



HRA Fall Educational Event on International Human Rights Law and Racism in the U.S.

By Anna Manuel

Human Rights Advocates held this year’s Annual Fall Educational Event entitled, What is the Relevance of International Human Rights Law For Addressing Systemic Racism in the U.S.?, on October 13, 2020 via Zoom conference. Typically held at USF School of Law this year’s event was presented remotely due to the COVID-19 pandemic.

The event was moderated by Associate Director of International Programs and HRA Board Secretary Julianne Cartwright Traylor (USF Law). Panelists included Professor of Law Benjamin G. Davis (University of Toledo College of Law) and Professor of Law and HRA Board Treasurer Connie de la Vega (USF Law).

Ms. Cartwright Traylor began the event by inviting attendees to consider certain overarching topics to keep in mind as context for the discussion: the COVID-19 pandemic and loss of hundreds of thousands of lives; economic downturn; job loss; systemic racism as it manifests itself with killing of unarmed people—Breonna Taylor and George Floyd, to name two; assault on peaceful demonstrations; and attacks by right wing vigilante groups, abetted by our president, amidst political gridlock in D.C.

Professor Davis began by acknowledging these issues, and the despair they trigger. He offered three fundamental thoughts that he finds helpful in facing these feelings:

- “The past is never dead. It’s not even past.” William Faulkner, *Requiem for a Nun*.
- “We not only have a right to be free, we have a duty to be free. And when you see freedom in sense of duty, it becomes greater than in sense of right, your right to be free.” Martin Luther King, Jr., *The Papers of Martin Luther King, Jr., Volume III: Birth of a New Age, December 1955-December 1956*.

- [Frederick] “Douglas had been describing the wrongs of [towards] the black race, and as he proceeded, he grew more and more excited, and finally ended by saying that they had no hope of justice from the whites, no possible hope except in their own right arms. It must come to blood; they must fight for themselves and redeem themselves, or it would never be done. Sojourner was sitting, tall and dark, on the very front seat, facing the platform; and in the hush of deep feeling, after Douglas sat down, she spoke out in her deep, peculiar voice, heard all over the house, “Frederick, is God dead?”” Sojourner Truth, *The Narrative of Sojourner Truth*.

In sum: The chaos that we are living through is new for us, but it is not new for our country; We have a duty to be free, an obligation that impacts all of us; And whether you’re religious or not, this is a powerful moment of despair overcome by a call to something greater than that limited vision we have as mere humans. We cannot despair—we can vote, bring lawsuits, organize, advocate, and keep going.

Professor Davis followed these inspiring quotes with equally moving photographs (some taken by his own father), which framed the next part of his discussion.

Beginning with a 1916 photo of three former

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slaves and a Freeman, Davis pointed out that prior to the Civil War human rights were invoked by the abolitionist movement, and an international vision was incorporated into U.S. Constitutional structure in the Antebellum Period.

He shared a photo of Martin Luther King, Jr. standing next to Richard Nixon, taken at an independence celebration in Ghana in 1957. The president of Ghana had attended Lincoln University in Pennsylvania, and was well aware of the civil rights movement in the U.S. He invited Martin Luther and Coretta Scott King to the celebration, and there they meet then Vice President Nixon for the first time. Back in the U.S., the Southern Christian Leadership Council had been, to no avail, asking President Eisenhower to visit Mississippi and Alabama to witness the civil rights struggle. Meanwhile, overseas in Ghana, Nixon—no doubt motivated by the international eyes upon him - invited Martin Luther King, Jr. to his first visit to the White House. This example illustrates how the international dimension can step in to push a domestic matter forward.

Professor Davis went on to point out ways in which the international plane helped facilitate various wins of the civil rights movement of the 1950s – 1960s. He pointed to the international struggle between the U.S. and then Soviet Union for hearts and minds, and that in the Brown decision, the Supreme Court was concerned with how the U.S. looked to the rest of the world—particularly in regards to its international obligations. He went on to discuss the Civil Rights Acts, and how passing legislation is an element of coopting a movement; he pointed out this is not a bad thing, because States will do one of four things to dissipate a movement: coopt, make you think what you're doing is a fantasy, repress you, or kill you. Lastly, he explained that in 1966, the US signed on to the International Convention on the Elimination of All Forms of Racial Discrimination, which would improve the U.S.' image on the international plane and also created a treaty obligation.

Bringing the discussion to present day, Davis pointed out that we are in a period of oppression and it is important that we continue to exert our human rights. Following the death of George Floyd under a police officer's knee in Minneapolis, approximately 600 civil rights organizations and Mr. Floyd's family urged the United Nations Human Rights Council to investigate police brutality and racial discrimination. The Council responded, and on Juneteenth it adopted a resolution

that sets up an inquiry into systemic racism and violent policing against people of African descent. Again we see a U.S. domestic matter illuminated on the international plane, adding volume to the current movement against police brutality and racism.

In closing, despite Professor Davis' view that the U.S. suffers an endemic dysfunction related to the divide and conquer strategy that has endured throughout history, he encouraged us not to despair, to keep going, because it is simply not possible to do otherwise.

Next, Professor Connie de la Vega discussed the death penalty in the U.S. and how its use violates international standards, highlighting its disproportionate use against racial minorities. She began by reading out statistics: of the death row inmates under U.S. government jurisdiction, 77% are minorities, and under U.S. military jurisdiction, 86% are minorities. In addition, a U.S. defendant is more likely to receive the death penalty if the victim is White than if the victim is African American.

Professor de la Vega explained that the death penalty is not prohibited under international law but has many limitations, and that there is a movement to prohibit it altogether. She cited to guiding international treaty law that the U.S. is party to. The International Covenant on Civil and Political Rights (ICCPR) Article 2 prohibits discrimination on the basis of race under our treaty obligations. Article 6 provides for the right to life, and thus, concerns the death penalty. The ICCPR states that the death penalty should only be imposed for the most serious crimes. In the U.S., this is often not the case. Lastly, imposing the death penalty on persons under 18 years of age is prohibited. In 2005 the U.S. stopped imposing the death penalty on juvenile offenders and cited to international law as the basis for the limitation.

Lastly, Professor de la Vega raised the topic of "death row phenomenon," i.e., harmful effects of being detained on death row for a long time. Human Rights Advocates brought a case before the Inter-American Commission on Human Rights (IACHR), to which the

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IACHR ruled that long stays on death row constitute torture and violate the American Convention on Human Rights. The case was brought on behalf of a defendant named N.I. Sequoyah, a Native American who has been on death row since 1992. He will have been on death row for over 30 years before his first appeal is heard. In this case, the IACHR ruled that Mr. Sequoyah was denied the right to a fair trial and due process of the law. The IACHR also addressed the fact that Mr. Sequoyah was erroneously permitted to represent himself in a death penalty case and addressed issues of competency to stand trial and mental competency in regards to representing one's self and being subject to the death penalty. The Commission also held that people who

become insane on death row should not be subject to the death penalty.

Professor de la Vega hoped that this important ruling from the IACHR, an international human rights body, can become a part of N.I. Sequoyah's appeal—if the procedural timeline permits. If not, she is prepared to file the ruling with the U.S. Supreme Court in the event Sequoyah applies for *certiorari*.

In closing, Ms. Cartwright Traylor expressed appreciation that Professors Davis and de la Vega are training a new generation of human rights lawyers to carry on the decades-long work discussed in this presentation.

We still have a lot to do – but do not despair.

The U.S. Election and International Human Rights Law

By Kathy Burke

This edition of the newsletter arrives in the weeks between the U.S. presidential election and the presidential inauguration. It is a good time to highlight how international human rights law secures the individual rights at stake in this and any U.S. election.

The Universal Declaration of Human Rights

First of all, of course, is the Universal Declaration of Human Rights:

“Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or **through freely chosen representatives**.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in **periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.**” (Emphasis added.)

And, as the Preamble proclaims, human rights – including suffrage and the right to free and fair elections – have no meaning without the rule of law:

“[I]t is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against

tyranny and oppression, that human rights should be **protected by the rule of law**”

The International Covenant on Civil and Political Rights (ICCPR)

Next is the ICCPR, ratified by the U.S. in 1992:

“Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.” (Emphasis added.)

So not only does every U.S. citizen have a right to vote, but each presidential candidate has an individual

right to be elected in an election of universal and equal suffrage that guarantees the free expression of the U.S. electors' will.

Positive Steps Are Required

It is not enough under international human rights law for a government to refrain from interfering with the vote. The U.S. must also take positive action to advance the right to vote. "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right." (Human Rights Committee General Comment 25, para. 11, 1996.)

For example, the government must take affirmative steps "to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively." (Human Rights Committee General Comment 25, para. 12.)

2020: The Human Rights Committee's Questions To The U.S. About Elections

The U.S. was due to present a Periodic Report to the Human Rights Committee in April 2020 on U.S. compliance with all the rights in the ICCPR. A year before the U.S. report was due, the Human Rights Committee asked the U.S. to particularly address certain issues regarding the international right to vote:

- felon disenfranchisement
- voter suppression
- gerrymandering
- campaign financing

In June 2019, a letter from some fifty U.S. civil society organizations (including HRA) and Indigenous Peoples' representative institutions urged the U.S. Department of State to make its scheduled report to the Human Rights Committee on ICCPR compliance. However, the U.S. government has not yet responded to the Human Rights Committee's questions about elections, and has not submitted its periodic report on all civil and political rights, though the report was due in April 2020.

International Observers Of The 2020 U.S. Election

The Organization on Security and Co-operation in Europe (OSCE) has sent observers to nine U.S. elections, most recently for the national election of November 3, 2020. The purpose of the 2020 OSCE mission was to assess whether the elections were held in line with OSCE commitments and other international obliga-

tions and standards for democratic elections, as well as with national legislation. The OSCE's Preliminary Report points out that "[t]he U.S. is a party to major international and regional conventions relating to democratic elections", including the ICCPR.

The observer mission included 15 experts stationed in Washington, D.C., and 30 long-term observers deployed throughout the country for weeks. On election day, the mission increased to 102 observers from 39 OSCE participating States. The observers' access to polling locations was not unlimited, however. The OSCE's Preliminary Report states that: "While the presence of [OSCE] observers was welcomed in the majority of states where observers were deployed, state election officials in three out of 30 states visited declined to meet with them or share their views." "Five states and the District of Columbia explicitly permit observation by international observers by law. Restrictions on observation are in place in eighteen states. Such restrictions on election observers are not in line with OSCE commitments."

The Preliminary Report is posted on the OSCE website. It explains that a final report is forthcoming: "The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. [OSCE] will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process."

Meanwhile, the Preliminary Report said that the U.S. violates international human rights law principles by disenfranchising some 5.2 million U.S. citizens due to criminal convictions: "These restrictions on voting rights of felons and ex-felons **contravene principles of universal suffrage, and the principle of proportionality in the restriction of rights, as provided for by OSCE commitments and other international standards.**"(Emphasis added.).

The report also called out the U.S. for "[I]egislation and practices [that] deprive some categories of citizens of their right to vote. More than 4.5 million citizens residing in District of Columbia and U.S. territories, 90 per cent of whom are ethnic and racial minorities, lack full representation in the Congress."

The Human Rights Council's Periodic Review of the U.S. in November 2020

In May 2020, the U.S. government filed with the U.N.

its scheduled report for the Universal Periodic Review conducted by the Human Rights Council (this is distinct from the periodic review by the Human Rights Committee). The only statement in the U.S. written report that addresses voting rights is: “Our elections are open and genuinely free and fair; our legislators and elected officials are held accountable in regular election cycles by a free press and a robust civil society; ...”

Stakeholders such as non-governmental organizations also gave the Human Rights Council information, and some of the issues they addressed were:

- the fact that people were required to vote on a weekday making it difficult for working people to vote;
- registration and identification requirements;
- purges of a high number of persons from voter rolls;
- the disenfranchisement of many African Americans due to mass incarceration, and the consequences of criminal convictions .
- that the citizens of Washington D.C. do not have voting representation in Congress;
- voter identification requirements that have or could have a discriminatory impact on voters;
- districting that is not done by independent bodies, and that does not respect the equality of the vote.

The U.S. report was reviewed by the Human Rights Council on November 9, 2020, just days after the presidential election in the U.S. The review session was conducted partially in person in Geneva, and partially by remote access. The outcome of the Human Rights Council’s review has not yet been published, but the session was televised on UN webtv, and can be seen there (<http://webtv.un.org>).

Taking Action

For more information about the ongoing work of human rights activists to help ensure that the U.S. follows international human rights law when it comes to the right to vote (and other international civil and political rights), you can visit the websites or organizations such as the US Human Rights Network’s International Covenant on Civil and Political Rights (ICCPR) Taskforce at <https://www.ushrnetwork.org>; or ACLU’s FAQ on The Covenant on Civil & Political Rights (ICCPR) at www.aclu.org.

Inter-American Commission on Human Rights Issues Report on the Merits in U.S. Death Penalty Case

By Connie de la Vega

The Inter-American Commission on Human Rights (IACHR) issued a Report on the Merits in a case that Human Rights Advocates has been involved in since it was filed in 2007. The Admissibility Report had been issued on March 17, 2010 and the Report on the Merits was issued on April 22, 2020. (Nvwtohiyada Idehesdi Sequoyah, Report No. 27/20. Case 12.754.) Students from the University of San Francisco worked on various stages of the case. The Swiss group fosters who brought the case to the attention of Professor de la Vega was also involved throughout the entire process.

Mr. Sequoyah was charged with a number of crimes including murder on January 3, 1986. There were numerous issues that were raised during the trial which included Mr. Sequoyah’s request to represent himself. When a finding was made that he was not mentally capable of representing himself, he appealed to the California Supreme Court. The Court granted his motion to represent himself at trial. Following this, Mr. Sequoyah was convicted of murder with special circumstances on November 1991 and sentenced to death on March 2, 1992. His conviction was followed with appeal and habeas corpus proceedings. The case has been briefed on appeal to the California Supreme Court where it is waiting to be scheduled for oral argument. At the time of the decision on the petition to the IACHR, Mr. Sequoyah had been incarcerated on death row at San Quentin Prison for 27 years.

The decision by the IACHR addressed a number of violations of his right including the right to a fair trial and due process of the law which involved the right to self-representation which the IACHR points out is not absolute and pointed out requires heightened scrutiny in death penalty cases. It also addressed the violation of the right not to receive cruel, infamous or unusual punishment, which includes subjecting persons with mental disabilities to the death penalty. Furthermore, the IACHR pointed out that the year before the crime Mr. Sequoyah had been diagnosed with a psychiatric illness and that at the beginning of the criminal proceedings the condition

persisted. Despite the information regarding his mental condition, he was found competent to stand trial and then convicted and sentenced to death. The IACHR also found that his right to be tried without undue delay was also violated.

The IACHR also found that the delay was caused by the improper care of documentation by the trial court, which increased the amount of time his lawyers needed for preparing the appeal, and by the death of the illness and death of his counsel. These were not the fault of Mr. Sequoyah, though the “length of the proceedings since the conviction and sentence had an impact on the configuration of the death row phenomena, aggravated by Mr. Sequoyah’s underlying mental condition.” (Paragraph 66) The IACHR reiterated that “the reasonable period of time must be assessed in relation to the total duration of the proceedings, from the first procedural act until the enforcement of the proceedings.” (Paragraph 67) The IACHR concluded that “the unwarranted delay in the appointment of appellate defense counsel as well as the delay caused by serious deficiencies in the trial court record, amount to a violation of Mr. Sequoyah’s rights under Articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man.” (Paragraph 68)

The IACHR went on to further rule that “the death row phenomena” is a violation of Articles XXV and XXVI of the American Declaration as well as multiple international treaties. His execution after proceedings that violated his rights would also constitute a violation of the right to life established in Article I of the American Declaration. (Paragraph 74) In light of all this the IACHR recommends that his sentence be commuted. It also recommends that the United States review the laws, procedures, and practices

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 traylor@igc.org by January 15, 2021.

to ensure that persons tried and sentenced for capital crimes in accordance with the rights established in the American Declaration. It also recommended that a more rigorous standard for assessing defendant’s competence to self-represent is applied. In light of the violations established in this case the IACHR recommended that the United States “adopt a moratorium on executions of persons sentenced to death.”

Message from the President

Thank you to all of our members who supported our work and participated in our events during this most challenging year. Despite the challenges of operating remotely, HRA has continued its work to advance international human rights. The focus of our advocacy this year has included challenging systemic racism especially as it relates to Black Americans, as well as bolstering awareness of this issue in line with the International Decade for People of African Descent. I wish you all and your loved ones a safe and enjoyable holiday season and New Year!

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