efforts at the U.N. are especially significant in light of current U.S. policy on military demand for trafficking. Today, the U.S. espouses a "zero tolerance policy" for its own military demand for trafficking, spearheaded by the Bush administration in 2003 following the implementation of the federal Trafficking Victim's Protection Act of 2000.

However, due to aggressive efforts by the U.S. Defense Contracting lobbying groups, under the umbrella group Council of Defense and Space Industries Association, the Pentagon has been unable to extend the "zero tolerance policy" to its own private military contractors. This is tantamount to creating complete impunity for U.S. private military companies to engage in a well-documented continuing pattern of human rights abuses, including the proliferation of demand for human trafficking and the resulting sexual exploitation of women and children.

## The New Face of Military Demand for Sex Trafficking: PMCs

The problem of private military demand for trafficking is

1. E/CN.6/2006/NGO17.
2. U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (2000).
3. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT'L L. 1, 6 (Winter 2004).
4. United Nations Press Release SC/8400, *Security Council Condemn 'In the Strongest Terms' All Acts of Sexual Abuse, Exploitation by U.N. Peacekeeping Personnel*, May 31, 2005.

complex and continues to evade accountability. The primary reason is that private military companies (PMC's) are not held to the same standard as state militaries and operate with virtual immunity to criminal prosecution.

Evidence demonstrates that private military companies reject internationally accepted human rights norms. For example, the U.S. contracted out to the PMC DynCorp. International in the 1990's, which was sent to train international police task forces (IPTFs) on behalf of the U.N. In 2000, DynCorp. employees were found to have raped local women, and procured networks of sex trafficking rings, in conjunction with other U.N. troops from Jordan, Pakistan, and Germany. Although eight DynCorp. employees were ultimately dismissed, no employees were ever criminally prosecuted for their role in the trafficking ring.

The failure to prosecute DynCorp. employees for their direct participation in the sex trafficking scandal was a breakdown of accountability, threatening the human dignity and rights of the trafficking victims involved, and sending a dangerous message to private military companies that they are beyond the reach of global justice.

### **The 50th CSW and Anti-Trafficking Measures**

This year's Commission exemplified why HRA must continue to keep the military demand for trafficking issue on the surface of the CSW agenda. The agreed conclusions focused on the two primary thematic issues: (1) creating an enabling environment and (2) women's equal participation in decision-making processes. Unfortunately, there was little to no reference to human trafficking in these documents. Moreover, additional draft resolutions did not surface until the end of the first week, and also failed to contain reference to trafficking specifically.

It appeared that the CSW was burying the human trafficking agenda. As a result, with little possibility for legislative reform in sight, I refocused my aggressive lobbying efforts towards educating the delegates. I spent the first week of the Commission making necessary contacts with many women from NGOs from all over the world. I joined the U.S. Caucus, the Linkage Caucus and the Trafficking Caucus in order to find the appropriate forum to shop my research and proposed resolutions. I contributed language on military demand for sex trafficking that was subsequently incorporated into an action letter and presented to the U.S. delegation. I also spent a day working with Julianne making extensive revisions to our group's oral intervention. We were proud to have Cari deliver it with great skill.

My lobbying efforts with delegates were rewarding and worthwhile. In particular, I spent considerable time and effort making contact with delegates from Botswana, South Africa and India and continued to educate them and members of their respective delegations.

Despite the mountain of evidence available on the issue, delegates were generally not well informed on the role that militaries continually play in the demand for human trafficking and sexual exploitation. In our meetings, some delegates were visibly shocked. I continued to provide them with evidence, including names, of private military companies that are among the most complicitous in human trafficking rings today.

### **Conclusion**

It is vital that HRA continue to examine the role of the U.S., and current U.N. trafficking legislation concerning the issues of government military, U.N. peacekeepers, and private military companies in the human trafficking crisis.

Thank you, HRA for giving me this tremendous opportunity. These invaluable lessons will travel with me to promote human rights in the future.

## **Enhanced Participation of Women in Development to Combat Trafficking in Persons**

*By Caryn Nutt*

Allyson Beck, Eren Gonen, Julianne Traylor and I represented Human Rights Advocates at the 50th Session of the Commission on the Status of Women ("CSW" or "Commission"), held in New York from February 27 – March 10. The discussions at the Commission focused on two thematic issues: the equal participation of women in democracy and the enhanced participation of women in development. My report focused on how the enhanced participation of women in development helps eliminate the "supply" of trafficking victims in countries of origin.

As HRA has been reporting of years, trafficking in persons is a modern day form of slavery and a gross violation of the human dignity of trafficking victims. It is estimated that between 600,000 and 800,000 persons are trafficked across international borders each year.

Trafficking in persons is fueled by globalization and governed by supply and demand forces. In this global slave trade, women and children are bought and sold, lured with the promise of opportunity abroad and traded into forced labor or sexual slavery for profit. The

trafficking industry provides huge profits for those willing to trade in human beings; it is estimated that trafficking generates nine billion dollars (USD) in profits for traffickers each year.

Poverty and lack of employment opportunities in supply-side countries are considered one of the root causes of trafficking in persons. Increased participation of women in development through employment and job training programs is a key component in the fight against trafficking. Successful programs must be tailored to the local market by teaching skills in demand within the community.

Employment programs can open the job market and allow women to participate in traditionally male dominated jobs, which often pay more than traditionally female dominated jobs. Greater participation of women in the workforce will decrease women's dependence on men, making them less vulnerable to traffickers if their economic support is withdrawn.

By focusing on the supply and demand dimensions of human trafficking and tailoring local responses to a country's position in this system, the forces driving the multi-billion dollar human trafficking industry can be eliminated and the modern-day slave trade can be eradicated.

In preparation for the Commission, my colleagues and I co-authored a short statement that was submitted to the U.N. prior to the Commission (Statement submitted by Human Rights Advocates, a non-governmental organization in consultative status with the Economic and Social Council, E/CN.6/2006/NGO/17).

In writing both this statement and a longer report on my topic, I conducted research that I used to draft proposed resolution language that I sought to have included in the CSW agreed conclusions. I was prepared to lobby delegates to include the resolution language that I had drafted on this issue.

I found that my proposed resolution language mirrored the draft agreed conclusion language that the delegates were already considering, so I focused on lobbying delegates to sponsor additions to that language. It is possible that the language was so close because we sent letters to the CSW Bureau before the Commission that contained suggested language. I found that the best way for me to talk with delegates was to observe the official meetings and approach delegates as they left those meetings.

The amendment I proposed to delegates would have focused on trafficking, providing the agreed conclusion with more concrete anchoring to an impor-

tant human rights issue. Under my proposal, the new agreed conclusion would directly follow the proposed language and would specifically address the issue of human trafficking.

Even though I thought that the close parallels would make it easier for delegates to accept my proposed resolution language, it didn't turn out to be the 'easy in' that I thought it would. Everyone that I spoke with agreed that human trafficking was an important issue. However, many delegates seemed to believe that the broad language of the draft agreed conclusions covered the same issues that my proposed language addressed, and that there was no need for further specificity.

Although I continued to stress the importance of highlighting this particular issue and of making sure that the agreed conclusion language was tied to specific violations of women's human rights rather than broad statements of poorly defined discrimination against women, I found that the resistance to specificity, in particular to lists in any resolution language, was pervasive among the delegates. Final agreed conclusion language has yet to be released, but will be available online at [www.un.org/womenwatch/daw/csw](http://www.un.org/womenwatch/daw/csw) when it is finally released.

In addition to monitoring discussions at official meetings and lobbying delegates on our issues, HRA was one of a limited number of NGOs selected to make an oral statement during the first week of the Commission. We delivered our statement at the high-level panel on emerging issues, which addressed the gender dimensions of international migration.

The statement we delivered discussed the supply and demand dimensions of trafficking. It addressed both the enhanced participation of women in development as a means of combating the "supply" of trafficking victims and the role that U.N. peacekeepers, militaries, and private military companies play in increasing the "demand" for trafficking victims.

I would like to thank Professor de la Vega, Human Rights Advocates, and the University of San Francisco for the opportunity to attend the United Nations Commission on the Status of Women. It was an invaluable experience to personally observe the workings of the U.N. system and use the U.N. mechanisms to work on an important issue in the international community. The Frank C. Newman International Human Rights Law Clinic provided me with an opportunity to hone my writing and oral advocacy skills and clarified the importance of NGO participation in ensuring that important human rights issues remain a part of the discussions at the Commission.

# The CSW, U.N. Reform and the Human Rights Council

By Julianne Cartwright Traylor

Caryn Nutt, Alyson Beck and Eren Gonen (see articles above) have given you brief and concise reports on the excellent work that they did as Edith Coliver interns at the CWSW meetings in New York. As you gleaned from their reports, NGO collaboration and advocacy played a very crucial role once again in the outcome of this year's session. The two agreed conclusions on "Equal participation of women and men in decision-making processes at all levels" (E.CN.6/2006/L.9) and "Enhanced participation of women in development: an enabling environment for achieving gender equality and the advancement of women, taking into account, inter alia, the fields of education, health and work" (E.CN.6/2006/L.10) reaffirm the Beijing Declaration and Platform for Action, and the outcome documents of other U.N. sessions and conferences such as the 2005 World Summit, provisions of the Universal Declaration of Human Rights, the two Covenants on Human Rights and CEDAW, for example.

In addition to the two agreed conclusions, another very important area of work at this year's session of the CSW was its work on examining its future organization and methods of work (document E/CN.6/2006/L.8). In summary, the Commission decided to consider one priority theme at each session, based on the Beijing Platform for Action and the outcome of the of the twenty-third special session of the General Assembly. For the 2007 CSW session, the priority theme will be "The elimination of all forms of discrimination and violence against the girl child": for 2008, "Financing for gender equality and the empowerment of women" and for 2009, "The equal sharing of responsibilities between women and men, including caregiving in the context of HIV/AIDS".

Thirdly, the CSW decided that annually it will discuss ways and means to accelerate implementation of the previous commitments made with regard to the priority theme, including conducting an interactive high-level round table discussion to focus on experiences, lessons learned and good practices, results and with – where available, supporting data. There will also be two interactive expert panels to identify key policy initiatives and on capacity building on gender mainstreaming in relation to the priority theme. The NGOs at the CSW were very active in their advocacy work on this resolution to make sure that they would have a continu-

ing role in the future methods and work of the CSW and this was recognized in operative paragraph 13 of the final text of the resolution.

The resolution also proposed that the CSW discuss at fifty-third session (2009) the possibility of conducting in 2010 a review and appraisal of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly (on the occasion of the Beijing+5 review).

Once again the CSW decided to postpone – until its 2007 session, the decision of whether or not to appoint a special rapporteur on laws that discriminate against women. The CSW adopted other resolutions on women and girls in Afghanistan, Palestine, women and children hostages in armed conflicts, women, the girl child and HIV/AIDS (see Report on the fiftieth session, U.N. document E/2006/27, E/CN.6/2006/15).

As in previous years, the NGOs met in many regional and issue-area caucuses and the Linkage Caucus, which included discussions of the work of all of the caucuses, was convened by the Women's Environment and Development Organization (WEDO), Center for Global Women's Leadership (CWGL), and the NGO Committee on the Status of Women. The operation of the caucus groups, the daily NGO briefings, and regular briefings of some of the government delegations were crucial in disseminating information about what was happening in the formal CSW sessions and working groups.

In addition, the large number and wide variety of scheduled parallel events were also important ways for NGOs to share information about the work that they were doing on the grass roots level and for NGO representatives to interact and discuss issues with U.N. officials. To put the CSW discussions into context, they were occurring simultaneously with the discussions and decisions on the fate of the Human Rights Commission and the new U.N. Human Rights Council. Therefore, one of the most valuable and informative of these events was the one sponsored by the Office of the High Commission for Human Rights, the International Federation of Women Lawyers and the Women's United Nations Report Network entitled "U.N. Special Rapporteurs, the Human Rights Council and NGO Networking" which occurred on Friday, March 3rd.

One of the other main topics of discussion among NGOs at this year's CSW session was the issue of gender equality and U.N. Reform. By way of background, earlier this year in February – coincidentally just a couple of weeks before the CSW began, the Secretary-General had just announced the formation of a high-level panel to explore how the U.N. system could work more coherently

and effectively across the world in the areas of development, humanitarian assistance and the environment. It had been called for in the Outcome Document of the 2005 World Summit. Dubbed the "Coherence Panel", it consists of 15 members, 3 of them women. (See [www.un.org/News/Press/docs/2006/sgsm10349.doc.htm](http://www.un.org/News/Press/docs/2006/sgsm10349.doc.htm)).

At the CSW session, 240 women (including HRA) from over 50 countries and by numerous international and regional organizations sent an Open Letter repeating a call that they had made at the 2005 World Summit for U.N. systems and mechanisms to be significantly strengthened, upgraded and resourced in order to advance gender equality at international and country levels. They expressed deep disappointment and outrage "...that gender equality and strengthening the women's machineries within the U.N. system are barely noted, and are not addressed as a central part of the reform agenda." They cited the above composition of the Coherence Panel as just an example of the U.N.'s failure to display a consistent and visible commitment to gender equality and women's empowerment. They called for additional women to be added to the panel and for gender equality issues to be explicitly be considered under each theme of the Panel's work. They recommended that "...the panel should be mandated to hold consultations with civil society groups, especially those working with women's rights, in order to ensure consideration of the impact on women of any proposed reforms. Citing that the position of women in high-level U.N. posts has stagnated, it pointed out that some high-level vacant positions have no women candidates listed. (see Open Letter, e.g., at [www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy/index/html](http://www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy/index/html).) For an excellent outline of the issues involved and proposals for consideration and action concerning the issue of gender equality within the context of the U.N. Reform Process, see "Briefing Note on Women's Rights and the "Coherence Panel" in the U.N. Reform Process drafted by the African Democracy Forum, Association for Women's Rights in development, Baha'i, International Community, BAOBAB for Women's Human Rights, Center for Women's Global Leadership, Development Alternatives with Women for a New Era, International Center for Research on Women, International Planned Parenthood Federation-Western Hemisphere, International Women's Tribune Center, Women Living Under Muslim Laws, Women's Environment and Development Organization, and Women's International League for Peace and Freedom, at [www.wedo.org/library.aspx?Resource](http://www.wedo.org/library.aspx?Resource). The Note also includes a summary of a meeting with the U.N. Secretary General on May 3, 2006.

In summary as the Note points to next steps, women's groups are urged to provide the Panel members with information about women's experiences as they engage various U.N. agencies in their work on all levels, national, regional and international providing concrete examples and data, including examples of not only failures too deliver on gender equality and women's empowerment, but also successes on the ground with information on why they worked. They are also urged to speak with Panel members in their countries / regions [www.wedo.org/files/mayjuneunreform.html](http://www.wedo.org/files/mayjuneunreform.html). because the Panel members will probably be recommending changes in gender architecture or a process for doing so to the U.N. Assembly Session convening in September 2006.

Already there have been results from women's advocacy. Now the Secretary General has mandated that gender mainstreaming be considered a cross-cutting issue and the Panel's work will now review both "...the gender architecture" of the U.N. and gender mainstreaming as part of its official assessment." (See June Zeitlin, "Women's Groups Influence U.N. Reform", at [www.wedo.org/files/mayjuneunreform.html](http://www.wedo.org/files/mayjuneunreform.html)).

At the time of the writing of this article, the U.N. is convening a "Stakehold Forum for a Sustainable Future in Geneva (July 2nd) to get input from civil society organizations into the work of the High Level Panel on System wide Coherence and the Sustainable Development Dialogues. The four main topics are: 1) improving U.N. system-wide coherence: opportunities and challenges; 2) Gender: mainstreaming and institutional architecture; 3) Human rights: coherence, mainstreaming and effectiveness; and 4) Sustainable development: mainstreaming, normative to operational and institutional issues. ( HRA will be reporting on the work of the Panel at the September Session of the General Assembly in the next issue of the Newsletter).

Finally, a few points about mainstreaming gender equality, U.N. Reform and the new Human Rights Council. Connie de la Vega has given an excellent overview of some of the legacy of successes of the Human Rights Commission and some of the issues concerning the work of the new Human Rights Council. One issue area which I would like to pose some questions concerns the relationship between the Council / Office of the High Commissioner for Human Rights (OHCHR) and the Commission on the Status of Women / Division for the Advancement of Women (DAW). Heretofore, there had been an imbalance between the resources and infrastructure devoted to the Human Rights Commission /UNHCHR and CSW and DAW. With the new human rights architecture at the U.N. now in the

form of the HR Council reporting directly to the General Assembly with more resources, will the CSW and DAW be even further marginalized in the overall U.N. human rights architecture? How will the joint workplan for DAW and the OHCHR be affected by these changes? (See latest workplan, doc. E/CN.4/2006/59 – E/CN.6/2006/9). What will happen to CEDAW which is now serviced by the DAW? Will there be attempts to move it to the enhanced human rights infrastructure in Geneva? On a positive note, the members of the Human Rights Council voted to extend all of the mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including that of the Special Rapporteur on violence against women, Dr. Yakin Er-turk. (See [www.un.org/apps/news/printnews.asp](http://www.un.org/apps/news/printnews.asp)).

HRA will continue to be involved in the work on these issues at the U.N. and to report back to you in future issues of the newsletter.

---

## COMMISSION ON HUMAN RIGHTS

---

### HRA's Advocacy of the Right to Water and Cor- porate Accountability

*By Jeannine Bell*

**W**ater is essential to life yet a worldwide crisis over water continues to plague our society. Fresh water and access to drinking water continue to be crucial factors in the sustainability and success of civilizations. According to the World Commission on Water for the 21st Century, over 1 billion people are without access to clean water - approximately one out of every six people on Earth does not have access to safe drinking water. Further, almost 4 billion are without adequate sanitation services. The World Health Organization estimates that 80 percent of illnesses are transmitted by means of contaminated water. The U.N. estimates that if current trends in water systems continue, by 2025, more than two-thirds of the world's population will not have access to enough water.

As a part of the International Human Rights Clinic, I prepared a report on the right to water and corporate accountability. I specifically focused on the

importance of international recognition of the right to water and the necessity of developing and adhering to international standards that hold corporations accountable for human rights violations, including the right to water. Bolivia's struggles with water privatization illustrate the tense intersection of (1) the right to water, (2) privatization, (3) the loan conditions imposed by the World Bank and the International Monetary Fund, (4) corporate accountability and (5) state's obligations to protect and promote the right to water.<sup>1</sup> In the city of Cochabamba, as an incentive to privatize the city's water system, the World Bank conditioned a \$14 million dollar loan to the city and \$600 million in international debt relief to Bolivia's president.<sup>2</sup> Sole-bidder of the water privatization scheme, Bechtel, leased the city's water system until the year 2039.<sup>3</sup> In the subsequent weeks of the privatization, some water bills had increased by 200% and others by greater percentages.<sup>4</sup> Fervent resistance was posed by citizens, which erupted into a general strike and subsequent violence in the city of Cochabamba, resulting in the government rescinding the contract.<sup>5</sup> Bechtel fired back in November 2001, launching a \$25 million suit against Bolivia at the International Centre for Settlement of Investment Disputes – ICSID (a non-transparent forum) operated by the World Bank.<sup>6</sup> On January 19, 2006, Bechtel agreed to drop their case in the ICSID for a token payment of 2 bolivianos – approximately 30 cents.<sup>7</sup>

Several international conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women<sup>8</sup> and the Convention of the Rights of the Child<sup>9</sup> have explicitly recognized the right to water as a fundamental human right. While the Committee on Economic, Social, and Cultural Rights has previously recognized water as a fundamental human right in General Comment on the Right to Water (2002)<sup>10</sup>, many governments have not implemented their obligations to provide equitable access to clean water supplies.

In addition to the international recognition, several states have begun to recognize the fundamental human right to water. In 2004, a successful public referendum in Uruguay added the human right to water to its Constitution, with over sixty-four percent of the population voting in favor of the amendment. Also, the proposed Kenyan Constitution of 2005 recognizes the right to water and sanitation. While these advances are to be applauded, the broader recognition of the right to water must continue to be forthcoming around the world.

My report on behalf of HRA (E/CN.4/2006/NGO/83), notes that governments need to develop global standards to hold corporations accountable for

all human rights violations, including the right to water. While the Sub-Commission on the Promotion and Protection of Human Rights by the United Nations High Commission on Human Rights has developed draft “Norms on the Responsibilities on Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (E/CN.4/Sub2/2003/12/Rev.2), which are draft norms on corporate accountability, the Sub-Commission must explicitly demand State parties to ensure that corporations do not interfere with the enjoyment of the right to water and sanitation or any other human rights and that privatization schemes be regulated by governments to guarantee the protection of human rights.

While at the U.N., our group sat in on the Aarhus Convention Compliance Meeting. The Aarhus Convention is apart of the U.N. Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The Aarhus Convention is an environmental agreement that links environmental rights with human rights and government accountability with environmental protection. It focuses on interactions between the public and public authorities in a

1. Jim Shultz, *Bolivia’s War Over Water*, The Democracy Center (2003), [http://www.democracryctr.org/bechtel/the\\_water\\_war.htm](http://www.democracryctr.org/bechtel/the_water_war.htm) (last viewed January 24, 2006) 2, 11 (hereinafter “Bolivia’s War Over Water”).
2. *Id.*
3. *Id.*
4. *Water Privatization Fiascos: Broken Promises and Social Turmoil*, Public Citizen (2003) 5, 11 (hereinafter “Water Privatization Fiascos”).
5. *Bolivia’s War Over Water*, 6.
6. *Id.*, 9.
7. *Bechtel v. Bolivia*, The Democracy Center, <http://www.democracryctr.org/bechtel/bechtel-vs-bolivia.htm> (last viewed January 24, 2006) 1-2, 3.
8. *Convention on the Elimination of All Forms of Discrimination Against Women* art. 14, para. 2(h), Dec. 18, 1979, 1249 U.N.T.S. 13.
9. *Convention on the Rights of the Child* art. 24 para. 2(c), Nov. 20, 1989, 1577 U.N.T.S. 3.
10. U.N. Econ. & Soc. Council [ECOSOC], Committee on Economic, Social, and Cultural Rights: *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social, and Cultural Rights*, 1 U.N. Doc. E/C.12/2002/11 (January 20 2003) (hereinafter “General Comment on the Right to Water”).

democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.

We attended days one and two of the three day Aarhus Convention Compliance Committee meeting where we watched the committee review compliance in Poland, Turkmenistan, Hungary and the Ukraine. It was interesting to see how the Committee functioned and determined how to move forward with the case studies. In addition, I spoke with a Committee member and the Committee Chairman regarding the Right to Water and their work in their countries regarding the link between environmental and human rights.

Although I wasn’t able to attend the Commission on Human Rights, the experience I had in attending a committee meeting gave me a glimpse into how different bodies of the U.N. function.

## Promoting Juvenile Justice

*By Trisha Fullinwider*

I went to Geneva to work on juvenile justice. (I submitted a short statement on the topic of Juvenile Justice which is available at “Issues Relating to the Administration of Juvenile Justice,” E/CN.4/2006/NGO/86. Within that broad topic, I wanted to address three smaller topics: the death penalty for child offenders; life without parole (LWOP) sentences for juveniles; and the need for rehabilitation within juvenile incarceration and detention programs and facilities. I spent my time speaking with different delegates and NGOs on these topics.

Although the U.S. Supreme Court ruled that the juvenile death penalty was unconstitutional in March 2005, the death penalty for child offenders remains a problem. Iran continues to execute child offenders and sentence child offenders to death. In 2005, Iran executed eight child offenders and has already sentenced two additional juveniles to death this year. Saudi Arabia also sentences child offenders to death. Judges have discretion to determine whether a child offender should be tried as an adult according to factors such as the tenor of the child’s voice and appearance of pubic hair. Recently, a 14-year old boy was sentenced to death.

With respect to LWOP for juveniles, the U.S. is by-far the major violator, with over 2,225 juveniles serving life sentences. There are reportedly no more than 12 child offenders with this sentence in the rest of the world.

The third prong of my topic came from personal experience interning and volunteering with criminal justice agencies and organizations in the U.S. where there

is a blatant absence of rehabilitation programs, especially for incarcerated or detained juveniles. This is a worldwide problem. As such, we introduced three examples of alternative models: Germany's restorative justice, the Texas Giddings State School, and the Georgia Justice Project.

### **Meeting with Delegates**

In terms of lobbying, the cancellation of the Human Rights Commission was actually a blessing in disguise. It allowed us to get private audiences with the Swiss and Austrian delegates.

The Swiss delegate was especially interested in the death penalty in the U.S. He was interested in the case of a man on death row in San Quentin who is married to a Swiss citizen. The delegate has followed this man's death penalty case for fourteen years. The delegate was also quite interested in the juvenile death penalty and life without possibility of release sentences. Hopefully Switzerland will help ensure the topic of juvenile justice is addressed by the new Council and that substantive resolutions come out on the subject as soon as possible.

Meeting with the Austrian delegate was also useful because we again had the opportunity to educate on the severity of LWOP sentences in the U.S. Austria also currently holds the European Union presidency. Furthermore, the Austrians have sponsored a juvenile justice resolution in the past and are looking to introduce a resolution on juvenile justice issues to the General Assembly.

### **Meeting with Defense of Children International**

We also met with Defense of Children International (DCI), an international non-government organization. They originated in the Netherlands and currently have 'associate offices' in many countries, including some that we highlight as 'bad guys,' including the U.S., Iran, Saudi Arabia, Israel and South Africa. We hope these associate offices will enable DCI to get better information on juvenile justice conditions within these countries.

When we met with DCI, I realized that frequently LWOP sentences are overlooked due to a focus on the juvenile death penalty issue. We took this time to educate DCI about LWOP in the U.S. and to make sure LWOP was treated as a human rights violation independent of the juvenile death penalty.

We had sent ahead our draft resolutions and we were very encouraged to see that DCI's proposed resolutions contained the issues we were concerned about. Hopefully our proposed resolutions influenced DCI and we will continue to work with them in the future.

All in all, it was an amazing trip. I am confident

I learned a lot professionally and on the nuances of the U.N. and working in Geneva.

## **Ensuring Migrant Workers' Right to Life Along State Borders**

*By Kimberly Irish*

**M**y work focused on migrant workers' right to life along state borders, which is protected under the International Covenant on Civil and Political Rights. I researched three main areas where migrants' right to life has been threatened: where a government's border policy causes migrant deaths, where private persons or groups violate migrants' right to life, and where government border officials violate migrants' right to life. In my research I focused on two main examples of these violations: problems occurring along the United States-Mexico border and the current situation in North Africa concerning Spain and Morocco.

After the U.S. changed its border policy in 1994, entry points in major cities closed and migrants were forced to cross the U.S.-Mexico border in remote areas. Despite the harsh conditions faced by migrant workers, many continue to risk their lives hoping to obtain better opportunities for their families. The U.S. Customs and Border Protection agency reported that in 2005, some 464 migrants had died as of September 30.<sup>1</sup> Most of the deaths were due to the extreme temperatures of the Arizona desert. This is an example of how a government's border policy has caused migrant deaths.

The United States House of Representatives voted in December 2005 to require the Department of Homeland Security to build fences along 698 miles of the U.S.-Mexico border.<sup>2</sup> This new policy may result in additional deaths if migrants are pushed into even more remote areas to avoid the fences.

Following the September 11, 2001 terrorist attacks in the U.S., there was an increase in the number of militia-like groups forming along the U.S.-Mexico border. Vigilante groups have hunted, detained, beaten, and even killed migrants.<sup>3</sup> These groups do not have the training or authority to determine who should be allowed to enter the U.S. Members of such groups operate outside the law and interfere with the U.S. Border Patrol's ability to perform its job. They are often not aware of migrants' protected rights and frequently violate them. The vigilante groups operating along the U.S.-Mexico border are an example of how private per-

sons or groups violate migrants' right to life.

The situation involving Spain and Morocco demonstrates how government officials have also contributed to the deaths of many migrants. In fall 2005, dozens of sub-Saharan African migrants attempting to cross the border fence from Morocco to the Spanish enclaves of Ceuta and Melilla were brutally treated or killed by law enforcement officials.<sup>4</sup>

In my report, I urged the Commission on Human Rights to forward the mandate on migrant workers to the new Human Rights Council and recommend that the Council urge the Special Rapporteur on the Human Rights of Migrants to educate Member States, particularly border communities, on the human rights of migrants and how to decrease violence along state borders. I also recommended that Member States work to prevent private persons or groups from enforcing immigration laws and border controls and prosecute violations of the law that result from such conduct.

Though we were not able to carry out our work in Geneva exactly as we had intended, we were still able to meet with a variety of people and lobby, which was a valuable experience. I met with a woman who works for the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. I presented her with a copy of my report and told her about the work I had done this semester on migrant workers' right to life along state borders. She expressed interest in the situation concerning Spain and Morocco, as her office had investigated that situation. The Special Rapporteur has sent communications to Spain and Morocco concerning excessive force used against migrants and has received no response from Morocco, but a largely satisfactory response from Spain.

Professor de la Vega, Kristina Zinnen, and I met with a large group from the Office of the United Nations High Commissioner for Human Rights. We met with people who work with treaty procedures such as the International Convention on the Protection of the

Rights of All Migrant Workers and Members of Their Families, people who work with the Commission on Human Rights procedures including the Special Rapporteur on the Human Rights of Migrant Workers, as well as someone who works for the Special Rapporteur on Trafficking in Persons.

It was a truly unique opportunity to meet with all of them, because had the Commission held a regular session, they would not have had the time available to see us. We gave them copies of our reports and discussed our work on migrant workers. They suggested that we review their report on Mexico and provide them with feedback. In addition, the assistant to the Special Rapporteur on the Human Rights of Migrants asked us for suggestions on where the Special Rapporteur should visit on an upcoming trip to the U.S.

My work in the Frank C. Newman International Human Rights Clinic has been a highlight of my time in law school. I learned so much about the practical work of international human rights law and I hope to continue this work in my future career. Thank you to Human Rights Advocates, Professor de la Vega, and USF for this valuable opportunity.

## The Right to Vote

By Yasmin S. Khayal

The right to vote is one of the most important expressions of true democracy and is essential for stable and efficient democratic societies. It is ensured in the International Covenant on Civil and Political Rights, which states that every citizen shall have the right

[to] take part in the conduct of public affairs, directly or through freely chosen representatives; [t]o vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of electors; [t]o have access, on general terms of equality, to public service in his country. (U.N. Doc. A/6316 (1996), 999 U.N.T.S. 171)

There are two inherent problems with the status of the right to vote as a fundamental human right. First, legal materials protecting and ensuring the right to vote are limited in the sense that there are very limited defined parameters and norms. Second, despite the existence of the international obligations and some defined parameters in the Human Rights Committee's General Comment

1. Ginger Thompson, World Briefing Americas: Mexico: Migrant Deaths at Record on U.S. Border, *New York Times*, October 5, 2005, at A6.

2. Rachel L. Swarns, House Votes for 698 Miles of Fences on Mexico Border, *New York Times*, December 16, 2005, at A37.

3. Nick Madigan, Police Investigate Killings of Illegal Immigrants in Arizona Desert, *New York Times*, Oct. 23, 2002, at A15.

4. Craig S. Smith, Spain's African Enclaves Are Migrants' Portals to Europe, *New York Times*, November 5, 2005, at A8.

25 (U.N. Doc. CCPR/C/21/Rev.1/Add.7 (1996)), the right to vote is continuously infringed upon.

First, the right to vote can be infringed upon by operation of law. The ICCPR extends voting rights to “every citizen,” however in some countries even citizens are denied the right to vote as a matter of law. For example, in the U.S., all mentally competent adults have the right to vote except for convicted felons. This restriction is disproportionate to the offense and sentence, and results in a disproportionate racial impact on minorities.

Second, derogation of the right to vote by fraud occurs in even the most developed of electoral systems. One example was the harassment in the state of Ohio during the 2004 presidential elections. Election monitors continuously find elections to be undemocratic in other countries, where fraud has included ballot stuffing, intimidation of voters, tampering with voting results, campaign restrictions, among many others.

Third, the emergence and usage of new technology, specifically the use of electronic voting, may be a useful development in enabling more individuals to vote. Currently use of electronic voting systems worldwide pose new challenges to voting rights because they can be easily subject to tampering. Oftentimes there is no paper record of citizens’ votes to authenticate computer records. Often there are no consistent reliability and security standards in most places where these machines are used.

Finally, the role of the media is a crucial part of ensuring the right to vote and effective and fair elections. Since the media is the principal means through which the voter collects information during elections, it needs to exercise an objective role in delivering complete and

unbiased information to aid the voter.

The four primary areas addressed in my research and subsequent writing are but a few of the many problems that arise in the absence of any effective norms, parameters and enforcement. Our recommendations focused on requesting the appointment of a special rapporteur on the right to vote, who can authorize a study on meaningful parameters, norms, and enforcement mechanisms. Additionally HRA recommended that more diligence be given by states in investigating discrepancies in the electoral process and ensuring that they do not occur again (*The Right to Vote, Arbitrary Detention, and Freedom of Association*, E/CN.4/2006/NGO/84, available on ohchr.org).

Initially my preparation and work this semester was based on attendance of the 62nd Commission on Human Rights in Geneva. The right to vote was a relatively new topic, with no specific resolutions, and was first addressed last year by HRA at the 61st session. Without the Commission cut short, my objective in Geneva shifted to educating relevant individuals for the future Human Rights Council on the right to vote and experiencing other various aspects of the U.N.

We met with various groups and individuals, such as Tanya Smith, a “Newmanite” who worked for the United Nations High Commissioner for Human Rights at the Palais Wilson. Ms. Smith works for the Working Group on Enforced and Involuntary Disappearances, and she went into detail on her work, concluding that despite the criticisms that the U.N. faces, she felt that working there was very rewarding. Additionally, she mentioned how the U.N.’s goodwill and reputation draws more cooperation from governments that may not be as receptive to outside interference.

We all presented our topics to Ms. Smith, who then recommended which individuals or departments to contact on our topics. She recommended I contact the U.N. Department of Political Affairs. Our concern with that approach is that there is a need to ensure that the right to vote is recognized as a fundamental human right, not a political right subject to interpretation and political influences.

We also met with the Swiss delegate to the Commission, who was receptive to HRA’s work and expressed initial interest in the right to vote when it was first raised last year in Agenda Item 11. This year, however, he was not as receptive to the idea. His disinclination primarily appeared from a dislike of having more mandates, but also appeared from the common resistance to change in the field, even from a delegate committed to human rights. The irony was that he directed us to a resolution passed



At the Palais des Nations: Left to right – Connie de la Vega, Kristina Zinnen, Kimberly Irish, Jeannine Bell and Yasmin Khayal.

by the Commission last year (The Right to Freedom of Opinion and Expression, E/CN.4/RES/2005/38), which was sponsored by the Romanians, who have been accused of violating the right to vote in the past (OSCE/ODIHR, *Assessment Mission Report on the Parliamentary and Presidential Elections in Romania on 28 November and 12 December 2004*, February 14, 2005), and did not specifically address the right to vote.

The meetings with the various individuals showcased the difficulty a human rights advocate faces. Nonetheless, the meetings with the Swiss delegate and Ms. Smith confirmed that to implement a new idea requires persistence and hard work, but is not impossible. This type of hard work and persistence was apparent to me while hearing Professor de la Vega and Ms. Smith reminisce about Frank Newman and his effect on others and especially on them.

Even though the Commission did not meet this year, in the final analysis, I probably had a more well-rounded experience in Geneva. I experienced the Aarhus Convention Compliance Committee in practice; I met an individual who worked at the UN-HCHR; and, I probably received more individual attention from a delegate than I would have been able to at the Commission. Last but not least, I was able to see the breadth of Mr. Newman's work, and hope that I contributed to contribute to his vision. This experience was very valuable to me, and for that I would like to thank Professor de la Vega, HRA, and the Frank C. Newman International Human Rights Clinic for giving me this opportunity.

## Arbitrary Detention in the Dusk of the CHR

*By João Pinheiro Moreira*

**M**arch 26, 2006: Three hours before I was going to leave for Geneva, I found out that the Commission on Human Rights, a body that usually met in a yearly 6 week session was having its 62nd (and final) session the next day, for about three hours.

Behind me I had several weeks of thorough investigation and a 15 page report that I was planning to present in my lobbying efforts at the Commission. Weeks of work that, fortunately, were not in vain.

My project was founded on two main issues: arbitrary deprivations of liberty (the official U.N. wording for what is more commonly known as arbitrary detention) and torture. My thesis was that arbitrary depriva-

tion of liberty is often a gateway to torture.

In my report [Arbitrary Deprivations of Liberty: A Gateway to Torture, the short version of which is *The Right to Vote, Arbitrary Detention and Freedom of Association* (E/CN.4/2006/NGO/84)], which I divided into a theoretical description of what my issue comprises and a few specific country situations that proved my point, I suggested that an important way to minimize the numbers of torture cases is to create an international standard of situations where arbitrary deprivations of liberty are allowed, thus enhancing international scrutiny over them and decreasing the likelihood of impunity.

The issue has its origins in the disparity between the levels of prohibition of two practices: while torture is prohibited in an absolute way, by international agreements and as a rule of jus cogens, the freedom from arbitrary detention is a derogable right (as can be seen in articles 4 and 9 of the International Covenant on Civil and Political Rights), allowing States to single handedly declare emergency situations when arbitrary detentions are allowed.

By being arbitrarily detained, a person is subject to a less legal protection, as many due process rights are suppressed, which can lead to situations of torture and impunity of those who perpetrate it. Specific situations arising from the so-called "War on Terror" help prove my theory.

We suggested that there is a need to specify the kinds of emergency situations that would allow the derogation of this right, enhancing the international scrutiny over States who violate it.

March 27th 2006: It's a Monday afternoon and Professor de la Vega and I are inside the Palais des Nations, the U.N. headquarters in Geneva, witnessing what many people called "the funeral of the Commission".

Despite my first time in such a forum, I understood that this was completely different from other (regular) Commission meetings. During this three hour session, each regional group had the chance to make a statement, along with the Chairman of the Commission's 62nd session, the High Commissioner on Human Rights and three other dignitaries.

All of these speeches were essentially the same: they started by enumerating the qualities of the Commission's work, then stated its flaws (such as politicization and double standards), then described the process that lead to the creation of the Council (the body that is substituting the Commission), ending with the expectations for the Council (most stressing the need for the Council to start substantive work from day one).

The NGO's also had the chance to make a statement, but only one for all of them, which created a lot of controversy. The one statement was a non-statement signed by 265 of them (Human Rights Advocates included), which stressed the need for NGO participation in the Council and asked for a minute of silence honoring the victims of Human Rights violations. The request that was accepted by the Chairman and marked the end of the meeting.

Even though no substantive decisions were taken, I still managed to lobby a few country delegates (along with the representative for the European Union), making sure that my issue is not forgotten during the transition from the Commission to the Council.

April 3rd 2006: One day before I left Geneva I had another important meeting regarding my subject. Professor de la Vega and I went to Palais Wilson, the Office of the High Commissioner on Human Rights building, and met with Miguel de la Lama, a staff person for the Working Group on Arbitrary Detention. He told us that my report was going to be handed to the Working Group members to be considered in its annual meeting in May 2006.

All in all, this trip was a wonderful once in a lifetime experience. Even though a bit frustrating because of the lack of substantive work during the Commission's session, it was a great opportunity to experience in person things that we discuss in our classrooms while at the same time still being able to make my work have some effect in the future of this issue.

## The Labor Rights of Migrant Workers

*By Kristina Zinnen*

Undocumented workers around the world suffer violations of their labor rights. The right to freedom of association is essential to ensure basic labor standards, without which migrant workers are more vulnerable to discrimination, slavery, arrests, exploitation, and abuse. Many countries are violating their international and regional treaty obligations prohibiting discrimination on the basis of immigration status in their national labor laws. For example, the United States Supreme Court case *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002), removed the traditional back pay and reinstatement remedies for undocumented workers whose rights had been violated under the National Labor Relations Act, 29 U.S.C. § 151

et seq. Without these remedies, undocumented migrant workers have little incentive to report workplace abuse, which in turn decreases the accountability of employers who exploit the migrant workforce. Many employers in the U.S. have attempted to use the Hoffman decision as a way to cut back on other workplace protections for migrant workers.

Another example is domestic workers who are excluded from labor law in many countries, including most of the Gulf States. In Kuwait, domestic workers are frequently the victims of physical and sexual abuse, and are subject to prosecution if they leave their employers, who often confiscate their passports. Many of Lebanon's large population of Ethiopian migrant workers are held in conditions of near slavery and some have even been killed. In Saudi Arabia, there are numerous reports of abuse towards domestic migrant workers, including restrictions on movement, forced confinement, lack of food, physical and sexual assault, and murder.

In my report to the Commission on Human Rights, *The Rights of Migrant Workers*, E/CN.4/2006/NGO/87 (Feb. 12, 2006), I emphasized the importance of keeping the human rights of migrant workers an issue of ongoing concern at the new Human Rights Council, with the following recommendations:

First, that Member States initiate a process of harmonizing their national legislation with the applicable international legal instruments by guaranteeing protection and full remedies in their labor laws to all workers, regardless of immigration status;

Second, that Member States comply with decisions of intergovernmental organizations and regional bodies regarding migrant workers and ratify the Migrant Convention, supplementing its ratification with measures to safeguard the human rights of migrants; and

Finally, that the Special Rapporteur on the Human Rights of Migrants make available to all Member States his analysis of the real demand for migrant workers in Member States and data on the number of unionized and non-unionized migrant workers, and recommend that government officials take more decisive action against employers that hire migrants under false pretenses and subject them to conditions of slavery.

We had an additional area of concern regarding the right to freedom of association. Last year's U.N. Commission on Human Rights Resolution 2005/37, *Promoting the Rights to Peaceful Assembly and Association*, E/CN.4/2005/RES/37 (Apr. 19, 2005), stated that it "[r]ecogniz[ed] . . . that no one may be compelled to belong to an association." We were concerned that this language might be interpreted to allow Member

States to limit labor rights on the grounds of protecting the right to freedom of association, when such limits would actually be used to undermine this right.

For example, federal labor legislation in the United States makes it unlawful for union collective bargaining agreements to require union membership as a condition of employment. Furthermore, 22 states in the United States have enacted so-called “right-to-work” laws that prevent unions from collecting fees from non-member employees, while still guaranteeing those employees the benefits of union membership. The result is weaker unions with inadequate resources to represent their members. Consequently, workers in states with so-called “right-to-work” laws have lower wages, fewer people with health care, higher poverty and infant mortality rates, lower workers’ compensation benefits for workers injured on the job, and more workplace deaths and injuries.

My goal therefore was to urge the new Human Rights Council to affirm that full labor rights are essential to guarantee the right to freedom of association, and that limits on labor rights such as so-called “right-to-work” laws are a violation of the right to freedom of association essential to guarantee workers’ human rights. See, *The Right to Vote, Arbitrary Detention, and Freedom of Association*, E/CN.4/2006/NGO/84 at 17-20.

The most fruitful meetings on these issues took place at the International Labour Organization (ILO), a specialized agency of the U.N. which formulates international labor standards and provides technical assistance to member countries, including training and advisory services. Within the U.N. system, the ILO has a unique tripartite structure with workers and employers participating as equal partners with governments in the work of its governing organs.

We met with several ILO departments, including the Bureau for Gender Equality, the International Migration Programme, and the International Labour Standards Department, which is the ILO’s legal branch. The attorney responsible for migrant workers discussed the work of the ILO’s Committee on Freedom of Association, which has issued opinions stating that the U.S. Hoffman decision and Spain’s Basic immigration Act of 2000 violated those countries’ international and regional treaty obligations. The Committee takes credit for last year’s draft Royal Decree from Spain’s newly-elected government that amended the Basic Act by removing the restrictions on undocumented foreign workers. The attorney responsible for freedom of association, however, did not believe the Hoffman decision could be seriously challenged in the

near future given the current climate in our country. She urged labor in the U.S. to strategize around agricultural workers, however, since the issue has not yet been addressed at the ILO.

Last year the ILO drafted a Multilateral Framework on Labour Migration, a set of non-binding principles and guidelines for a rights-based approach to labor migration. The ILO’s International Migration Programme works to protect the rights of migrant workers and promote their integration in countries of destination and countries of origin, to forge an international consensus on how to manage migration, and to improve the knowledge base on international migration. Though my work addressed labor issues involved primarily in destination countries, the ILO is doing a great deal of work addressing international migration by providing technical assistance and establishing microcredit programs in countries of origin. The Programme has also focused specifically on migrant domestic workers, who have been organizing internationally and have made some progress in achieving legislative change and building a support network.

In this era of globalization, efforts such as these are necessary to ensure the human rights of all workers are protected. I am grateful to Connie de la Vega, Human Rights Advocates, and the University of San Francisco’s Frank C. Newman International Human Rights Law Clinic to have had this opportunity, both last year at the Commission on the Status of Women and this year in Geneva, to be a part of this international movement.

---

## LITIGATION

---

### **A Small Victory - Hill v. McDonough, 547 U.S. \_\_\_ (2006)**

*By Nicole Phillips*

**I**n March 2006, Connie de la Vega and David Weissbrodt, on behalf of Human Rights Advocates, Human Rights Watch and Minnesota Advocates for Human Rights submitted an amicus brief to the U.S. Supreme Court challenging the Eleventh Circuit’s upholding of the death penalty by lethal injection.

Petitioner Clarence Hill was convicted of killing a police officer while robbing a bank in 1983. Hill was sentenced to death by lethal injection. Thirty-

eight states use lethal injection. The process typically includes three injection-steps. Inmates are first injected with sodium pentothal, which is an anesthetic. This is followed by pancuronium bromide, which causes the lungs to shut down and paralyzes the body. The final chemical, potassium chloride, then induces a fatal heart attack.

On appeal, Hill argued that execution by lethal injection causes “foreseeable and gratuitous pain,” in violation of the Eighth Amendment’s protections against cruel and unusual punishment. Earlier this year, Justice Kennedy granted Hill a stay of execution minutes before he was scheduled to die. The Court granted certiorari in order to determine whether such a claim is properly brought under 42 U.S.C. §1983 or a petition for writ of habeas corpus.

The amicus brief urged the Court to consider international treaty obligations in assessing the appropriateness of the 42 U.S.C. §1983 claim. The brief argued that Section 7 of the International Covenant of Civil and Political Rights (ICCPR) and Article 16 of the Covenant against Torture and Other Cruel, Unusual, Inhumane or Degrading Treatment of Punishment (Covenant Against Torture), both of which the U.S. has ratified, prohibits cruel, unusual and degrading punishment or treatment.

The Human Rights Committee’s comment on Section 7 provides that when a State uses the death pen-

alty for its most serious crime, it must be carried out in a way to create the least physical and mental suffering. The brief argued because the U.S. has ratified the ICCPR, it should look to the Committee’s comment in its interpretation of the Eight Amendment.

The Supreme Court did not rule on the constitutionality of death by lethal injection, but it did uphold Hill’s right to bring a separate federal appeal challenging the method of execution under the Eighth Circuit (in addition to any habeas corpus challenge to the lawfulness of the prisoner’s sentence or confinement). The Court remanded the case for further proceedings.

**The Human Rights Advocates Board Officers and Committee Chairs for 2006-2007 are:**

**President – Julianne Cartwright Traylor**  
**Secretary – Jeremiah Johnson**  
**Treasurer – Anne Wagley**  
**Education – Jeremiah Johnson**  
**Finance – Anne Wagley**  
**Litigation/Legislation – Connie de la Vega**  
**Nominations – Julianne Cartwright Traylor**  
**Publications – Nicole Phillips**  
**United Nations – Cindy Cohn**

**Human Rights Advocates**

P.O. Box 5675  
Berkeley  
CA 94705

[www.humanrightsadvocates.org](http://www.humanrightsadvocates.org)

Cindy Cohn  
Connie de la Vega  
Jeremiah Johnson  
Conchita Lozano-Batista  
Nicole Phillips  
Julianne Cartwright Traylor  
Anne Wagley

Newsletter production: Philip Goldsmith