



HRA Fall Educational Event on Martial Law in Mindanao: Violations Under Human Rights and Humanitarian Law

By Trevor Yan

Human Rights Advocates held its Annual Fall Educational Event at the University of San Francisco School of Law on October 5, 2017, focusing on the international human rights consequences of Philippine President Rodrigo Duterte declaring martial law across the Mindanao island group on May 23, 2017. HRA Board Member Trevor Yan led the discussion, which included Katie Joaquin, Coordinator for the International Coalition for Human Rights in the Philippines; and Terry Valen, Executive Director of the San Francisco Filipino Community Center and President of the National Alliance for Filipino Concerns. The discussion centered on what martial law’s imposition means, who supports and opposes it, and the history of martial law in the Philippines.

Martial law’s imposition means that Filipinos

living in Mindanao suffer from grave violations of their international human rights. These violations include those of the rights against torture, to freedom of expression, and to the due process of law. As Ms. Joaquin and Mr. Valen explained, declaring martial law serves as a pretext for President Duterte to authorize and justify human rights abuses against his political opponents. These opponents include many rural Filipinos living in desperate poverty.

The Philippines has a tragic history with martial law’s imposition, with the memory of the decades-long authoritarian regime of Ferdinand Marcos not far from Filipinos’ minds. Ms. Joaquin and Mr. Valen cautioned that President Duterte may seek to expand martial law to cover all of the Philippines. He has already threatened to do so. In response, those who advocate for human rights to apply universally should stand in opposition.

Co-sponsored by the USF School of Law, the event ended with a Q&A among the panelists and the members of the audience. It was an honor and privilege to moderate the panel presentations and the Q&A afterwards.



Trevor Yan, HRA Fall Educational Event

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A Global Need to Enforce Widows' Land Rights

By Katie Hall

As HRA's 2017 Edith Coliver Fellow, my main focus was to write a statement for the 62nd session of the Committee of the Status of Women, to be held March 12-23, 2018. The priority theme of the session will be Challenges and Opportunities in Achieving Gender Equality and Empowerment of Rural Women and Girls. Knowing this, I was drawn to the issue of widows' land rights.

Gender inequality in land rights is pervasive. Not only do women often have less access to land than men, they often are also restricted to having so-called secondary land rights, meaning that they hold these rights through male family members, such as their husbands. Thus, widows are frequently at risk of losing their land, which often serves as not only their source of food security but also a credit tool to rise out of poverty.

There are an estimated 285 million widows around the world, with over 115 million living in deep-poverty. ("UN Women statement for International Widows' Day, 23 June," UN Women, June 21, 2017.) Despite the global consensus that women's land rights are fundamental for the realization of food security and rural development, according to the World Bank Group's Women, Business and the Law 2016 report, out of 173 countries surveyed, surviving female spouses do not have the same inheritance rights as their male counterparts in 30 countries.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly says that State Parties shall "accord to women equality with men before the law." (CEDAW Art. 15.1.) It also states women and men have equal rights to contract and administer land, and calls on State Parties to provide women with access to agricultural credit, loans, agrarian reforms, and land resettlement schemes. However, in several countries these protections have not been implemented, making women, and particularly widows, vulnerable to continued poverty.

In my statement, I focused on three countries—each with the same problem but for different reasons. First, in Uganda, widows are often pushed off their land by a relative of their husband who wants to reclaim the land or are forced to marry a relative of their husband so the land remains within the same family. Even though

Uganda's Constitution provides women equal access to land ownership, this practice continues because most rural women do not know they have land rights, and rural police will not enforce the law as it against traditional Ugandan custom.

In Jordan, women own only 3% of agricultural land. Many women are coerced by their male family members or husbands to relinquish their land rights. This happens often by a husband unlawfully bequeathing the land to a son or using threats of physical violence to force the women to sign over their land rights.

In India, widows often do not exercise their ownership rights to land due to fear of stigma and societal pressures requiring women to live lives of isolation following the death of a husband. As a result, widows often do not challenge relatives of their husbands or even their sons who wish to take their land.

A common theme that ran throughout all the countries I studied was that women often failed to know the laws and their rights. I also found that even if the widows did know they had a right to the land, they lacked access to legal aid to defend their rights.

In my recommendations, I called on all CSW State Parties to educate women about their land rights, provide legal aid to widows and rural women, and strengthen inheritance laws to make it more challenging for men to take land from the women in their families. It was a great experience to write a statement for the CSW, and I am grateful to HRA for the opportunity.

Human Rights Council – 36th Session

By Claudio Marinucci

I attended several events during the 36th session of the Human Rights Council, which met in Geneva from September 11 to 29, 2017. I would like to highlight two of the side events during this period.

First, at the event "Supporting Accountability through Investigations, Monitoring and Reporting," delegates identified that the critical issue of accountability is primarily the responsibility of states. In addition, international human rights bodies and mechanisms, such as the Human Rights Council and

its Special Procedures mandate holders, the Universal Periodic Review, and international human rights treaty bodies, can contribute to accountability for human rights violations. Moreover, civil society and public interest groups, both regionally and internationally, play an important role in advocating for accountability measures. They can assist victims in bringing complaints about human rights violations, convene expert meetings and hold mock trials or people's tribunals to raise public awareness of the scope of allegations. Notably, civil society also engages in education about human rights and in providing psychosocial assistance.

Delegates and members of civil society from Canada noted the importance of collecting data relating to human rights violations today for justice in the future, with trained members of civil society playing an active role in collecting preserving and reporting evidence. Additionally, James Rodehaver, the UN Coordinator of the Independent Commission of Inquiry on Syria, emphasized that the methodology for fact-finding is the key to establishing the value of the data. This methodology is based on: (a) transparency in all reporting; (b) consistency, or applying the same standard and approach to all information gathered; and (c) specificity.

Second, the event "Artificial Intelligence, Justice and Human Rights" raised the question of what kind of behavior engineers may want to teach a machine when a machine is capable of imitating intelligent human behavior, i.e. Artificial Intelligence (AI). The discussion explored AI's potential impact on a variety of human rights, such as the right to a fair trial, the right to privacy, freedom of expression, freedom of assembly and association, the right of effective remedy, the prohibition against discrimination, the right to free elections, and access to public services.

The core of the AI algorithm issue is based on the principle that "Whoever controls the data will control AI." The difficulty is not so much in the mathematical models, which are apparently relatively easy to understand, but in the understanding of how the algorithm comes to a "solution" of a given problem. One key issue is the bias of data sets, which makes it extremely easy to fool the system.

While there is no consensus in terms of what mechanisms would be appropriate for regulating the use of algorithms, there are already numerous cases in which governments and independent auditors regulate algorithms before implementing them. Historically, private companies, in line with economic, legal and

ethical frameworks, have decided how to develop their software. There is still no normative framework for the development of systems and processes that lead to algorithmic decision-making or for their implementation. As a longtime colleague and member based in Switzerland, I am always honored to attend meetings on HRA's behalf.

Litigation Update

By Connie de la Vega

Human Rights Advocates filed an amicus curiae brief before the US Supreme Court to support a petition for certiorari in the case of *Smith v. Ryan*, a death penalty case from the state of Arizona. Mr. Smith has been on death row for almost 40 years. He has spent that time alone in a small cell the size of a compact parking space, with no windows. Several days a week, Mr. Smith is in his cell twenty-four hours a day. He is permitted to shower up to three times a week and to participate in up to three, two-hour blocks of outdoor recreation in a concrete box. Meals and medication are dispensed in the cell.

Human Rights Advocates supported the petition for certiorari urging the Court to consider international human rights law and jurisprudence from other countries to interpret the meaning of the cruel and unusual punishment clause of the Eighth Amendment of the US Constitution. Clear consensus has emerged in national, regional, and international courts and bodies around the world that execution of prisoners subjected to prolonged incarceration under a death sentence is unconstitutional because it adds a significant degree of suffering and punishment over and above the death sentence itself and therefore amounts to cruel and unusual punishment.

Among the decisions cited include those of the Privy Council which oversees appeals from independent British Commonwealth countries, dependencies and territories; the European Court of Human Rights; the Inter-American Commission and Court of Human Rights; and the UN Human Rights Committee. The latter body oversees US compliance with the International Covenant on Civil and Political Rights and has explicitly expressed concern regarding

long stays on death row “which in specific instances, may amount to a breach of article 7.” *Comments of the Human Rights Committee: United States of America*, ¶ 16, UN Doc. CCPR/C/79/Add.50, (Apr. 7, 1995). The Committee Against Torture reached a similar conclusion in reviewing US compliance with the UN Convention Against Torture, noting that in certain cases long delays in death penalty cases amount to torture. *Concluding observations of the Committee Against Torture: USA*, UN Doc. CAT/C/USA/CO/3-5, ¶ 25 (Dec. 19, 2014). Several courts in common law countries have expressed grave concern about the length of time spent on death row prior to execution and some have prohibited the practice, finding that it violates constitutional provisions and/or international human rights norms. These include courts in Canada (in an extradition case to the US), India, and Singapore.

Human Rights Advocates urged the Court to consider this jurisprudence and to grant Mr. Smith’s petition for certiorari. Unfortunately, the Court denied certiorari. (*Smith v. Ryan*, No. 16-8071.)

Board member Connie de la Vega and Neil Popović from Sheppard, Mullin, Richter & Hampton were counsel for Human Rights Advocates.

HRA NEWSMAKERS

One of HRA’s founding members and current Board Treasurer Connie de la Vega was recently selected to serve as the Marshall P. Madison Chair of Law at the USF School of Law.

Named in honor of Marshall P. Madison – a longtime friend and benefactor of USF, the Chair was endowed not only to highlight ethical and spiritual values in teaching, but also to bring an added dimension to the legal profession’s concern for and service to humanity. It continues to honor his leadership in and service to the community.

According to USF Law School Dean John Trasvina, “Professor de la Vega exemplifies the highest purposes in both the study and practice of law. She is central to our being a global law school that has ethics at its core. We are proud of her work training our students in international human rights that will serve them and their future clients well for years to come.”

Congratulations, Connie, for this latest, well-deserved honor!

Human Rights Advocates is accepting nominations for the Board of Directors

The Board will be elected at the Spring Annual Meeting at the University of San Francisco School of Law. Board meetings are held once a month in San Francisco. If you would like to apply, please contact Julianne Cartwright Traylor at jtraylor@igc.org by January 19, 2018.

Your contributions are greatly appreciated by HRA!

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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