



## HRA Fall Educational Event on Using International Human Rights Law in Practice

By Jacqueline Brown Scott

Human Rights Advocates hosted a panel entitled, “Using International Human Rights Law in Practice” on November 1st at the University of San Francisco School of Law. The event, which was moderated by Assistant Professor Jacqueline Brown Scott, focused on how U.S. lawyers could make use of and benefit from international human rights law (“IHRL”) in their practice areas. Professor of Law Connie de la Vega, Immigration Judge Jeremiah Johnson, and human rights and refugee policy attorney Jessica Therkelsen shared their experiences and insights during the lively Q&A panel discussion.

Ms. Therkelsen, whose focus for several years after law school was policy advocacy around refugee and immigrant rights in Africa, Asia and Latin America, noted how international law in general is used pretty freely in that context, though to mixed reception by governments. In her work on domestic immigration and post-conviction relief, she noted a “complete and utter shift in vocabulary and advocacy style.” The

human rights language she had previously used felt like “a foreign language.” Nevertheless, she believes there is much to be gained from educating both the public and adjudicators on the relevance of IHRL and the U.S. history in creating and committing to such law, such as the 1967 UN Protocol Relating to the Status of Refugees.

Similarly, Professor de la Vega reminded the audience that our own constitution, Article VI, Clause 2, leaves little room for the argument that international law has no place in our legal system. Under the constitution, “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.” Professor de la Vega spoke about filing *amicus briefs* addressing IHRL in death penalty cases (on the suggestion of one of her USF students). This culminated with the filing of the brief in *Roper*, which was cited by Justice Kennedy in the majority opinion. She similarly emphasized the importance of citing international law, especially to treaties that the United States is a party, to inform the justices about international law and the law of other countries.

Judge Johnson discussed how he regularly used IHRL in his private immigration practice. For example, in making the argument that a harm rose to the level of persecution in the context of asylum, he would consider the rights of the person that may have been violated, such as the right to food, to housing, to



HRA Fall Educational Event Panel: Jeremiah Johnson, Jessica Therkelsen, Connie de la Vega, and Jacqueline Brown Scott.

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practice your religion, or the right to education. Now as an immigration judge, he has noticed how practitioners maybe missing opportunities to incorporate and support their arguments especially with regards to particular social group analyses. In addition, practitioners in court should not shy away from calling the law what it is—rather that say their client is eligible for “CAT,” practitioners could state that their clients are eligible for protection under the United Nations Convention Against Torture.

All agreed that while we need to keep citing to and educating other practitioners and adjudicators on the importance of IHRL, in the end it may be just as important to obtain the results our clients need even if we call it something that is more palatable to adjudicators hostile to international human rights law.

## Using International Human Rights Law in a Local Eviction Defense Practice

*By Trevor Yan*

I practice as a housing attorney for low-income tenants in San Mateo County, located adjacent to San Francisco to the south. My work in the HomeSavers Project at the Legal Aid Society of San Mateo County primarily involves eviction defense. I meet new clients at three weekly clinics that we host throughout the county at community centers and the courthouse. Because we serve as one of two agencies doing eviction defense work in the entire county, which has a population close to 900,000, the volume of data that we collect has also enabled me to conduct policy advocacy backed by quantitative analysis.

At first glance, one might not expect a local, eviction defense practice to involve international human rights law. However, my practice does involve advocating for housing justice—in courts and city council chambers—consistent with international human rights law’s principles. For example, our HomeSavers Project operates on the premise that every resident of San Mateo County should have the right to life’s basic necessities. This includes the right to safe, affordable housing. Therefore, when I argue a

motion in court or press a city council to pass a law protecting tenants, I root my advocacy in the legal principle that everyone should have the right to safe, affordable housing.

I also have a long-term goal, though, to make the language of international human rights law conversant in the legal culture at the local level. We believe, at Human Rights Advocates, that international human rights law applies universally. Its’ legal principles apply equally from the loftiest United Nations proceeding to the humblest local venue. Treaties that the United States has ratified, like the Convention on the Elimination of Racial Discrimination (CERD), perhaps offer the most promise for local advocates.

Under the federal Constitution’s Article VI, “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. . . .” This Supremacy Clause makes the CERD treaty’s provisions legally-binding on state and local governments. The CERD treaty’s Article 6, read together with Article 5(d)(iii), provides the right to “effective protection and remedies . . . against any acts of racial discrimination” that violate housing rights. Thus, the treaty offers a distinct, legal basis—with its own, nuanced body of interpretation—for challenging racial discrimination in housing.

Moreover, the CERD treaty’s Article 2 obligates parties to take concrete and special measures to protect certain racial groups and individuals where the circumstances warrant it. Although often raised in the educational admissions context, this provision applies equally to remedying housing segregation. The U.S. Department of Housing and Urban Development recently reviewed San Mateo County’s progress toward addressing fair housing barriers under its Affirmatively Furthering Fair Housing rule. The CERD treaty’s legal tools and nuanced body of interpretation could assist further in eliminating barriers to fair housing at the local level.

My efforts to incorporate international human rights law into my local eviction defense practice remain a work in progress. Through educating governmental officials, raising awareness among advocates of tools available to them, and persistence, perhaps we may all one day speak the language of international human rights law.

# Indigenous Rights to Land and Culture at the UN's Expert Mechanism on the Rights of Indigenous Peoples

By Dana Zartner

In June 2018, I attended the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) at the Palais des Nations in Geneva, Switzerland on behalf of Human Rights Advocates. EMRIP was established by the Human Rights Council in 2007 as a subsidiary body of the Council. EMRIP provides the Human Rights Council with expertise and advice on the rights of indigenous peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). EMRIP also assists Member States, upon request, in achieving the ends of UNDRIP through the promotion, protection and fulfilment of the rights of indigenous peoples. The Expert Mechanism is composed of seven independent experts on the rights of indigenous peoples, representing different regions of the world.

EMRIP holds an annual session, the event which I attended, in which representatives from states, indigenous peoples, indigenous peoples' organizations, civil society, inter-governmental organizations and academia gather to discuss issues affecting indigenous peoples around the world. Each year, EMRIP adopts a theme and for 2018 it was 'Free, Prior and Informed Consent', a major tenet of UNDRIP. (The study on FPIC can be found at: <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/StudyFPIC.aspx>.) Other sessions this year focused on country engagement under EMRIP's mandate, dialogs between EMRIP and country human rights institutions, a panel discussion on reconciliation, recognition and reparations, and plenary discussion on cultural heritage, indigenous languages, and traditional knowledge. The Annual Report of the Expert Mechanism should be submitted to the UN Human Rights Council shortly and will be available on EMRIP's website.

My primary purpose in attending EMRIP this year was to conduct research on issues pertaining to land claims by indigenous groups, particularly when faced with extractive industries wanting access to the land and governments not taking indigenous concerns and needs into account. This research will be used in

my own work as an advocate for indigenous groups and work on environmental issues here in the U.S. and around the world. I am also working on a book project examining innovative activism in the environmental realm, particularly using law and courts. During my time in the sessions at EMRIP, I was able to gather a great deal of information – particularly on the challenges facing indigenous groups around the world, but more importantly, on the various efforts being undertaken and the resources available for these types of challenges. For example, the large delegation from New Zealand – both official government representatives and NGO representatives – was particularly useful in providing information on the movement in New Zealand to protect the rights of nature, as well as expanded understandings about the importance of recognizing the cultural and spiritual importance of land. In addition to the case study research, I was able to begin compiling a database of active advocates from EMRIP, including government officials and NGO representatives. This will be extremely useful for my own work, and can be made available to other HRA members who might find it useful for their own work.

I also attended a very enlightening side session on addressing issues of indigenous rights in North America in the era of the Trump administration. At the time of EMRIP, the issue of child separation at the U.S. border was exploding in the news, and there was a great deal of discussion about the additional human rights implications for indigenous children separated from their parents at the border, including loss of language and culture. The panel included United States Representatives from Arizona, as well as activists from a number of NGOs. The discussion was excellent for highlighting the additional burdens faced by indigenous migrants and highlighting actions that could be taken to provide protections and address policy. It may also be of interest to HRA members to know that for 2019, EMRIP has chosen the theme of migration and indigenous persons. Migration is a big issue at USF's law school, as well as in other programs, so this work might be of interest to member for Human Rights Advocates and the law school in the next year. The regular work of EMRIP focusing on land rights, corporate responsibility on indigenous lands, and cultural rights of indigenous persons will also, of course, continue.

*Dana Zartner is Associate Professor, International Studies Department, and Adjunct Professor, USF School of Law*

# Human Rights Council - 38th Session (September 2018)

By *Claudio Marinucci*

I attended several events during the 38th session of the Human Rights Council which met in Geneva from September 17-25, 2018. The following are highlights from two of the side events that focused on the rights of women.

First, at the event on “Women’s Access to Justice for Gender-Based Violence,” Prof. Lisa Gormley of the International Criminal Court summarized that the persistence of violence against women has been described as a pandemic by the WHO. The problem affects 35-70% of women and girls globally, and in 2013 one in three women worldwide were reported as having experienced sexual or physical violence.

International human rights conventions recognize that gender-based violence, whether committed by state or non-state actors, constitutes torture. Access to justice for women for acts of gender-based violence means that States must implement a range of measures to ensure that acts of violence against women are properly defined as crimes and ensuring appropriate procedures for investigations, prosecution and access to effective remedies. In the context of women prisoners, women are often subjected to violence and abuse of all kinds in detention, frequently rape and sexual abuse. Under the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also known as “the Bangkok Rules,” women reporting violence and abuse must be provided with immediate protection, support and counseling; women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive proper medical advice, counseling and mental health care.

Next, the panel event on “A Global Overview of Women Facing the Death Penalty” included Dr. Agnès Callamard, the Special Rapporteur on Extrajudicial,

Summary or Arbitrary Executions at the Office of the United Nations High Commissioner for Human Rights, as well as Delphine Lourtau and Sharon Pia Hickey of the Center on the Death Penalty Worldwide (“the Center”) at Cornell Law School. The event highlighted the report “Judged for More Than Her Crime: A Global Overview of Women Facing the Death Penalty” by the Center. According to this research, at least 500 women are currently on death row around the world and, while exact figures are impossible to obtain, it is estimated that over 100 women have been executed in the last ten years. The report additionally provides country and region-specific data available on the sentencing of women to death.

The death penalty is most commonly imposed on women for the crime of murder, often relating to the killing of family members in the context of gender-based violence or in the commission of drug offences, terrorism, adultery, witchcraft and blasphemy. Some factors that often make women particularly vulnerable to a capital punishment include: a higher rate of illiteracy affecting their ability to understand and participate in their own legal defense; and actions perceived to be outside a woman’s socially ascribed gender role. For example, in sentencing Alice Nungu to death in 2003 for the killing of her husband while defending herself and her mother from a vicious attack by him, a court in Malawi failed to hear evidence of her husband’s abuse over years or her self-defense. Alice suffered on death row for the next 12 years, fading from HIV, inhumane living conditions, and lack of food. With the assistance of the Center, Alice’s case was finally reheard in 2015, and ultimately ordered her immediate release. Alice returned to her village to much jubilation, but died shortly after.

Furthermore, once on death row, in addition to often harsh and life-threatening conditions, women in some jurisdictions must also care for infants and young children who are incarcerated with them. The panelists described, for example, the case of Mariam Ibrahim, who was sentenced to death in Sudan for apostasy in 2014, and, while on death row at eight months pregnant and caring for a young child, was shackled to heavy chains.

As a longtime colleague and HRA member based in Switzerland, I am always honored to attend meetings on HRA’s behalf.

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## HRA NEWSMAKERS

**I**nternational Advisory Board Member Danwood Chirwa has been appointed Dean of the Law School at the University of Cape Town

Danwood M Chirwa was the head of the Department of Public Law and professor in public law at the University of Cape Town. He has vast research and teaching experience in human rights, especially children's rights, socio-economic rights, and business and human rights on which he has authored and edited several books and journal articles. He has also worked with a variety of international and African non-governmental organizations. A former Secretary-General of the African Network of Constitutional Lawyers, Chirwa has served as a member of board of directors for a number of organisations including the Open Democracy Advice Centre, the Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), and the Socio-Economic Rights Institute of South Africa (SERI). Currently, he is also a member of the Board of Trustees for the UN Voluntary Trust Fund on Contemporary Forms of Slavery, of the Board of Directors of the Global Business and Human Rights Scholars Association, and of a Technical Working Group of the African Partnership to End Violence against Children.

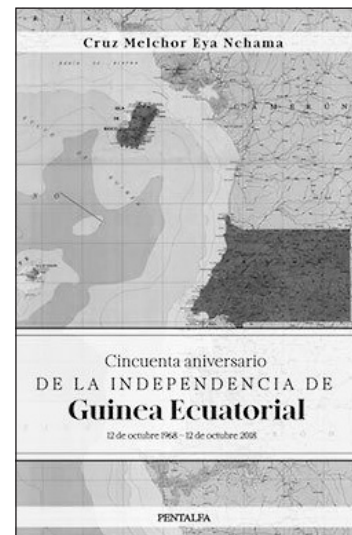
### Human Rights Advocates is accepting nominations for the Board of Directors

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](mailto:jtraylor@igc.org) by January 18, 2019.

**O**ne of HRA's longtime members and member of its International Advisory Board, Cruz Melchor Eya Nchama has published a book entitled *Cincuenta Aniversario de la Independencia de Guinea Ecuatorial: 12 de octubre 1968 – 12 de octubre 2018* (The Fiftieth Anniversary of Independence of Equatorial Guinea: 12 October 1968 – 12 October 2018.)

Originally from Equatorial Guinea, Eya, as he is known to many of us, is a well-known international human rights activist, who currently serves as a Judge Assessor at the Conciliation Commission for Leases and Rents, which deals with cases involving rental and lodging/housing matters. Before that he was an elected Swiss politician and had been appointed head of the municipal council of Grand-Saconnex (near Geneva). He was the first black person to reach such a position in Switzerland. Prior to this he was a leader in the struggle against the Equatorial Government dictatorship. He has held an academic position at the Graduate Institute of Development Studies, University of Geneva, and has been an advisor on human rights issues to the UN.

We congratulate Eya on his latest publication and, as always, the students in the Frank C. Newman International Human Rights Clinic at the USF School of Law look forward to meeting him when they attend the session of the Human Rights Council under the supervision of HRA's Connie de la Vega.



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