



HRA Fall Educational Event on the Refugee Crisis: Can International Human Rights Law Help?

By Birte Scholz

Human Rights Advocates held its Annual Fall Educational Event at the University of San Francisco School of Law on October 13, 2016, focusing on the refugee crisis – globally and here at home. HRA hosted Jessica Therkelsen, Director of Global Advocacy and Communications at Asylum Access, and Jacqueline Brown Scott, Supervising Attorney of the USF Immigration and Deportation Defense Clinic, both USF Law graduates, to provide insights into the crisis, sharing information about what a refugee or asylum seeker around the world and here at home faces, and the relevance of international human rights law.

The world is witnessing a refugee crisis of enormous proportions. War, internal conflict, authoritarian regimes, economic disparities, crushing poverty, and religious discrimination – these are factors converging to create one of the largest movement of persons ever recorded. Roughly 1 percent of the world’s population – 65 million persons – have been displaced around the world – including 21 million refugees, half of these children.

Jessica Therkelsen spoke about the work of Asylum Access, a non-governmental organization

with 15 offices around the world working to challenge barriers that keep refugees from rebuilding their lives. It provides personalized legal assistance and helps refugee communities organize to assert their human rights. She shared statistics about the crisis worldwide, showing that over 50% of the world’s refugees come from just three countries ravaged by conflict – Syria, Afghanistan and Somalia. The highest number of refugees are currently hosted in Turkey. She spoke about the Refugee Convention of 1951, ratified by 145 countries, that elaborates specific human rights for refugees, including the right to wage-earning employment, access to housing, right to access elementary school education, a right to public relief, a right to identity papers, among many other rights. However, the reality for refugees is very different. Refugee families flee to other countries, often with little more than the clothes on their backs. Yet they are not allowed to work or to go to school to better their lives. They struggle to find adequate housing and are not allowed to provide for their families. Refugees are consistently scapegoated for global and national economic and social crises. This is particularly the case in the US, where some people have characterized refugees as terrorists and threats to the US public. Refugees



HRA Fall Event Speakers (left to right): Jessica Therkelsen and Jacqueline Brown Scott

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have never caused or been attached to a terrorist event in the US. Jessica explained that the process for refugee resettlement in the US takes refugees through a two-year process during which they are screened by every security agency in the US to show that a well-founded fear of persecution exists. Procedural hurdles, burdens of proof, and categorization of persecution all play a debilitating role in seeking asylum status in the US. She encouraged people to champion the cause of the refugees, and ensure that the situation is portrayed accurately without the rhetoric that surrounds the crisis today. She invited those with influence into the movement and requested that interested folks invest their time and money to organizations focused on making human rights a reality for refugees.

Jaqueline Brown Scott then provided a local perspective. In addition to her own law office practice, representing clients with a broad range of immigration issues, including removal and deportation defense, asylum, and visas and appeals, she spoke about the work of the Immigration and Deportation Defense Clinic at USF. The Clinic has over 100 pending cases, all deportation proceedings for asylum seekers. Most of their clients come from Guatemala, Honduras, El Salvador, and Mexico, facing extreme violence due to gangs and cartels, or violence within the home. Approximately 80 percent of her cases involve unaccompanied minors.

The violence that these asylum seekers are facing in their home countries is extreme. She told the story of several of clients. One young man from El Salvador who witnessed a gang killing at age 5, did not tell anyone about it, and went on to witness approximately 20 more until he was 15. At that time, he was forced to leave because he witnessed a killing by a gang and was seen by the gang members. The gang members said they would not kill him if he joined. He fled, telling no one, and is now seeking asylum in the US.

Further, she said that asylum seekers face many challenges in their claims, many due to US asylum law that fails to fully integrate international law on the definition of a refugee. She shared insights about what lessons asylum cases here locally provide for those seeking asylum in Europe and elsewhere. The message is unfortunately bleak: asylum seekers here, as refugees around the world, face complicated legal hurdles, social discrimination, and economic deprivation. Hope is not lost, however: these hurdles can be overcome by the proper implementation of international human rights

law. International law does protect refugees and asylum seekers – its implementation and protection are vital in ameliorating the current refugee crisis.

In addition to Asylum Access and the USF Immigration and Deportation Defense Clinic, the event was co-sponsored by International Justice Resource Center, Student Outreach for Refugees, Asylees, and Immigrants (SORAI), Lead Eritrea, and the USF Swig Program in Jewish Studies and Social Justice. It was an honor and a privilege to moderate the panel presentations and the Q&A afterwards.

UN REPORTS

Defending the Right to Free Expression Online at the UN in Geneva

By Peter Micek, Global Policy & Legal Counsel, Access Now, and USF Alum

With the support of Human Rights Advocates, I attended the June Human Rights Council session (HRC33) with the primary goal of encouraging the consensus passage of a renewed resolution on the internet with strong language condemning internet shutdowns.

Internet shutdowns comprise a new mechanism that governments worldwide have to shut down critics, limit access to information, deter journalists, and exercise unfettered power. Authorities ranging from dictators and police chiefs to communications ministers are ordering telecom companies to shut down the internet, or block and slow (“throttle”) access to the most popular mobile and digital communications applications.

Access Now, the NGO where I have worked since taking the bar exam, has identified this spreading problem as a direct threat to the digital rights of internet and mobile communications users at risk around the world. Searching for opportunities to draw a red line before this worst practice, we found that the Human Rights Council would likely renew its foundational resolution on human rights and the internet in the June 2016 session. The resolution, known variously as the “internet” or “freedom of expression resolution,” first passed in 2012 as A/HRC/RES/20/8. The resolution

affirmed that, “the same rights that people have offline must also be protected online, in particular freedom of expression” (OP1).

Importantly, we did not wait until getting to Geneva to begin our advocacy. Even before the core group of states had its first meeting in the months leading to the June session, we delivered a lobbying packet by email to mission delegates -- at least the ones for whom we could find emails and identify.

With a bit of luck, the core group took up our suggestion, it seems, and went beyond by “condemning unequivocally” the growing trend of intentional disruptions of electronic communications. Thus, our goal for the majority of the lead-up to and the session itself was simply to defend the language from hostile states.

My only official speaking opportunity of the week came during the first informal workshop, which I attended during the first week of the session. Along with my colleagues at Article 19 and Association for Progressive Communications, I spoke in favor of consensus support for the resolution, retention of the language condemning internet shutdowns, and also supported the strong language on violations against people for exercising their rights. We understood this to refer to human rights defenders, even though it did not (dare) mention that phrase.

To our surprise, the language on shutdowns did not turn out to be controversial. Delegates in the first informal workshop focused much more attention on whether to support a human rights-based approach to expanding access to the internet. A host of states, including India, Russia, and China spoke out against such an approach.

A couple of weeks later, the resolution passed by consensus as A/HRC/RES/32/13. Hostile amendments by Russia and China failed, and the Council, for the first time, condemned internet shutdowns. This victory was hailed widely, even in a tweet by former NSA contractor and whistleblower Edward Snowden (<https://twitter.com/snowden/status/748838516940038144>).

Perhaps most important, though, I met up with longtime HRA colleague and member Claudio Marinucci who attends meetings at the UN in Geneva on HRA's behalf. Over coffee and cookies, Claudio regaled me with stories from a life in science, technology, human rights, and anti-racism activism, and we had a great time.

Thank you HRA for this productive and enjoyable opportunity.

Serving on the NGO/DPI Executive Committee at the UN in New York

By Patience Tusingwire, USF LLM Alum

In March 2014, I was nominated by Human Rights Advocates (HRA) Board to serve on the NGO/DPI Executive Committee at the UN in New York as a Director. On behalf of the HRA Board, when Connie de la Vega asked me if I would be interested in being nominated, I felt very honored. The Directors are elected by representatives from NGOs affiliated with the UN Department of Public Information (UN DPI). As a member of Human Rights Advocates, an NGO in consultative status with ECOSOC, I did not have any prior experience with the UN DPI and so I felt this would be a great opportunity to learn about another working body of the UN – the Department of Public Information. The UN DPI was established by the UN General Assembly in 1946 and promotes global awareness about the work of the UN through different media fora and partnership with around 1300 NGOs around the world.

In June 2014, I was elected to serve as a Director of the NGO DPI Executive Committee on behalf of Human Rights Advocates for the 2014-2016 term. The NGO/DPI Executive Committee is an administrative Board comprised of eighteen representatives elected by NGOs associated with the UN DPI. The Executive Committee acts as a liaison between NGOs affiliated with the UN DPI and the UN DPI. The Committee organizes an Annual NGO Conference at the UN for NGOs affiliated with the UN DPI. It also holds Town Hall meetings at the UN in New York for members of the NGO Community on how best to communicate with the UN and network with other NGOs in matters concerning human rights and development issues. The UN DPI holds monthly briefings about events happening at the UN and the Executive Committee participates in these briefings, which are a rich source of information for the NGO community about what is going on at the UN and in the world.

The Committee meets every other month and is made up of different sub-committees, which include Fundraising, Youth, Communications, By-laws, and Nominations. During my term as Director, I worked on the Communications subcommittee, that is in

charge of communicating with members of NGOs affiliated with UN DPI; the Youth Subcommittee, that does tremendous work with the youth and students from different universities, who are youth delegates at the UN; and the Nominations Subcommittee, that is in charge of the nominations process and elections of new Directors and Officers of the Executive Committee. I am proud to have served as the Chair of the Communications Sub-Committee from 2014-2015. The Communications Sub-Committee works in collaboration with the UN DPI NGO Relations office to, inter alia, host a communications workshop at the UN which focuses on how NGOs and their constituents, can better communicate, highlight and promote their human rights work.

As a representative of Human Rights Advocates on The Executive Committee, hosting a Communications Workshop in June 2015 entitled “*DPI-NGO Communications Workshop: Acting Globally in the Digital Age*” in collaboration with UN DPI, was a task that I took to heart. Human Rights Advocates works to promote human rights issues including the right to food and water, women’s rights, the rights of migrant workers, etc., and since one of my duties was to find speakers at this workshop, I endeavored to find someone who has done tremendous work in using technology in communicating and putting across the work of human rights advocates and highlighting human rights issues around the world. We were very pleased that the team at Isometric Studio (<http://www.isometricstudio.com>) gave a presentation of the wonderful work they have done using graphic design to tell stories about human rights issues around the world. All of the participants at the workshop were tremendously impressed with their work, not only in story telling, but also in using visuals in highlighting human rights issues. This role, along with managing with the Constant Contact account of the Executive Committee to communicate with the 1300 NGOs’ members around the world, have made me really appreciate this opportunity I was given.

Being a Director on the Executive Committee was also a learning experience for me because I did get to witness the intricacies of different people with divergent views working for a common goal, and trying to represent the people who had elected them to the best of their abilities. Also, the work of the Youth Sub-Committee in involving students at the UN as UN delegates, hosting youth conferences is very impressionable on them. Since

Human Rights Advocates works with law students from the University of San Francisco School of Law in advocating for human rights at the UN Commission of the Status of Women in New York, and at the Human Rights Council in Geneva, working with the Youth Sub-Committee of the Executive Committee is something that was an invaluable experience especially since my time as a member of the Frank C. Newman International Human Rights Law Clinic who attended the CSW session in NY when I was studying for my LLM degree at USF.

Thanks again to Human Rights Advocates for this opportunity.

Human Rights Council 33

HRA submitted a written statement to the 33rd session of the Human Rights Council on the death penalty. HRA focused on the death row phenomena and methods of execution as violations of the prohibition against torture in both the ICCPR and CAT. See, *Death Penalty and the Prohibition Against Torture and Cruel, Inhuman or Degrading Treatment and Punishment*, A/HRC/33/NGO/150 (2016).

HRA also wishes to take this opportunity to thank Claudio Marinucci, longtime HRA colleague and member based in Switzerland, for representing HRA at this Council session including attending several side events on topics such as the effects of conflicts on child mortality, fracking, extractive industries and human rights, specifically on the case of Argentina.

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.

Litigation Report

By *Connie de la Vega*

HRA submitted *amicus curiae* briefs on a number of cases where human rights standards were relevant.

People v. Franklin

In *People v. Franklin*, HRA urged the California Supreme Court to consider international standards and treaty obligations when addressing the constitutionality of a sentence of 50 years for a juvenile offender under both the State and United States Constitution. In addition to violating various treaties to which the U.S. is party, HRA addressed the fact that 50 years to life would not be given to any juvenile offender in any other country in the world, with the possible exception of Australia, where two juvenile offenders received sentences the Human Rights Committee deemed to be the functional equivalent of life without parole—and held to be a violation of Australia’s international human rights treaty obligations. Indeed, throughout Europe, a recognized and reasonable reference point for contemporary norms and standards of decency, the maximum sentence for juvenile offenders is 10 years or less. The California Supreme Court ruled that the sentence was invalid, but based its decision on the fact that the California legislature had enacted legislation that all juvenile offenders could apply for re-sentencing after 15 years to lower the time to be eligible for parole after 25 years.

People v. Gutierrez

In *People v. Gutierrez*, HRA filed an *amicus curiae* letter in support of Mr. Gutierrez’s petition for review before the California Supreme Court. Mr. Gutierrez received a mandatory sentence under California law. HRA addressed the U.S. obligations under the International Covenant on Civil and Political Rights (ICCPR) that require that the *age of the juvenile* and his *status as a minor* be considered in sentencing, but a mandatory sentencing scheme prevents such consideration. In 2006, the Human Rights Committee, oversight authority for the ICCPR, determined that allowing a juvenile life without parole sentence contravenes Article 24(1), which states that every child shall have “the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State” and Article 7, which prohibits cruel

and unusual punishment. (Concluding Observations of the Human Rights Committee: United States of America (Dec. 18, 2006) U.N. Doc. CCPR/C/USA/CO/3/Rev.1, para. 34.) Article 14(4) of the ICCPR further requires that criminal procedures for juvenile persons should take into account their age and the desirability of promoting their rehabilitation. (ICCPR, Art. 14(4).) HRA also raised the obligations under the Convention Against Torture (CAT) that also prohibit the mandatory sentencing of minors and the Convention for the Elimination of Race Discrimination (CERD) to address the racial impact of the use of the sentence. In California, African American youth are more than five times more likely to be serving a sentence of life without parole than white youth. (See C. Back & E. Calvin, “*When I Die, They’ll Send Me Home*,” *Youth Sentenced to Life without Parole in California*, 20 Human Rights Watch Report, No. 1(G) (Oct. 2008) pp. 24-25.) This is a violation of CERD article 5(a). Unfortunately, the California Supreme Court denied review.

Fisher v. Texas

In *Fisher v. Texas*, HRA filed a brief to the U.S. Supreme Court in support of the University of Texas’ program that considered race as one of seven factors for admission. HRA argued that both the ICCPR and CERD supported the Texas admissions program since both treaties require the United States to take measures to address the lack of equality in education. The United States Supreme Court upheld the University of Texas’ admission program. (For more information, see her blog post at: <http://www.humanrightsadvocates.org/blog/>).

HRA 2016 Edith Coliver Fellowship

By *Abby Rubinson*

This year, Human Rights Advocates is thrilled to welcome not one, but two, HRA Edith Coliver Fellows for 2016! Laura Neacato and Gabriela Mendez, both recent graduates of USF law school, are working with June Lorenzo of Indigenous World Association to promote indigenous peoples’ rights.

More specifically, Laura and Gabriela are tackling

the repatriation of indigenous peoples' cultural items in auction houses. They are preparing a resource guide for Native American tribes dealing with repatriation of these items in French auction houses. Their work entails research on international law and French law, with a focus on intellectual property law, as well as possible interviews with and presentations to Native American communities in New Mexico who have engaged in the process of seeking repatriation of cultural items. The fellows' work will inform international dialogues, such as the UN Permanent Forum on Indigenous Issues.

HRA NEWSMAKERS

One of HRA's founding members and current Board Treasurer Connie de la Vega was recently given the Warren M. Christopher International Lawyer of the Year Award presented annually by the International Law Section of the California Bar Association. She is the first woman to receive this award named in honor of the American lawyer, diplomat, and public servant.

Harumi Hata, partner at Seyfarth Shaw LLP and chair of the International Law Section wrote the following: "We selected Professor de la Vega, known to many as the 'rock star' in the international public law arena, because her work leaves an inspiring and lasting impact on international justice...Professor de la Vega's important and dedicated work contributes to the improvement and protection of human rights for individuals, including the youth and the women, in the U.S. and around the world." The Award was presented to Connie at a reception organized by the State Bar of California International Law Section on October 1st as part of the State Bar of California 89th Annual Meeting in San Diego.

Congratulations, Connie, for the well-deserved honor!

HRA Board President Jeffrey Kaloustian has been selected to the 2016 Northern California Super Lawyers Rising Stars. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The

annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys. Jeff is the founder of his own firm and his practice areas include general criminal defense, driving under the influence, and plaintiff's personal injury cases. Jeff, a USF Law Alum, Class of 2009, has a long-standing relationship with HRA beginning as a student in the Frank C. Newman International Human Rights Law Clinic. See Jeff's Super Lawyer Profile at SuperLawyers.com with an abbreviated listing of his extensive Bar/Professional Activities, and his Pro Bono /Community Services activities. Congratulations, Jeff, for the award as a rising star!

Human Rights Advocates is accepting nomination 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 16, 2017.

OTHER HRA SPONSORED EVENTS

HRA proudly co-sponsored several human rights-related events in the past few months. These events included *Proving Genocide: The Prosecution of Radovan Karadzic at the Bar Association of San Francisco* (July 28th); *Eritrea at 25: Human Rights, Migration, and the Route to Democracy* at USF (September 24th); and *Human Rights in Twenty-First Century America: From Ferguson to Flint, from Tamir to Trayvon* at USF (September 27th); and finally, HRA was one of the co-sponsors of the Programme of the VI Ibero-American Week of International Justice at the Iberoamerican Institute of the Hague (May 30th – June 10th).

A Message from the President of the Board of Directors

By *Jeff Kaloustian*

On behalf of the entire Human Rights Advocates community, I would like to extend a sincere and heartfelt thank you to Jeremiah Johnson for his eleven years of service as a member of HRA's Board of Directors. Jeremiah's contributions to the functioning of the HRA Board were many. In addition to his regular attendance at monthly Board meetings, Jeremiah administered HRA's website, spearheaded our organization-wide communications, and regularly provided expertise on HRA's advocacy programs and litigation activities. Jeremiah also opened the doors of his law practice to HRA fellows, providing mentorship and supervision in the area of immigration law. We are extremely excited for Jeremiah as he begins his new position as an Asylum Officer for the United States Customs and Immigration Service (USCIS)—a position that precludes his further participation as an HRA Board Member. Although we are sad to see him go, we are extremely grateful for his years of service to HRA and look forward to a continued relationship with Jeremiah as an HRA member. We also wish him all the best in his new position with USCIS.

I am also extremely excited to welcome a new member to HRA's Board of Directors, Jacqueline

Brown Scott. In addition to her private immigration law practice, Jacqueline Brown Scott is an Assistant Professor of Law and Director of the University of San Francisco School of Law's Immigration & Deportation Defense Clinic. Jacqueline's work with the Clinic involves supervising law students and representing children, and women with children, who are currently in expedited proceedings to remove them from the United States. Jacqueline's immigration law experience also includes collaborations with Catholic Legal Immigration Network and the National Center for Refugee & Immigrant Children.

Finally, I also enthusiastically welcome board member Alen Mirza to the HRA Executive Board as Secretary. Alen joined the HRA Board in April 2016, and brings a wealth of human rights advocacy and nonprofit experience to the position. Currently serving as Global Policy Associate with Asylum Access, Alen's areas of expertise include refugee rights and the U.N. human rights system.

We are very pleased to be working with both Jacqueline and Alen in furtherance of HRA's mission of promoting and protecting international human rights in the United States and abroad.

Sincerely,
Jeffrey Kaloustian
President, HRA Board of Directors

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Human Rights Advocates

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