



# Human Rights Advocates

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## HRA's Fall Education Event on the UN World Summit

*By Conchita Lozano-Batista, Connie de la Vega, Julianne Cartwright Traylor, and Michelle Leighton*

On October 5, 2005, Human Rights Advocates (HRA) held its Fall Annual Education Event at Boalt Hall, University of California at Berkeley. The meeting began with a welcome reception for members and guests followed by a discussion on the U.N. World Summit and the proposed U.N. reforms.

HRA Board President Julianne Cartwright Traylor made a few opening remarks about the Summit which took place from September 14 – 16, 2005 at UN Headquarters in New York City. Purported to be the largest gathering of world leaders in history, the Summit brought together more than 170 Heads of State and Government to complete a five-year review of the Millennium Development Declaration and Goals established in 2000. She introduced the panelists who then spoke about various aspects of the Final Outcome Document of the World Summit.

Michelle Leighton (Assistant Dean of John F. Kennedy University School of Law and Member of HRA's Board of Directors) discussed some of the gains of the Summit, which were in the areas of development, genocide, and the rights of women and children. Eighteen developing countries will receive 100% debt relief from funds owed to the major international monetary institutions as part of an agreement by the G-8 governments in anticipation of the World Summit. The World Summit Outcome Document also reiterates the commitment by governments to cancel all outstanding debt owed by heavily indebted poor countries.

The issue of development was firmly tied to the concept of human rights and various themes of human rights were reinforced at the Summit. With regard to genocide, government commitments to end genocide were reiterated and language in the Outcome Document was strong in this regard. Importantly, governments recognized their collective responsibility to protect civilians facing genocide and similar atrocities, making it impera-

tive they act to protect civilians from mass killings.

While in most instances human rights were not expanded, the Millennium Goals were preserved in the Outcome Document (an issue that had become controversial in the U.S. proposal for major changes to the Document). Discussion of and support for the rights of women and children also remained in the Document, as well as language urging states to become parties to the Convention on the Rights of the Child.

Worth further note is the recognition of equal treatment of all human rights in the Outcome Document, including economic, social and cultural rights, and the restatement that human rights are "universal, indivisible, interrelated and interdependent." Finally, governments agreed to establish a Peace Building Commission and to double the budget of the Office of the High Commissioner for Human Rights.

In regard to development and environment issues, the Outcome Document contains a number of paragraphs referring to government commitments toward sustainable development. However, these commitments are not new and language regarding climate change, while remaining in the Document, was weaker because of U.S. objections and discussion regarding increased support for the U.N. Environment Programme (UNEP) were tabled.

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Leighton then discussed some of the losses seen in the Final Outcome Document. One of the gravest losses was the removal of language regarding the obligation of states for the nonproliferation of nuclear weapons. All language mentioning these issues was removed from the Document, even language stating that countries should consider eradicating nuclear weapons.

With regard to development assistance, the Outcome Document included weak language providing that developed countries would try to increase their development assistance, but no concrete figure or percentage of GNP was set. Language regarding trade subsidies did not make it into the Document. Similarly, almost all language regarding corporate accountability was removed from the Document, with the exception of a single sentence. Despite the drawbacks in the Document, advocates of human rights were encouraged to use the Outcome Document in their advocacy efforts and to stress the gains made this year.

Next Connie de la Vega (Professor of Law, University of San Francisco and Member of HRA's Board of Directors) discussed human rights language and issues mentioned in the Outcome Document, as well as proposed U.N. reforms. She discussed the impetus for reform at the U.N. and the proposed changes. Some issues discussed included the deletion of regional representation and the failure to affirm the role of non-governmental organizations (NGOs) at the Human Rights Council.

De la Vega then pointed out that the Final Outcome Document included an entire section on Human Rights and the Rule of Law. The Document reaffirmed that all human rights are universal, indivisible, inter-related, and interdependent and that all human rights must be treated in a fair and equal manner.

The governments reaffirmed their commitment to promote and protect human rights and fundamental freedoms for all, including the right to development. They also resolved to strengthen the U.N. Office of the High Commissioner for Human Rights and agreed to double its budget, as well as improve the effectiveness of human rights treaty bodies. Governments also committed to inject promotion and protection of human rights into their national policies. Special attention was paid to the rights of women, children, minorities, and the right to education.

As part of the methods for increasing the effectiveness of U.N. bodies, the governments agreed to create a Human Rights Council (HRC), presumably to take over the functions of the Commission on Human Rights. The Council is to address violations of human

rights including gross and systematic violations. However, the U.S.'s proposals for the Council received little support from the non-aligned countries, presumably because of suggestions that membership should be limited. As a result, the Final Outcome Document includes fewer details than the drafts did on the Council. However, there was an agreement in Paragraph 160 for the details to be determined by open and transparent negotiations at the General Assembly – something that has failed to happen to date. If negotiations are continuing, they are happening in a non-transparent manner.

The governments did acknowledge the important role that the International Court of Justice can play in the protection of rights and asked States to accept its jurisdiction to resolve disputes.

Finally, Julianne Traylor (Political Scientist, Lecturer, and President of HRA's Board of Directors) discussed gender issues addressed at the World Summit. There was a general feeling at the World Summit that the Final Outcome Document contained gains for women's rights. In the Document, gender is discussed both generally, and more specifically within many of the human rights topics covered.

The Outcome Document included some gains on gender equality – despite what a number of women's groups characterize as the lack of meaningful action on the total package of what was debated at the World Summit.

The Third Millennium Development Goal on gender equality was, in fact, expanded from its original focus on primary education to include: an end to impunity for violence against women; the goal of universal access to reproductive health; the right to own and inherit property; equal access to labor protections; and increased representation of women leaders in government decision-making bodies.

In remarking about this victory, it is important to note that language condemning violence against women, boosting their access to reproductive health and defending their property rights had been proposed, but not accepted, at the UN Millennium Summit in 2000. Now the language was included in the 2005 Outcome Document. In addition, government delegates agreed to repeal all laws that discriminate against women and promised to implement Security Council Resolution 1325, which provides for the promotion of women's increased participation in peace and security processes (para. 116).

Traylor pointed out some of the other provisions of the Final Outcome Document which specifically mention women and girls include:

- 1) Education – striving for expanded secondary and higher education as well as vocational education and training, especially for girls and women (para 43); eliminating gender inequality and imbalance and to renew efforts to improve girls’ education (para. 44);
- 2) Employment – supporting fair globalization and resolving to make the goals of full and productive employment and decent work for all, including for women and young people (para. 47);
- 3) Gender equality and empowerment of women – eliminating gender inequalities in primary and secondary education by the earliest possible date and at all educational levels by 2015; the rights to own and inherit property and ensuring secure tenure of property and housing by women; ensuring equal access to reproductive health; promoting women’s equal access to labour markets, sustainable employment and adequate labour protection; ensuring equal access of women to productive assets and resources, including land, credit and technology; eliminating all forms of discrimination and violence against women and the girl child, including by ending impunity and by ensuring the protection of civilians, in particular women and the girl child, during and after armed conflicts in accordance with the obligations of States under international humanitarian law and international human rights law; increased representation of women in government decision-making bodies (para. 58) This section of the Final Outcome Document also recognized the importance of gender mainstreaming – including actively promoting the mainstreaming of a gender perspective in the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres,, and undertaking to strengthen the capabilities of the United Nations system in the area of gender (para. 59).
- 4) Human rights – recognizing the need to pay special attention to the human rights of women and children and to undertake to advance them in every possible way, including by bringing gender and child-protection perspectives into the human rights agenda (para. 128).

Despite these gains, representatives of women’s groups were “...dismayed by a shameful lack of political will on the part of governments to tackle poverty, foster peace, and ensure human rights...Women expected more from their governments.” (see Press Release of September 14, 2005 by Women’s Alert: Gender Monitoring Group of the World Summit). Many of the issues

they wanted discussed at the World Summit in a meaningful way such as trade reform, debt relief and financial measures for development were deferred to be discussed at the regular session of the General Assembly.

However, in the final analysis, the Outcome Document does provide women’s rights advocates a textual basis to push their agenda within their own countries. Its provisions can be used to keep advancing whatever issues they are working on locally, nationally, regionally and internationally and can be used to insist that substantial funding goes to support gender equality, fight violence against women and support reproductive health measures.

The session closed with a Q and A segment and included a discussion about other upcoming UN issues and sessions such as of the Committee on Torture and the Human Rights Committee (see, for example, the article below on the NGO shadow report to the Human Rights Committee). The document citation for the Final Outcome Document is A/60/L.1.

## HRA Joins Shadow Report to Human Rights Committee

*By Connie de la Vega*

This past Fall, HRA joined a group of non-governmental organizations (NGOs) who sent a report to the Human Rights Committee (HRC) regarding human rights in the United States. The HRC had requested information after the U.S. had failed to submit its second and third reports due pursuant to its obligations under the International Covenant on Civil and Political Rights (ICCPR). The U.S. had submitted its first report in 1994, but had failed to submit any additional reports since then. The HRC had decided to review the U.S. without its report and had requested information from NGOs.

The NGO Report focused on violations of human rights by the U.S. after 9/11. It included information on arbitrary detention and treatment, violations on the right to privacy, criminalization of dissent, the Patriot Act, violations of due process at Guantánamo Bay, and outsourcing of interrogations. It also included information on the right to vote, including racial and felony disenfranchisement, rights of migrants, including the right to freedom of association, reproductive rights, limits on the right to a remedy, harsh treatment of children in conflict with the law, detention issues including abuse of women, violence against women, and punitive

treatment of people labeled with psychiatric disabilities.

Just as the HRC was preparing to review the U.S.'s record regarding compliance with the ICCPR, the U.S. submitted its second and third reports ([www.state.gov/g/drl/rls/55504.htm](http://www.state.gov/g/drl/rls/55504.htm)). The HRC decided to put off its review until next year so it could examine the U.S. reports. HRA will continue to work with other NGOs to submit additional reports if needed.

## XI UN Congress on Crime Prevention and Criminal Justice

### “Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice”

By *Deborah LaBelle*

I represented Human Rights Advocates at the XIth UN Congress on Crime Prevention and Criminal Justice between 18-25 April 2005 held in Bangkok, Thailand. One of the central stated purposes of the Congress was to draft the Congress Declaration with guidelines that determine the Crime Commission's agenda for the next five years. The Congress was attended by approximately 2500 delegates. The Crime Commission has been somewhat neglected by criminal justice advocates and it is fair to say that in large part the Commission would rather that NGOs continue their limited participation.

However, because of its mandate and its smaller more accessible delegate population, the Commission does offer some opportunities to raise issues related to concerns of human rights advocates in the area of criminal justice.

The Congress was organized in five parts:

- 1) Committees assigned to work on the various agenda items;
- 2) Workshops held on two days to explore issues in detail. Invited experts and representatives of inter-governmental organization (IGOs) gave brief presentations, e.g., presenting programs from their regions, and with limited opportunity for discussion;
- 3) Ancillary meetings organized by NGOs with the agreement of UNODC and logistical support from ISPAC. The ability to hold ancillary meetings was somewhat limited due both to space and time constraints placed on the NGOs. Penal Reform International (PRI), as the most prominent NGO in attendance, organized or co-organized the majority (four) of the ancillary meetings;
- 4) Informal consultations conducted in closed session

(i.e., government delegates only) to discuss the final draft of the Bangkok Declaration. The exclusion of NGOs made involvement by NGOs difficult and quite ad hoc. This was criticized by government delegates from the Netherlands and Canada (at the behest of a number of NGOs) as being against the spirit of the Congress. In part, however, due to the small number of NGOs that attended the Congress, the exclusion was retained throughout; and

- 5) The High Level Segment which enabled senior government representatives to join their country delegates to meet in plenary and to express their concerns on each agenda item.

As the HRA representative, I presented at an ancillary meeting on April 18th co-sponsored by PRI and ICCPPC entitled: “Safeguarding the Fundamental Rights of Prisoners.” A focus of the discussion was on the treatment of juveniles in the United States with an emphasis on the impact of sentencing juveniles to life without possibility of parole.

We also discussed the issue of how to ensure that the rights of prisoners and detainees to humane treatment, as described in the Standard Minimum Rules for the Treatment of Prisoners and other international standards, are recognized and enforced by countries increasingly focused on terrorism, global crime and the war on drugs. NGOs, penal experts and government representatives discussed the most effective strategies for ensuring the basic rights of imprisoned men, women and children and how to establish a plan of action for the implementation of those strategies at and beyond the Congress.

This ancillary meeting had the highest attendance of both NGO representatives and delegates and served as a basis for organizing around the language in the Bangkok Declaration.

I also made an oral statement in a plenary session in support of one of the five agenda items at the Congress: “Making standards work: Fifty years of standard-setting in crime prevention and criminal justice”. This agenda item was in many ways the sole item that significantly addressed issues of the rights of those in detention or incarceration.

The statement expressed HRA's support of the continued consideration of the proposed draft Charter of Fundamental Rights of Prisoners in order to insure humane treatment of those in detention in accordance with international standards with a view to early adoption, recognition, and commitment to working to insure universal compliance with the Charter and existing international standards.

The statement also emphasized the need to be vigilant in protecting the human rights of children in conditions of detention and confinement. They continue to suffer from an attitude of exceptionalism resulting in the lack of recognition of their status as children, and their right to be treated in accordance with the Convention on the Rights of the Child and compliance with the Minimum Rules of Treatment of Prisoners.

The remaining plenary sessions addressed the following items:

- 1) Effective measures to combat transnational organized crime;
- 2) International cooperation against terrorism and links between terrorism and other criminal activities;
- 3) Corruption: threats and trends in the twenty-first century;
- 4) Economic and financial crimes: challenges to sustainable development.

The final Draft Declaration of Conference contained several references to prisons, prisoners' conditions in detention, juveniles, legal aid, and the problem of HIV in prisons. There was a reference to a commitment to "the development and maintenance of fair and efficient criminal justice institutions, including the humane treatment of all those in pre-trial and correctional facilities, in accordance with applicable international standards" inserted at the behest of NGOs.

It further included para (30) recommending that 'the Commission on Crime Prevention and Criminal Justice give consideration to reviewing the adequacy of standards and norms in relation to prison management and prisoners.' This was inserted, we were told, at the request in the main of the U.S. delegation.

The recommendations of the regional preparatory meetings (Africa, Latin America and the Caribbean and Western Asia) that the proposed Charter of Fundamental Rights of Prisoners being considered by the Congress was resisted by the U.S. delegation which 'questioned the value the charter would add to the existing body of standards and norms in crime prevention and criminal justice' (as set down by the chairman of the committee in his report to congress).

Accordingly, notwithstanding the lobbying of PRI and others and the support of some country delegates (Austria, Turkey, Canada among others), the Charter was not considered any further and no mention of it was made in the Declaration. However, as stated above, the specific clause on humane and just treatment of those in detention suggested by PRI and supported by all NGOs was incorporated.

In the final analysis, there was a preoccupation at this Congress with terrorism and transnational crime prevention. Unlike the Commission's Hearings in Vienna, which I had attended on behalf of Human Rights Watch a few years ago, in which the U.S. delegation included people from the Department of Justice and BOP, the U.S. representatives at this Congress were largely from the DEA and other agencies concerned with global terror.

Also, because of the overlap with the meeting of the U.N. Commission on Human Rights, many of the international NGOs such as Human Rights Watch, Amnesty International and FIDH (Federation Internationale des Droits de l'Homme) were missing from Bangkok and it was difficult to switch the focus or impact the agenda.

Prior to the next Congress, it would be helpful to discuss the increased presence of NGOs and develop an agenda for specific issues to press forward on within the context of criminal justice concerns.

*Deborah LaBelle is an HRA member and has been working on the issue of juvenile justice for a number of years.*

## UN requests trafficking data

### HRA Provides Information to The Office of the High Commissioner on Human Rights for Report on Trafficking Demand

*By Kristina Zinnen*

Human Rights Advocates (HRA) recently responded to a request from the U.N. Office of the High Commissioner on Human Rights to complete a questionnaire on demand for services deriving from sexual exploitation. The Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on trafficking in persons, especially women and children are compiling information for the preparation of a joint report to the Commission on Human Rights (CHR).

This questionnaire on the demand-side of trafficking included questions concerning the scope and extent of demand, factors creating or increasing demand, and strategies to eradicate or decrease demand. Most notably, the questionnaire asked respondents to provide available information on possible links between military deployment and the demand for sexually exploitative services.

HRA has raised the issue of demand at both

the CHR and the Commission on the Status of Women (CSW) for the past five years, with a particular emphasis on the role of militaries and peacekeeping troops in creating demand. HRA was asked to present our research as it pertained to the U.S. Although our work at HRA generally focuses on thematic procedures, we compiled research on the U.S. and our military from HRA reports and statements to the CHR and CSW. Where applicable, we also provided information on the role of the U.N. in creating or addressing demand, particularly the role of U.N. peacekeeping troops. The 42-page report to the Special Rapporteurs is a reflection of the combined efforts of many members of HRA over the past five years.

The report addresses the role of the U.S. military, irregular migration, and U.S. law and policy, as well as the role of U.N. peacekeeping troops and U.N. Security Council resolutions. We included an extensive list of recommendations that we have presented to the CHR and CSW for Member States regarding their militaries, the inclusion of women in peace processes, the supply side of trafficking, monitoring mechanisms and assessment studies, education and awareness programs, and the use of U.N. mechanisms. We also included a list of recommendations for the U.N. regarding these issues and the role of peacekeeping troops.

HRA's recommendations to Member States regarding their militaries included establishing clear codes of conduct, mandatory gender-sensitivity training, and a reinforced chain of command committed to a zero-tolerance policy for sexual exploitation. HRA further recommended investigation procedures and criminal penalties to hold military personnel accountable for their actions.

Regarding the inclusion of women in peace processes, HRA recommended the participation of local women's groups in negotiations leading to formal peace processes, mechanisms to ensure the prosecution of violators of the codes of conduct, and refrain from incorporating amnesty or impunity arrangements for perpetrators of trafficking into peace agreements.

Regarding the supply side of trafficking, HRA recommended Member States support local women's groups that provide microfinance and job training programs for women and girls vulnerable to the commercial sex trade, assist supplying countries in alleviating conditions that contribute to trafficking, review their migration legislation policies, and affirm international labor standards with no discrimination on the basis of immigration status. HRA recommended Member States establish monitoring mechanisms that can re-

cord and address violations against women.

Regarding education and awareness programs, HRA recommended programs on gender equality and human trafficking, including men's programs for first-time offenders of prostitution.

Finally, regarding the use of U.N. mechanisms, HRA recommended the ratification and effective implementation of the Convention on Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Convention for Elimination of Discrimination Against Women (CEDAW).

HRA made similar recommendations to the U.N. where applicable. Regarding the role of peacekeeping troops, HRA recommended that peacekeeping troops and personnel be held accountable within the U.N. judicial system and that the Special Rapporteur on trafficking in persons conduct an investigation. Regarding the inclusion of women in peace processes, HRA recommended the implementation of U.N. Security Council Resolution 1325's mandate as a tool to combat trafficking.

Regarding the supply side of trafficking, HRA recommended that the Special Rapporteur on Migrant Workers provide information on international labor rights obligations with no discrimination on the basis of immigration status. Regarding monitoring mechanisms and assessment studies, HRA recommended the U.N., through the Special Rapporteur on Trafficking in Persons, coordinate monitoring and information dissemination.

Regarding education and awareness programs, HRA recommended the Secretary General follow up on his 2002 report and pay special consideration to the trafficking issue, including the recommendations for effective training programs. Finally, regarding U.N. mechanisms, HRA recommended the U.N. clarify the mandate of the Special Rapporteur on trafficking in persons to include the authority to take urgent action to address allegations of specific violations and to investigate reliable allegations of governmental inaction with respect to those claims.

HRA applauds the efforts of the Special Rapporteurs to conduct an in-depth study on demand and are pleased that we were able to contribute to this project.

*Kristina Zinnen is a third year law student at the University of San Francisco, School of Law. She was an Edith Coliver Intern in Spring 2005 and will be a Frank C. Newman Intern in Spring 2006.*

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# Litigation and Legislation

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## The Presbyterian Church of Sudan, et al., v. Talisman Energy, Inc., Republic of the Sudan

244 F. Supp. 2d 289 (S.D.N.Y. 2003) (2nd Circuit)

By Nicole Phillips

In October 2005, HRA joined in an amicus brief wherein current and former residents of the Republic of the Sudan sued a Canadian energy company under the Alien Tort Statute (ATS) and Torture Victim Protection Act (TVPA), claiming that Talisman “collaborated with Sudan in ‘ethnically cleansing’ civilian populations surrounding oil concessions located in southern Sudan in order to facilitate oil exploration and extraction activities” from 1999-2003.

The amicus brief was filed before the Second Circuit Court of Appeals on behalf of several human rights organizations and activists seeking to reverse a denial of class certification. The brief argues that class treatment is warranted in this case, and cases like it, because otherwise victims of collective rights violations (like genocide, crimes against humanity and war crimes) will be without any avenue for legal redress. Petitioners assert that the district court overlooked key areas where proof will be common to the class where the existence of a policy or course of conduct common is at issue.

The brief argues that Petitioners have an interest in ensuring that cases alleging the commission of mass crimes against civilian populations proceed in United States courts as class actions pursuant to Federal Rule of Civil Procedure (FRCP) 23. The brief pointed out that mass crime class actions have the potential to play an important role in the worldwide effort to enforce international norms concerned with the protection of international human rights. Class actions can contribute to the redress and rehabilitation of victims, the deterrence of future abuses, the creation of an accurate judicial record of mass violence, and the enunciation of international law norms in ways that individual actions may not. These suits also provide victims with a form of redress that is unattainable in the jurisdictions in which the harm occurred or in international and regional fora that do not allow collective action. In addition, class action suits in domestic courts contribute to

the fulfillment of states’ obligations under international law to provide victims of human rights violations with an opportunity to seek civil reparations.

Given the important goals satisfied by class action suits in the mass crimes context, the brief argues that it is vital that United States courts exercise their equitable powers to certify victim classes where class members allege collective harms and theories of liability that are subject to common proof. In such circumstances, common issues will predominate over individual issues and certification is warranted. If the narrow reading of FRCP 23 advanced by the district court is allowed to take hold, it would render class treatment unavailable in the mass crimes context and thousands of victims will be effectively denied any opportunity to pursue legal redress for acts of genocide, crimes against humanity, and war crimes.

The Second Circuit is expected to rule sometime in 2006.

The other amici include: the Allard K. Lowenstein International Human Rights Clinic (Yale Law School), the Center for Constitutional Rights (CCR), Center for Justice and Accountability (CJA), Earth Rights International (ERI), William Aceves (Professor of Law at California Western School of Law), Deena Hurwitz (Associate Clinical Professor and the Director of the Human Rights Program at the University of Virginia School of Law), Deborah LaBelle (Senior Soros Justice Fellow), Jules Lobel (Professor of law at the University of Pittsburgh School of Law), Cynthia Soohoo (Bringing Human Rights Home Project (BHRH) with the Human Rights Institute (HRI) of Columbia Law School), and Eric Tars (independent human rights consultant).

## In re South African Apartheid Litigation

346 F. Supp. 2d 538 (S.D.N.Y. 2004) (2nd Circuit)

By Nicole Phillips

In October 2005, HRA joined in an amicus brief challenging a New York District Court’s dismissal of a series of class action lawsuits on behalf of individuals who were residents of South Africa and suffered damages as a result of apartheid crimes. In re South African Apartheid Litigation, 346 F. Supp. 2d 538 (S.D.N.Y. 2004). The class action suits were against various corporations

that had done business in apartheid South Africa and with the South African government <sup>1</sup>.

Amici curiae in this case are international human rights organizations and bar associations <sup>2</sup>. In general, the brief argues that the district court misinterprets core international law principles and undermines the efforts of the Amici to prevent human rights violations and to hold perpetrators accountable.

In 2004, the lower court dismissed the class suits on the basis that:

- 1) plaintiffs had not alleged state action under the Alien Tort Statute (ATS) because the conduct complained of did not constitute state action with the apartheid government;
- 2) aiding and abetting international law was not a universally accepted violation of international law; and
- 3) defendant corporations' activities did not constitute violations of international law.

In its decision, the district court rejected several widely ratified international agreements because they supposedly impose only criminal liability, not civil liability, on perpetrators. The court rejected the relevance of the Genocide Convention and the Convention against Torture because, "both conventions are criminal in nature, and neither is self-executing. Therefore, there is no private liability under the treaties in United States courts. It follows that no liability based upon any alleged violation of these norms can form an adequate predicate for jurisdiction under the ATCA." The court found irrelevant all other sources of international law, including the International Covenant on Civil and Political Rights, the United Nations Charter, and the Universal Declaration of Human Rights.

In response, the amicus brief argues that the abuses alleged by the plaintiffs in this case - crimes against humanity, apartheid, summary execution, torture, and slavery - are among the most egregious human rights violations, and by an overwhelming international consensus, trigger jurisdiction under the ATS. The brief also argues that all members of society, including private individuals, government officials, and corporations, are subject to complicit liability (aiding and abetting), for knowingly assisting the commission of crimes against humanity and the other abuses at issue in this case applies. Finally, the brief argues that the court's misinterpretation of international law would eviscerate the ATS and severely undermine worldwide efforts to hold accountable perpetrators of egregious human rights abuses.

The Second Circuit is expected to rule sometime in 2006.

1. These defendants include: Barclay National Bank Ltd., British Petroleum, Chevrontexaco Corporation, Chevrontexaco Global Energy, Citigroup, Commerzbank, Credit Suisse Group, DaimlerChrysler, Deutsche Bank, Dresdner Bank, ExxonMobil Corporation, Ford Motor Company, Fujitsu, General Motors Corporations, International Business Machines Corp., J.P. Morgan Chase, Shell Oil Company and UBS AG.

2. The other amici curiae include: Amnesty International USA, Bar Association of San Francisco (BASF), Center for Human Rights and Global Justice, Center for Justice & Accountability (CJA), Centre on Housing Rights and Evictions (COHRE), Due Process of Law Foundation (DPLF), Human Rights Watch (HRW), International League for Human Rights, JUSTICE, Minnesota Advocates for Human Rights, Odhikar, Robert F. Kennedy Memorial, and the United Electrical, Radio and Machine Workers of America (UE).

## Letter to President of the U.N. General Assembly with suggestions for the new Human Rights Council

*By Nicole Phillips*

In November, HRA signed on, along with sixty-five other international human rights organization and activists, to a letter Mr. Jan Eliasson, President of the 60th Session of the U.N. General Assembly, with specific recommendations to issues such as elections, voting, and other procedures in establishing the Human Rights Council. The following is the text of the letter:

Dear President Eliasson,

At the September 2005 World Summit, heads of state and government took a historic step towards strengthening the protection of human rights worldwide by agreeing to establish a Human Rights Council. The challenging task of implementing that decision through negotiations at this year's General Assembly was placed in your capable hands. At this crucial moment in the negotiations process, the undersigned organizations and individuals, all deeply committed to the promotion and

protection of human rights, would like to emphasize our shared view regarding the key elements of a new Human Rights Council that we would consider indispensable to a credible outcome.

We start from the premise that the result of this reform must be substantially more than a change in name. The Human Rights Council must significantly enhance the U.N.'s existing capacity to protect and promote human rights. We would also stress that the key elements of the council should be adopted by the end of this year in order to allow it to begin its work in early 2006.

We believe that the following essential points must be included in the resolution creating the Human Rights Council:

**Status:** The HRC should be elevated to principal organ status within five years and should have transitional status as a subsidiary body of the General Assembly in the meantime.

**Mandate:** The HRC should address any matters relating to the protection and promotion of all human rights in any country, including specific situations of gross, systematic, continuing or urgent violations. The HRC should be empowered to make recommendations and report on all such matters to member states and bodies within the United Nations system, including to the Security Council and the General Assembly.

**Composition:** At a minimum, states seeking election to the Human Rights Council must commit to abide by the highest standards of human rights and to cooperate fully with the HRC and its mechanisms, and should put forward a platform that describes what they seek to accomplish during their term of membership.

**Elections and Voting:** Members of the HRC should be elected by an individual and direct vote of two-thirds of the General Assembly. Regional groups should be required to put forward more candidates than the number of seats allocated to their region. When vot-

ing, member states should give due regard to the positive contribution which the member state seeking election has made to the protection and promotion of human rights, as well as to the pledges it makes.

**Working Methods:** The HRC should be a standing body which meets regularly throughout the year and is able to respond in a timely fashion to any matters involving the protection and promotion of human rights. Meetings of the HRC in addition to the regular sessions could be called by one-third of HRC members, the HRC chair, the Secretary-General, or the U.N. High Commissioner for Human Rights.

**Special Procedures:** The system of special procedures should be transferred to the HRC with enhanced coherence and support, as well as greater participation in HRC meetings.

**NGO Participation:** The HRC should ensure a level of participation by NGOs at least as high as that at the Commission on Human Rights by retaining the existing rules and practices for participation by NGOs.

We believe that by incorporating each of the above elements the Human Rights Council will be able to fulfill the promise that engendered this reform. Given the inter-relationship of many of these issues, failure to secure any of these key points would compromise the entire effort.

We look forward to continuing to work with you and the co-chairs to support the establishment of an effective, credible, and authoritative Human Rights Council.

Human Rights Advocates is accepting nominations for the Board of Directors. The Board will be elected at the spring meeting. Board meetings are held once a month in the East Bay. If you would like to apply, please contact Julianne Traylor at [jtraylor@igc.org](mailto:jtraylor@igc.org) no later than January 16, 2006.

## Human Rights Advocates

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Anne Wagley

Newsletter production: Philip Goldsmith



# Human Rights Advocates

## 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 \$35.00  
\_\_\_\_\_ Student or low-income (sliding scale available) \$20.00  
\_\_\_\_\_ Other \_\_\_\$50.00 \_\_\_\$75.00 \_\_\_\$100 \_\_\_\$125 \$\_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Profession/Affiliation: \_\_\_\_\_

HRA Committee Interest:

\_\_\_ Education \_\_\_ United Nations \_\_\_ Litigation/Legislation

\_\_\_ Publications \_\_\_ Fundraising/Finance

**Please return this form to:**

**The Treasurer  
HUMAN RIGHTS ADVOCATES  
P.O. Box 5675  
Berkeley, CA 94705**

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