Human Rights Advocates Fall Event

By Kim Irish and Nicole Phillips

On November 6, 2013, Human Rights Advocates, along with co-sponsors the University of San Francisco School of Law and its Frank C. Newman International Human Rights Clinic, hosted the event, The Evolution of Human Rights Advocacy at the United Nations: An Analysis and Celebration of 30 Years of HRA Advocacy at the UN and the 20th Anniversary of the Vienna Declaration.

Speakers included Philip Alston, HRA Advisory Board Member and New York University Professor of Law (via Skype); Sandra Coliver, HRA Advisory Board Member and Senior Legal Officer of the Open Society Justice Initiative (via Skype); Alen Mirza, 2013 alumnus of the Frank C. Newman International Human Rights Clinic and Director of the Global Policy Advocacy Initiative; Connie de la Vega, HRA founding member, Board Treasurer, and University of San Francisco Professor of Law; and Julianne Cartwright Traylor, HRA founding member, Board Member, and Associate Director of International LLM and Visiting Scholar Programs, also at the University of San Francisco School of Law. Rita Maran, founding member of HRA and author and university lecturer, moderated the panel.

The panel was well-attended, attracting law students, undergraduate students, and local Human Rights Advocates members. Several panelists noted HRAs remarkable longevity and its consistency of human rights advocacy and presence at key UN meetings.

Rita Maran started the discussion with a few words about HRA’s inception in 1978, which was during the Cold War when politics at the UN were divided into two blocs. She recalled that it was virtually impossible to obtain UN accreditation because the 18-member accreditation panel would deny applications from U.S.-based non-governmental organizations (NGOs). The Rwandan delegate on the panel recommended HRA based on Julianne Cartwright Traylor’s work on the right to food, demonstrating HRA’s interest in economic, social and cultural rights, not just civil and political rights. Therefore, HRA’s focus on thematic issues, rather than on countries, dates back to its inception.

Connie de la Vega noted that having her law students and mentors participate in drafting sessions at the United Nations has been a highlight of HRA advocacy over the years for its educational and training value for future advocates. Julianne Cartwright Traylor described the women’s rights advocacy she has participated in on HRA’s behalf at the international, national, and local levels, including the push for U.S. ratification of CEDAW (UN Convention on the Elimination of All Forms of Discrimination against Women) and the successful campaign that resulted in the local ratification of CEDAW by the City and County of San Francisco. Alen Mirza, a recent graduate
of USF School of Law, inspired students with stories about how his job utilizes his experience from the Frank C. Newman Clinic.

Philip Alston noted the dramatic changes in UN advocacy, including the increase in NGO participation at all levels of the UN. Today there are very few UN bodies that are not subject to input by advocates, including the Security Council. Professor Alston also discussed the historical development of the UN human rights enforcement framework. When the Commission on Human Rights first met in 1946, the recommendation, including from Eleanor Roosevelt, was that it be comprised only of experts, noting that states cannot police themselves. But, states protested and the Commission became comprised of representatives of UN Member States. Independent experts, special rapporteurs and treaty bodies emerged in order to bring expertise into the system and play a quasi-judicial role towards state accountability. To illustrate the role that an independent expert can play in advocacy, Professor Alston discussed his work as the UN Special Rapporteur on extrajudicial, summary or arbitrary executions challenging the legal grounds for U.S. drone attacks in Yemen. More information about Professor Alston’s work as a UN Special Rapporteur is available at http://www.law.nyu.edu/news/ALSTON_UN_JUNE2010.

Sandy Coliver spoke about the role of civil society organizations in developing the right to information, the right to truth, and the right to an effective remedy. In 1989, only 12 countries had freedom of information laws. Instigated by the fall of the Berlin wall, today 96 countries have freedom of information laws. But, enforcement remains a problem. The importance of freedom of information laws was only acknowledged by the Special Rapporteur on Freedom of Expression in 2000, who attached a set of principles to Article 19 of the International Covenant on Civil and Political Rights. The first case on this issue was filed with the Human Rights Committee in 2006. Advocates await a general comment to Article 19 from the Committee addressing freedom of information.

After the panel, HRA hosted a celebratory reception. Attendees gathered in the beautiful Terrace Room at the University of San Francisco School of Law Zief Law Library and shared memories of past HRA work in New York and Geneva. Alumni of the Frank C. Newman International Human Rights Clinic noted their gratitude toward HRA and the Clinic for providing them exceptional opportunities and helping launch their human rights and public interest law careers.

**Women’s Human Rights in 2013, 2015 and Beyond – An Essential Part of the Post-2015 Development Agenda**

**By Birte Scholz and Julianne Cartwright Traylor**

As 2014 dawns, we are reminded that one year remains until the expiration of the Millennium Development Goals (MDGs) - the target date for achievement of the goals is December 31, 2015.

Evidence shows that the MDGs have been a powerful force for change. They have helped to set global and national priorities and fuel action on all levels. Raising awareness, they have shaped a broad vision for development work around the globe.

Thus far, MDG targets for reducing poverty, improving access to safe drinking water and improving the lives of 200 million slum dwellers have been met. All over the world, more children are attending primary school, with parity achieved between boys and girls. Child mortality has been reduced in many countries, and targeted investments in fighting malaria, HIV/AIDS and tuberculosis have reduced the impact of these diseases.

Progress has been made, but gaps still remain -large ones. Millions of people - in particular women and girls, are being left behind. As usual, we are left asking -where are the women?

On April 5, 2013, UN WOMEN, the United Nations Entity for Gender Equality and the Empowerment of Women called for the 1000 Days of Action, which demanded an acceleration of action and an increase in programs and policies that have proven valuable in meeting the MDG targets by the end of 2015. Integrating governments, the international community, civil society and the private sector, this campaign seeks to reduce inequalities on many fronts, such as improving food security, maternal health, water and sanitation, rural development, environmental sustainability and responses to climate change. (See UNWomen, “MDG Momentum” April 1, 2013; also see “The Gender Dimension of the Millennium Development Goals Report 2013”, July 1, 2013).

Hard evidence indicates that women’s empowerment and gender equality are the cornerstones to accelerating and sustaining any development progress across all of the goals. Countries that invest in promoting the social and economic status of women tend to have lower poverty rates. Women with some formal education are
more likely to seek medical care during pregnancy, ensure their children are immunized, be better informed about nutritional requirements, and adopt improved sanitation practices. (World Bank Overview of the MDGs, Goal 2, Achieve Universal Primary Education by 2015, 2011, http://www.worldbank.org/mdhs/education.html).

But women’s empowerment and gender equality go beyond education of women – the only target specifically addressing this issue in the current MDGs – MDG Goal 3. Women’s empowerment and gender equality must be achieved through addressing root causes of such inequalities, including increasing efforts to combat violence against women, and putting in place measures to enhance women’s agency, voice and political participation. Women’s safety must be ensured, as well as their access to and control over assets, especially over land. In other words, discrimination against women must be combated on all levels in order to achieve real change.


Furthermore, the Report suggests a new, illustrative universal goal – Goal 2: Empower girls and Women and Achieve Gender Equality – that would have national targets for the next years and include the prevention and elimination of all forms of violence against girls and women, the ending of child marriage, the equal right of women to own and inherit property, sign a contract, register a business and open a bank account, and the elimination of discrimination against women in political, economic and public life. (See Annex II). While indicators to demonstrate these targets have not yet been developed, this is already a positive step in the right direction for the next framework for development. It is hoped that these goals and targets be adopted and real, practical targets be implemented in order to realize the end to discrimination against women and thus the acceleration of development.

In addition to the work of the High-Level Panel, the UN’s Open Working Group of the General Assembly has recently (February 3-4, 2014) held its eighth and final session focusing on topics including promoting equality, including social equity, gender equality, and women’s empowerment. The UN System Task Team on the Post-2015 UN Development Agenda – comprised of representatives of more than 60 UN agencies and international organizations, will continue to work on these issues.

One thing that remains certain is that regardless of any kind of revised MDGs or other development framework agenda, activism of women on the ground will continue to be the real driving force for change. Women from all around the world took charge of this change in 2013, and worked in coalitions with governments to gain major milestones in women’s human rights – including constitutional changes in Zimbabwe, criminal law amendments in India, legal claim in courts in Botswana to change inheritance rights laws, and voting in larger numbers – 40 percent in Pakistan thanks to the amazing activism of Malala Yousafzai.


It is a powerful statement saying among other things, that “…anchoring the post-2015 agenda in human rights for current and future generations” implies that the framework:

1) Upholds, all human rights for all; 2) stimulates transparency and genuine participation in decision-making at all levels; 3) integrates meaningful institutions and systems to ensure human rights accountability of all development actors; 4) is backed by national mechanisms of accountability; 5) ensures that the private sector, at the very least, does no harm; 6) eliminates all forms of discrimination and diminishes inequalities, including socioeconomic inequalities; 7) specifically and comprehensively supports women’s rights; 8) enables the currently disadvantaged and commonly discriminated against and excluded groups to be effective agents of their own development; 9) upholds the legal obligation to fulfill the minimum essential levels of economic, social and cultural rights, without retrogression; and 10) tackles structural drivers of inequality, poverty and ecological devastation at the global level.

In the final analysis, the activism and advocacy of local women, the real human rights defenders on
the ground who struggle day in and day out for their human rights and the development of themselves and their communities, cannot be ignored as a driving force for positive change. The MDGs may be the official benchmark of development and are vitally important, but the true makers of change are women themselves, working to realize their human rights. As the great Nelson Mandela said, “Freedom cannot be achieved unless the women have been emancipated from all forms of oppression.” Let the MDGs moving forward accentuate this and the Post-2015 Development Agenda framework beyond put this notion at the center of change.

Readers who would like more information about any of this information can contact the authors at jtraylor@igc.org and birtescholz@gmail.com (Readers wanting to have talking points for Women’s Advocacy can consult “talking Points on the Post-2015 Agenda” taken from Feminist Reflections: UN’s High Level Panel Report on Post – 2015 Development Agenda at the Center for Women’s Global Leadership – (CWGL) website at Rutgers University. In addition to CWGL, groups such as the Huairou Commission, International Planned Parent Federation, WEDO, ActionAid, Asia Pacific Forum for Women, Law and Development, Feminist Task Force, WILPF, and AWID – Drafting Team, and signed on by more than 30 other NGOs.

Second United Nations Forum on Business and Human Rights

By Kim Irish

In December 2012, Human Rights Advocates representatives attended the First Annual United Nations Forum on Business and Human Rights. For the Second United Nations Forum on Business and Human Rights, held in December 2013, HRA provided input to the “Civil Society Dialogue” coordinated by the International Corporate Accountability Roundtable. Topics included the biggest challenge to prevention, mitigation, and remediation of corporate-related human rights abuses, how have the UN Guiding Principles caused a significant change in the human rights impacts of businesses and governments’ policies on businesses and their human rights impacts, and what HRA sees as the biggest need for effective prevention, mitigation and remediation of corporate-related human rights abuses.

HRA responded that the voluntary nature of the UN Guiding Principles is a major challenge in the prevention, mitigation, and remediation of corporate-related human rights abuses, especially where states are unwilling or unable to protect people from human rights abuses. As a direct response to the UN Guiding Principles, the United Kingdom in September 2013 became the first country to create a national action plan that provides guidance to UK companies on integrating human rights principles into their operations.

While this is encouraging, the UK is merely one of many countries where large corporations are based, and more work is needed. Through the survey, HRA advocated for a mandatory international legal mechanism to hold corporations accountable to human rights abuses they commit against individuals, because there is a dire need for real accountability and remediation of corporate-related human rights abuses.

Dispatches from Geneva

By Jeremiah Johnson

Human Rights Advocates member Claudio Marinucci attended the summer and fall sessions of the Human Rights Council on our behalf. Claudio is the head of Fos*ters, a group that joined HRA in a petition before the Inter-American Commission on Human Rights regarding a person suffering from the death row phenomenon in San Quentin. We are grateful to partner with Mr. Marinucci, who is based near Geneva and has been attending the Council’s sessions for the past two years. His work is proving to be an invaluable contribution to HRA’s work because it provides a continual presence in Geneva. We wanted to highlight a few important issues he has been following.

Corporate Accountability

With respect to corporate accountability, an issue HRA has addressed extensively, the Human Rights Council discussed reshaping and revitalizing global governance and partnerships, protecting the environment, sustainable production and consumption, strengthened implementation, and accountability in measuring progress. Despite some positive developments, the issue of business and human rights is not yet part of mainstream UN operations. However, it is encouraging
that the Council continues to discuss the role the UN system as a whole can play in advancing the business and human rights agenda, and HRA will continue to advocate for accountability.

Increasing Accountability in General
The Council discussed promoting accountability through human rights mechanisms. Over the years, the human rights agenda has grown from a marginal segment into a broad and comprehensive component in the pursuit of international justice. Together with peace, security and development, human rights is one of the main UN pillars. As a result, an extensive network of human rights standards and mechanisms came into being in the quest for political freedom and social justice. This network holds universal dimensions with an operational focus in Geneva where the Office of the UN High Commissioner for Human Rights (OHCHR) was established in 1993.

Side Events
In addition to the official work of the Council, there were many side events. These included discussions about State’s obligations to redress victims of torture, protection of migrant children, women in conflict, and water and human rights. Another interesting discussion was the launch of the OHCHR Anti-discrimination Database. The database is intended to support the international fight against racism, racial discrimination, xenophobia and related intolerance. The database serves as a reference for member states, national human rights institutions, UN bodies, and non-governmental organizations to further their activities by providing easy access to information on measures taken at the international and national levels.

Having a presence at more UN sessions allows HRA to connect to the UN process so that we can more effectively carry out our work. Thank you, Claudio!

LITIGATION
By Connie de la Vega

Human Rights Advocates has joined *amicus curiae* briefs filed before three state supreme courts. Three of the five briefs are on the issue of juvenile life without parole in cases pending in California and Illinois. Two of the briefs address the international law on retroactive application of ameliorative legislation in Connecticut. The United States Supreme Court issued a ruling on an affirmative action case that Human Rights Advocates had also joined as *amicus curiae*.

**Juvenile Life Without Parole**

Following the decision in *Miller v. Alabama*, 576 U.S. (2012), where the U.S. Supreme Court ruled that mandatory sentencing schemes violate the Eighth Amendment when applied to offenders under the age of 18 at the time of the commission of the crime (see Human Rights Advocates Newsletter Vol. 60, Winter 2012), litigation regarding life without parole sentences has moved to the state courts. In addition to urging the state supreme courts to consider the relevance of international standards in interpreting the Eighth Amendment prohibition on cruel and unusual punishments as indicated by the U.S. Supreme Court in *Graham v. Florida*, *amicus curiae* have urged the state court judges to consider the U.S. treaty obligations as required by the Constitution. Also noted in the briefs is that the prohibition against juvenile life without parole has risen to the level of a *jus cogens* norm that should also be considered by the courts.

The three cases that Human Rights Advocates joined on this issue are:

*People v. Davis* (Ill. S. Ct. Case No. 115595), *Amici curiae* urge the Illinois Supreme Court to hold juvenile life sentences unconstitutional. The brief is filed on behalf of eight organizations and addresses the international and treaty standards relevant to this issue. (Filed August 2013).

*People v. Moffett* (Cal. Sup. Ct. Case No. S206771) and *People v. Gutierrez* (Cal. Sup. Ct. Case No. S20635), *Amici curiae* raising international and treaty law in urging the California Supreme Court to hold that juvenile without parole sentences are unconstitutional. The brief is filed on behalf of five organizations involved in international law and juvenile justice issues. (Filed July and September 2013 respectively).

**Retroactivity of Legislation**

The legislature in Connecticut passed a law abolishing the death penalty but did not make it retroactive. Eleven persons on death row have filed challenges to their sentences arguing that the legislation should be applied retroactively to their cases. Human Rights Advocates joined *amicus curiae* briefs in two cases arguing that the
court should consider international law and practice as well as U.S. treaty obligations under Article 15 of the International Covenant on Civil and Political Rights which provides in part that, “If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.” The U.S filed a reservation to this provision on federalism grounds and *amici* urge the Connecticut Supreme Court to consider that no country has executed persons after abolishing the death penalty. The two cases Human Rights Advocates joined on this issue are:

*State of Connecticut v. Santiago* (S.C. 17413) and *State of Connecticut v. Webb* (S.C. 18857). *Amicus curiae* urge the Connecticut Supreme Court to apply the statute abolishing the death penalty retroactively. The brief filed on behalf of eleven organizations and law professors from Connecticut and Europe addresses the international standards of retroactivity of ameliorative legislation especially in dealing with the death penalty. (Filed February 2013).

**Affirmative Action**

The United States Supreme Court decided affirmed its prior holding in *Grutter v. Bollinger*, 539 U.S. 306 (2003), that affirmative action can be used in university admissions in order to promote diversity at the school. *Fisher v. University of Texas*, 575 U.S. (2013). It did remand the case because the lower court had not applied the proper strict scrutiny standard in determining whether the University of Texas' holistic admissions program is constitutional. Human Rights Advocates had joined an *amicus curiae* brief that urged the Court to consider United States’ treaty obligations in upholding the University's practice. The U.S. Supreme Court did not refer to those obligations in upholding the validity of affirmative action under *Grutter*.

**HRA Newsmakers**

A big congratulation to Professor Dinah Shelton for winning the Goler T. Butcher Medal of the American Society of International Law. Professor Shelton is the Manatt/Ahn Professor of International Law at George Washington University, Commissioner with the Inter-American Commission on Human Rights, and HRA National Advisory Board Member.

The February 2014 edition of California Lawyer magazine features an article about Cindy Cohn entitled, *Reining in the NSA - Amid Splits in the federal courts over the legality of dragnet government surveillance, the Electronic Frontier Foundation wages a campaign to restrain the agency*. Ms. Cohn is Legal Director and General Counsel for the Electronic Frontier Foundation (EFF) and an HRA National Advisory Board Member. *The National Law Journal* named Ms. Cohn one of 100 most influential lawyers in America in 2013 noting: “[I]f Big Brother is watching, he better look out for Cindy Cohn.” A link to the California Lawyer article is available at [http://www.callawyer.com/clstory.cfm?eid=933196&wteid=933196_Reining_in_the_NSA](http://www.callawyer.com/clstory.cfm?eid=933196&wteid=933196_Reining_in_the_NSA).

UC Hastings Professor and HRA National Advisory Board Member Naomi Roht-Arriaza will teach an intensive course this summer on transnational justice principles and processes at the Geneva Academy of International Humanitarian Law and Human Rights. The course will have a specific focus on post-conflict situations. More information about the course is available at [http://www.cassese-initiative.org/files/Summer_school_Flyer_FINAL.pdf](http://www.cassese-initiative.org/files/Summer_school_Flyer_FINAL.pdf).

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**Your contributions are greatly appreciated by HRA!**

Long-time HRA supporter Holly Newman, daughter of Frannie and Frank Newman, generously agreed to match contributions up to $2,500. Please consider renewing your membership and making a donation – both of which are tax-deductible – by completing the form attached to this issue of the Newsletter.

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