



HRA Celebrates Human Rights Day

By Jeremiah Johnson

HRA celebrated Human Rights Day with a special event at Boalt Hall, UC Berkeley School of Law. In 1950, all UN Member States and interested organizations were invited by the General Assembly to observe December 10th as Human Rights Day to honor its adoption and proclamation in 1948 of the Universal Declaration of Human Rights, the first global expression of human rights.

After recounting this history, HRA Board President Julianne Cartwright Traylor, remarked that the event was also in honor of the late Professor Louis Henkin, one of the most influential contemporary scholars of international law and U.S. constitutional law of foreign relations. Dr. Rita Maran, one of HRA's founding members and current member of its National Advisory Board, provided an historical context of Professor Henkin's human rights work noting that "we are diminished by his lost." Professor Richard Buxbaum, Jackson H. Ralston Professor of International Law at Boalt Hall, offered some wonderful anecdotes discussing Prof. Henkin's early career in the army and then at the United Nations – especially during its early years. All agreed with Professor Buxbaum's conclusion that Professor Henkin was "...a wonderful man worth remembering."

The theme for this year's global celebration of Human Rights Day was - "Speak Up – Stop Discrimination." The remainder of the event focused on discriminatory practices and effects in the context of gender and food security. Dr. Maran began the discussion by reminding participants that non-discrimination is a fundamental underpinning of human rights. For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) promotes and protects women's rights by addressing discrimination. Indeed, the Committee on the Elimination of Discrimination against Women's General Recommendation 19 states that "[g]ender-based violence, which impairs or nullifies the enjoyment by women of human rights and

fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention."

Professor Connie de la Vega, HRA Board Treasurer, continued the discussion linking the concepts of human rights, the right to food and food sovereignty. Human Rights Advocates' work addresses this link in a number of ways, for example, land grabbing. Professor de la Vega concluded by noting that food aid should not undermine food security. HRA Board member Birte Scholz spoke next, helping those in attendance understand how these issues are actually playing out on the grassroots level and the links among the work of various UN bodies such as the UN Commission on the Status of Women, UN Commission on Sustainable Development and the Human Rights Council. She spoke about HRA's collaboration on food sovereignty issues with our partner The Huairou Commission.

The evening's program continued with a very powerful and informative powerpoint presentation from Jeff Kaloustian, 2010 Human Rights Advocates

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Fellow. Mr. Kaloustian spoke of his recent experiences as a Human Rights Advocates Fellow and his work with The Huairou Commission. Mr. Kaloustian discussed discrimination in the context of food vulnerability and global food security. He emphasized the connection between women and hunger and discrimination. Discrimination created problems not only with access to land, but also land security and tenure for women.

The evening concluded with a Q and A session and Julianne Traylor thanked the presenters and the members of the audience for their participation.

UN ADVOCACY

United Nations Recognizes Human Right to Water and Sanitation; Independent Expert Addresses Non-State Service Providers

By Emily Wick

On July 28, 2010, the United Nations General Assembly recognized the “right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” (A/RES/64/292) Subsequent to the adoption of the resolution, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Ms. Catarina de Albuquerque, emphasized the fact that the existence of the right was “recognized,” rather than created, by the resolution. This, she explained, means that the existing human rights framework, including the International Covenant on Economic, Social, and Cultural Rights, fully applies in this context. In addition to recognizing the right, the resolution also urges States and international organizations to provide financial resources, capacity building, and technology transfer, especially to developing countries, in order to realize the right for all.

Two months later, on September 30, the Human Rights Council affirmed, by consensus, that the human right to safe and clean drinking water and sanitation is derived from the right to an adequate standard of living. (A/HRC/RES/15/9) The Human Rights

Council resolution was essential because, although the General Assembly resolution was a critical first step, it did not specify that the right imposed legally binding obligations. By clarifying the foundation for recognition of the right and the legal standards which apply, the Human Rights Council made the right to water and sanitation legally binding.

The Human Rights Council resolution calls upon States to develop tools and mechanisms, including legislation, and plans and strategies, including financial ones, to achieve full realization of the right, especially to unserved and underserved areas. The resolution also calls upon States to ensure transparency of the planning and implementation process, community and stakeholder participation therein, and respect for the principles of non-discrimination and gender equality. Effective regulatory frameworks must also be developed, implemented, and enforced, and accountability mechanisms are necessary to remedy violations. In regards to non-State service providers, the resolution recalls that States are responsible for ensuring that service providers contribute to the realization of the right by providing “a regular supply of safe, acceptable, accessible and affordable drinking water and sanitation services of good quality and sufficient quantity.” Non-State service providers should also develop grievance mechanisms, to detect potential human rights abuses, which will complement and assist State-based accountability mechanisms. In closing, the resolution stressed the importance of international cooperation and technical assistance by States, specialized UN agencies, and development partners.

The General Assembly and Human Rights Council resolutions both reinforce the mandate of the Independent Expert, as she is asked to study and report on the content of human rights obligations in relation to access to safe drinking water and sanitation. During the second year of her mandate, the Independent Expert focused on clarifying the human rights obligations and responsibilities related to drinking water and sanitation in the context of non-State service providers by conducting a series of consultations. These consultations were performed in cooperation with and reflecting the views of Governments and United Nations bodies, as well as the private sector and civil society organizations. The Independent Expert submitted her report to the Human Rights Council in June 2010. (A/HRC/15/31)

Non-state involvement in the provision of water and sanitation services is pertinent because although it has advantages, such as attracting funding and increased technical efficiency, it can also be problematic. This is due to the fact that the provision of water and sanita-

tion services relates directly to the fulfillment of human rights. Non-State service providers have tremendous potential to positively contribute to the realization of the right to water and sanitation or, conversely, to contribute to abuses of this right. This is compounded by the fact that water and sanitation services are not conducive to competitive delivery, and instead are essentially monopolized once a provider is chosen. This monopolization can easily lead to profit-making practices which are inconsistent with and threaten the realization of the right to water and sanitation.

In her report, the Independent Expert recommends a more nuanced approach to the issue of non-State participation in the provision of water and sanitation services. She advocates for an approach which recognizes the various forms of non-State provision and the wide range of non-State actors involved. This approach would account for situations where formal delegation of service to non-State actors has occurred, as well as situations where the State has not made an intentional decision to involve non-State actors, but instead non-State involvement has evolved over time in response to need. A more nuanced approach would also address the role of State-owned companies, and the differences between networked provision of water and sanitation as opposed to on-site solutions.

The report affirms that regardless of whether water and sanitation services have been delegated to non-State actors, States retain the obligations to respect, to protect, and to fulfill the right to water and sanitation. The involvement of non-State actors merely changes the type of action necessary to meet these obligations. The responsibilities of non-State service providers are two-fold. It is undisputed that service providers must comply with the laws and regulations of the State, but they also have direct human rights responsibilities as a result of global voluntary commitments such as the United Nations Global Compact, soft law instruments such as the Organization for Economic Cooperation and Development, and the basic expectation of Society that business enterprises will respect human rights. Although they were not discussed in the Independent Expert's most recent report, Human Rights Advocates continues to recommend the use of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (promulgated in 2003) as a foundation for the development of binding legal obligations for non-State actors.

Looking forward, the Independent Expert recommends that States develop a comprehensive national plan, including legislation, to progressively achieve

the full realization of the right to water and sanitation. Water and sanitation services should be reliable, of sufficient quantity and quality, safe, culturally acceptable, accessible, and affordable for all. States must not discriminate and should take steps to ensure that services reach underserved, unserved, and marginalized areas. States must establish effective regulatory schemes based on human rights standards and independent monitoring mechanisms. Accountability mechanisms must be accessible and actually possess the power to punish and deter violations, and provide remedies for victims. The decision whether to delegate service provision must be transparent and democratic, and all those concerned should have actual access to adequate information and be enabled to participate. Non-State service providers should exercise due diligence to ensure they comply with human rights standards at all times, from the contract and negotiation process to the operation of services. Non-state actors must not obstruct access to State-based accountability mechanisms, and instead should develop their own grievance mechanisms to complement State-based mechanisms. Both States and non-State providers should carry out impact assessments which investigate and measure the impact of policies, programs, and projects on human rights. Above all, the Independent Expert emphasizes that the human rights framework does not express a preference for a specific model of service provision, but rather insists that the human right to water and sanitation be guaranteed in all instances.

Human Rights Advocates has been advocating for the recognition of the right to water and sanitation for several years. More information about the right to water and sanitation is available on HRA's website at <http://www.humanrightsadvocates.org/> and on the Independent Expert's website at <http://www2.ohchr.org/english/issues/water/Iexpert/>.

HRA at the 14th Session of the Human Rights Council

By Kimberly Irish & Amol Mehra

In June 2010, HRA Board Members Amol Mehra and Kimberly Irish, along with HRA member Elena Gil, attended the 14th Session of the Human Rights Council in Geneva. The start of the session coincided with the Israeli military attack on the humanitarian aid flotilla, which led to an emergency session devoted

to that incident. A resolution passed that condemned the attack, demanded that Israel release all detained people and return them to their homeland, and decided to dispatch an independent, international fact-finding mission to research violations of international law as a result of the attack.

HRA moved its work forward on a number of issues during the 14th Session. With the help of fellow HRA Board Member Connie de la Vega, Irish prepared written and oral statements on private prisons and the arbitrary detention of migrants. Privately-run prisons often escape accountability for the human rights violations migrants experience there because there is little government oversight. She was able to make two oral interventions before the Human Rights Council, and spent time lobbying delegations from Mexico, the Philippines, and Israel. She also met with a representative from the Office of the High Commissioner for Human Rights. Mexico demonstrated interest in HRA's continuing work on migrants; the delegation proposed focusing the 2010 migrant resolution on the detention of migrants and private prisons. Unfortunately, Mexico ultimately decided not to pursue this topic during 2010; the terrible tragedy of the kidnapping and murder of 72 migrants in Mexico became a more immediate concern.

Mehra prepared written and oral statements for the mandate of the Special Representative of the Secretary General on Transnational Corporations and other Business Entities, Prof. John Ruggie. His advocacy focused on the corporate responsibility to respect human rights, and the state duty to protect human rights: both key pillars of what is now the UN "Protect, Respect and Remedy" Framework for Business and Human Rights. Specifically, he addressed the need for increased disclosures of corporate activity pertaining to human rights; and the need for more complete enforcement of existing laws relating to disclosures by state parties. Further, Mehra continued HRA's long standing advocacy around the need for an international agreement regulating the activities of transnational corporations to ensure the promotion and protection of human rights. He also continued his lobbying work on this topic as well as that of private military and security companies through meetings with members of the Office of the High Commissioner for Human Rights, delegates from Africa, Europe and Latin America and through conversations with members of the Ruggie team.

In addition to her advocacy efforts, Irish attended a panel on human trafficking during the Session, which proved to be worthwhile; the Special Rapporteur introduced the panel and stated that "today was the first

time that a thematic panel on the issue of human trafficking was being held within the Council. The council would send an important message to the world that trafficking in persons was a crime and it required the highest attention by all member States." (HRC10/060E, available at [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/C688C93923E7374EC125773600416DF?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/C688C93923E7374EC125773600416DF?OpenDocument)). She also stated clearly that victims should be at the center of responses to trafficking - she has observed that many States and regional organizations still focus almost exclusively on the criminalization of traffickers.

Overall, the 14th Session was a great success with a strong HRA presence. We worked hard to advocate for important issues around business and human rights, migrant rights and the dumping of toxic wastes. At the same time, we continued to expand upon the connections that HRA has built in Geneva towards ensuring the ultimate promotion and protection of human rights the world over.

Using the Right to Truth to Account for the Adverse Impact of Toxics on Human Rights: Reporting Back from the 14th Session of the Human Rights Council

By Elena Gil

I attended the fourteenth session of the Human Rights Council in June of 2010 to continue advocacy I had done on the toxic wastes mandate while I was in law school. I also followed up on the work initiated by René Velásquez (USF LLM'10) at the March 2010 session on the right to truth. During the 14th session, the Council held an important panel discussion on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. The aims of this panel were to comprehensively discuss existing problems and challenges, new trends, good practices, and solutions, to strengthen international collaboration in relation to this problem, and to provide a first step towards developing a set of guidelines on human rights-based approaches to the sound management and disposal of toxic and dangerous products and wastes.

HRA's participation focused on two issues: (1) the recognition and utilization of the right to truth as another tool in examining the adverse human rights impact of toxic wastes and providing for appropriate remedies; and (2) lobbying for the inclusion of corporate accountability language in the upcoming toxic wastes resolution.

Earthjustice asked to join HRA's oral intervention during the toxic wastes panel. (See Human Rights Advocates, Oral Intervention, June 8, 2010, available at <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/fourteenth/hrc100608pm2-eng.rm?start=01:49:44&end=01:52:02>.) HRA also submitted a written statement to the Council addressing these issues. (See Human Rights Advocates, *The Right to Truth: A Tool for Addressing Human Rights Violations Resulting from the Transfer of Toxics*, A/HRC/14/NGO/18, May 17, 2010, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/135/99/PDF/G1013599.pdf?OpenElement>)

The fourteenth session ended with the appointment of the new Special Rapporteur, Calin Georgescu. Unfortunately, the Council did not consider a resolution on the issue of toxic wastes.

Panel at the 15th Session of the Human Rights Council A Great Success!

By Amol Mehra

On September 15, 2010, Human Rights Advocates hosted a panel during the 15th Session of the Human Rights Council entitled "Private Military and Security Companies: Building Accountability and Oversight". Amol Mehra organized and moderated the panel, with speakers including Amada Benavides, Member of United Nations Working Group on Mercenaries; His Excellency Jerry Matjila, South African Ambassador to the Human Rights Council; Thomas Haueter, Swiss Federal Department of Foreign Affairs, André du Plessis and Anne-Marie Buzatu, Geneva Center for Democratic Control of Armed Forces.

The parallel panel explored the growth of the private security industry, and considered national, international and multilateral stakeholder responses to providing accountability and oversight over private security companies.

The event was a great success, and Human Rights Advocates received a strong response from delegates at the Council, and members of the Working Group. In fact, at the close of the 15th Session of the Human Rights Council, member states decided to establish an intergovernmental open-ended Working Group with the mandate to consider the establishment of a legally binding instrument on the regulation, monitoring and oversight of the impact of the activities of private military and security companies on the enjoyment of human rights. The model for this instrument comes from the principles, main elements and the draft text for a possible convention proposed by the United Nations Working Group on the use of mercenaries which was discussed during our panel.

HRA has been advocating for this outcome for many years, and was pleased that our work on this topic has resulted in measurable human rights promotion. Ms. Benavides, Chairperson of the Working Group, attributed some of the success to HRA's efforts in advocacy and in coordinating the panel, stating: "I think a good portion was a consequence of the side meeting we had after my presentation in the HRC".

The resolution, A/HRC/15/L.22, was adopted by a vote of 32 in favor, 12 against, and 3 abstentions. The result of the vote was as follows:

In favor (32): Angola, Argentina, Bahrain, Bangladesh, Brazil, Burkina Faso, Cameroon, Chile, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, Guatemala, Jordan, Kyrgyzstan, Libyan Arab Jamahiriya, Malaysia, Mauritania, Mauritius, Mexico, Nigeria, Pakistan, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda, Uruguay and Zambia.

Against (12): Belgium, France, Hungary, Japan, Poland, Republic of Korea, Republic of Moldova, Slovakia, Spain, Ukraine, United Kingdom, and United States.

Abstentions (3): Maldives, Norway, and Switzerland.

HRA's Contributions to the Universal Periodic Review of the US

By Kimberly Irish

With the goal of equality as one of its chief objectives, the Universal Periodic Review (UPR) is a

mechanism of the UN Human Rights Council whereby each of the 192 Member States' human rights records is reviewed once every four years. Human Rights Advocates (HRA) has recently made significant contributions to the UPR of several nations, including that of the United States.

The first-ever United States UPR took place in Geneva on November 5, 2010. HRA submitted a report which addressed the following issues: juvenile life without possibility of parole ("JLWOP"), the death row phenomena, corporate accountability in the context of immigrant detention, and racial inequality and affirmative action. Preparing for this process brought many human rights NGOs together to contribute to a report submitted by the US Human Rights Network (USHRN). HRA also contributed to the report on the death penalty, which focused on several issues that HRA has advocated on for years, including the arbitrary and discriminatory imposition of the death penalty and the execution of persons with mental disabilities. HRA also endorsed the USHRN report on migrants, refugees, and asylum seekers. In the section on the right to humane conditions in detention, HRA's written intervention to the 11th Session of the UN Human Rights Council under Agenda Item 3 (the rights of migrants) was cited. (See, Submission by Human Rights Advocates, A/HRC/11/NGO/17.)

HRA was pleased to note that Switzerland, Belgium, Austria, and Slovakia raised the issue of juvenile life without parole (JLWOP) during the UPR process. JLWOP advocacy has been at the heart of HRA's work at the UN Human Rights Council, and it was extremely gratifying that these four Member States drew attention to the issue. Also, numerous countries made reference to the use of the death penalty in the U.S. in general with most calling for the U.S. government to work towards a moratorium. (See Draft Report of the Working Group on the UPR – United States of America, Paragraphs 118-132).

In addition to HRA's work on the United States UPR reports, HRA joined with Earthjustice, 350.org, and Greenpeace International to file reports in the UPR processes of the Republic of Palau, the Independent State of Samoa, Papua New Guinea, the Republic of Seychelles, the Solomon Islands, and St. Vincent and Grenadines describing threats to human rights as a result of climate change. People living in these island nations do not have an adequate standard of living for their health and well-being. Particular threats include rising sea levels, increased sea temperature, and increased cyclones, among others.

UN WOMEN: A New Agency Begins Its Work

By Julianne Cartwright Traylor

History was made at the United Nations on January 1, 2011: UN Women – or more formally known as the UN Entity for Gender Equality and the Empowerment of Women, began its work. The result of many years of deliberations by UN Member States supported by – indeed some may claim driven by, strong advocacy on the part of the global's women's movement, the new agency is led by its Executive Director, Michelle Bachelet, the former president of Chile. Her position carries the rank of UN Under-Secretary General which means that she will be a member of all senior UN-decision-making bodies and will report directly to the UN Secretary-General.

HRA has been part of this global advocacy movement through its participation as a member of the GEAR Campaign, the Gender Equality Architecture Reform Campaign. UN Women will work with UN Member States to agree on international standards for gender equality and to actually implement them. In addition, it will work with other UN agencies that work on a broad spectrum of development issues to ensure that they integrate gender equality priorities in their activities. Furthermore, UN Women will work closely with members of civil society. Bachelet recognized the important role that members and organizations of civil society will play in whatever achievements UN Women may have when she wrote "The success of UN women depends on the continued involvement of Governments and civil society partners. Your Network [GEAR] has significant knowledge on the gender equality issues and can contribute significantly to the work of UN Women. (See letter to GEAR, 1 November 2010. GEAR's website address is: www.gearcampaign.org).

The 41-members of Executive Board of UN Women, elected by ECOSOC, have been allocated in the following way: 10 from Africa (Angola, Cape Verde, Congo, Ivory Coast, Democratic Republic of the Congo, Ethiopia, Lesotho, Libya, Nigeria and Tanzania); 10 from Asia (Bangladesh, China, India, Indonesia, Kazakhstan, Japan, Malaysia, Pakistan, Republic of Korea and Timor-Leste); 4 from Eastern Europe (Estonia, Hungary, Russia and Ukraine); 6 from Latin America and the Caribbean (Argentina, Brazil, Dominican Republic, El Salvador, Grenada and Peru); 5 from Western Europe (Denmark, France, Italy, Luxembourg and Sweden); and 6 from contributing

countries (Mexico, Norway, Saudi Arabia, Spain, United Kingdom and the US) . The terms vary from two to three years. UN Women will be funded largely by both voluntary contributions and the regular UN budget and a minimum of US\$500 million has been set as its annual operating budget.

HRA will have a delegation at the upcoming 55th session of the UN Commission on the Status of Women meeting at UN Headquarters in New York City. It will participate in a celebration of the launch of UN Women which will take place on Thursday, February 24th.

For more information about this exciting new phase in the work to achieve gender equality and empower women and girls on the global level at the United Nations and on the ground in regions and countries around the world, readers can visit the UN Women website at www.unwomen.org. For more background about the GEAR Campaign, please consult previous HRA Newsletters, especially Volumes 54 and 55).

EVENTS

HRA Co-sponsors “Universal Periodic Review” Conference

By Ann Kam*

On June 26, Human Rights Advocates (HRA) recognized the progress of international human rights law by co-sponsoring an event at the University of San Francisco School of Law.**

Approximately 50 scholars, activists and guests from across the world attended the politically and morally empowering conference, “The Universal Periodic Review: From Ideas of Freedoms to Implementation of Rights,” in Kendrick Hall. The event gave speakers the opportunity to address the United Nations’ new UPR process and to speak about their respective human rights areas. Two HRA Board Members and two National Advisory Board Members participated on a number of panels.

Connie de la Vega, USF Professor of Law and HRA Board Director, opened the conference by providing a brief synopsis of the Universal Periodic Review. Mainly, she noted, the UPR process was created by the UN General Assembly in 2006 to identify and

alleviate critical human rights abuses in the United Nations’ 192 member states.

As de la Vega remarked, the creation of the UPR is the latest development of UN procedures to protect human rights. The United Nations’ steady progress is evident in the UPR because the process obliges the UN Human Rights Council to review a Member State’s human rights situation once every four years. Between these quadrennial reviews, states have the chance to implement the Council’s recommendations and improve their statuses.

When a country is under review, the Council makes its human rights evaluation based on a number of factors such as a country’s report, compliance with relevant international law, and voluntary commitments. Information provided in reports from NGOs and human rights organizations is also very important in this process.

“NGOs and people’s movements are the bodies that push for representation in state [review],” said Joshua Cooper, the conference’s main planner and Four Freedoms Forum Director. Cooper highlighted that the unique provision for civil society to contribute human rights reports offers the Council a more holistic view of each state’s issues.

The types of civil society organizations involved in writing human rights reports for the United States’ review were well represented at the conference. Leaders and activists from HRA and other NGOs spoke on a myriad of issues that ranged from human rights in California to indigenous peoples’ rights worldwide.

For example, Julianne Cartwright Traylor, HRA Board President, called audience members to action when she provided resources and links attendees could use to support US ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). After giving a brief overview of the provisions of CEDAW and giving examples of how it has been implemented around the world – including in a unique way by the City and County of San Francisco enacted in a local, legally-binding ordinance, Traylor discussed the history of attempts at US ratification of CEDAW. The US is the only western industrialized country which has not ratified CEDAW. The other 6 countries that have also failed to ratify the treaty are Iran, Sudan, Somalia, and the Pacific Islands of Nauru, Palau and Tonga.

Susan J. Zipp from the United Nations Association of the United States of America also provided information about how activists could engage in this process when she declared that “Every moment, you have

the power to create value.” She advocates for CEDAW because of its mission to protect the rights of roughly 600 million girls and women in the world. “If you do nothing, nothing will happen.”

In addition, HRA National Advisory Board Member, Roxanne Dunbar Ortiz, presented a startling depiction of the mistreatment of indigenous peoples when she described her work with the Indigenous World Association. The oppression Ortiz spoke of was brought to life when representatives from the Khmer Kampuchea-Krom Federation brought in three indigenous Khmer-Krom monks to talk about the prison abuses they suffered in the Vietnamese judicial system.

A second HRA National Advisory Board Member, Rita Maran, advocated the need for a consensus on how the use of military drones violates international human rights law. Currently, she explained, the U.S. military’s use of drones in Afghanistan and Pakistan is lawful under principles of self-defense. However, this practice needs to change. “At the end of the day, what developing law on drones will help the dignity of humans?” she asked.

Maran’s call for the application of morals and ethics in codified law were reflective of the speeches given on the other topics explored during the conference. Those topics included a discussion about California Assembly Concurrent Resolution No. 129 requesting the Attorney General to publicize specified international treaties and protocols to cities, counties, and state agencies to use to create reports pertaining to those treaties and protocols; the sentencing of juveniles to life without parole; and environmental sustainability.

HRA is proud to have co-sponsored and contributed to the Universal Periodic Review Conference. The event provided participants with an abundance of information and opportunities to network and share strategies.

**Ann Kam served as a summer intern working on HRA projects under a fellowship funded by Claremont McKenna College’s Center for Human Rights Leadership.*

***Note: The conference was also co-sponsored by Amnesty International USA, Four Freedoms Forum, Global Citizen Center, Global Exchange, Khmer Kampuchea-Krom Federation, UNA-USA (United Nations Association of the United States of America), the University of San Francisco School of Law, and the U.S. Human Rights Network.*

Accountability in Haiti after the Earthquake

By Nicole Phillips

On October 12, HRA co-sponsored a panel discussion at the University of San Francisco School of Law with the Institute for Justice & Democracy in Haiti. IJDH Director Brian Concannon was the keynote speaker, discussing the roll of the United States and international community in supporting sham elections in Haiti. He explained that the U.S. taxpayers were spending \$15 million for elections the U.S. knew were controlled by a corrupt electoral council and would exclude 15 political parties, including Haiti’s largest political party, Fanmi Lavalas. Without political accountability, Concannon argued, the billions of dollars in reconstruction funds could be wasted.

Four USF law students who participated in USF’s Center for Law and Global Justice Haiti Program talked about the human rights violations occurring in internal displacement camps where over one million Haitians made homeless after the earthquake continue to survive. The group travelled to Haiti with USF Professor Dolores Donovan and conducted surveys of 58 families in six internal displacement camps. Students shared their observations and findings – inhumane camp conditions, including a lack of food, drinking water, sanitary toilets, lightening, security, adequate housing, and access to medical care.

The report produced by USF and IJDH, *We’ve Been Forgotten*, argues that donor countries like the U.S., the United Nations, non-governmental organizations, and the Government of Haiti have an obligation to follow international human rights standards in providing relief assistance. The report concludes that given the abominable conditions in camps, compared with the billions of dollars that had been donated or allocated to provide relief to Haitians – Haitians’ human rights were being systematically violated. Students identified violations of the right to housing, food, water, adequate standard of living, health, and to be free of gender-based violence. The report recommends that a rights-based approach be followed by all actors providing relief, which includes consultation and coordination with camp residents, especially women-headed households, and mechanisms for accountability.

LITIGATION

The Inter-American Commission on Human Rights Rules that a Petition raising the Death Row Phenomena is Admissible

By Connie de la Vega

On March 17, 2010, the Inter-American Commission on Human Rights (IACHR) deemed a petition filed on behalf of a death row inmate in California who has now been on death row for 18 years without having had his first appeal heard by the Supreme Court of California admissible. (Case No. 12.74) The petition was filed by the University of San Francisco's Frank C. Newman International Human Rights Law Clinic on behalf of two groups, Human Rights Advocates and fos*ters. The latter is a group that was formed in Switzerland to address the specific issues surrounding this inmate's case.

The IACHR ruled that the petitioner does not have to exhaust domestic remedies to raise the claim that long delays on death row constitute torture because there are none really available to him under the procedures that exist in the United States. If he filed habeas corpus or other actions at this time, he would end up waiving claims that might arise after the appeal is heard since successive petitions are not allowed. Further, the IACHR referred to petitioner's claim that the United States Supreme Court has repeatedly rejected arguments challenging prolonged detention on death row as cruel and unusual punishment.

The IACHR rejected the United States' claim that the delay was due to petitioner's requests for extension since those requests were tied directly to the loss of large portions of the trial transcripts by the trial court. It also mentioned long delays in the appointment of appellate counsel following the trials in California. The IACHR also ruled that the claim regarding the denial of medical care could not go forward without exhaustion of administrative remedies that are available to petitioner.

The IACHR will now consider the merits of the claim that long stays on death row constitute torture. Petitioner has cited to various provisions of

the American Declaration of the Rights and Duties of Man that are violated by the death row phenomenon. The IACHR ruled that it is competent to examine the alleged violation of articles I, XVIII, XXIV, XXV and XXVI of the American Declaration. The petition cites to cases of the European Court of Human Rights and the Privy Council of Great Britain to support the claim that long periods on death row violate international human rights law. Petitioner will also clarify that the health care situation in the California prison system contributes to the intolerable conditions on death row that constitute part of the death row phenomena. The merits brief was filed by petitioners on June 29, 2010. As of December 3, 2010, the United States has failed to file a response.

OTHER ADVOCACY

Investigating Food Security and Women's Empowerment in India and Nepal

By Jeffrey Kaloustian

Conducting field research on food security as a post-graduate HRA intern was truly a phenomenal experience. In mid-August, while my summer fellowship at the Tibetan Center for Human Rights and Democracy in Dharamsala, India was winding down, discussions began to emerge about the possibility of my HRA internship beginning with an on-the-ground exploration of food security issues with grassroots women's groups in Bihar, India and Nepal. After funding and hosting arrangements were finalized, the journey began on a flight from Delhi to Patna, the capital city of Bihar.

Bihar is among the poorest states in India. Forty percent of the population lives below the poverty line and flood and drought pose a constant threat to agrarian livelihoods. In Bihar's Madhubani District rural poverty is pervasive, and inefficient government support schemes often fail to reach those most in need. Violations of the right to food are all too common in Bihar, where most families face food insecurity for an average of six months each year, forcing many males to leave the area in search of work. This distress migration of rural Bihari males places additional

burdens on women and children, who exude a strong sense of strength and resilience in the face of increasing hardships.

I was guided by Mr. Ajay, my translator turned friend with a PhD in economics who serves as Program Director for Ghoghardiha Prakhanda Swarajya Vikas Sangh (GPSVS), an inspiring social development organization with Gandhian roots. My association with GPSVS gave me the opportunity to gather firsthand information from women farmers on how savings and credit cooperatives directly support their empowerment in economic, social, and political spheres. Each session explored interconnecting issues around food, livelihood, water, health, and education. In the words of Anita Devi from the village of Sugga Patti, “we are surviving, but we are not developing.”

After leaving Bihar feeling enlightened and deeply moved by the spirit of people with whom I had come in contact, I embarked on an adventurous two-day overland journey into Nepal, which included a breathtaking ride in an overstuffed shared taxi over a gorgeous mountain range. In Kathmandu, I connected with Lajana, the Executive Director of Lumanti, the excellent organization that facilitated my field visits there. With the help of a guide/interpreter Upendra, I interviewed members of a vegetable vendors association, a youth group working on a hunger-free campaign, and four women’s savings and credit cooperatives. While the geography, socio-economic conditions, and faces changed with each visit, many common themes around food security and grassroots empowerment of women emerged. Through access to credit for agricultural purposes and other income-generating activities, women are becoming better able to secure their families’ right to food while simultaneously combating the discriminatory consequences of life in patriarchal societies.

I am grateful to HRA and the Huairou Commission for the opportunity to engage with these critical issues in such an impactful and exciting way. The research will be presented in the form of case studies that will support the development of the Huairou Commission’s food security agenda.

Mr. Kaloustian, a graduate of University of San Francisco School of Law (2009), is a Human Rights Advocate intern working with Board Member Birte Scholz on developing the Huairou Commission’s food security program.

Hold new, open, fair elections

By Nicole Phillips and Nicolas Alberto Pascal, published in the Miami Herald Tribune, January 3, 2011

As a special team from the Organization of American States tries to resolve the country’s election impasse, the one solution acceptable to most Haitians – fair, inclusive elections – is not on the table.

Thousands of Haitians protested, demanding new elections. Several Haitian senators and 12 of the 19 presidential candidates want the same. Yet the United States, Canada, France, the United Nations and OAS, which say they are committed to helping Haitians resolve this crisis, will not support new elections.

Instead there has been a feeble attempt by the international community to quell the protests. The OAS monitored the flawed elections and originally said that “the irregularities, as serious as they were, [did not] necessarily invalidate the process.” Amid accusations that the OAS terminated its Special Representative to Haiti, Ricardo Seitenfus, after he was critical of the international community’s operations in Haiti, the OAS is heading back to Haiti to negotiate a resolution and monitor a recount of votes from the presidential election.

A recount of votes for the entire House of Deputies and two-thirds of the Senate seats has not been planned, even though those results were undermined by the same irregularities.

The elections that the international community helped organize and pay for were so deeply flawed from beginning to end that the only resolution that would be fair to Haitians and the taxpayers of donor countries is to start all over again.

Scrutiny must first fall on the Haitian Electoral Council, which was illegally hand-picked by President Préval and marred by allegations of corruption. The Council excluded 15 political parties from the legislative elections, among them Fanmi Lavalas, Haiti’s most popular party, and created a new requirement to disqualify Fanmi Lavalas from the presidential elections.

So no matter what happened on election day, the vote was already tainted. But the U.S. government nevertheless wrote a \$15 million check to pay for these elections, despite warnings by Rep. Maxine Waters, D-Calif., and 44 other members of Congress, along with Sen. Richard Lugar, R-Ind., that the process would be a sham.

It was no surprise that there were reports of widespread election irregularities almost as soon as the

polls opened on election day. In addition to ballot-box stuffing, observers and journalists saw countless people turned away from polling stations, unable to vote because their names were not on electoral lists.

At least 90,000 identity cards requested by voters could not be printed in time and tens of thousands of cards that had been printed were not distributed. An estimated 75 percent of registered voters were either unable to vote or stayed home. Such clear disenfranchisement, along with the dubious candidate-selection process, stripped elections of legitimacy.

Responding to the election crisis, Secretary of State Hillary Clinton rightly recognized that, “If you ignore the legitimate questions raised about the election, you create conditions for longer-term instability.”

Sen. Patrick Leahy said that the United States “must come down squarely in support of the Haitian people’s right to choose their leaders freely and fairly” and called for cutting off direct aid to pressure Haiti’s government.

But by supporting a recount of tainted votes from the previous flawed elections rather than supporting a fair rerun, the United States is creating the very conditions for long-term instability Clinton hopes to avoid. The only way to support long-term stability in Haiti is to support inclusive elections.

The Obama administration should: 1) announce that it will not provide any further financial support to the current Electoral Council or to any government resulting from this Council’s elections; and 2) offer to support fair elections under a new Electoral Council.

The Préval administration should: 1) ask the Electoral Council to annul the first round of elections and resign; 2) work with Haitian society to appoint a balanced Electoral Council; 3) allow all political exiles, including President Aristide, to return; and 4) run the elections the Haitian people deserve.

The time and cost of organizing new elections is a small price to pay to avoid wasting the \$11 billion promised for earthquake reconstruction. The elections budget – \$29 million – is less than two weeks’ expenses for the U.N. peacekeeping mission in Haiti. Fair elections would do more for ensuring a stable and democratic government able to rebuild the country effectively than peacekeeping troops ever could.

Nicole Phillips is a staff attorney at the Institute for Justice & Democracy in Haiti and assistant director for Haiti Programs with the University of San Francisco School of Law. Nicolas Alberto Pascal is a graduate student in Global & International Studies at the University of California Santa Barbara.

HRA thanks all its members for their continued financial support of HRA's activities. In particular, the Board would like to thank Holly Newman and the Newman Trust for their generous contributions to the Frank C. Newman Fund that allows HRA to continue to send Frank C. Newman Interns to meetings of UN human rights bodies and Sandy Coliver for her contributions that support the Edith Coliver Interns and HRA's general work.

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The Board will be elected at the Spring Annual Meeting in April 2010 in the San Francisco Bay Area. Board meetings are held once a month in San Francisco or Oakland. If you would like to apply, please contact Julianne Traylor at jtraylor@igc.org by February 1, 2011.

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