



HRA Fall Educational Event: Advocacy at the UN on the Right to Housing

By Jeremiah Johnson

Human Rights Advocates held its Annual Fall Educational Event on November 2nd at the University of San Francisco School of Law. The gathering of HRA members, supporters and friends examined the use of United Nations and Inter-American Commission on Human Rights instruments comparing their effectiveness in two countries on opposite ends of the economic spectrum - Haiti & the United States. The event, co-sponsored with the Institute for Justice & Democracy in Haiti (IJDH), the University of San Francisco and the Center for Law and Global Justice, explored the differences – and similarities – between the two countries as experienced by housing rights advocates.

With HRA Board Member Birte Scholz as moderator, the program started with a presentation by Eric Tars, Director of Human Rights and Children's Rights Programs National Law Center on Homelessness & Poverty, who spoke about coordinating advocacy with local homelessness and housing agencies in the U.S. and the coalition's results with the UN Special Rapporteur on the Right to Safe Drinking Water and Sanitation and the recent U.S. review under the UPR. He opened the discussion with chilling about the increasing rate of homelessness in the United States – as many as 3.5 million and growing. Perhaps even more troubling was the more recent trends of criminalization of homelessness, which creates more barriers for individuals seeking to realize their right to housing. Despite U.S. early support and signatures on different human rights instruments, it appears that the U.S. has strayed from these commitments regarding housing.

Next, Nicole Phillips, IJDH Staff Attorney, Assistant Director for Haiti Programs at USF School of Law and HRA Board Member, spoke about efforts to halt forced evictions in Haiti's post-earthquake displacement camps before the Inter-American Commission on

Human Rights and under various UN procedures, including Haiti's UPR this October. Ms. Phillips noted that although the right to housing was enshrined in Haiti's constitution, the government is failing to live up to its commitment to protect this human right. Moreover, forced and illegal evictions are the routine and the economic condition of most Haitians leaves them unable to afford any housing or assert their rights.

Both panelists then discussed the different reasons they turned to international instruments to address the problems. With Haiti, the lack of response from the Haitian government, while perhaps understandable because of the earthquake and elections, nevertheless led IJDH to turn to international instruments to put pressure on the Haitian government to live up to its human rights obligations. Mr. Tars indicated that in order to end homelessness, housing must be considered a human right and not simply a policy option. This realization led to a long term advocacy approach to build a record in international bodies that would allow domestic advocates to use international human rights language in litigation that could one day end homelessness.

As the final panelist, Darya Larizadeh, Human Rights Advocates 2011 Post-Graduate Intern and Law

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Clerk at the San Francisco Public Defenders Office, shared her research on safeguarding women's rights to adequate housing in post-disaster recovery in Haiti. Her work not only stressed the need for women to have a greater say in Haiti's reconstruction, but also demonstrated the connection between the lack of adequate housing and violence against women.

At the close of the meeting there was a brief Q & A session and Ms. Scholz thanked the presenters and the members of the audience for their participation.

Haiti: The Last Country to be Reviewed under the Universal Periodic Review

By Nicole Phillips

Haiti was reviewed on October 13th by the United Nations Human Rights Council under the Universal Periodic Review (UPR). The UPR is a process established in 2006 by the Council that all UN member countries undergo every four years. Through the process, the Council reviews each country's human rights record in light of its obligations under the U.N. Charter, the Universal Declaration of Human Rights (UDHR), other human rights instruments, and the country's own stated commitments. Due to the earthquake in Haiti on January 12, 2010, Haiti's review was postponed and it was the last country to be reviewed in the UPR's four-year cycle.

I attended Haiti's UPR on behalf of HRA, and helped coordinate participation from Haitian civil society in my role as staff attorney with the Institute for Justice & Democracy in Haiti. In preparation for the review in Geneva, we coordinated thirteen written reports from a coalition of 57 grassroots groups, internally displaced persons (IDP) camps, non-governmental organizations, and academic institutions, which we submitted to the Council in March 2011 (<http://ijdh.org/projects/universal-periodic-review-upr>). This level of civil society engagement with an international human rights mechanism is unprecedented for Haiti. It is also the first time that various communities affected by the earthquake in Haiti organized as a coalition to bring their shared concerns to the international community.

Our coalition in Geneva included members

from the *Bureau des Avocats Internationaux* (a Haitian public interest law firm), MADRE, the City University of New York (CUNY), the University of California Haiti Initiative, the Center for Gender and Refugee Studies at Hastings, and the Transnational Legal Clinic, University of Pennsylvania Law School.

We were hoping to bring advocates from Haitian grassroots groups, but unfortunately they could not get travel visas for Switzerland, so they were not able to come. This is a good example of the many barriers for Haitian civil society to participate at the UN. With 80 percent of the population living on under \$2 a day, getting to the UN is next to impossible, which means that the voices of those who are the victims of human rights violations are often not heard.

So after all this effort to assemble our delegation, we learned just before the review that the Government of Haiti was "unable" to send a delegation to Geneva. Because Haiti was the last country to be reviewed in the UPR's four-year review cycle, it was unclear whether the review could be postponed for a future date if the government did not appear.

In the end, a representative from the Haitian UN permanent mission in Geneva appeared. They gave about a 40 minute presentation, then about 40 or so government members of the UN delivered two minute statements and made recommendations.

In general, the recommendations reflected most of the issues we raised in our reports and in our lobbying, which reflects the hard work of our broad coalition. The following issues were mentioned:

- right to education - to establish and fund a national education fund;
- trafficking and domestic child servants (*restaveks* in Haitian Creole);
- almost one-half of countries raised issues of women's rights, including gender-based violence – make protection of women and girls in displacement camps after the earthquake a priority, education of gender stereotyping, building women's economic capacity;
- prison conditions and arbitrary detention;
- prosecution of former dictator, Jean-Claude Duvalier and ending impunity in judicial system; and
- the need for basic services in displacement camps such as water, housing and medical care.

(See *Draft Report of the Working Group on the Universal Periodic Review, A/HRC/WG.6/12/L.17*)

Haiti will have a chance to consider the recommendations and report back to the Council next year, probably at the next session in March. We hope to attend that session as well, where civil society will have an opportunity to deliver an oral intervention before the Council.

Hopefully, after this session in March and once the Haitian government adopts recommendations, the real work can begin. We will be working with grassroots organizations to help them engage with their government to prioritize those recommendations that reflect the concerns of those most directly impacted within Haitian society, to identify those within the government who have responsibility for the implementation of the different recommendations, and to identify strategic partners for their implementation. In summary, the UPR can be a useful tool in setting goals and fostering dialogue about human rights accountability, but success depends on the government's willingness to participate.

The Human Rights Implications of Prison Privatization

By Justin White

I was fortunate to have had the wonderful experience of participating in the Frank C. Newman Human Rights Law Clinic in the Spring of this year. The focus of my research was the human rights implications of prison privatization. Throughout the course of my research I found a general lack of awareness of this important issue both here and abroad. (The written statement summarizing my report can be found at A/HRC/16/NGO/18. My full report is available online at: http://www.humanrightsadvocates.org/wp-content/uploads/2010/05/Justin_White_-_The_Human_Rights_Implications_of_Prison_Privatization_.pdf)

Countries around the world have experimented with varied forms of prison privatization. In some instances privatization is for a limited service such as transportation of inmates or janitorial services. Other times the entire operation of the detention facilities is performed by a private corporation. There is also a great variety of different types of facilities that have been privatized, such as low-security facilities for youth in-

mates, high security facilities with violent inmates and immigration detention centers.

The practice of prison privatization is most widespread in the United Kingdom, Australia and the United States. The United States began to experiment with prison privatization in the 1980s. The private prison industry in the US is currently a 27 billion dollar industry. One of the largest of these corporations is the Corrections Corporation of America (CCA), which has contracts with all three federal corrections agencies and with nearly half of all states. CCA and other private prison corporations have secured long-term contracts resulting in approximately 9% of total detainees being housed in private facilities.

The economic structure of the private prison industry is in conflict with the state's goal of prisoner rehabilitation. International Covenant on Civil and Political Rights (ICCPR) Article 10 (3) provides that the essential aim of the penitentiary system shall be "reformation and social rehabilitation." Privatized prisons lack the incentive to rehabilitate prisoners because recidivist offenders are turned into profits and lucrative future contracts.

Privatized prisons are often understaffed with poorly-trained and underpaid guards. Prisoners are dehumanized and viewed as a commodity that translates into profits. These factors contribute to an unsafe environment where prisoner's human rights are commonly violated. This includes violations of the right to be treated with humanity and dignity and violations of the right to life.

The right to food and medical care is recognized by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration on Human Rights. This right is commonly violated when private prisons deny prisoners adequate food and medicine in an effort to cut costs.

The right to family unity is recognized in many human rights treaties including the ICCPR, ICESCR and the European Convention on Human Rights. This right is consistently violated by private prisons through the practice of transferring inmates to private facilities away from their home states. Family visitation becomes impractical when inmates are transferred across state lines. The isolation that results from this violation inhibits the rehabilitation process.

Prison privatization has also led to corruption and arbitrary detention. For example, in 2009 two Pennsylvania judges pled guilty to crimes associated with a bribery scheme. The judges were receiving payments from two privately operated youth detention centers in exchange for committing the defendants there.

This scheme resulted in thousands of youths receiving disproportionately harsh sentences.

In an effort to obtain new contracts and increase profits the private prison industry has engaged in lobbying to expand the pool of detained persons. These efforts have been directed towards migrant detention. The Working Group on Arbitrary Detention has stated that migrants should only be detained as a last resort. The lobbying efforts of the private prison industry have resulted in increased detention of migrants in contravention of this principle.

For example, in 2010 Arizona passed Senate Bill 1070, which required police to detain individuals who are unable to prove that they entered the country legally. This Bill was the culmination of the aggressive lobbying efforts of the private prison industry. CCA is a prominent member of the American Legislative Exchange Council (“ALEC”). In December 2009, a CCA official presented ALEC with a proposal regarding a bill to incarcerate migrants. The language of the proposed bill, drafted at the ALEC meeting, was almost identical to Senate Bill 1070.

Thirty of the 36 Arizona Senate co-sponsors of the Bill have received campaign contributions from the private prison industry. Arizona Governor Jan Brewer, who signed the bill into law, employs two former CCA lobbyists as top aides. The close relationship between lobbyists and government officials is a disturbing trend that leads to an increase in the number of incarcerated migrants.

The issue of prison privatization would be most appropriate to include in an arbitrary detention resolution. However, I discovered through a conversation with a member of the French delegation that there would be no arbitrary detention resolution being drafted at the 16th Session. I then shifted my efforts towards educating delegates and raising awareness of this important issue.

I started my lobbying efforts by approaching the chair of the Working Group on Arbitrary Detention, and presenting him with a copy of my report. I was able to discuss my research with many delegates. The Mexican delegation was interested in my topic because many Mexican citizens are being detained in private immigration facilities. I also spoke with delegates from several Latin and South American countries. While interacting with these delegates I emphasized my concern with Chile’s recent venture into the private prison industry. I had a productive conversation with a member of the Canadian delegation, who approached me after hearing me speak in an informal side panel.

It was very insightful to be able to observe

the proceedings of the Human Rights Council. The structure and inner-workings of the UN can be difficult to grasp, but being there helped to put everything into perspective. I also had the unforgettable experience of presenting a formal statement in front of the Human Rights Council during a general debate session. I am very grateful to have been able to participate in the USF Frank C. Newman Human Rights Law Clinic.

Protection for the Human Rights of Migrants

By Kimberly Irish

During the 18th Session of the UN Human Rights Council, a group of 16 countries, consisting of Argentina, Bolivia, Bosnia and Herzegovina, Chile, Colombia, Costa Rica, Ecuador, Ethiopia, Ghana, Guatemala, Honduras, Peru, Serbia, Turkey, Uruguay, and Venezuela, proposed a resolution on migrants’ human rights that passed on September 28, 2011. (A/HRC/18/L.10/Rev.1)

The resolution recalls the human rights protections that are set forth in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, among others, citing their relevance to the protection of migrants’ rights. In addition, the resolution refers to the decent work agenda of the International Labour Organization (ILO), the eight fundamental Conventions of the ILO and the Global Jobs Pact adopted by the International Labour Conference at its 98th session as a framework that individual countries can use to promote job-intensive recovery and sustainable development.

Migrant workers are, the resolution notes, one of the most vulnerable populations in the current worldwide economic crisis, and female migrants engaged in domestic work are particularly at risk for experiencing physical, sexual, and psychological abuse. The emphasis on the unique situation of domestic workers echoes recent developments in human rights protections for them – in June 2011 the ILO adopted the International

Convention on Domestic Workers, and the organizing efforts of domestic workers worldwide, from New York and California in the United States to South Africa and beyond are increasingly recognized.

The September 2011 resolution calls on Member States who have not yet signed, ratified, or acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to prioritize this action. It also “expresses concern” that some States have adopted legislation restricting the human rights and fundamental freedoms of migrants, and reaffirms that States have a duty to comply with their obligations under international law so that full respect is given to migrants’ human rights.

Finally, the resolution “strongly condemns” acts of racism, racial discrimination, xenophobia, and other intolerance expressed toward migrants and urges States to apply and reinforce law to ensure that perpetrators do not enjoy impunity for their actions. The resolution also requests that States protect migrants’ human rights related to their conditions of work, particularly the right to equal pay for equal work, and the rights to peaceful assembly and freedom of association

Women’s Rights and Housing Rights in Haiti

By Darya Larizadeh

I am fortunate to be the Human Rights Advocates Post-Graduate Intern this year. Under the direction of HRA Board Members Nicole Phillips of the Institute of Justice & Democracy in Haiti (IJDH) and Birte Scholz of the Huairou Commission, I am creating policy recommendations for the Government of Haiti on the connection between women and housing. The aim of the project is twofold. First, it seeks to raise awareness on the particular ways that women are affected by a lack of adequate housing. Second, the policy recommendations focus on how to include women in the ongoing rebuilding process taking place after the devastating earthquake in January of 2010.

Now, almost two years later, the people of Haiti are still picking up the pieces of their lives. Housing is the primary concern for much of the population still living in large overcrowded tent camps and waiting for

the government to deliver on its plan to create housing. Women are largely left in the dark in terms of where they are going to settle permanently and are not consulted about what needs to be done. Post disaster situations, although horrific and devastating, can also be a time for those who are traditionally excluded from decision making to finally have a voice. The rebuilding of Haiti presents itself as an opportunity for women to get a say in some of the crucial decisions that affect their lives, specifically in the area of housing.

Women are uniquely affected by threats to secure housing. In several of its reports, IJDH has documented the particular hardships that women face in the Internally Displaced Persons Camps (IDP camps). Because of a lack of adequate security and lighting in the camps, women’s basic daily functions including gathering water, bathing, using the toilets, and taking children to the bathrooms, become dangerous. Lack of housing can make women more vulnerable to violence because they do not have secure homes to keep intruders out. There has been a high number of rapes and other instances of violence against women in the camps. Women are faced with the threats of forced eviction which are often accompanied by violence. Finally, women also face violence within the home due to the increased stress of their precarious living situations.

Because women are affected by the lack of adequate housing in different ways than men, they should be afforded a space for input and participation in the rebuilding and reconstruction process. Currently surveys by IJDH indicate that women mostly do not have access to information about their housing rights and fates. Information about evictions often happens through word of mouth. They have not been consulted and largely have not been given the opportunity to participate in the reconstruction process.

The project at the focus of my internship seeks to provide some guidance to the Government of Haiti and other influential international actors on how to integrate women into the rebuilding of their country. Drawing on the extensive network of women’s organizations that are members of the Huairou Commission, I have interviewed women leaders who have faced similar natural disasters and have successfully created spaces for women to be a part of the rebuilding.

In Jamaica, the Construction Resource and Development Center organized women after a hurricane and trained them on how to build homes that can withstand the hurricanes. They faced opposition from men and male politicians, but the women’s work and results were so strong that they eventually gained

a lot of support. In Peru, a nonprofit organization, Estrategia, has taken the lead on training women to build earthquake-safe homes. This was done through a series of trainings including gender sensitivity training to communities and technical training on how to create building materials and construct homes. Through Estrategia, women have also become engaged in producing concrete bricks which they can then sell and earn some income. Another organization called DAMPA in the Philippines told me about their experiences with organizing women in poor communities that are facing forced evictions. DAMPA described their organizing strategy which includes holding small meetings with community women, informing women about their legal rights, teaching women how to research land titles, technical training for women in how to build homes, and finally forming alliances with private actors, the government and other NGOs.

Speaking to the women's groups from all over the world has been truly inspirational and there is a lot that can be learned from them and applied to the circumstances in Haiti.

As a result of these interviews and in researching strategies from other groups, one thing remains clear: women have to be involved in the rebuilding process in Haiti. All of the groups interviewed acknowledged that women have a unique connection to the home because they spend most of their time in the home, they are responsible for the family, and they often are involved in organizing in their communities. Every group that I interviewed stated that a top priority was consulting with women in the community prior to embarking on any sort of project. Another common theme in the success of these groups is that they made efforts to train women. Women were given training regarding their legal rights and technical training on how to construct homes. In all instances the groups gained government support. This can be done by piloting a project and showing how successful the results can be. It is hard to argue with a well-designed and well-built home.

In addition to the actual physical labor of rebuilding, there are other ways that women can be involved in the reconstruction process. In other countries women's groups have created safe spaces for women and children by using their existing social networks. In addition to safe spaces there is also a need for information centers where people can go to learn about the reconstruction efforts and plans of the government. Women can be involved in spreading information about these centers and making sure that people know where they are. To achieve long term success, Haiti needs to

incorporate a rights-based approach into its rebuilding scheme. The people most affected by the devastation of the earthquake are those that must be involved in the rebuilding. Although men and women are both affected by the devastation of the earthquake in Haiti, because there are differences in women's experiences in the home and in the IDP camps, women need to be afforded a voice and a place in the rebuilding process so that their particular needs and concerns are met in the long term. Only then will a sustainable and adequate reconstruction policy be realized that meets the needs of all those affected by the earthquake.

Conference on Regulation of Private Military and Security Companies: Global, Regional and Local Initiatives in Bogotá

By Amol Mehra

The Colombian Chapter of the Academic Network on Private Security, created by Amada Benavides de Pérez, member of the United Nations (U.N.) Working Group on the use of Mercenaries, invited HRA to participate as a panelist at the international conference "Regulation of Private Military and Security Companies: Global, Regional and Local Initiatives". The seminar took place on the 18th and 19th of August, 2011 in Bogota, Colombia at the Universidad Tadeo Lozano and Universidad Externado de Colombia.

The two day event brought together researchers from institutions such as the United Nations Office of the High Commissioner for Human Rights in Colombia, the European University Institute, Tokyo University of Foreign Studies, and the International Committee of the Red Cross, among others. The meetings confirmed the need to expand a regional dialogue with stakeholders, scholars and civil society organizations in order to examine frameworks of regulation over private military and security contractors operating in Latin America.

At the conference, I shared my views on current U.S. accountability measures in place over private security contractors, including the International Code of Conduct for Private Security Service Providers, U.N.

Draft International Convention on the Regulation, Oversight and Monitoring of Private Military and Security Companies, and domestic legislation extending jurisdiction for violations committed by contractors and government employees.

HRA has long been a leader in calling for increased accountability over private security companies and their personnel. From 2007 onwards, HRA has been working at the United Nations Human Rights Council through offering expert research and commentary to the Working Group on Mercenaries. Our submissions have also lead to the publication of a law review article, which I co-authored with Connie de la Vega, on the issue: “Bridging Accountability Gaps – the Proliferation of Private Military and Security Companies and Ensuring Accountability for Human Rights Violations,” published in the *Pacific-McGeorge Global Law and Development Journal*.

HRA looks forward to continued advocacy in this area, and believes that more can be done to ensure human rights are protected and accountability frameworks built over corporate actors, including private military and security companies.

LITIGATION

HRA Joins Amicus Brief on Excessive Sentencing of a Juvenile Offender

By Connie de la Vega

Human Rights Advocates joined the Juvenile Law Center, Human Rights Watch, Loyola Law School Center for Juvenile Law and Policy, the National Association of Criminal Defense Attorneys, and the Disability Rights Legal Center in an *amicus curiae* brief filed on October 28, 2011 in the case of People v. Caballero pending before the California Supreme Court. The case involves an appeal of a guilty verdict from 2009 on three counts of attempted murder with special circumstances. Rodrigo Caballero was 16 when he committed the offences but was sentenced to three consecutive life sentences totaling 110 years to

life. Caballero would not be eligible to apply for parole until 2112 when he would be 122 years of age. *Amici* argued that since he will not be eligible for parole in his lifetime, he was sentenced to the functional equivalent of life without parole and thus a violation of the ruling in Graham v. Florida, 130 S.Ct. 2011 (2010).

Amici argued that the sentence is unconstitutional on a number of grounds: it serves no legitimate penological purpose; the sentence is not proportionate under the Eighth Amendment or under state law that requires that courts take into account the individual characteristics of the offender; a separate proportionality analysis is required for children and adolescents; courts must consider mitigating circumstances whenever a child receives a harsh adult sentence that in Mr. Caballero’s case included significant mental illness; and that international practice and opinion and U.S. treaty violations support holding life sentences without parole for juveniles unconstitutional.

With respect to the latter, *amici* argued that international practice and opinion has been a part of Eighth Amendment analysis for over fifty years. In the case of life without parole sentences for juveniles the United States Supreme Court ruled in Graham that international law and practice are relevant to a determination of whether a sentence is cruel and unusual under the Eighth Amendment of the United States Constitution. Further, because both the Senate and members of the United States Supreme Court have made reference to the fact that it is the states that are responsible for implementing United States treaty obligations, *amici* noted three treaties that the United States is a party to that have been interpreted by their oversight bodies to prohibit juvenile life without parole sentences: the International Covenant on Civil and Political Rights; the Convention Against Torture; and the Convention on the Elimination of All Forms of Racial Discrimination. *Amici* urged the Court to consider the rulings of the three treaty bodies in determining whether the sentence of 110 years to life violates the international treaties.

Your contributions are greatly appreciated by HRA. If you would like to renew your membership / make a donation – both of which are tax-deductible – please complete the form attached to this issue of the Newsletter. Your membership will be good through 2012.

HRA NEWSMAKERS

HRA President and USF Associate Director of International Programs Julianne Cartwright Traylor was presented the Legacy CEDAW Women's Human Rights Award from the Friends of the San Francisco Commission on the Status of Women on Oct. 17th.

The award is bestowed to those who have shown extraordinary vision and leadership in promoting the principles of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international human rights treaty.

"I report with pride that Julianne Traylor will be receiving the Legacy CEDAW Women's Human Rights Award," USF School of Law Dean Jeffrey Brand said. "I am constantly amazed at how much we all do at the law school and really amazed how time still allows for the work exemplified by Julianne's well-deserved honor."

With Traylor's efforts, San Francisco City and County became the first local governmental entity in the world to adopt the provisions of the CEDAW treaty. Traylor has assisted the work of the San

Francisco Commission on the Status of Women in the implementation of the city ordinance in the public and private sectors. She also helped organize and participated in events related to the Women and the Economy Summit during the Asian-Pacific Economic Cooperation conference held in San Francisco in September.

"I have attended the Friends of the San Francisco Commission on the Status of Women award ceremonies in the past but I never thought that I would be considered for one of them," Traylor said.



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 20, 2012.

Human Rights Advocates

P.O. Box 5675
Berkeley
CA 94705

www.humanrightsadvocates.org

Connie de la Vega
Kimberly Irish
Jeremiah Johnson
Amol Mehra
Nicole Phillips
Birte Scholz
Julianne Cartwright Traylor

Newsletter production: Philip Goldsmith



Human Rights Advocates

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