



Human Rights Advocates

Volume 48

Winter 2006/2007

HRA's Fall Educational Event on Human Rights Issues at the United Nations

By Conchita Lozano-Batista

On October 17, 2006, Human Rights Advocates (HRA) held its Fall Annual Educational Event at the University of San Francisco School of Law. The meeting began with a welcome reception for members and guests. HRA Board President Julianne Cartwright Traylor (Associate Director of International Programs at USF), moderated a panel discussion and Q & A session on Human Rights Issues at the U.N., including updates on the work of the Human Rights Committee and the new Human Rights Council. Attendees included HRA Board and National Advisory Board members, and students from various Bay Area law schools.

Nicole Phillips (an attorney with the union labor law firm Weinberg, Roger & Rosenfeld and a member of HRA's Board of Directors) discussed her role in attending the Human Rights Committee on behalf of HRA. HRA prepared and presented a report on the United States' compliance with the International Covenant on Civil and Political Rights (ICCPR) and responded to the United States' own report to the Committee. The topics covered in HRA's report include juvenile life without parole (JLWOP) sentencing, migrant rights issues and labor issues (see her article, page 4).

Connie de la Vega (Professor of Law and Academic Director of International Programs at USF, and a member of HRA's Board of Directors) discussed the changes at the U.N. with regard to the Human Rights Council, including new and continued procedures that would be followed by the Council, as well as what HRA expects its continuing role at the Council to be.

Michelle Leighton (Director of Human Rights Programs for the Center for Law and Global Justice at USF, Co-Founder of the Natural Heritage Institute, and Member of HRA's National Advisory Board) spoke about HRA's work at the September meeting of the Human Rights Council. At this meeting, HRA addressed JLWOP issues, children's rights issues, and

environmental issues surrounding toxics. She reported that she and Connie de la Vega have been asked to help define the agenda of non-governmental organizations (NGOs) with respect to the Council's ongoing work in the area of children's rights. HRA hopes to work on the drafting of the general comment regarding JLWOP sentencing. She also talked about HRA's work on toxics. Though the United States tried to have the toxics issue removed from the agenda, HRA worked with government delegates from Kenya and Nigeria and was successful in ensuring that the issue remained on the agenda.

The final panelist was Jennifer Porter, a second-year law student at USF, who accompanied Michelle Leighton to the September Human Rights Council meeting to work on corporate accountability issues. She focused her work on trying to make the Norms a legally binding document. Jennifer left the Council feeling that it was somewhat disorganized and that NGO participation was yet still undefined. Though the International Labour Organization (ILO) was asked to take on the mandate of developing the Norms with regard to labor issues, they declined to do so (see her article, page 2).

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Human Rights Advocates is accepting nominations for the Board of Directors. The Board will be elected at the spring Annual Meeting. Board meetings are held once a month in the East Bay. If you would like to apply, please contact Julianne Traylor (jtraylor@igc.org) by February 16, 2007.

Corporate Accountability at the Second Meeting of the Human Rights Council

By Jennifer Porter

This summer under the guidance of Professor de la Vega, I researched corporate accountability with regards to international human rights – why we need human rights laws regulating corporations and States and explored legal precedent for holding businesses accountable for human rights violations. This is a topic that HRA has been advocating for a long time, first at the Sub-Commission on Promotion and Protection of Human Rights and then at the Commission on Human Rights and the new Human Rights Council. As a result, I continued the efforts for legally binding human rights standards on corporations and States at the second meeting of the Human Rights Council in Geneva in September.

A few of the most compelling reasons for developing binding law on corporations include: (1) size and number of corporations throughout the world, (2) competition for investment between developing countries, which undermines human rights protections, and (3) ineffectiveness of current voluntary codes and guidelines for regulating businesses and their activities in developing countries. I emphasized the need to make the “Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights,” (“Norms”) legally-binding international obligations. This document was approved by the Sub-Commission on the Promotion and Protection of Human Rights in August of 2003. However, when presented to the Commission on Human Rights, developed countries, mainly the U.S. and United Kingdom, voiced loud protests to its adoption.

The Norms list 23 articles on environmental and human rights obligations, which were codifications of existing human rights standards in treaty-like language. It is easy to see why some States were fearful of their potential legal status. In April 2004, the Commission announced that the proposed Norms had no legal standing, but urged the Secretary General to appoint a Special Representative to study the issue. As a result, the Secretary General appointed John Ruggie as the Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises to identify and clarify the current standards of corporate accountability and responsibility and to

elaborate on the function of Atates in regulating and adjudicating TNCs.

During the second meeting of the Human Rights Council, John Ruggie was to report on his work. Since July of 2005, Ruggie has been analyzing the best possible method to eventually determine global human rights standards. Unfortunately, he has completely abandoned the Norms and does not see his mandate as giving him the authority to determine the legal status of his eventual findings. This is a major setback since corporate accountability standards have been an issue at the U.N. since the 1970s and the Norms, being the first cohesive set of obligations, were not approved until 2003.

NGOs must now advocate the U.N. for more funding to help Ruggie finish his mandate and allow him to be more objective. At this point he is relying on resources from corporations to carry out his mandate. Also, though the Norms are dead in the format approved by the Sub-Commission, it is important to advocate for the incorporation of the principles that were defined in the Norms into the new set of standards that will eventually be developed. And lastly, since NGO lobbying was essential in creating this mandate for the Special Representative, NGOs need to lobby their governments again for stricter, legally-binding human rights standards on corporations.

This opportunity to see the U.N. process firsthand was truly invaluable and I'd like to thank Professor de la Vega, Michelle Leighton and HRA for all their advice and aid along the way.

Hope For A Better Future – The Early Days of the Human Rights Council

By João Pinheiro Moreira

If you take the time to read (or reread) my previous article for Human Rights Advocates you will notice that I wrote that going to the Commission on Human Rights' final session was a “once in a lifetime experience.” Well, it was and it wasn't.

Three months after attending the Commission on Human Rights I was back in Geneva, this time to attend the first session of the Human Rights Council (“HRC”). No longer a USF student and without my fellow advocates, I found my experience much more hard-working, but all the same rewarding. In particular, I was pleased to see that none of the incidents that impaired

the final session of the Commission was repeated.

My second experience in Geneva could be divided into three general categories: 1) the prior work 2) the Council's meetings and 3) the side events.

Prior work

Rather than producing a new report, my mission was to go to Geneva and promote the work already done by my fellow Frank C. Newman Interns and me. As such, I did not prepare a new report on a substantive issue; rather I studied and summarized the reports of my fellow advocates. I was ready to push for the existing report's ideas, an effort that proved to be very useful while in Geneva.

When I wasn't addressing substantive issues, I found myself defending the interests of NGO participation in future sessions of the HRC, an effort shared by numbers of other NGOs represented in Geneva.

Council's meetings

Being present in Geneva from June 20th thru June 27th (the session of the HRC took place from the 19th to the 30th), I had the chance to experience two very different types of work of the HRC. The first work was the High Level segment of the first week, and second was the more substantive work that took place during the second week.

Not much was accomplished at the High Level segment. Days passed by with constant speeches by Ambassadors and Ministers about how good it is that the HRC is replacing the Commission and how good the Human Rights situation is in their respective countries. I witnessed the not so uncommon clashes between typical political opposing countries, like North and South Korea, the Islamic Middle Eastern States and Israel and, more noteworthy, Venezuela's speech aimed at the U.S.

Other common ideas during those days were similar to what was said at the "funeral of the Commission", with many States stressing the need for financial help and capacity building, the hope that the HRC will not suffer from the same faults as the Commission (*inter alia*, politicization and double standards), and many other issues that could be found on my previous report.

During the second week, the work became more substantive, which brought more lobbying opportunities and less time taking notes of speeches. I even had the chance to do what all of Frank Newman Interns had wished to do during the Commission's meeting: I made an oral statement. During this second week, the discussions focused on the mandates that should be reviewed

and also on "other pressing Human Rights issues" (an expression that the Cuban representation found objectionable), such as the Human Rights of migrants – the subject of HRA's oral intervention. I found that the Mexican delegation had a very positive reaction to the intervention. Also discussed was the implementation of the Durban Declaration and Program of Action regarding racism and xenophobia; the (suggested) creation of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; and, due to the possibility of a more informal introduction of issues through the "other pressing Human Rights issues" agenda item, the Mohammad cartoons incident, with the adjoining conflict between freedom of religion and freedom of speech.

I must note that I sensed a very positive sentiment towards NGO participation in the HRC's future meetings. Many States expressed their approval regarding NGO participation, which, adding to the support NGOs seem to have from the special procedures representatives, makes me believe in a bright future to this regard. Unfortunately, the formal discussion on this issue took place after I left Geneva.

Side events

With more substantive work being done at the Palais des Nations, I was not surprised that the number of side-events promoted by both NGOs and the U.N. itself was much bigger. Even before going to the Palais for my first day there, I had the chance to go to the Palais Wilson to attend a very positive meeting between NGOs and the special procedures representatives. At this meeting there was a common understanding that special procedures must be an essential part of the HRC's future work ("Special procedures are the frontline troops of the United Nations' Human Rights system") and that NGOs are one of the key players in helping those special procedures reach effective outcomes.

Other meetings of note included the NGO Orientation Session, in which NGOs tried to decide on how to take part in the various components of the HRC's yearly work, as this new format makes it very hard for non-Geneva-based NGOs to participate effectively in much of the Council's work.

Finally, the last side-events that I wish to mention were the Informal Consultations on the Program of Work of the HRC, a meeting attended by many governmental delegates in which the way the HRC should work in the future was discussed, with the objective of "enhancing transparency and predictability", and a special weight being given to the first year of work.

Human Rights Committee's Review of Civil and Political Rights in the U.S.

By Nicole Phillips

This summer, the United States appeared in Geneva before the United Nations Human Rights Committee (“HRC” or “Committee”), the enforcement body of the International Covenant on Civil and Political Rights (ICCPR). The Committee convened to review the 2nd and 3rd periodic reports of the U.S., which were seven years late. The last time the Committee reviewed the U.S. was in 1995.

Confronting the U.S. was a David and Goliath undertaking. The distinguished members of the Committee wanted to be sure that their allegations and questions had solid factual and legal basis. Over 40 NGOs from the U.S., including organizations like the ACLU and Human Rights Watch, and those still learning about advocating on an international forum, gathered in Geneva a week before the U.S. report was reviewed by the Committee. The coalition strategized on lobbying Committee members and assisting their review of the U.S. report. The Committee praised the somewhat unprecedented coalition of U.S. NGOs. This built credibility and allowed several group and individual meetings with Committee members.

Concluding Observations Critical of the U.S.

The Committee was less impressed with the U.S. report and testimony. In their Concluding Observations, the Committee had five positive things to say about the U.S. report and compliance with the ICCPR and 30 “concerns”.

One-third of the concerns focused on the U.S. post September 11 anti-terrorism, unlawful detention and interrogation techniques, and transfer/rendition of suspects. Of most concern and given a lot of attention was the U.S. unwaivering position that the Covenant does not apply to individuals under its jurisdiction but outside its territory, nor in times of war, despite contrary opinions of the HRC and the International Court of Justice.

HRA submitted a long report and advocated about the issue of violence against immigrants along the U.S./Mexico border, the U.S. Supreme Court case *Hoffman Plastics*, juvenile sentencing of life without the possibility of parole (JLWOP), and voter rights. We were assisted greatly by Minnesota Workers Rights Project on

migrant issues, and Human Rights Watch on JLWOP.

The Concluding Observations gave a lot of attention to racism and discrimination in the U.S. The Committee “regretted” that they had not received sufficient information on the measures the U.S. has regarding the nine million undocumented migrants living in the U.S. They were also concerned “about the increased level of militarization on the southwest border with Mexico.” Unfortunately there was no mention of *Hoffman Plastics*. However, the Committee included strong language against the JLWOP, calling upon the U.S. to ensure that that practice is ended.

The Concluding Observations and U.S. report can be found at <http://www.ohchr.org/english/bodies/hrc/hracs87.htm>. HRA’s report to the HRC can be found at www.humanrightsadvocates.org.

What Now?

The NGO Coalition continues to work together about follow-up to the HRC, the U.S. implementation of the Concluding Observations, and to coordinate efforts in anticipation for the upcoming review of the U.S. Report to Committee on the Elimination of Racial Discrimination (CERD), the monitoring body of the International Convention on the Elimination of All Forms of Racial Discrimination – a treaty which the U.S. has also ratified.

In the meantime, we have language from the concluding observations to be cited in state and federal cases. The U.S. has ratified the ICCPR, although with reservation on implementation (arguing the treaty is non self-executing). For information on applying international law in domestic cases, see Connie de la Vega and Conchita Lozano Batista’s law review article on *Hoffman Plastics* in *Race and Poverty Law Journal*, Vol. 3, Issue 1.

Gender Equality and Women’s Empowerment – Progress at the United Nations

By Julianne Cartwright Traylor

The United Nation’s High-Level Panel on U.N. System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment (“Coherence Panel”) presented its final report entitled “Delivering as One” to Secretary General Kofi Annan on November 9, 2006. (See www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf). Co-chaired by three prime ministers, Luisa Dias Diogo of

Mozambique, Jens Stoltenberg of Norway, and Shaukat Aziz of Pakistan, one of its major recommendations was to propose strengthening the coherence and impact of the U.N.'s institutional gender architecture by streamlining and consolidating three of its existing gender institutions (Division for the Advancement of Women (DAW), the United Nations Development Fund for Women (U.N.IFEM), and the Office of the Special Adviser to the Secretary-General on Gender Issues (OSAGI)) into a consolidated U.N. gender equality and women's empowerment program. The new entity would be under the direction of a new high-level Under Secretary General position on gender "...to guarantee organizational stature and influence in U.N. system-wide decision making." (Box 2, p. 25)

The mandate of the gender entity would combine normative, analytical and monitoring functions, with policy advisory and targeted programming functions both at the global/policy level and at the country/operational levels. It should "...mobilize forces of change at the global level and inspire enhanced results at the country level." (p. 24) The normative and analytical division of the new entity would be funded from the U.N. regular budget supplemented by voluntary contributions, and "the policy advisory and programming division should be fully and ambitiously funded." (emphasis added, Box 3, p. 26)

The Coherence Panel also recommended that other U.N. entities should devote more resources to gender mainstreaming in all their work and decisions, particularly at the country level, and to monitor and report regularly on progress." (Box 3, p. 26). The Panel Report stated that "the promotion of gender equality must remain the mandate of all U.N. entities." (emphasis added, Box 1, p. 24).

Background

Global leaders at the September 2005 World Summit in New York decided that there should be fundamental restructuring of U.N. work in the fields of development, humanitarian and environment. Subsequently, the Coherence Panel was established in February 2006. It convened a series of meetings and consultations in venues around the world.

At the end of all of its deliberations, it concluded the following: "We have listened carefully to governments in programme and donor countries, to civil society representatives, and to U.N. staff in headquarters, regional and country offices. The message is clear: While the U.N. remains a key factor in supporting countries to achieve gender equality and women's empowerment,

there is a strong sense that the U.N. system's contribution has been incoherent, under-resourced and fragmented." (emphasis added, para. 47)

Its final report continued: "The U.N. needs a much stronger voice on women's issues to ensure gender equality and women's empowerment are taken seriously throughout the U.N. system and to ensure that the U.N. works more effectively with governments and civil society in this mission. We believe that a gender entity-based on the principles of coherence and consolidation is required to advance this key U.N. agenda." (para. 49)

The Role of Women's Groups and their Allies

Women's groups and their allies around the world had lobbied vigorously with governments and members of the Coherence Panel in support of the new U.N. agency to help strengthen the U.N.'s role in addressing gender inequality issues. It would be an understatement to say that their work played a crucial role in the substance of the final provisions of the Coherence Panel's Report. Their demands were heard! A statement endorsed by more than 154 groups from around the world states that "these recommendations are in line with what civil society, and in particular women's groups, have been calling for to enable governments and the U.N. system to better achieve their goals on gender equality, women's empowerment and human rights." (See "Statement on Reforming the Gender Equality Architecture of the United Nations" initiated by the Center for Women's Global Leadership and the Women's Environment and Development Organization at www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy).

A very important ally of women's groups to establish a new high-level U.N. agency for woman was Stephen Lewis, U.N. Special Envoy for HIV/AIDS in Africa. He lobbied the Coherence Panel and leaders from Europe, Latin America and Africa. (See, e.g., his remarks to the High-Level Panel at www.sarpn.org.za/documents/d0001917).

Next Steps

Secretary General Kofi Annan welcomed the Panel's report and recommendations in hopes that they would "...make the U.N. system stronger, more coherent and more responsive to the needs of people everywhere." (See remarks at an informal meeting of the General Assembly, "Secretary-General Presents Report on United Nations System-Wide Coherence, Calls for Action on 'One Country Programmes', Gender Equality, Business Practices", Document SG/SM/10724, GA/10530, 9 November 2006). He had hoped to "fast-track" some of

the Panel's recommendations, including the new U.N. agency proposal and have it adopted by the General Assembly before the end of his term and the end of the session of the General Assembly so that his successor, Bak Ki-moon, could then proceed to appoint the USG for this newly-created position. However, whether due to opposition to the gender recommendations in particular, or to concerns of other parts of the Panel's report, the proposal was not discussed by the U.N.'s Budget Committee (5th Committee). Therefore, there was no final decision taken by the General Assembly as a whole on the Panel's Report and its recommendations. Secretary-General elect Ban did agree to meet representatives of women's NGOs in December. (See Center for Women's Global Leadership, United Nations Advocacy at www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy).

At the end of its session in December, the President of the General Assembly, Sheikha Rashed Al Khalifa said that there would be two more thematic debates in the General Assembly, one on gender equality (in March 2007) and the other on dialogue among civilizations" remarking that "promoting gender equality and the empowerment of women is an integral aspect of achieving the MDGs (Millennium Development Goals)." (See her Closing Statement to the General Assembly at www.un.org/ga/president/61).

In the meantime, women's NGO representatives and their allies around the world must continue to lobby for support for the adoption and implementation of the Panel's recommendations on gender equality and women's empowerment. Undoubtedly, this will be a part of the discussions at the upcoming session of the U.N. Commission on the Status of Women (February 26th – March 9th) where – as usual, the HRA delegation will participate. We will report about future U.N. actions on these recommendations in the next issue of the Newsletter.

A Rights Based Approach to Immigration Reform

By Jeremiah Johnson*

Human rights, including the rights of migrants, are protected by internationally guaranteed standards that ensure fundamental freedoms and dignity of individuals and communities. Over the past several years, Human Rights Advocates has promoted the rights of migrant workers, specifically addressing border deaths and arbitrary detention. Currently the United States is considering reforming its immigration law, and the ap-

proach policy makers take may effect the realization of human rights for millions of migrants. Although there are some generally good ideas being debated, many of the specific proposals should raise questions and concerns as to the policy makers' approach.

In the past, HRA has urged policy makers to adopt a rights based approach to decision making processes. A rights based approach is the only means for ensuring that communities affected are empowered to work with governments to help develop more effective and durable policies and programs. As noted above, HRA has promoted migrants' rights to life, safety and liberty. International human rights law also protects migrants from expulsion from a country. Specifically, an alien may be expelled from another country "only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his [or her] expulsion ..." ICCPR, Article 13. Unfortunately, many aliens are now being expelled from the U.S. without the opportunity to "submit the reasons against his [or her] expulsion." If the current proposals become United States policy, many more migrants may be expelled without an opportunity to submit reasons.

Amnesty

Perhaps one of the proposals that has caused the most uproar in the public is the idea of "amnesty." Although the Senate has proposed legislation that would permit certain undocumented migrants to remain in the United States, that proposal should not be compared with the amnesty legislation of the past. The current proposal provides an opportunity for undocumented migrants who have been in the U.S. for more than five years to gain lawful status. To do so, applicants would need to meet certain requirements including passing background checks, learning English and paying back taxes and additional penalties.

However, this "amnesty" contains fine print waiving migrants' rights to a full and fair immigration hearing. For instance, an applicant for "amnesty" would waive his right for review if his application were denied. This is particularly troubling because the application requires the migrant to admit to his unlawful presence. Furthermore he would waive his right to contest future removal. The proposed provision also precludes a migrant who does not submit an application from seeking cancellation of removal or voluntary departure in any future removal proceedings. In short, these provisions limit an alien's right as defined by Article 13 of the IC-CPR to submit reasons against his or her expulsion.

More Visas, Less Justice

Sometimes more is less, and the current proposal to increase the number of available visas raises serious concerns as to the approach taken by policy makers (rather than the human rights based approach that is needed.) Some may applaud the proposal's tacit recognition that there simply are not enough visas available for the need. However, there remains a troubling "bravo" from some in response to the proposal's limitation on judicial review.

Beside the creation of a new temporary guest worker program, policy makers proposed to raise the number of family based visas available by exempting immediate relatives of U.S. citizens from counting against the worldwide cap. Furthermore, employment based visas would also be increased. Although these increases are certainly "steps" in the right direction, there needs to be a much greater "leap" in numbers to meet the demand.

Although policy makers may increase the numbers of visas available to enter the U.S., unfortunately they are also considering more walls. Aside from the physical fences (no longer a proposal, but enacted) and the added border patrol, policy makers propose to create additional legal "fences" around federal courthouses. These proposals would completely overhaul the current system for judicial review, establishing automatic denials of a petition for review unless a single judge issues a "certificate of reviewability." Other "fences" being considered include a judicial bar from reviewing an agency's decision about good moral character and stripping jurisdiction from the district courts to grant citizenship. Again, these proposals do not recognize an alien's right to present reasons against his or her expulsion as stated under Article 13, ICCPR.

Undocumented = Criminal

Perhaps the most troubling aspect of the proposal, not only in its practical effect but also for what it says about the U.S. position toward migrants is the criminalization of migrants. Through a number of changes to definitions of existing immigration offenses and addition of new criminal offenses, policy makers may be transforming whole communities, including both migrants and U.S. citizens, into "criminals."

For instance, the current proposal broadens the definition of "alien smuggling" to include acts relating to transporting, housing, and employment of undocumented

persons – whether you knew or not. The proposal also expands the definition of an aggravated felony to include immigration document related offenses, such as use of a false passport. Given the harsh consequences resulting in an aggravated felony conviction, this proposal will preclude many people convicted of relatively minor criminal offenses from any form of relief from removal, again in violation of ICCPR Article 13. Indeed, just last month in *Lopez v. Gonzales*, the Supreme Court noted that an alien who has suffered a conviction defined as an "aggravated felony" is subject to automatic deportation. Adding insult to injury, policy makers are considering increases in criminal penalties for such offenses such as neglecting to file a change of address form (you may now be subject to six months in jail). To aid in enforcement, Congress will authorize local and state police with inherent authority to enforce our federal immigration laws.

The purpose of this article is to help begin to understand the current debate surrounding immigration reform and the possible proposals and their effects. It is just an overview of some of the current proposals and the apparent approach that is being taken by policy makers. Although the outcome of the immigration reform debate is not certain, what does appear is that policy makers are not taking a rights based approach. Migrant rights are human rights, and the U.S. must recognize and respect these rights when it comes to immigration. A rights based approach to the current debate would be a good start.

LITIGATION

Death Penalty in Indonesia Challenged

By *Connie de la Vega*

Todung Mulya Lubis, a member of HRA's International Advisory Board, filed a judicial review with the Constitutional Court on 17 January 2007 calling for the abolishment of capital punishment in Indonesia, according to Alvin Darlinika Doedarjo of the Jakarta Post. "The right to life is guaranteed by the Constitution. I'm optimistic that even though the Indonesian legal system still recognizes the death penalty, eventually capital punishment will become history," Todung Mulya Lubis said. While he based his case on Article 29 of the Indonesian Constitution, he also referred to international law to support his challenge of the 1977 Narcotics Law which provides for the death penalty for drug-related crimes.

*** Jeremiah Johnson is a HRA Board member and an attorney practicing immigration law, focusing on removal defense for immigrants.**

Will the Supreme Court Uphold Affirmative Action To Correct School Segregation? *Meredith v. Jefferson County Board of Education*, U.S. Supreme Court Case No. 05-915

By Nicole Phillips

In October 2007, David Weissbrodt and Connie de la Vega, on behalf of the University of Minnesota Human Rights Center and Human Rights Advocates, submitted an amicus brief urging the U.S. Supreme Court to uphold the Sixth Circuit's approval of a school district's race-conscious student assignment plan aimed at correcting *de facto* segregation and promoting integration. Other amici included the Midwest Coalition for Human Rights, Centre on Housing Rights and Evictions (COHRE) and George E. Edwards from the International Human Rights Law at Indiana University School of Law.

Jefferson County, Kentucky has a long history of *de jure* and *de facto* segregation in its neighborhoods and schools. Since 1981, Jefferson County has modified its student assignment plan to address growth while keeping its policies consistent with previous desegregation decrees. In 1998, a group of parents challenged the student assignment plan, alleging that their children were denied admission to a magnet high school based on race. *Hampton v. Jefferson County Bd. of Educ.*, 72 F. Supp. 2d 753, 774 (W.D. Ky. 1999). In 2000, a desegregation decree was lifted and the court held that the school board could not use racial quotas at magnet and other schools that offered unique programs not available at other schools in the district. *Hampton v. Jefferson County Bd. Of Educ.*, 102 F.Supp.2d 358, 376, 381 (W.D.Ky. 2000).

In response to the court's ruling, Jefferson County adopted the 2001 Plan, which uses a system of managed, voluntary choice to promote integration in the county's schools without using racial quotas. Enrollment decisions are based on place of residence, student choice (through a system of student preference ranking, application to magnet or traditional programs, transfer, or open enrollment), and racial guidelines. The 2001 Plan was found constitutional by the Western District of Kentucky. The decision was affirmed en banc by the Sixth Circuit. *McFarland ex rel. McFarland v. Jefferson County Pub. Schs.*, 416 F.3d 513 (6th Cir. 2005).

A parent appealed the Sixth Circuit's decision alleging that the race-based assignment plan is unconstitutional. This case has been joined with an appeal from Parents Involved in *Community Schools v. Seattle School District*, NO.1, 426 F.3d 1162 (9th Cir. 2005). The Seattle school district, like Jefferson County, utilized a voluntary open choice student assignment plan.

HRA's amicus brief argues that the Fourteenth Amendment's Equal Protection guarantee, read consistently with treaties the United States has ratified as well as other international law, upholds the use of voluntary state action to correct *de facto* segregation in public schools. Both the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) permit race-based distinctions to redress past discrimination and promote the benefits of diversity. The brief argues that by becoming a party to these treaties, the U.S. is obligated to take the affirmative steps necessary to guarantee all persons equal and effective protection against all forms of racial discrimination. International law and international interpretive bodies uphold and encourage state action to address both *de facto* and *de jure* segregation. Such action is appropriate whenever a law, regulation, or action has the effect, not just the intent, of race-based discrimination.

The Supreme Court heard oral argument on December 4, 2006.

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