Advocacy at the UN

By Connie de la Vega

Eight students participated in the University of San Francisco’s Frank C. Newman International Human Rights Law Clinic during the Spring 2012 semester, representing Human Rights Advocates at the meetings of two UN human rights bodies. Two Edith Coliver interns attended the UN Commission on the Status of Women (CSW) in New York and six Frank C. Newman Interns attended the Human Rights Council (HRC) in Geneva, Switzerland.

The two Edith Coliver Interns were supervised by HRA Board President Julianne Traylor. Board Member Jeremiah Johnson and Patience Tusingwire, a former Edith Coliver Intern, also attended the session on behalf of HRA. While the construction work at the UN in New York continued to create access difficulties, the interns saw the CSW process from beginning to end, though for the first time ever, the CSW did not adopt the Agreed Conclusions, even after holding an additional session the week following the session. Aside from this, it is important to note that one of the students did manage to make an oral statement before the CSW.

The six Frank C. Newman interns who attended the HRC were involved in a number of activities that I supervised. Four were able to make oral statements before the full Council and many of them were involved in resolution drafting sessions. In addition to discussing their projects with delegates and other NGOs, they met HRA’s International Advisory Board member Cruz Melchor Eya Nchama. Board Member Nicole Phillips also attended the session and worked on Haiti’s Universal Periodic Review.

The HRC passed 39 resolutions at the 16th session. Twenty-five passed by consensus on issues such as: human rights and the environment (Res. 19/10), rights of the child (Res. 19/37), the right to housing in the context of disasters (Res. 19/4), and...
the right to food (Res. 19/7). The U.S. was the only abstention on the right to development (Res. 19/34) and China and Cuba were the only abstentions on human rights democracy and rule of law (Res. 19/35). Some resolutions on countries also passed by consensus, including those on assistance to Libya (Res. 19/39), Yemen (Res. 19/29), Somalia (Res. 19/28), Myanmar (Res. 19/21), the Democratic Republic of Korea (Res. 19/13), and the Democratic Republic of the Congo (Res. 19/22). Nine country resolutions went to vote including the one on Iran (Res. 19/12) that again garnered only 22 votes in favor, 20 opposed, and 5 abstentions. All of the resolutions involving the Occupied Territories, Palestine, and the Syrian Arab Republic went to a vote. The HRC resolutions and decisions can be found at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session19/Pages/ResDecStat.aspx.

There was an all-day panel on the rights of the child, which included one session on the administration of justice, something HRA has been working on for a number of years. It was an honor for me to participate as one of the panelists on that topic. My presentation on the panel and the students’ reports on their work follow below. The reports on their topics are available at the HRA website: www.humanrightsadvocates.org under Advocacy.


“Thank you Mme. President,

Excellencies. I would like to thank the Human Rights Council for asking me to speak on this issue as it is reflective of the positive influence the various bodies of the United Nations have had on promoting the protection of human rights.

The two most inhuman sentences that are still imposed on juvenile offenders, that is, persons under the age of 18 at the time of the crime, are the death penalty and life imprisonment without the possibility of release. While not used traditionally by many countries, the international community made it clear that these sentences were prohibited, first by including the prohibition specifically in the Convention on the Rights of the Child and then by the almost universal adoption of that treaty 20 years ago. Since then, the continued reference to the prohibition by both treaty bodies in the review of their reports and resolutions of the General Assembly, the Commission on Human Rights, and more recently the Human Rights Council, has led to the almost abolition of these two practices.

With regard to the death penalty, there has been a great deal of progress in eradicating the practice completely. Only one country, Iran, reportedly executed juvenile offenders in 2010 and 2011, down from three countries in 2009: Iran, Saudi Arabia, and Sudan. In early 2012, Iran amended its penal code to end the death penalty for juvenile offenders, though commentators have noted, that the death penalty may still be imposed on juvenile offenders for certain crimes. In Yemen, it has been reported that one juvenile offender was executed in early 2012, although the death penalty is not a lawful sentence for juvenile offenders there. Due to a lack of birth registration, juvenile defendants are sometimes sentenced as adults. I would note that this problem arises in many countries, and not only in capital cases. In addition, in several countries, many juvenile offenders remain on death row.

With regard to the sentence of life imprisonment without the possibility of release, 13 countries have laws allowing the sentence to be imposed on juvenile offenders or have ambiguous statutory language which suggests that it could be imposed. However, among those 13 states, only one actually imposes it in practice: - the United States, where over 2,500 juvenile offenders are serving life without parole sentences for crimes committed when they were under the age of 18.

Lindsay Freeman, Julianne Traylor, and Cassandra Yamasaki at the UN in New York
One solution to combat the extreme sentencing of juveniles is to follow the mandates of the treaties themselves— the worst violations can be avoided by following the requirements set forth in the Convention on the Rights of the Child, which specifically prohibits these sentences as applied to juveniles— sentences which are primarily given when juveniles are treated as adults in the criminal justice system. When juveniles are tried as an adult for certain crimes they are also eligible for adult sanctions, which leads to extreme sentences that do not promote rehabilitation, as required by Articles 37(b) and 40.

In order to avoid long sentences that are devoid of rehabilitation, best practices suggest that juveniles not be tried as adults. This would require countries to comply with their obligations under International Covenant on Civil and Political Rights article 14(4), which notes that “in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”

These measures need not be one size fits all, and indeed many countries have taken different approaches to ensuring that juveniles are tried as juveniles. A majority of countries flatly prohibit transferring a juvenile to adult court, while others, such as Croatia, require that specific protections of the juvenile code apply when the child is in adult court. Other best practices include transferring the offender back to juvenile court for sentencing, as is the case in Ghana, or requiring that the adult court sentence juveniles to different punishments than adults. All of these practices ensure that the age of the offender is considered.

In addition to the death penalty and life imprisonment without the possibility of release, juvenile offenders face the possibility of being sentenced to corporal punishment in at least 42 countries. These practices include caning, flogging, stoning, and amputation. The Committee on the Rights of the Child has repeatedly emphasized that these sentences violate international law, and has expressed concern about such sentencing of children to states.

Several states are considering draft legislation that would prohibit sentencing children to corporal punishment. Some states have recently adopted such legislation. For instance, Pakistan adopted in 2000 the Juvenile Justice System Ordinance, which prohibits corporal punishment in the penal system. However, often there are barriers to enforcement of new legislation, especially when there are conflicts with other internal laws, such as those defining children.

I urge the Council to continue to address these issues as through both the thematic procedures and country procedures including the UPR. It is hoped that with this continued attention that the almost universal compliance with the specific prohibitions against extreme sentencing of juveniles will indeed become universal.”

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**UN Commission on the Status of Women, 56th Session, New York**

**The UN Commission on the Status of Women 56: A Disappointing Outcome**

By Birte Scholz

Each year in late February/early March, government representatives, activists and advocates from around the world convene in New York at the United Nations (UN) headquarters for the annual meeting of the United Nations Commission on the Status of Women.

The Commission on the Status of Women (CSW) is the principal global policymaking body dedicated to the promotion of gender equality and the advancement of women. At the annual meeting, representatives of member states evaluate progress, set global standards and priorities, and formulate policies. The meeting culminates with the adoption of “agreed conclusions” on that year’s theme.

The Commission has a standard method of work wherein at each session, it considers a priority theme (set several years in advance from the CSW multi-year programs of work which covers 2010-2014 and was negotiated by the Commission in 2009), plus a review theme based on the agreed conclusions of a previous session (usually 4 years prior), and an emerging issue, which is decided upon by the CSW Bureau inter-sessionally. It also briefly looks at a priority theme for the subsequent year. The program of CSW includes a general debate where delegations can make statements on national developments and a high level roundtable on the themes representatives can interact and network and learn from each other on the themes.
NGO delegations may be involved through the submission of written statements, making oral statements (though severely limited—an HRA delegate did have this opportunity) and on the interactive panels, is an opportunity for NGO’s to respond and react to a state’s comments on a particular theme- this as well is restricted participation. Side and parallel events provide many opportunities for civil society to discuss issues, learn from each other, interact and network on the themes and other issues of concern to women’s empowerment and gender equality.

This year’s priority theme was, “The empowerment of rural women and their role in poverty and hunger eradication, development and current challenges” with the review theme of the CSW in 2008, “Financing for gender equality and the empowerment of women” and lastly, the emerging issue “Engaging young women and men, girls and boys, to advance gender equality”.

This year, very surprisingly considering the rather holistic theme of the empowerment of rural women – a topic, it was thought, that most agree upon as important – no agreed to conclusions resulted from their deliberations.

This is a shame of the highest degree. Rural women and girls comprise ¼ of the world’s population, and are at the forefront at the key issues of the global agenda- poverty reduction, food security and sustainable development agenda. They face clear and defined discrimination in access and ownership over land and property, access to credit and financial resources, they are ignored in rural development programs, lack leadership in local and national government due to discrimination, have little to no education—yet they still manage to produce in some countries 80 percent of the food. They educate children, care for the sick, provide for their households, and develop entire communities. Yet governments on the Commission on the Status of Women, the very government representatives that are supposed to be keenly aware of and dedicated to eliminating gender discrimination and support women’s empowerment could not agree on issues of vital importance to the empowerment of rural women? It is not only a shame, it is an outrage.

Furthermore, governments had plenty of time to prepare—the reasons for the multi-year program of work framework are for Commission Members to have a predictable schedule and to have time to prepare for its meetings. As well, an Expert Group Meeting in Accra, Ghana, held 5 months in advance of the CSW, provided an opportunity to review the issues that would emerge. The CSW was even extended to allow full discussion and debate the issues, in an attempt to reach consensus, but governments still could not agree.

Even more importantly, the CSW was attended by a record number of grassroots women, directly part of rural women’s associations, and coming from very far away representing the needs and issues of thousands of rural women that they left behind. The Huairou Commission, a global coalition of grassroots and professional women’s organizations, hosted over 20 grassroots rural women from around the world. It was thoroughly disappointing for these women to know that the very governments they came to share their issues with and counted upon, could not agree on a simple set of statements saying what needed to be done to support grassroots rural women around the world, the backbone really of the world’s development, both bearing the brunt of its downfalls and carrying forward any progress in development.

Michelle Bachelet, UN Under-Secretary-General and Executive Director of the United Nations Entity for General Equality and the Empowerment of Women (UN Women), the new entity devoted to gender equality and the empowerment of women at the UN, said it best: “I sincerely hope that this does not mean Member States are not ready to do what still needs to be done to support and empower rural women around the world.”

Ms. Bachelet expressed “deep regret” that the CSW had failed to adopt the Agreed Conclusions that traditionally mark the conclusion of its annual sessions and urged delegations to move past that setback and press ahead with efforts to ensure that rural women would be fully empowered to reach their potential. Despite the very disappointing conclusion, she lauded the Commission’s 56th session as having “witnessed passionate and dynamic discussions” on the empowerment of rural women and strengthening their role in achieving sustainable development for all.

The CSW did approve a number of resolutions including a draft resolution on the “situation of and assistance to Palestinian women” (document E/CN.6/2012/L.2), by a recorded vote of 29 in favor to 2 against (Israel, United States), with 10 abstentions. Deploiring the dire economic and social conditions of Palestinian women and girls in the Occupied Palestinian Territory, including East Jerusalem, the Council, by that text, reaffirmed that the Israeli occupation remained the major obstacle for Palestinian women with regard to their advancement, self-reliance and integration in their society’s development.

Speaking after the vote, Israel’s representative said that while the situation of Palestinian women “may not be ideal”, by adopting the resolution, the Commission
was sending a message that other women were “not as important”.

The Commission also approved (after lengthy informal consultation) an orally revised version of a draft resolution on women, the girl child and HIV and AIDS (L.7), which had originally contained 43 operative paragraphs. The revised version contained only 2 operative paragraphs, eliminating all substantive ones. In the final version, the Commission took note of the Secretary-General’s report and requested that the Secretary-General submit a report to the Commission at its 58th session.

Commission members approved a draft decision on female genital mutilation (L.1), by which the Commission recommended for approval by the Economic and Social Council, and then adoption by the General Assembly, a text recalling and re-affirming the GA’s relevant resolutions and the conclusions of the Women’s Commission and noting the Secretary-General’s report on ending the harmful practice and the recommendations contained therein. The Assembly will consider the issue at its 67th session, in 11 years. As noted by the Commission’s official report: “The Russian Federation’s representative said he was concerned that the term ‘harmful traditional practices’ could inadvertently include non-harmful practices.”

Condemning all violent acts committed against the civilian population, in violation of international humanitarian law, the Commission approved a draft resolution on the release of women and children taken hostage, including those subsequently imprisoned, in armed conflicts (L.3). The Commission urged States that are parties to armed conflict to take all necessary measures to determine the identity, fate and whereabouts of women and children taken hostage.

While unanimously approving a draft resolution on eliminating maternal mortality and morbidity through empowerment of women (L.5), the Commission heard some delegates’ reservations. Abortion-related issues concerned several representatives.

Turning to a draft resolution on gender equality and the empowerment of women in natural disasters (L.4), the Commission urged Governments and Nations entities and civil society to design and implement gender-sensitive economic relief and recovery projects, and to ensure women’s and men’s equal access to natural-hazard early warning systems and promote disaster risk reduction planning.

Another approved resolution stressed the importance of recognizing the distinct and crucial contribution of indigenous women and their knowledge, and their vital roles in diverse local economies to poverty eradication, food security and sustainable development (L.6).

The resolutions passed and the debates, discussions and consultations, partnerships formed and networks strengthened made the CSW an important event. But the fact that the CSW could this year not agree on its conclusions, a document very important in shaping policy for women around the world, is disappointing to say the least. The women of the world, and the rural women in particular, had faith in the CSW- and it failed. We must ensure that CSW and other UN bodies are not allowed to walk away without doing their job properly. We must hold those who allegedly serve us, the people of the world, to meet our interests and realize our rights, accountable and ensure that they do whatever it takes to ensure the outcomes of their meetings actually work to improve the world, rather than cause further hardships and disappointment.

The Impact of Food Insecurity on Women’s Personal Security

By Cassandra Yamasaki

This past semester, I had the pleasure of being one of two students who participated in the 56th Session of the Commission on the Status of Women. With the one-year anniversary of UN Women, and the highest rate of NGO participation in CSW history, the energy at the Commission was infectious. Packed with women from every corner of the world, I felt even more determined to reach the ultimate goal of advancing women’s empowerment. However, I was completely unaware of the amount of strength, patience, and resilience it takes to make even the slightest step toward this end.

The priority theme for this year’s 56th Session of the CSW centered on the empowerment of rural women and their role in poverty and hunger eradication. As such, I was intent on linking my interest in preventing violence against women with the challenges posed by food insecurity among rural women in developed and under-developed countries alike. What I ended up with was an analysis of the ways in which food insecurity impacts women’s personal security, including the increased risk of vulnerability to human trafficking, intimate partner violence, and abuse in several different contexts.

My report was divided into three sections. The
first section focused on the challenges facing rural women at achieving food security at the national level. Unfortunately, research shows that women are disadvantaged in all areas of agriculture, production, and in their access to natural and productive resources, such as land, credit, technology, and education. The second section of my report was narrowed to focus on women’s food security at the household level. In an examination of poverty among women-headed households, and women’s roles as both provider and family caretaker, I found that rural women fare no better at the household level than in the national market. In fact, in many countries, social and culture practices preclude women from eating alongside men, and instead, are made to eat last—thereby succumbing to higher levels of maternal mortality and poorer health. The third and final section of my report made the connection between food insecurity and violence against women, concluding that discrimination in the market economy, which has lessened the capacity of rural women to provide food for their households, is increasingly linked to higher incidences of vulnerability to violence, abuse, and exploitation.

At the CSW, I knew that I had my work cut out for me, but I also knew that I was in somewhat of a unique position having drafted the Written Statement for the CSW back in October 2011. As a result, I had the opportunity to engage in advocacy early on. In fact, most of the language I wanted to include in the Agreed Conclusions was already mentioned in the first draft of the outcome document, which we received prior to our departure to New York. Thus, my primary goal at the CSW was to expand on the language in the Draft Agreed Conclusions, which proposed expanding services to victims of gender-based violence, to include prosecuting perpetrators of gender-based violence to the fullest extent of the law. Given that violence against women is next year’s theme, getting this particular language in was going to be an uphill battle.

In order to achieve my advocacy goals, I knew that I had to act strategically, which meant attending the side-events hosted by government delegations and UN agencies, sitting in on the informal discussions of the Agreed Conclusions, and creating opportunities to speak to delegates, discretely following them at the plenary sessions. My first “official” interaction was with the delegate from the United Republic of Tanzania, who was incredibly receptive to my report. She urged me to continue pressing for the issue of violence against women, as it continues to affect women and girls from across the globe and from all walks of life. Shortly after this “ice-breaker,” successful conversations with delegates from Thailand, Switzerland, Mexico, Paraguay, and Afghanistan soon followed. Indeed, my strategies for advocacy resulted in significant achievement, as the Swiss delegation pushed to expand the language of the Agreed Conclusions to encompass prosecuting perpetrators of gender-based violence at the end of the CSW’s first week of operations.

Despite our successes, neither my colleague Lindsay Freeman nor I anticipated the obstacles we would face with regard to transparency at the CSW. In fact, toward the end of the second week, many delegates were inaccessible, as the informal discussions on the final outcome document were closed to not only NGO participation, but also observation. These closures made lobbying incredibly difficult. However, being a good advocate means staying flexible and staying focused, and for Lindsay and me that meant remembering our purpose at the CSW, going to events focused on our particular topics, and adjusting our strategies to effectively advocate for our issues. While we regret that our international delegates were unable to produce an outcome document this year, we hope that the CSW will consider the issue of transparency with an eye toward fostering greater cooperation and cohesion among all participants—for these are the cornerstone of international change and agreement.


**Chronic Malnutrition From a Gender Perspective**

*By Lindsay Freeman*

Despite the intense weeks of researching, writing, practicing oral statements, and lobbying through role-play with my classmates, there is nothing that could have prepared me for the excitement and terror of approaching my first delegate or having the floor for two minutes to address a room full of UN General Assembly members.

The priority theme for the 56th Commission on the Status of Women was the empowerment of rural women and their role in poverty and hunger eradication, development and current challenges. When asked to pick a topic for my research that fell within this overarching theme, I immediately thought of...
my past experience in Guatemala. Before law school I did research on violence against women and impunity in Guatemala as part of a task force with the Pacific Council on International Policy. During this trip, in the rural highlands near San Juan Comalapa, I learned the term “chronic malnutrition” from an American doctor running a health NGO to treat impoverished, sick, and malnourished Mayan women and children.

Chronic malnutrition comes from a persistent lack of food diversity, as opposed to acute malnutrition, which comes from a lack of caloric intake. Acute malnutrition, which usually results in the wake of a natural disaster or man-made catastrophe, manifests in starvation and affects the general population relatively equally. Chronic malnutrition, which can be caused by various economic, political, social and cultural factors, as well as long-term climate and environmental challenges, manifests in physical and mental stunting, and susceptibility to disease. The resulting physical weakness and cognitive underdevelopment leads to diminished lifetime earnings for individuals and puts a strain on the overall economy, lowering GDP by 2-3% per year. Since women tend to be more economically and politically disenfranchised, and socially and culturally marginalized, chronic malnutrition has a disparate impact on the female population. People in rural areas, which lack the market access and the infrastructure of urban areas, suffer from chronic malnutrition to an even greater degree.

Since one of the goals of this year’s CSW was to promote food security for rural women, I felt it was important to include in the Agreed Conclusions a mandate, not just for the right to food, but the right to nutritious food. Everybody is entitled to a healthful, culturally appropriate diet, and the traditional food aid (cheap carbohydrates) serves only as a band-aid and not as a sustainable solution to world hunger. My first objective was to bring attention to the issue of chronic malnutrition and to distinguish it from acute malnutrition. This involved approaching foreign delegates and giving out copies of my report (http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Breaking-the-Cycle-of-Chronic-Malnutrition.pdf).

In my recommendations for the Agreed Conclusions, I suggested that data on malnutrition should be disaggregated based on gender, region (urban vs. rural), and type of malnutrition. During the first week, I had the opportunity to speak to the UN General Assembly in a panel on financing for women's equality and empowerment. In my research, I found that most countries’ public health ministries test for malnutrition by measuring children's weight relative to age, and disregard other important indicators such as height relative to age and cranial circumference. In my oral statement, I stressed the importance of proper monitoring and evaluation techniques to properly understand the issue. I also encouraged states and international organizations to dedicate separate funds to combat the separate problems of acute and chronic malnutrition.

From this great experience I learned how the United Nations operates, how to advocate for a cause and, most importantly, how to creatively address the challenges that present themselves along the way. Although no Agreed Conclusions were produced from this year’s CSW, a first in its 56 years of existence, I believe we were successful. After a grueling two weeks in New York, I know that more members of the UN and NGOs have heard of chronic malnutrition and are better informed about what it is, how it impacts rural women, and why it is an important issue to which they should be paying greater attention.
Both the written statement and the report explain why when applied to children under 18 at the time of the offense, all three of the sentences mentioned above are prohibited under international law. That is why we called on all countries to abolish them for child offenders. In addition, we recommended that in cases where the age of a minor is in doubt, he or she be presumed to be under the age of majority until such an assumption is rebutted by the prosecution. If this burden is not met, the accused should be tried and sentenced as a juvenile. This presumption is necessary to protect children from being treated as adults, especially in countries where the lack of birth registration and of adequate forensic facilities with staff trained in conducting age determinations put alleged child offenders at risk of being treated as adults.

At the Human Rights Council, I was able to advocate for HRA's position both through the United Nations body mechanisms and by lobbying directly with government delegates. I made a two-minute oral statement at the Council, after which delegates from Nigeria and Iran approached me to obtain copies of my statement. I was able to give them my report as well. Iran is the only country known to have executed juvenile offenders in 2010 and 2011. In Nigeria, the death penalty was abolished for child offenders, but many remain on death row.

With regard to life imprisonment without possibility of release, I targeted delegations directly to point out to them how their domestic provisions might have violated international law. There are 13 countries that have laws that either explicitly allow this sentence for juvenile offenders or that have ambiguous statutory language which suggests that it could be imposed. I spent time discussing the specific laws of Argentina and Cuba with their respective delegates, and also provided my report to delegates from Australia, the Solomon Islands, and the United States.

At a drafting session of the omnibus resolution on the rights of the child (A/HRC/19/L.31), when we examined the paragraph addressing corporal punishment as a court sentence, I suggested to remove the phrase “in detention” to make sure that the prohibition on corporal punishment applied to both the in-detention and the out-of-detention contexts. This suggestion was approved in the final draft (paragraph 51). I also lobbied for the inclusion of an age presumption clause reflecting our recommendation set forth above, by taking the floor and by communicating repeatedly with the Uruguayan delegate in charge of the resolution. Our recommendation was included in the final draft (paragraph 53).

I also raised this age determination issue when I spoke to the President of the Committee on the Rights of the Child and the Special Representative of the Secretary General on Violence Against Children. The later welcomed my comments and included our recommendation in her presentation at the all-day panel on the rights of the child.

This experience was very instructive and rewarding for me. It gave me more confidence, and the opportunity to develop unique skills in a multilingual and multicultural environment.

The Death Row Phenomenon

By Cherisse Cleofe

This past spring, I had the great fortune of being one of the Frank C. Newman interns attending the 19th Session of the United Nations Human Rights Council (“HRC”) in Geneva, Switzerland. In the course of conducting research and developing the advocacy on the death row phenomenon, I concentrated on 2 main points: (1) the negative relationship been death penalty moratoriums and the death row phenomenon and (2) the connection between the death penalty and solitary confinement. For a copy of my report, please see A/HRC/19/NGO/19. A full version of my report is also available at “Death Row Phenomenon Violates Human Rights,” http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Death-Row-Phenomenon-2012.pdf).

The death row phenomenon is the result of conditions endured by individuals on death row, facing a death sentence. This captures circumstances that inevitably bring about mental and physical deterioration in an individual, such as physical death row conditions, prolonged execution waiting times and the psychological anguish of execution anticipation. These factors work in concert to produce the death row phenomenon.

Although the death penalty was not on the HRC’s agenda at this session, we were still able to pursue our advocacy goals. Because a death penalty moratorium resolution will be on the General Assembly floor later this year, I focused on developing General Assembly
contacts for the upcoming death penalty moratorium resolution. Our goal is to shed light on the negative aspects of the moratorium and the need to address the sentencing component in conjunction with executions. I also received news from the Special Rapporteur on Torture that he was helping in the preparation of a report on the death penalty. He noted consideration of the inclusion of a section on the death row phenomenon, and said that he would contact HRA for guidance should the section materialize. Finally, I received news that the UN Secretary General will present a death penalty report to the 21st session of the HRC. We will submit a supplemental report focused on the death penalty moratoriums for his consideration prior to the end of this semester.

It has been a true honor to represent USF and HRA as a Frank C. Newman intern. I’d like to extend my deep appreciation to Prof. de la Vega, Julianne C. Traylor, the USF School of Law and HRA for allowing me the opportunity to partake in this amazing once-in-a-lifetime experience. Thank you.

The Perpetuation of Global Hunger through Improper Food Aid and Land Grabbing

By Julia Quinn

The right to food has been recognized as a basic human right since the inception of the United Nations. Since that time, it has remained at the forefront of the United Nations agenda. However, despite the attention it has received from the international community, global hunger continues to grow. In 2009, the number of hungry in the world reached over one billion of which the rural poor constitute roughly 80%. (United Nations Human Rights Fact Sheet #34 at p.1).

The growing number of hungry in the world is not a result of lack of food production, but rather short-sighted policy decisions made around the world. As a result, during my time with the Frank C. Newman International Law Clinic, I focused on two detrimental policies that have an overwhelming effect on the rural poor: the provision of improper food aid and large-scale land acquisitions, also known as “land grabbing.” (Written statement, A/HRC/19/NGO/22, long report available at http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Right-to-food-HRC-19th-sess.pdf.)

Food aid is only a effective if it helps promote food security in receiving countries by supporting local agriculture and improving infrastructure. When food aid comes in the form of subsidized commodities it undermines local food production because local farmers cannot compete. The result is that local farmers cannot generate enough income or food for their families. This decreases food production in receiving countries, creating international dependency.

The second policy of large-scale land acquisitions, or “land grabbing” is the practice of large corporations and countries procuring large tracts of agricultural land in poorer countries such as Ethiopia, Cambodia, Madagascar to name a few. These land deals are often done behind closed doors and are followed by forced evictions of those currently cultivating the land. This has a particularly adverse effect on the rural poor and indigenous persons who often lack secure title to their lands.

After months of researching these policies and their effect on the realization of the right to food, I was honored to be able to discuss my findings and my recommendations with the Special Rapporteur on the Right to Food. He was genuinely interested in my research and the following day, I was thrilled to hear language from my report reflected in his address to the UN Human Rights Council.

I also worked closely with the Cuban delegation, which is in charge of drafting the annual resolution on the right to food. (A/HRC/RES/16/27 available at http://www.unhchr.org/refworld/category,LEGAL,UNHRC,,4dc0020e2,0.html) I recommended language that would protect the land rights of the rural poor and indigenous persons as well as language that would promote proper food aid practices.

Throughout the two weeks at the Human Rights Council, I advocated for the realization of the right to food at side events organized by country delegations and other non-governmental organization. I advocated by showing the nexus of the realization of the right to food and the realization of so many other human rights such as the rights of the child, the right to education, health, housing and human rights in the corporate context.

Having this opportunity for me was an honor and privilege. It has increased my ability to advocate for international human rights as well as my understanding of international policy and process.
Dispatches from a Geneva Intern: The Right to Adequate Housing and Thoughts for Future Interns

By Kevin LaPorte

It was my honor and privilege to be one of six interns chosen for the Frank C. Newman International Human Rights Clinic. The clinic was not a tough sell, given the fact that interns get to travel to Geneva to witness the United Nations Human Rights Council in person.

I knew I wanted to study the right to adequate housing from the outset. For a comparative law class I wrote my final paper on the blatant land-grabbing situation in Phnom Penh, Cambodia. This issue strikes a particular cord with me, as I have witnessed first-hand the human rights abuses occurring in some of the most contentious land grabbing sites while working in Phnom Penh.

For the Clinic, I studied the right to adequate housing in the context of mega-events, and drafted a paper titled "Mega-Events, Urban Development, and Human Rights: The Duty to Prevent and Protect Against Evictions and Ensure the Right to Adequate Housing." The paper can be found at: http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Right-to-housing-19th-session.pdf.

The term "mega-event" is UN jargon for large-scale international events such as the Olympic Games and the FIFA World Cup. Given the fact that London is hosting the Summer Olympics this year, and that these events occur every two years, this is a timely issue that deserves attention. I was surprised to discover that mega-events are often marred by vast housing violations.

The high-water mark of these violations was the Beijing Olympic games in 2008, where it was reported that an estimated 1.5 million people were evicted from their homes to make room for Olympic infrastructure (Center on Housing and Eviction, “One World, Whose Dream? Housing Rights Violations and the Beijing Olympic Games.” July 2008, p. 6.)

Widespread evictions are not the only negative impact from mega-events. Native residents experience long-term displacement due to gentrification. Host cities will often criminalize homelessness in the areas surrounding mega-event venues in order to keep marginalized communities out of site and away from the media, tourists, and athletes. Also, in an attempt to beautify a host city, people living in informal settlements will be relocated without adequate compensation to areas far away from jobs, education, public transportation, and medical services.

I arrived at the Human Rights Council with the goal of raising this issue with concerned governments, especially Brazil, the United Kingdom, and Russia, who are slated to host upcoming mega-events. After getting over the initial apprehension about approaching country delegates on the floor of the UN Human Rights Council, I began speaking with people about this issue, and made recommendations as to how housing rights violations can be avoided for future mega-events.

By far the most exhilarating and terrifying experience of the trip was speaking on the floor of the Human Rights Council during a two-minute intervention. With my heart pounding out of my collar, I delivered a condensed version of my 15-page paper in a two-minute prepared speech. When I was finished, I was pleasantly surprised to see a member of the Brazilian delegation waiting for me with a request for my report.

I was able to arrange a meeting with the Brazilian delegate in charge of housing, and asked him about some of the human rights concerns with the upcoming Brazil FIFA World Cup and Olympics. I found that the best way to approach a delegate, especially when the inevitable focus of the conversation will be the alleged human rights abuses occurring in their country, is to focus on the positive before delving into the negative. I learned that everyone has a vested interest in improving the human rights situation in the world, and this is the tie that binds us in our endeavors.

This year, the delegations from Finland and Germany focused on the right to adequate housing in the context of natural disasters. Next year, the Special Rapporteur on adequate housing will focus on informal settlements. This is a critical issue, as the world’s populations become increasingly urbanized, and the Millennium Development Goal (Number 2) including providing adequate sanitation for informal settlements, are becoming harder to realize. If someone wants to continue to research and advocate for this important issue, studying informal settlements would be a great place to start.
The Right to Vote

By Wendy Betts

I entered law school with a strong passion for human rights. I was therefore incredibly excited to have been selected as one of the six students who would advocate on human rights issues at the Human Rights Council (HRC) meeting in Geneva. Although the semester began with a flurry of research and writing to become fully conversant in my topic, the true import of what I had been selected to do did not strike until walking into the HRC meeting room for the first time. In taking our place among other NGO representatives with open access to government delegations, it became clear just how unique an opportunity the Clinic provides.

My topic was the right to vote. Although the right is guaranteed in multiple human rights treaties, there is wide derogation in state practice, in both democratic and non-democratic countries. One prevalent type of violation, which I chose to focus on, is prisoner disenfranchisement. When a state restricts the right to vote, the restriction must be reasonable and proportional. Despite these requirements, many states retain prohibitions on prisoner voting inconsistent with the prisoner's length of sentence or type of crime. Additionally, some states permanently disenfranchise former prisoners. In the United States, an estimated 5.3 million U.S. citizens currently cannot vote as a result of prisoner disenfranchisement laws. Approximately two million of these disenfranchised voters have fully completed their sentence. I also addressed the widespread use of violence to intimidate or coerce voters to influence the outcome of elections. Studies have shown that approximately 25% of elections experience election-related violence. Recent elections in Zimbabwe, Democratic Republic of Congo, and Kenya, among others, tragically erupted into violence resulting in the death and displacement of thousands of people. (See, Human Rights Defenders and the Right to V ote, A/HRC/19/NGO/20)

The right to vote, as such, has not been on the HRC agenda. HRA's objective for the past five years has been to convince the Council to address this issue explicitly, either by including it in the mandate of an existing special procedure, or, ideally, through the creation of a new special procedure to monitor allegations of voting rights violations. However, moving from absence from the Council's agenda to the creation of a new special procedure requires incremental steps.

My goal in Geneva was to promote recognition of the right by identifying a resolution in which language on the right to vote would be appropriate and convincing the delegations to include such language. A proposed Resolution on Democracy and the Rule of Law (A/HRC/19/L.27) turned out to be the vehicle. This resolution was sponsored by Romania, together with Peru, Qatar, Tunisia, and Norway. Based on Romania's not so distant experience with democratization, the importance of voting struck a very personal chord with the delegation. In fact, the sponsoring countries already intended to include language reaffirming the right vote and were very receptive to my report. Perhaps most importantly, the Resolution calls upon the High Commissioner for Human Rights to conduct a study on best practices for democracy and present the results at the Council meeting next March. Now that the voting issue will be on the Council's agenda, the Clinic can focus on lobbying for a new special procedure.

HRA, through the Clinic, provided me an invaluable opportunity to learn skills that will use throughout my career. I learned firsthand the time, patience, and commitment that go into advocating. Additionally, watching the state delegations in action gave me a more concrete understanding of how international norms evolve in the international community. Overall, I feel tremendously fortunate to have had such an opportunity, and I would like to thank HRA for providing it.

Human Rights Implications of Private Prisons

By Martha Menendez

Last October, I was one of six USF law students selected to participate in the 19th Session of the United Nations Human Rights Council, as a representative of Human Rights Advocates, in Geneva, Switzerland. My work for the Clinic consisted of researching and developing a report on the inherent incompatibility of the private prison industry and the maintenance of basic human rights principles. (For an abbreviated version of my report, see: A/HRC/19/NGO/32). Before embarking on this task I had read several disturbing reports on the private prison industry’s lobbying efforts in favor of recent laws that criminalize immigrants and require their indefinite detention, many times at private
detention centers. As I delved deeper into the matter I was horrified, though unfortunately not surprised, to discover that the business of incarceration has far greater implications across a wide plane of human rights issues including minority rights, labor rights, immigrant rights, the right against arbitrary detention, and several others.

Private prisons, as they exist today, were first introduced in the United States in the early 80s when Corrections Corporation of America (CCA), today’s largest prison company, contracted with the now defunct Immigration and Naturalization Service (INS) to construct and manage an immigration detention center. Tellingly, the industry began to grow and take shape at around the same time that crime enforcement was becoming increasingly politicized and the tough-on-crime stance grew in popularity. The Reagan Administration’s Drug War and it’s advancement of neoliberal policies, whereby all of society’s ills are believed to be best addressed by the private sector, led to a boom in private incarceration facilities under the pretense that they would alleviate the overcrowding that resulted from the war on drugs.

Today, the United States has the highest incarceration rate in the world and this is in no small part due to the private prison lobby’s intense efforts to finance and push for tougher sentencing laws and anti-immigrant legislation. It has thus become abundantly clear that, far from solving the problem of over-incarceration, the private prison industry actually depends on and ferociously fights for an ever increasing number of inmates.

More recently, the industry has also pushed for the abolition of prison labor laws that prohibit the use of inmate labor for private sector gain, making it possible to now arrest and detain an immigrant for working “illegally” one day, and then shipping him out the next day to perform the same job as inmate, this time receiving a fraction of the pay (if any) while the private prison doubly gains from his or her indefinite detention. The business of incarceration, furthermore, is naturally ripe for corruption as was proven by the “Cash-for-Kids” scandal in Pennsylvania. There, a juvenile court judge was convicted last year of taking over two million dollars from a private detention facility in exchange for his sentencing of minors to serve jail time for what were mostly minor infractions. (See Ian Urbina, Despite Red Flags About Judges, a Kickback Scheme Flourished, N.Y. Times, Mar. 27, 2009, at A1).

Given the origin, pervasiveness, and political power of the industry in the U.S., much of my report focused on the impact that private prisons are having in this country. However, despite the lack of any studies showing that privatization saves the State money and in the face of growing evidence that the industry itself invites judicial and legislative corruption, the business of incarceration has proven too profitable to refuse. Australia, the United Kingdom, Brazil, and Chile are just a few of the countries in the world that already have their own private prison industry and others, like Peru and Mexico, continue to pursue the possibility of establishing their own in the near future.

My experience in attempting to bring these issues to light during our two weeks at the UN was extremely rewarding, but oftentimes also quite frustrating — a mixture of emotions that I expect I will become quite familiar with as I continue to work in the field of human rights. Having been consumed by this issue for months, it was shocking to me that so few people I spoke with had even heard of this phenomenon. Furthermore, even most of those who had seemed to believe that the issue was mainly a problem in the U.S. and other developed nations. More than lobbying, I felt that my role at the UN became one of educating anyone I could speak with about the dangers of the private prison industry and the threat of its continued growth around the world. For this reason, and because HRA was the only organization even raising this issue at all, I was especially grateful to have been able to give my two-minute oral intervention before the Council.

I was also able to speak with several delegates from France, Mexico, Cuba, and others about this topic with mixed results. Because private prisons operate under the laws of the State and are thus legally recognized institutions, it was oftentimes difficult to explain how the industry violates the most fundamental human rights by its mere existence. As our time in Geneva went by I became more aware of the vast amount of work and research that this topic necessarily demands and how it still may be in the early stages of creating awareness. I am honored to have been able to help build the foundation for what I hope will be HRA’s continued work on this incredibly important issue.

I’ve truly been inspired by my work and by the invaluable opportunity that the clinic has afforded me. Now in my last few weeks of law school, I can say without a doubt that it has been the single most important experience of my blossoming legal career and has reinforced my commitment to human rights law. I look forward to seeing HRA’s future interns continue to move these causes forward. For a full copy of my report,
Haiti’s UPR: Baby Steps Toward Human Rights Enforcement

By Nicole Phillips

This March, Haiti appeared before the Human Rights Council for part two of the Universal Periodic Review, to accept recommendations made by the Council at the October 2011 session. I attended on behalf of Human Rights Advocates. As a staff attorney with the Institute for Justice & Democracy in Haiti, I have been working on the UPR with a coalition of 57 grassroots groups, internally displaced persons (IDP) camps, non-governmental organizations, and academic institutions since January 2011.

There were several small successes to take away from Haiti’s UPR, though the long-term success will depend on President Michel Martelly’s commitment to protecting human rights. The first success was that the Government of Haiti sent a high-level delegation to address the Council, which included the Minister of Justice. This was a welcomed contrast to the October session, when the government sent a representative from the Haitian UN permanent mission in Geneva. It was hopefully enlightening for this high-level delegation to hear and report back to the government in Port-au-Prince comments and recommendation made by states and non-governmental organizations in Geneva.

A second success is that weeks before the UPR, Haiti’s parliament ratified the International Covenant of Economic, Social and Cultural Rights (ICESCR). Ratification of this treaty was one of the principle recommendations of our coalition. Under Haiti’s Constitution, treaties that have been properly ratified become the law and trump any other laws that may conflict. We hope to use the Covenant’s protections for the rights to education, housing, and other important rights directly in court to hold the government accountable.

The third success is that the government adopted 122 of the 136 recommendations that Council members made to the Government of Haiti in October, and only three with reservations. Most of the 136 recommendations reflected recommendations made by our coalition, so we consider the wide adoption to be a huge success.

A fourth success is that the government held a civil society consultation in February, which was attended by human rights agencies and civil society organizations. Civil society consultation in Haiti is all too rare.

My colleague, Mario Joseph, who is the managing lawyer at the Bureau des Avocats Internationaux, a public interest law firm in Port-au-Prince, Haiti, gave an oral statement before the Council. Six NGO representatives spoke before the Council, including me, on behalf of HRA, but Mario was the only Haitian civil society representative to address the Council. My statement to the Council is below.

These successes are positive steps towards fostering the Government of Haiti’s human rights compliance. But unfortunately some of these successes are already tempered by problems. For example, for full execution of the ICESCR, Haiti must lodge its ratification with the UN, which it still has not done. Similarly, civil society groups are concerned about a lack of plan of action for implementing the ICESCR, or the 122 commitments the Government made during the UPR. Lastly, the civil society consultation in February excluded many human rights groups in Haiti, including all of the members of our coalition, despite the 13 stakeholder reports that we submitted to the Council in March 2011.

We will continue to work with the coalition to develop strategies to (1) pressure the Haitian government to implement the Council’s UPR recommendations in consultation with civil society; and (2) raise awareness with the general public about the UPR and human rights. But enforcement ultimately depends on the will of the Haitian government.


Housing

Two years after the earthquake, one-half million people still live in internal displacement camps in Haiti’s capitol. Conditions in the camps are getting worse.
Humanitarian organizations have mostly stopped providing water and servicing portable toilets, leaving people to use plastic bags as toilets.

The government still has not adopted a comprehensive rehousing plan. As a result, twenty percent of displacement camps face eviction, many initiated by the government. In most cases, evicted families are thrown into the streets without legal due process or alternate housing. The government ignored recommendations by the Inter-American Commission on Human Rights for a moratorium on evictions and for victims to be placed in alternate housing.

With all the reconstruction money going into Haiti, providing durable housing and protecting camp residents from illegal and violent evictions must be a priority.

**ICESCR**

We commend the Haitian parliament for ratifying International Covenant of Economic, Social and Cultural Rights (ICESCR) in January of this year. We encourage the government to quickly deposit ratification with the United Nations so that the treaty can take effect.

**Duvalier**

The UN Office of High Commissioner for Human Rights and the Inter-American Commission on Human Rights emphasized Haiti's international law obligations to prosecute former repressive dictator Jean Claude Duvalier. Despite a mountain of evidence, the judge dismissed all crimes against humanity – a decision that appears more politically than legally motivated. Appeals have been filed and we recommend that the Haitian government and international community assure that the judicial process be fair and transparent.

**Elections**

Lastly, senatorial and local elections that were required last November have not taken place. We recommend that a permanent electoral council be appointed in compliance with the constitution and that all measures be taken to assure that eligible political parties, including Haiti's largest party Fanmi Lavalas, are not arbitrarily excluded. Flawed elections in 2010 and 2011 spawned much of Haiti's current political crisis.

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**Private Military and Security Companies and the Critical Gaps in Accountability**

*By Amol Mehra*

Human Rights Advocates has been closely involved with the issue of private military and security companies for some time. We have offered submissions and commentary to the Working Group on the Use of Mercenaries, the initial working group with a mandate to consider private security company regulation. Our interventions included highlighting the accountability gaps that leave human rights subject to abuse and to deny access to remedy for those aggrieved. HRA also provided commentary to the Draft International Convention regulating private military and security companies that the Working Group developed. The Working Group itself has now shifted under a new resolution and mandate.

At its 15th session, the Human Rights Council adopted resolution 15/26 by which it decided “to establish an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.” (See, http://www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx)

Although media attention may have shifted away from the use of private military and security contractors in war-time and peace-building operations, the presence of these non-State actors has only increased. In the second quarter of fiscal year 2012, the Department of Defense reported that 152,959 private contractor personnel worked for the Department in Afghanistan, Iraq and other areas. These include more than 29,000 private security contractor personnel, many of which are armed and provide personal security, convoy security, and static security. (See, http://www.acq.osd.mil/log/PS/CENTCOM_reports.html) To be clear, these numbers only repre-
sent the contractors employed by the Department of Defense, and do not include the increasing numbers of contractors employed by the State Department, the US Agency for International Development and various other missions and embassies around the world.

It is clear that private military contractors are filling a larger role in our wartime and peace building operations. But what of the accountability mechanisms that will ensure that these private actors can be held liable for their impacts on human rights? To this question, there continues to be much ambiguity in the application of existing law and in the jurisdictional gaps that exist within our legal framework.

After the military invasion of Iraq in 2003, the United States hired contractors from U.S.-based CACI and L-3 to provide translators and help conduct investigations. In 2004, photographs emerged depicting the abuse of detainees at Abu Ghraib prison. A number of military personnel were disciplined, but no contractors were charged.

In September 2011, a split three-judge panel of the 4th Circuit ruled that the companies had immunity as government contractors and that the claims were pre-empted by U.S. national security and foreign policy law.

But after agreeing to reconsider the appeal, a larger panel of the 4th Circuit reached the opposite result in a recent 12-2 decision. The case was Al Shimari et al v. CACI International Inc et al., U.S. Court of Appeals for the 4th Circuit, No. 09-1335, and showcases how existing law and possible exceptions can leave human rights subject to abuse.

Outside of questions about the applicability of existing law to these actors, there are also problematic gaps between laws. For instance, the Military Extraterritorial Jurisdiction Act provides for jurisdiction for the acts of government contractors and employees employed by the Department of Defense. However, there are questions around whether this law would apply to contractors employed outside of functions that support the Department of Defense, including by the State Department.

With questions about the application of existing law and the gaps that are apparent between such laws, HRA has supported the need for an international convention to address the use of private military and security companies, not just by the U.S., but by countries around the world.

As the Working Group has noted in its Submission to the Human Rights Council in May, 2011: “In addition to the need to hold PMSCs and their employees accountable for their actions, victims of human rights violations involving PMSCs and/or their employees should be able to exercise their right to an effective remedy. Ideally, they should be able to do so locally. However, victims often live in countries with weak judicial systems. Even where victims are able to bring cases to the courts in the countries where PMSCs are established, such cases are rarely successful for the same reasons that criminal prosecutions often fail (availability of witnesses, lack of evidence, etc.). An international convention would reaffirm the right of victims to an effective remedy, create an obligation of mutual legal assistance and provide an international avenue for those who cannot exercise this right at the national level.” (See, A/HRC/WG.10/CRP.1)

Human Rights Advocates supports the critical need to provide access to remedy for those who have been aggrieved. We believe that the Convention is one step in this direction, but also note the critical need for States to ensure, both in application of existing law and through passing laws to cover gaps, that remedies are provided for wrongs. We look forward to continued engagement on this important issue.

HRA Annual Meeting

HRA held its Annual Meeting on April 11, 2012, at the University of San Francisco School of Law. The following were elected by HRA members to serve on HRA’s Board of Directors for 2012-2013: Connie de la Vega, Kimberly Irish, Jeremiah Johnson, Amol Mehr, Nicole Phillips, Birte Scholz, and Julianne Cartwright Traylor. All were incumbents.

At its first meeting following the Annual Meeting, the Board elected the following officers for 2012-2013: Kimberly Irish, President; Connie de la Vega, Treasurer; and Jeremiah Johnson, Secretary. HRA welcomes Kimberly Irish as the new President, and thanks Julianne Cartwright Traylor for her leadership as President from 2009-2011.
Your contributions are greatly appreciated by HRA. Long-time HRA supporter Holly Newman, daughter of Frannie and Frank Newman, has generously agreed to match contributions up to $2,500. So far we’ve been able to raise about $1700, but we still have $800 to go. Please consider renewing your membership and making a donation – both of which are tax-deductible – by completing the form attached to this issue of the Newsletter, or by going online:

www.humanrightsadvocates.org/donate

HRA thanks John Kikuchi, Esq. for his ongoing advice on tax matters.
MEMBERSHIP FORM

I want to become an HRA member to support HRA’s activities and receive the Newsletter and announcements of events. Enclosed is my check for annual dues, fully tax-deductible, in the amount of:

___ Regular Membership ______ $40.00
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An * by your name means you have not paid your dues for a number of years and this will be your last newsletter.

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