



Human Rights Advocates

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Human Rights Advocates' Annual Meeting

By Jeremiah Johnson and Julianne Traylor

Human Rights Advocates held its Annual Meeting on April 18th at The University of San Francisco School of Law. The gathering of HRA members, supporters and friends was divided in two parts – presentations by members of this year's USF International Human Rights Law Clinic and HRA's Annual Meeting.

This year saw a continuation of human rights advocacy by Frank C. Newman and Edith Coliver interns addressing a wide range of subjects, including: trafficking of persons, violence against women, migrant rights, criminal justice issues such as juvenile life without parole and the death row phenomenon, environmental rights such as the illicit transfer of toxics, and voting rights. Edith Coliver interns, Jesse Macias and Erika Dahlstrom, represented HRA at the UN Commission on the Status of Women session in New York along with another USF student, Kiran Singh. The following six USF students represented HRA as Frank C. Newman interns at the UN Human Rights Council in Geneva: Ifoema Ajunwa, Elizabeth Hanowsky, Mary Johnson, Caryn Nutt, Nikki Skobola, and Troy Ware.

After the presentations and discussion, HRA members convened the Annual Meeting. Chair Julianne Traylor welcomed everyone and reviewed the events of the previous year. Led by Board Members Connie de la Vega and Michelle Leighton, members discussed the procedures at the new UN Human Rights Council. The group discussed the substantive changes, like the continued role of Special Rapporteurs, and practical changes, such as physical accessibility to the Council. The group also discussed HRA's work addressing Juvenile Life Without Parole ("LWOP") sentencing. Michelle Leighton gave an overview of the issue, specifically as it relates to California, and also discussed the complimentary work being done by the USF School of Law Center for Law and Global Justice.

During the meeting, HRA members publicly thanked outgoing Board Member Cindy Cohn for the

work she has done for many years on behalf of HRA. Members also thanked the interns for being a "renewable source of energy working for human rights on behalf of HRA" and part of the "Sustainable Development" of the organization.

Following the presentation and discussion of HRA's Financial Report for 2006, the following members were elected to HRA's Board of Directors: Connie de la Vega, Jeremiah Johnson, Conchita Lozano-Batisa, Nicole Phillips, Julianne Traylor, Anne Wagley, and Kristina Zinnen. HRA welcomes Kristina Zinnen as a new Board Member.

At the close of the meeting, Board Chair Julianne Traylor thanked HRA members and supporters for their hard work and commitment to continuing HRA's important work in the future.

Contents

Advocacy at the UN	2
Child Sexual Abuse and Exploitation	3
Trafficking and Sexual Abuse of Girl Children	4
Donor Nations' Obligations on Health Aid	6
Corporate Accountability and Toxic Waste	7
The Human Rights of Migrants	7
Violence Against Women During Armed Conflict	8
Voting, Human Rights and Peacekeeping	9
Death Row Phenomena and International Law	11
Life Without Parole Sentencing for Juveniles	12
Reforming U.S. JLWOP Sentencing Practices	13
Gender Equality at the United Nations	14
International Law and The Supreme Court's Recent Affirmative Action Decision	16

Advocacy at the UN

By *Connie de la Vega*

Eight students participated in the Frank C. Newman International Human Rights Law Clinic in the Spring 2007. 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 4th session of the newly created Human Rights Council (Council) in Geneva.

The two interns attending the CSW stayed for the full two-week session, which gave them the opportunity to see the process from beginning to end. They thus were able to have a fair amount of input into the Agreed Conclusions on their projects as described below.

The Council was still focused on institution building as it continued the review work of its mechanisms and heard reports from its two intergovernmental working groups on the Universal Periodic Review and the Review of Mandates. The latter included segments on the Complaint Procedure (former 1503 procedure), the Expert Advice Body, which will replace the Sub-Commission on Promotion and Protection of Human Rights, and the Special Procedures.

It heard from a large number of Special Rapporteurs and Working Groups, which reported in groups of three in an inter-active dialogue with the Council members, observer nations, inter-governmental bodies, and non-governmental organizations (NGOs). A code of conduct for mandate holders was also discussed.

While there appears to be a need for greater transparency in the selection of special rapporteurs and working groups, concerns were raised regarding limitations that the selection process and the code might put on their independence.

The President of the Council, Luis Alfonso de Alba, was very supportive of NGOs and made a great effort to allow them to participate on an equal footing with observer nations. However, the large number of NGOs makes it difficult for all of them to participate equally in making oral statements. Nonetheless a great effort was made to permit the system to work smoothly and it is hoped that as the Council gains more experience it will continue to refine the procedures to maximize the equitable participation of all NGOs.

In a written statement, HRA urged the Council to keep the special procedures as well as country resolutions, since the more tools it has available for addressing human rights, the more likely it will be able to tackle human rights violations as they arise.

We also urged the Council to adopt a specific agenda with broad categories of topics to allow issues to be addressed that were not covered by the Special Procedures. An agenda would also facilitate the participation of NGOs who are not based in Geneva. (See, Written Statement of Human Rights Advocates Regarding the Work of the Human Rights Council, A/HRC/4/NGO/6.)

The Council adopted ten resolutions and four decisions during the 4th session. It also deferred the vote on the procedural draft proposal so its working groups would have an opportunity to finalize their proposals at a one-week session in June. Two resolutions were adopted on country situations: Darfur and the Occupied Palestinian Authority.

The other resolutions and decisions addressed transitional justice, unilateral coercive measures, enhancement of international cooperation in the field of human rights, globalization and its impact on the full enjoyment of all human rights, strengthening the Office of the High Commissioner on Human Rights, the legal status of the Committee on Economic, Social and Cultural Rights (which was created by Economic and Social Council and not by the treaty instrument as were other treaty bodies), combating defamation of religions, the elimination of intolerance and discrimination based on religion or belief, and the question of the realization of economic, social



From left to right: Mary Johnson, Nikki Skobola, Ifoema Ajunwa, Connie de la Vega, Elizabeth Hanowsky, Caryn Nutt and Troy Ware

and cultural rights.

In the latter resolution, the Council called upon all states to consider signing and ratifying, and the States parties to implement, the International Covenant on Economic, Social and Cultural Rights. In addition to the above, the Council deferred action on texts on the rights of the child, Sri Lanka, the rights of indigenous peoples, impunity, and freedom of opinion and expression.

Texts of the resolutions and HRA's written statements to the Council can be found at www.unhcr.ch. HRA's eight statements are found at the beginning of the list: NGO/3 -13 as noted in the reports below. The students' reports can be found at HRA's Web site, www.humanrightsadvocates.org.

51ST SESSION OF THE COMMISSION ON THE STATUS OF WOMEN

The Elimination of Child Sexual Abuse and Exploitation

By Erika Dahlstrom

The topic of this session of the CSW was "The Elimination of All Forms of Discrimination and Violence Against the Girl Child." As an Edith Coliver intern, I focused on child sexual abuse and exploitation, including incest abuse and abuse by caregivers, child pornography and prostitution, and female genital mutilation, virginity exams and early and forced marriages.

The number of girl children affected by these practices globally is staggering. World wide, one in every four girl children is sexually abused or exploited.¹ More than 1.8 million children are involved in commercial sex work, including pornography and prostitution.² Two million girl children are subject to some form of female genital mutilation.³ Millions more are married before the age of 18.⁴

The numbers are significantly higher in countries where there are no laws condemning these practices or where the legal system is ineffective in prosecut-

ing perpetrators. For example, until recently India had no law condemning child sexual abuse and even now its Domestic Violence Act only criminalizes incest abuse. Several studies indicate that more than 50% of Indian children are sexually abused. In the Philippines, where there are strong laws against child sexual abuse, the rate is slightly lower. But because the legal system lacks effectiveness, the rate is still quite high. It is estimated that 48% of children in the Philippines are sexually abused.⁵

Commercial sexual exploitation is also a global problem, with some countries like Germany and the U.S. driving the demand, while citizens in other countries are more likely to be exploited in fulfilling the supply.

Pornographers, traffickers, pimps and sex tour travel agencies alike use web chats and postings to create sophisticated international, underground networks through which their actions are easily concealed. The San Jose based "Orchid Club" is one example of such networks. It was discovered after a six-year-old girl reported being sexually abused at a slumber party.⁶ An investigation revealed that members had been sharing child pornography through virtual chats in which children were molested live at the suggestion of chat room participants.

Although recent years have seen impressive legislative initiatives in many countries, child sexual abuse and exploitation continue to be extensive global problems. Domestic laws, while an important step, often suf-

1. World Health Organization (WHO), World Report on Violence and Health (WHO, Geneva, 2002) available at www.who.int/violence_injury_prevention/violence/world_report/.
2. UNICEF, The State of the World's Children (2007) available at www.unicef.org/sowc07/report/report.php.
3. WHO, World Report on Violence and Health, supra.
4. International Women's Health Coalition, IWHC Factsheet: Child Marriage (2004) available at <http://www.iwhc.org/resources/childmarriagefacts.cfm>.
5. Frontline, Interview with Lois J. Engelbrecht, supra. Lois J. Engelbrecht is the founder of the Center for the Prevention and Treatment of Child Sexual Abuse which the Philippine's cites in its First Periodic Report under the CRC for its important work training "a core of 400 teachers in the proper handling of disclosures of school children who are already victims of sexual exploitation." CRC/C/65/Add.31 at 15.
6. Tim Golden, 16 Indicted on Charges of Internet Pornography, N.Y. Times A8 (July 17, 1996).
7. The Agreed Conclusions are available at: www.un.org/womenwatch/daw/csw/csw51/pdfs/CSW51_agreed%20conclusions_ADVANCE%20UNEDITED%20VERSION.pdf.

fer from weak and inconsistent enforcement, and in the case of child pornography and prostitution, do not address the global nature of the problem.

At the CSW, I focused on these practices as violations of children's human rights and as violations of the Convention on the Rights of the Child, which guarantees children the right to be free from sexual abuse and requires that states parties take actions to ensure those and other related rights.

The first few days of the CSW were very intimidating, but the Clinic prepared me well for both my oral statement and lobbying delegates. I waited for two and a half days to make my oral statement and was the first NGO speaker on Thursday morning. Because HRA was only permitted one statement, Jesse and I combined our statements into one, cohesive, two to three minute statement, which was passed out to all of the delegates while I was speaking. A lot of NGOs came up to us after I spoke requesting our reports and we took the opportunity to lobby on the floor at the end of that session, while our faces and issues were fresh.

I was very impressed with the final document and I feel that Jesse and I both had an impact on that document through our lobbying efforts. In the end, the first paragraph on violence listed all of the issues I had been working on in similar fashion to the language I had been suggesting, and the final version also suggested remedial and preventive measures.

The best part of the experience was observing the process of revising and ultimately adopting the final document. Each country had an opportunity to speak on any paragraph, sentence or even a single word, and suggest changes and additions. It was inspiring to see delegates from all over the world essentially having a conversation with each other, and I want to thank Professor de la Vega and HRA for the opportunity to have been part of that conversation.⁷

Trafficking in Persons and the Market for the Sexual Abuse of Girl Children

By Jesse Macias

My topic was "Anti-Trafficking in Persons Efforts and the Market for the Sexual Abuse of Girl Children," which I selected with the hope that the CSW would take a leadership role in the international trafficking in persons discourse.

UN efforts to address the problem of trafficking in persons culminated at Palermo, Italy in December of 2000. In Palermo, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime ("the Palermo Protocol") was first opened for signatures. The Palermo Protocol was adopted by resolution A/RES/55/25 of November 15, 2000 at the fifty-fifth session of the General Assembly. The Palermo Protocol entered into force December 25, 2003, and now has 117 signatories and 111 state parties. Since the adoption of the Palermo Protocol, several countries have adopted or amended their own legislation addressing trafficking in persons in line with their minimum obligations under the Protocol.

The Palermo Protocol has had an exceptional impact in that it formulated the following universal definition of trafficking in persons:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation...

This definition has been construed differently by various nations and other stakeholders. For example, some hold that prostitution is always a result of "the abuse of power or a position of vulnerability" and, therefore, acts of prostituting another or even purchasing sexual services constitute acts of trafficking in persons. Others hold that all acts of prostitution do not fall within the ambit of trafficking in persons. This division often hampers the efforts to address trafficking in persons at a multi-national level. However, I expected that focusing on the sexual abuse of children would allow those with differing views to set their concerns aside long enough to reach consensus when the victim of trafficking is universally considered too young to consent to her sexual exploitation.

My expectations were temporarily reversed on the Sunday before the Commission began, when I attended a break-out group on trafficking as part of an NGO orientation. At the break-out group, several NGO representatives ignored the topic of trafficking and used the venue to debate whether all acts of prostitution are acts of trafficking in persons.

Later that day, I received the draft agreed con-

clusions, which provided the framework and starting-point from which the delegations would form their final document. The fifty-five paragraphs of the draft agreed conclusions mentioned trafficking in persons twice and gave no individualized attention to the issue.

The lack of trafficking in persons language came as a surprise. The General Assembly had recently adopted a resolution entitled “Trafficking in women and girls,” A/RES/61/144, and another entitled “Improving the coordination of efforts against trafficking in persons,” A/RES/61/180. The United Nations Office on Drugs and Crime was scheduled to launch its Global Initiative to Fight Human Trafficking within one month.

In light of these developments, I expected the Commission to discuss the finer points of the trafficking problem. I took for granted that the agreed conclusions would reaffirm the Palermo Protocol, address the factors that push people into trafficking situations, criticize the factors that contribute to the demand for trafficking victims, and present new ideas on the topic. After witnessing an NGO forum reduce the trafficking problem to a politicized prostitution debate and reading the draft agreed conclusions, I reoriented my expectations.

The first couple days of the Commission I spent searching for delegations that might be interested in suggesting additional language on trafficking in the agreed conclusions. I found my concern over the paucity of trafficking language echoed by many of the government delegations and other NGO representatives. The nations interested in discussing trafficking in the agreed conclusions made up an eclectic mix: the Philippines, Mexico, the United States, India, Russia, Egypt, and China. The prostitution debate persisted at some of the NGO forums, but the government delegations skillfully avoided that debate at their official meetings by focusing the trafficking discussion on girl children.

A flexible approach was the key to success during the Commission’s first couple of days. Thanks to the extensive preparation necessary to serve as an Edith Coliver Intern, I felt comfortable enough with my topic to switch focus and rally interest in more generalized language. I attended a mix of official meetings and parallel events. At the official meetings I observed the delegates, contacted delegations I had not yet spoken with, and checked in with delegations I had already contacted. Checking in with delegations proved critical. Although many countries expressed an interest in suggesting language, they would frequently ask me to return later because they were not yet prepared to discuss specifics. They would often wait until the last minute to prepare their suggested language, so I made sure I was there to

offer my suggestions in those narrow windows of opportunity. Maintaining a rapport with delegates made it easier to communicate my suggestions and also served as a source of helpful information. Delegates are often the only people who know about informal meetings, rescheduling and deadlines.

Throughout the second week of the session it became clear that the agreed conclusions would address the issue of trafficking in persons. During the government negotiations, several of the countries I had spoken with recommended language on trafficking similar to the language I had discussed with them. The recommendations became so numerous that the Commission ultimately decided to create an entire subsection dedicated to trafficking.¹ The language reaffirmed the Palermo Protocol; called on governments to address the factors that increase the vulnerability of girls to trafficking and to eliminate the demand for their exploitation; emphasized the obligation of governments to remove victims of trafficking from harm and to protect them against future harm; and underlined the importance of international and regional cooperation in anti-trafficking in persons efforts.

The final draft of the agreed conclusions further addressed several topics closely associated with a victim-centered approach to trafficking in persons. Mexico, for example, successfully proposed a new subsection on migration that included language regarding the increased risk to trafficking in migrant communities and the need for policies and programs that do not revictimize migrant victims of trafficking.

Working on trafficking in persons at the Commission allowed me to observe and participate in one of the most significant changes in the agreed conclusions. The absence of language on trafficking in the draft agreed conclusions provided an opportunity to work with government delegations interested in trafficking in persons. Taking part in the creation of language in a United Nations document was the most I could have asked from this experience. Moreover, I believe the language adopted moves the trafficking in persons discourse forward. I look forward to working on the issue again and maintaining an approach that emphasizes the rights of the victims.

1. As of this writing, the “Agreed Conclusions on the Elimination of All Forms of Discrimination and Violence Against the Girl Child” have not been completed. There is an “advance unedited version” available at: http://www.un.org/womenwatch/daw/csw/csw51/pdfs/CSW51_agreed%20conclusions_ADVANCE%20UNEDITED%20VERSION.pdf

Donor Nations' Obligation To Promote And Protect The Special Health Needs Of The Girl Child When Giving Aid For Health Services

By Nicole M. Phillips

This year HRA sponsored USF School of Law student Kiran Singh to attend the CSW and lobby state delegates to recognize the obligation of donor nations to promote and protect the special health needs of the girl child when giving aid for health services. Kiran was an intern with USF's Center for Law and Global Justice Haiti Program, which collaborates with the Institute for Justice and Democracy in Haiti (IJDH) in researching and advancing economic, social and cultural rights of Haitians.

Kiran's written statement argued that the international community should be held accountable for the girl child not having the economic, social, and cultural rights that are internationally recognized standards. By using a human rights framework to promote and protect the right of the girl child to health, donor nations should be held responsible for ensuring that the right to health be upheld. Kiran argued that female health care and family planning in particular should be a priority for donors in addressing discrimination against females.

At its core, reproductive health is the right of females to manage their own fertility safely and effectively by conceiving when one desires to, terminating unwanted pregnancies and carrying wanted pregnancies to term, the right to contraception, and the right to social, economic, and political conditions that make all of the aforementioned rights possible.¹ In many countries, the girl child does not enjoy access to adequate health care or the freedom to make her own choices regarding her reproductive health.

For example, although millions of dollars are funneled to poorer nations each year by donor countries and organizations to fund health care programs and initiatives, there is an inadequate, if any, emphasis placed on women's health issues, including the areas of maternal mortality and family planning services.

For example, only 46% of deliveries in Haiti are done under the supervision and assistance of a health professional and 78% of Haitian health care facilities do not provide any maternal or delivery services.² As a result, Haitian females have the highest maternal mortal-

ity rate in the Western Hemisphere and 14% of deaths amongst women aged fifteen to forty-nine are related to pregnancy and childbirth.³

Because breakdowns in a country's health services are proven to have a disparate impact on the girl child, donor nations, through development assistance, must address this by creating specialized directed funding for the health of the girl child. Donors are giving their money in a discriminatory fashion by failing to fund women's health initiatives, and ultimately the development assistance given to poorer nations can have a disparate impact on females, including the girl child. Ultimately, to equalize female health care, more directed funding is required, and recognizing, promoting, and protecting the special health issues of the girl child must become a top priority for donors.

Kiran had an uphill battle at the CSW. While the draft agreed conclusions discussed equal access for the girl child to health and health education, nothing mentioned the need of donor nations to recognize or protect the special health needs of the girl child when providing development assistance. Certainly no provision mentioned a girl's right to manage her own fertility safely.

Kiran attended several breakout sessions focused on health; treatment and prevention of HIV/AIDS; and treatment of victims of violence and genital mutilation. Many of the groups were not very receptive to her suggestion that language be included that obligates donor nations to recognize/promote/protect the special health needs of the girl child when providing development assistance. She spoke with several state delegates who seemed interested: Canada, Egypt, the Dominican Republic, Columbia, Ecuador, Japan, India, Indonesia and Argentina.

While the concluding recommendations did not mention the role of donor countries or aid assistance, there were several positive provisions promoting health, including raising awareness about sexual and reproductive health; securing appropriate prenatal and post-natal care; and developing national and international prevention and treatment strategies to address obstetric fistula, maternal mortality and related morbidities, including through ensuring access to affordable, comprehensive, quality maternal health care services, including skilled birth attendance and emergency obstetric care.

1. Circle of Rights.
2. AlterPresse.
3. Gender Profile of The Conflict in Haiti

FOURTH SESSION OF THE HUMAN RIGHTS COUNCIL

The Need for Corporate Accountability to Stem the Illicit Transfer and Dumping of Toxic Waste

By *Ifeoma Yvonne Ajunwa*

Attending and speaking at the Council was the crowning achievement of my three year law school experience. I would like to thank Professor Connie de la Vega, the Frank C. Newman International Human Rights Clinic at the University of San Francisco and Human Rights Advocates for giving me this priceless opportunity.

I saw my trip to Geneva as an opportunity to affect change on a global scale. In a world that is becoming more globalized each year, I am of the belief that the U.S. and its citizens cannot afford to take an isolationist view to the world's problems. Thus while the direct impact of my work might have been on issues plaguing the Asian and African continents, any positive change that results from it will also be felt in the U. S.

My report focused on the illicit transfer and dumping of toxic waste. The official title of my report is "Effects of and recommendations for the eradication of the illicit transfer and dumping of toxic waste" and it can be found on the United Nations Web site.¹

1. A/HRC/4/NGO/11, www.ohchr.org/english/bodies/hrcouncil/4session/documentation.htm

2. Frequently Asked Questions About Waste, U.S. Environmental Protection Agency, www.epa.gov/epaoswer/osw/basifact.htm.

3. "China revises law – doesn't want to be "world's largest dumping ground." People's Daily Online, November 4, 2004, www.ban.org/ban_news/2004/041104_china_revises.html.

4. Kevin Caruso, "Illegally Dumped Hazardous Waste Released in Somalia After Tsunami," Feb. 23, 2005, www.tsunamis.com/tsunami-hazardous-waste-somalia.html.

5. "Help Urged for Ivory Coast Waste" BBC News, 24 November 2006, <http://news.bbc.co.uk/2/hi/science/nature/6180604.stm>.

As wealth increases in developed nations so does consumption and ultimately waste. For example, The United States Environmental Protection Agency reports that in 1999 alone, over 20,000 toxic waste generators produced more than 40 million tons of toxic waste in the United States.² The problem arises from the need to dispose of the waste, and this problem is even more acute when the waste is hazardous or toxic. Developing nations are left to bear the brunt of the waste, with China alone importing about 3 million tons of plastic waste in 2003.³ For the past 15 years, the coast of Somalia has been used as an illegal dumping ground for several European companies.⁴ And in August of 2006, 10 people died and thousands of others were sickened when a Dutch company dumped toxic waste off the coast of Abidjan, the Ivory Coast.⁵

In addition to documenting specific instances of human rights abuses, my report also set forth recommendations to curtail the dumping of toxic waste as it adversely affects the human rights to health, life, food, water, housing and work. Some of the recommendations included loss of corporate charter for offending corporations or personal liability for individual corporate officers.

The two weeks I spent at the Council were exciting and rewarding. Most of my time was spent disseminating my research to and lobbying delegates from all over the world. I also had the chance to attend several IGO and NGO meetings and meet UN Human Rights Officers, including Tanya Smith, a graduate of Hastings Law School. My oral intervention before the Council was the highlight of my experience as I was able to address the Council about the link between the lack of corporate accountability and the dumping of toxic waste by multinational corporations. My speech stressed the need for a coherent approach between the different mandates in order to achieve real progress.

My participation in this Clinic and the visit to the Council were extremely educational and fulfilling opportunities and I would highly recommend the Human Rights Clinic to other USF law students.

The Human Rights of Migrants

By *Mary Johnson*

I researched the human rights of migrants, synthesizing the international standards that protect these rights. Prepared as I was for the Council, it was fascinating to attend meetings and meet other advocates who had different perspectives on the issue, and to be

able to have a finger on the pulse of the international community's attitude toward international migration.

Migration is a worldwide phenomenon that is directly impacted by economic globalization. As emphasized by the Special Rapporteur on the Rights of Migrant Workers, receiving countries' denial of the demand for migrant workers is a significant obstacle to creating and enforcing protective legal standards. Migrants are often viewed as commodities rather than as human beings entitled to rights. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been signed by 36 countries to date, but most of the signatories are sending countries. This divide between sending and receiving parties and non-parties to the Convention was a theme recapitulated throughout the Council, one the international community hopes to address in more detail at the Global Forum on Migration in Brussels this June.

My report focused on several specific rights violations: 1) violations of the right to life along borders, specifically the Mexico-U.S. border and the EU border that extends into the Atlantic Ocean to the Canary Islands; 2) violations of the protection against cruel, inhuman, or degrading treatment in migrant detention centers; 3) violations of the rights of the children of migrants; and 4) violations of core labor rights of migrant workers. While researching any of these aspects of migration could easily occupy a semester, I was grateful to have an understanding of the larger picture of migration from Geneva. My short statement, in English and Spanish, is available at http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=67&t=7. (A/HRC/4/NGO/5.)

In preparation for the trip I researched various factual situations involving violations of migrants' rights, compiled the international legal standards that govern the issue, identified countries of interest that I thought I may (or may not, as the case may be) want to speak with once in Geneva, and generally attempted to educate myself on the issue as much as possible. These efforts paid off in that I was able to engage in conversations with government delegates, NGOs, and the Special Rapporteur, where truly reciprocal information exchanges took place. The Special Rapporteur, Professor Jorge Bustamante, was scheduled to visit California in May armed with information we gave him regarding recent raids in migrant neighborhoods and factories, an issue we briefed him on during a private meeting one Friday morning.

The second day I attended the session, after hearing the report of the Special Rapporteur, I made an oral intervention and was immediately approached by people seeking more information on my research. This experi-

ence is unparalleled by anything I have done during the course of my education. Many meetings focusing on the issue of migration followed the Special Rapporteur's report, all of which offered excellent opportunities to discuss the issue with advocates from other countries. The information I garnered from these meetings was invaluable and each meeting inspired me to expand my project to incorporate solutions and suggestions that could have meaningful impact immediately. The Special Rapporteur's report is available at www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm (A/HRC/4/24).

The educational value of attending the session was not limited to expanding my knowledge on migration, but encompassed a wealth of information and experience not available in any other forum. To witness the functioning of an international mechanism of the magnitude of the UN was fascinating, and the bureaucracy alternately frustrating and awe-inspiring. Having returned, it seems strange to recall that just a few weeks ago I was sitting over coffee in the Palais des Nations discussing the plight of African migrants struggling to live in Switzerland or being invited to a migration forum in Rabat. Ultimately, it was an invigorating environment to be a part of and a unique experience that I shall not forget. I am extremely grateful to Human Rights Advocates, the University of San Francisco, and Professor de la Vega for their collective efforts that have allowed us such a great opportunity.

Violence Against Women in Times of Armed Conflict

By Caryn Nutt

My work this year focused on two related issues - first, violence against women in the form of sexual exploitation, abuse and trafficking in persons during and after times of armed conflict and second, holding employees of private military and security companies (known as PMSCs) accountable for their actions. I was particularly concerned with acts of violence against women perpetrated by employees of PMSCs. My goal in attending the Council was to raise awareness of these issues, encourage the Council to take steps to hold military and peacekeeping forces accountable for acts of sexual exploitation and abuse, and to encourage the Council to focus on the impunity currently enjoyed by PMSCs. My written statement on each of these issues is documented in UN Doc. No. A/HRC/4/NGO/10.

The first issue was violence against women dur-

ing times of armed conflict, including abuses committed by peacekeepers and national military forces. The United Nations has long been plagued by rumors of peacekeeper involvement with sexual exploitation and abuse. For example, in January 2007, allegations surfaced in Sudan that peacekeepers paid children as young as twelve for sex. Only one day later, the UN Mission in Liberia called for an immediate investigation after receiving information that some of its personnel were involved in acts of sexual exploitation and abuse.

National military forces have also been implicated in acts of sexual exploitation and abuse. In October 2006 uniformed members of the Congolese Army raped a woman and her thirteen year old daughter repeatedly over the course of three days, shot and mutilated the woman.

Armed conflict also increases the risk of women and girls being abducted and forced into sexual slavery. A recent report found numerous situations in which patronization of brothels and sex clubs by military personnel, including peacekeeping forces, contributed to a demand for prostitution and a demand for trafficked women.

In response to these issues I encouraged the UN to take steps to hold peacekeepers accountable for their actions by using a note verbale to create a binding international law obligation that would call on countries to prosecute acts of violence against women perpetrated by peacekeepers contributed to a UN mission. I also encouraged individual countries to adopt zero tolerance policies with regard to violence against women and trafficking in persons, and to prosecute members of their national military forces who violate these standards.

My second issue was accountability for PMSCs. As PMSC involvement in international contracts has increased, allegations of human rights abuses have been leveled against them. In 2000, employees of a United States PMSC, DynCorp, in Bosnia were accused of participating in a sex trafficking ring. Although the employees were transferred out of Bosnia, the allegations did not result in a single criminal prosecution. In 2003, despite the documented instances of human rights abuses, the U.S. awarded the multi-million dollar contract for policing Iraq to DynCorp.

I encouraged the UN to focus on this new actor in international human rights and encouraged individual countries who employ PMSCs on government contracts to adopt domestic legislation extending criminal jurisdiction to cover human rights abuses committed by all government contractors when they are stationed overseas.

Of my many incredible experiences at the Council, I was most gratified to realize that government

delegates and UN officials were sincerely interested in listening to the information submitted by NGOs. I realized that, even though I am just a student and a representative of an NGO, people who were in a position to make real change and take meaningful steps to stop human rights abuses were willing to listen to my recommendations. After a minor meltdown (Why are people listening to me? I'm just a student! What if I'm completely wrong!), I realized that the research, feedback, and practice that the clinic required prepared me well, and that I was in a position to offer informed advice to these international actors.

One of the interesting things I witnessed while at the Council was the different reactions that I received from government delegates and other officials depending on which issue I discussed. Violence Against Women has been on the human rights agenda for a number of years and many people that I spoke with had a fair amount of independent knowledge about the issue. People were open to discussing the issue and concrete measures that could be taken to end the abuse. In contrast, PMSCs are fairly new actors on the international scene and have yet to be addressed in depth by the Council (or other human rights bodies of the UN). Not only were the delegates less informed on the issue, but they were more likely to see it as something that would be difficult for the Council to address and were less willing to support action.

Overall, my experience with the Frank C. Newman International Human Rights Law Clinic has been among the most rewarding of my law school career. I sincerely thank USF, HRA and Professor Connie de la Vega for providing such an amazing opportunity for students.

Advocacy on behalf of the Right to Vote, Human Rights and Peacekeeping

By Troy C. Ware

At the Council, I attempted to bring attention to two pressing human rights issues: the right to vote and peacekeeping reforms to improve human rights compliance by peacekeepers.

In researching and advocating on behalf of the right to vote, I took advantage of prior research by former clinic students and HRA member, Abdul Hamid Bashani Khan. It was my privilege to add to this solid foundation of work and advance the status of the right to vote.

The right to vote is enshrined in the UN foun-

dational documents. The International Covenant on Civil and Political states:

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

Despite this recognition and recognition in numerous other international and regional treaties, infringement on the right to vote does not garner much attention from governments and institutional bodies charged with the protection of human rights.

Voter violations occur through fraud, intimidation, lack of fair transparent polling procedures, prohibitions on women voting, and poorly planned use and operation of electronic voting machines. Currently no international body is addressing violations or collecting and making available information on best practices. It was my goal to propose a special rapporteur to do just this and promote awareness concerning violations of the right to vote. (The Right to Vote, UN Doc. A/HRC/4/NGO/7 (Feb. 19, 2007.)

This task was a difficult one, as the new Council had no agenda item concerning the right to vote or any general civil and political rights. Initially, my focus involved lobbying delegates on the floor of the Council. My fellow interns were helpful in this process by identifying delegations that mentioned voting in statements before the Council. Still, the process was slow going as I had difficulty talking to the persons most likely to be interested in the delegation I was directed to – Germany.

My breakthrough in lobbying came as a result of prior contacts Professor Connie de la Vega had with delegations. One contact was with the First Secretary of Turkey who had expressed interest in the right to vote in the past. Although that person had moved on I made an instant connection with the new First Secretary based on that contact. The Turkish First Secretary passed on the names of multiple other delegations to contact. Although no country has taken an official position, the response was quite positive. The delegation of Switzerland even stated publicly about the problem that the right was not actively protected by the Council in a working group of delegates concerning special procedures.

Although we did not obtain resolution addressing the right to vote from the session, the prospect that delegations will raise the issue in the future looks prom-

ising. Several delegations accepted draft resolution language establishing a special rapporteur and indicated action at a future session. At the bare minimum a long list of contacts was established for lobbying next year.

My second focus was improving human rights compliance among peacekeepers. For well over a decade, numerous reports of sexual abuse and exploitation have resulted from UN and regional peacekeeping missions. Intuitively, the training, preventative measures, and disciplining of peacekeepers does not appear to be a human rights issue to many advocates. I argued that a direct link existed and that only through a comprehensive approach could sexual abuse and exploitation among peacekeepers be reduced and their effectiveness enhanced. (Improving Human Rights Compliance by Improving Peacekeeping, UN Doc. A/HRC/4/NGO/13 (Feb. 23, 2007.)

Fortunately, significant research had been done in the form of a UN report in 2004. (Special Adviser to the Secretary General, A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations, 13, UN Doc. A/59/710 (Mar. 24, 2005).) In 2004, Prince Ra'ad Zeid Al-Hussein acting as the Special representative of the Secretary General completed a report making numerous recommendations to stop sexual abuse among peacekeepers. While some progress has been made in terms of getting contributing nations to agree to an UN memorandum of understanding (“MOU”) agreeing to adhere to common standards and prosecute violations, many problems recognized in the report persist.

Even if countries agree in an MOU to adhere to standards of conduct, training must take place and leadership must embrace explicitly a zero tolerance policy to ensure standards are followed in practice. I spoke to one official from the office of the High Commissioner of Human Rights who told me his office was training each contingent. I stressed to him that this was insufficient. Training one time before a mission, often by an outsider who does not accompany the peacekeeping contingent, does not equate ownership by the peacekeeping contingent. Training must be regular and sustained. The Zeid Report calls for gender advisors within peacekeeping contingents to take such steps. Furthermore, contingents must convey “a serious commitment to a ‘zero tolerance’ policy” by taking sexual abuse allegations seriously and holding those implicated accountable.

The Zeid Report calls for broader steps in addition to training and accountability. Among the other recommendations are: recruiting more women as peacekeepers, mechanisms making it easier to report

violations, compensation funds established for victims, maintaining records of offenders to prevent rehire and funding in peacekeeping budgets for recreation, family contact, and counseling. The Zeid Report also warns of selecting the wrong personnel, but as late as this past January the Assistant Secretary-General for Peacekeeping Operations admitted no such system was in place when responding to allegations of sexual abuse by peacekeepers with the UN Mission in the Sudan (UNMIS). Sadly, the majority of recommendations have yet to be fully implemented.

My goal was to raise awareness on the connection between the human rights violations and reform of the training and operation of peacekeeping, which was something they had not considered before. I took the opportunity of a side meeting on violence against women in Africa to speak on the issue. I was pleased that the Independent Expert on the situation of Human Rights in Liberia mentioned that peacekeepers needed to be addressed in her remarks before delegates. My sense is that this is not the last session in which types of measures recommended in the Zeid Report will be addressed before the Council.

The Death Row Phenomena Violates the Limitations on Capital Punishment Under International Law

By Elisabeth Hanowsky

This spring, as the Council was a relatively new body (replacing the former Commission on Human Rights), institution building preoccupied much of the session. I was fortunate enough to witness numerous discussions on what could make the work of the UN more effective while at the same time lobbying and advocating at a changing United Nations. As such, I sought to integrate my work in the context of a developing body.

I addressed issues surrounding capital punishment by submitting a statement and longer report on circumstances surrounding the use of the death penalty. (“The Death Row Phenomena Violates the Limitations on Capital Punishment Under International Law,” A/HRC/4/NGO/4).

Capital punishment continues to be a divisive issue at the UN. Although international law has not

declared the practice a *per se* violation, limitations as to how and for what reasons the punishment may be implemented have been established. For example, the punishment may be applied only for the most serious crimes and without arbitrariness.

This international pressure has produced results. Ninety four percent of executions are conducted in only four countries: the United States, China, Saudi Arabia and Iran. However, China declared at the Council that for the first time in the country’s history, they are mandating Supreme Court review of their death penalty cases.

My report covered a specific aspect of the death penalty — violations of torture taking place when countries implement the punishment. As a result of extremely long sentences awaiting death, death row inmates experience severe mental deterioration and trauma that is not found in prisoners facing term sentences. This severe psychological trauma is also known as the death row phenomenon and manifests itself as mental incompetence, mental slowness, senility, self-mutilation, delusions and, ultimately, insanity.

This phenomenon is a violation of numerous international instruments, including articles in the International Covenant of Civil and Political Rights covering torture, the right to life and due process procedures.

The death row phenomenon has already been recognized by numerous psychological studies, not to mention numerous international legal systems. The United Nations Human Rights Committee, the European Court of Human Rights and the Judicial Committee of the Privy Council — in addressing the death row phenomenon — have noted the factors of long times spent on death row, harsh conditions, and effects of the sentence on the prisoner. These factors continue to exist with increasing severity on death rows worldwide.

These legal systems have also declared that lengths of time as little as five years constitute torture of a death row inmate. In some countries, a prisoner’s average wait for their own execution is ten years. However, delays lasting for 20, 30 or 40 years are not uncommon. In these cases, essentially two sentences are being imposed — one of severe psychological torture and one of death.

At the UN, I wanted to increase awareness of this violation and its legal precedent and to educate delegations on the conditions of death row and executions.

Although the idea of lobbying a country delegation is daunting, I found I was treated with respect and courtesy. I felt the Human Rights Clinic fully prepared me with the factual and legal information on my topic, as well as how to approach and discuss my issue with a

member of a delegation.

I found it interesting that even though capital punishment is a largely moral issue, I was able to discuss my issue in terms of rights. While personal views of course differed on the underlying morality of state sponsored executions, even countries that retained the death penalty were eager to discuss how to implement the punishment humanely and with reason. It was interesting that a rights based approach was an effective avenue and allowed for a truthful discussion on rights without the pressure that a “moral debate” would have, even though rights and morals are so inextricably intertwined.

I am deeply thankful to Human Rights Advocates and Professor de la Vega for the amazing educational opportunity I was provided with.

Working Toward Bringing an End to Cruel and Inhuman Sentences: Juvenile Life Without Parole

By Nicole Skibola

In the U.S., children under the age of 18 legally cannot get married without permission, buy cigarettes or vote, and they can't consume alcohol until age 21. However, in 41 states, these youths can be prosecuted as adults and sentenced to life without the possibility of parole, some of these children as young as 10 years of age. Nationally, 59% of these kids received the sentence for their first ever criminal conviction, 16% were between the ages of 13 and 15 when they committed their crimes, and 26% were sentenced under a felony murder charge, where they weren't even the felon who pulled the trigger or carried the weapon.¹ Life without the possibility of parole is a death sentence for youths, who will spend their entire lives in prison and will eventually die in prison. They will be deprived of any opportunity for the rehabilitation that the Supreme Court's Roper v. Simmons decision advocates for juveniles. (See A/HRC/4/NGO/3)

While HRA has worked on this issue in the past, Professor de la Vega, Michelle Leighton and I decided to approach the issue from a different angle at the Council this year. We focused on trying to clarify the status of juvenile sentencing laws in eleven countries. This entailed identifying and approaching delegates from the prominent countries like Australia, down to small island

countries like Antigua and Barbuda, (many of which did not have representatives at the Council this year) to discuss their juvenile sentencing policies.

We were fortunate enough to have strong support for our cause. In the past year alone, a wave of resolutions have come out in steadfast opposition to the juvenile life without parole sentence. In December 2006, the General Assembly passed Resolution 61/146, which urges states to abolish the death penalty and life imprisonment without the possibility of release for offenders under the age of 18.² The Committee on the Rights of the Child recently recognized that all juvenile life imprisonment sentences violate the Convention on the Rights of the Child³ and the Committee Against Torture commented that life imprisonment of children “could constitute cruel, inhuman or degrading treatment or punishment.”⁴ The International Covenant on Civil and Political Rights' Human Rights Committee in its General Comment of the U.S. last year condemned the U.S.'s practice and urged the U.S. to change its sentencing policies to come into compliance with international standards.⁵

It seemed that with the recent wave of legislation came knowledge of the sentence within each country and a growing willingness to make domestic changes in the law. Of the eleven countries, South Africa, Tanzania, Burkina Faso and Sri Lanka reported to have laws pending that would bring their national laws into compliance with the CRC, though at this point, the length of time these laws may remain pending is unclear. One

1. Amnesty International and Human Rights Watch Report, “The Rest of their Lives: Life Without Parole for Child Offenders in the United States,” p. 1, available at <http://hrw.org/reports/2005/us1005/>

2. General Assembly Resolution 61/146, “Promotion and protection of the rights of children,” UN Doc. No. A/Res/61/146. November 30, 2006

3. Committee on the Right of the Child, “General Comment No. 10: Children's Rights in Juvenile Justice,” UN Doc. CRC/C/GC/10, at para 27. Feb. 2, 2007

4. Committee Against Torture, “Consideration of Reports Submitted by State Parties Under Article 19 of the Convention: Conclusions and recommendations of the Committee Against Torture,” UN Doc. CAT/C/USA/CO/2, Art. 34, July 26, 2006.

5. Concluding Observations of the Human Rights Committee on the United States of America, 87th Sess. Held on 27 July 2006, (CCCPR/C/SR.2395), para. 34.

6. Roper v. Simmons, 543 U.S. 551, 570 (2005)

country, Kenya, has successfully passed the Child Act in 2006, which outlaws the sentence and ensures that all other sentencing laws are in conformity with the CRC. Of course it is important for our ultimate goal—building international consensus against the practice—that all pending legislation actually become law. However, the trend only strengthens the argument that juvenile life without parole is quickly reaching *jus cogens* status, especially considering only one country in the world, the U.S., actively sentences its youth to life sentences in such large numbers, if at all.

One can not forget the Supreme Court's words in Roper v. Simmons describing diminished culpability in youth: "[juveniles'] own vulnerability and comparative lack of control over their immediate surroundings mean [they] have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment...[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character."⁶ While we still have a long road ahead of us in our quest to end the juvenile life without parole practice, the Roper majority's words leave a lingering hope that the Supreme Court has the willingness to bring about change, and will again review the injustice faced by our most vulnerable population in the near future.

HRA's Continued Efforts To Reform the Juvenile Life Without Parole Sentencing Practice in the U.S.

By Anne Wagley

Human Rights Advocates has continued its work to reform the juvenile life without parole sentencing practice in the United States. In conjunction with the End Juvenile Life Without Parole Project at the University of San Francisco School of Law, and funded by a grant from the JEHT Foundation, HRA board members participated in several United Nations meetings and presented information on this practice.

The sentencing of juveniles to life imprisonment without the possibility that these young people will ever be released violates international standards of juvenile justice and human rights law, including treaties to which the U.S. is a party. The widespread denunciation of this

practice by most countries in the world demonstrates the near isolation of the U.S. in its continuing violation of these standards. It was estimated in 2005 that there were 2,225 youth offenders serving this sentence in U.S. prisons, while at most there are 12 such cases in the rest of the world combined.

In March and July, 2006, HRA board members Nicole Philips and Anne Wagley participated in the official sessions of the Human Rights Committee, the enforcement authority for the International Covenant on Civil and Political Rights to which the U.S. is a party.

During the Committee session we circulated our reports with detailed analysis of how the U.S. is violating specific provisions of the treaty by allowing the juvenile LWOP sentence. Our documentation and analysis, and joint statements with other NGOs, such as Human Rights Watch, were critical to the Committee's findings in its final report on U.S. compliance. The Human Rights Committee found that the U.S. is out of compliance with its treaty obligations (art. 24(1)) by allowing this LWOP sentence. This is the first time that the Committee has made such a serious finding on the issue against the U.S. The Committee further stated that the U.S. "should ensure that no child offender is sentenced to life imprisonment without parole, and should adopt all appropriate measures to review the situation of persons already serving such sentences." (HRC Report on the U.S., CCPR/C/USA/CO/3/Rev. 1, para 34, July 2006.)

In September 2006, former HRA board member Michelle Leighton participated in the Human Rights Council session to raise awareness among delegates and NGOs about juvenile LWOP sentences and the violation of international treaty and customary international law by those countries still allowing the sentence. After meeting with delegations, we obtained agreement from European Union and Latin American group representatives to work with us to call for the abolition of such sentencing in a resolution at the UN General Assembly.

Working with Geneva and New York based NGOs, the End Juvenile Life Without Parole Project helped to get language included in the omnibus resolution adopted by the UN General Assembly on Rights of the Child, "calling on all states...to abolish by law, as soon as possible, the death penalty and life without possibility of release for those below the age of 18 years of the time of the commission of the offense." (para. 31 (a) emphasis added). (cite to res.)

In February 2007 the End Juvenile Life Without Parole Project was able to get perhaps the strongest

official international condemnation yet of sentencing juvenile offenders to life without parole in a General Comment issued by the Committee on the Rights of the Child on Juvenile Justice: “The death penalty and a life sentence without the possibility of parole are explicitly prohibited in article 37(a) CRC [of the treaty].”

The Comment’s additional paragraph 27 titled, “No life imprisonment without parole” further recommends that parties abolish all forms of life imprisonment for offences committed by persons under the age of 18. Providing greater clarity to this norm is the Committee’s interpretation of treaty obligations around procedure for trial of juveniles, requiring states to treat juveniles strictly under the rules of juvenile justice. This would effectively prohibit courts from trying juveniles as adults—the primary mechanism in U.S. courts for seeking the LWOP sentence. While the United States is not a party to this treaty, the General Comment is now part of the body of law that can be used to establish that this norm has risen to the level of customary international law or even *jus cogens*, a peremptory norm of international law.

In March 2007, HRA Board member Connie de la Vega participated in the Human Rights Council session and on behalf of HRA, submitted a written statement and made an oral statement to the Council calling for its attention to the LWOP issue. We also joined a statement to the Human Rights Council from the global coalition on rights of the child calling on the Council to dedicate at least two days of its sessions to issues concerning children’s rights abuses and, among other measures, incorporation of a state’s compliance with children’s rights within the new universal periodic review of states. The coalition provided a further statement to delegates in the official session dedicated to violence against children.

HRA and the End Juvenile Life Without Parole Project at the University of San Francisco School of Law will continue this important work both at meetings of United Nations bodies, and in support of litigation and legislative efforts in the United States.

Update: Gender Equality and Women’s Empowerment at the United Nations

By Julianne Cartwright Traylor

In our last report about this issue at the United Nations, former UN-Secretary General Kofi Annan had just welcomed the report and recommendations of the

UN’s High-Level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment, entitled “Delivering as One.” (See HRA Newsletter Volume 48, Winter 2006/2007 and UN Document A/61/583, 20 November 2006).

One of the Panel’s key recommendations was to “...strengthen the coherence and impact of the United Nations institutional gender architecture by streamlining and consolidating three of the United Nations existing gender institutions as a consolidated United Nations gender equality and women’s empowerment programme.” (para. 48). In short, the gender equality architecture (GEA) discussions and consultations have continued through the first months of the new Secretary-General, Ban Ki-Moon’s term in office.

On March 6th and 7th of this year, President of the General Assembly Sheikha Rashed Al Khalifa convened an informal thematic debate in the General Assembly on “Gender Equality and the Empowerment of Women.” It consisted of a high-level debate and two interactive panel discussions and had more than 80 speakers, including 20 Ministers. One of the key findings and common concerns that emerged from the informal debate included the following:

“[T]he role of the United Nations system in improving the political, economic and social status of women was clearly recognized, while at the same time the recommendations of the High-level Panel on System-wide Coherence for a stronger, well-resourced and more accountable gender entity with a focus on tangible results at the country level was widely supported... Member States expressed strong support for a more coherent, better coordinated and better resourced United Nations gender architecture with both normative and operational functions, which would strengthen the impact of gender equality and the empowerment of women programmes at the country level and across the Funds, Programmes, Agencies and Department of the United Nations. Member States also pointed out the each United Nations entity was responsible for mainstreaming gender perspectives in its policies and programmes, and called for much better accountability mechanisms to ensure proper implementation.

(See pages 2 and 8, Report on the “Informal Thematic Debate of the General Assembly – Promotion of Gender Equality and the Empowerment of Women,” 6 and 7 March 2007)

On April 16th, the Secretary General presented his report on the recommendations contained in the Panel’s report. His report clearly supported the recom-

mendation "...for replacing current structures with one dynamic UN entity, focused on gender equality and women's empowerment". He wrote that "...he was committed to taking this recommendation forward, in accordance with the decision of Member States" and that:

"[With] regard to the Panel's recommendations to strengthen the Organization's gender architecture, I am in full agreement with the Panel's assessment of the need to consolidate and strengthen several current structures in a dynamic United Nations entity focused on gender equality and women's empowerment, which should mobilize forces of change at the global level and inspire enhanced results at the country level."

(See para. 17, Report of the Secretary-General, Recommendations contained in the report of the High-level Panel on United Nations System-wide Coherence in the areas of development, humanitarian assistance and the environment, UN document A/61/836, 3 April 2007).

With respect to the new under-secretary general position to "...lead a consolidated and strengthened United Nations gender architecture subject to approval by the relevant intergovernmental process, the United Nations system and many Member States are united in their conviction that the recommendations would contribute to overall efforts to achieve the goals of gender equality and empowerment of women. However, I will await the outcome of the substantive discussions and consultations by Member States on the proposal in order to be guided further by the intergovernmental process." However, he did continue to say "I hope that Member States will be able to reach a positive early agreement on this proposal so that we can take it forward." (para. 18).

Following a debate on the Secretary General's Report and the Report of the High Level Panel on 16th and 17th of April, President Al Khalifa appointed Ambassadors Hackett (Barbados) and Hoscheit (Luxembourg) to co-chair the negotiations and intergovernmental process on United Nations System-Wide Coherence, starting their work at the end of June and reporting to her monthly on the progress in these consultations. (See update on UN Reform and the GEA – from the co-chairs).

In June of this year, UN Deputy Secretary General Asha-Rose Migiro spoke at the first intergovernmental consultation on the recommendations of the high-level Panel on System-wide Coherence on Gender Equality and Women's Empowerment, in support of the Panel's recommendations of the need for a new gender architecture with appropriate and secure resources and

what the mandate of the new entity would be – not just the sum of the current mandates and resources of the agencies that it would replace. (See "Statement to the General Assembly Consultations on System-Wide Coherence and Gender Architecture," 21 June, 2007). In addition, she has been asked by the Secretary General to take the lead to implement the recommendations of the Panel's Report. In response to her presentation in June, President Al Khalifa wrote to her saying that the "Member States reacted positively to your assessment of the weaknesses of the current system and the need to improve system-wide coherence and capacity of the United Nations gender equality architecture. They requested that she submit a concept note addressing the "...need to greater clarity and additional information on the Secretariat's proposal for a strengthened gender equality architecture."

In summary, there is widespread support both on the NGO level and at the intergovernmental level at the UN and among Member States, for the Panel's recommendations to strengthen the UN Gender Equality Architecture. However, "...this is not the case for [the recommendations in] the entire report..." of the Panel. It appears that members countries of the G77 and the "Non aligned Movement" (NAM) "...continue to insist on an extensive debate on the entire report rather than negotiating within separate working groups on different sections. Thus, the relatively non-controversial recommendations like strengthening the gender architecture are lumped together with all the other recommendations in the report, some of which are likely to be more controversial. Most of the discussions taking place are focused on process rather than the recommendations themselves. As a result, the process is currently stalled and the consultations continue, without any timeframe for action. (See Urgent: Action Needed to Gain Stronger Gender Equality Architecture, 23 May 2007 – June Zeitlin at WEDO – Women's Environment and Development Organization (june@wedo.org) or Charlotte Bunch at the Center for Women's Global Leadership (cbunch@igc.org) www.wedo.org or www.cwgl.rutgers.edu).

As a result, NGO activists are being asked to advocate for separating the GEA recommendations from the rest of those of the Panel's Report and negotiating them now – "...regardless of what happens with the other components of the report." They are calling for this before the current session of the General Assembly ends in August. As usual, we will continue to report about the status of the deliberations about the gender architecture proposals at the UN in future issues of the Newsletter.

LITIGATION

Supreme Court Denunciation of Affirmative Action Flouts U.S. International Treaty Obligations, Parents Involved in Community Education v. Seattle School District No. 1, 551 U.S. ___ (June 28, 2007)

By Nicole M. Phillips and Connie de la Vega

The Court's 5-4 opinion overturning the use of race as a factor in denying admission to Caucasian students arguably goes against the Fourteenth Amendment's Equal Protection guarantee and the Court's prior holdings in Brown v. Board of Education and Grutter v. Bollinger. The Court also overlooked international law.

The International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) permit race-based distinctions to redress past discrimination and achieve equality in the enjoyment of human rights and fundamental freedoms. By becoming a party to these treaties, the U.S. is obligated to take the affirmative steps necessary to guarantee all persons equal and effective protection against all forms of racial discrimination. International law and international interpretive bodies uphold and encourage state action to address both *de facto* and *de jure* segregation.

As reported in HRA's 2007 Winter Newsletter, the U.S. Government's international obligations were raised in an amicus brief submitted by HRA, the University of Minnesota Human Rights Center and a coalition of other human rights institutions. The brief focused on one of the two cases decided by the Court involving Jefferson County, Kentucky, which has a long

history of *de jure* and *de facto* segregation in its neighborhoods and schools. The affirmative action plan struck down by the Court used a system of managed, voluntary choice to promote integration in the county's schools without using racial quotas. Enrollment decisions were based on place of residence, student choice (through a system of student preference ranking, application to magnet or traditional programs, transfer, or open enrolment), and racial guidelines. (Amici were represented by Professor David Weissbrodt, a member of HRA's National Advisory Board, and Professor Connie de la Vega.)

Justice Stephen Breyer's dissent recognized that the compelling state interest in upholding "positive race-related goals" was to eradicate remnants of primary and secondary school segregation, such as in Jefferson County. According to the dissent, diversity is a compelling state interest in public schools even more so than in higher education. Justice Breyer wrote that three interests justified the racial classification: the historical and remedial element, an educational element, and a democratic element—that children need to "work and play together."

A number of amicus curiae briefs (including the one joined by HRA) were filed in the case urging the Court to consider the U.S. treaty obligations as well as the practice of other nations to uphold the two programs. None of the Justices addressed these issues in their opinions, perhaps affected by the conservative backlash that resulted from the reference to treaty and international norms in Roper v. Simmons, which held that the death penalty for offenders under 18 years of age violated the Eighth Amendment.

In April 2007, the U.S. submitted its report of compliance to the CERD Committee. (Available at http://www.state.gov/g/drl/rls/cerd_report/) HRA will be submitting a report to the CERD Committee on the U.S.'s failure to take the steps necessary to guarantee students equal and effective protection against racial discrimination. HRA's report will mention this ruling. The U.S. is expected to appear before the CERD Committee in Spring 2008.

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