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RIGHTS REVIEW

Special Edition: 25th Anniversary of the IHRP

TRANSFORMATIVE HUMAN RIGHTS
25 YEARS IN THE FIELD

Photo Credit: Alice Tsier

The IHRP transforms law students into global citizens by involving them in cutting edge international human rights work at a pivotal point in their careers. At the same time, the students' work helps transforms human rights law around the world.

Topics in :

UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL HUMAN RIGHTS PROGRAM

Greetings from the IHRP Director: Renu Mandhane

Welcome to this special anniversary edition of Rights Review, *the International Human Rights Program's signature publication.*

This special issue of *Rights Review* marks the 25th anniversary of the International Human Rights Program (IHRP) at the Faculty of Law. In 1987, Professor Rebecca Cook had the groundbreaking idea to launch the summer internship program which would eventually grow into the IHRP. Her vision was to ensure that Canadian law students were provided with formative experiential learning opportunities early in their careers and transformed into global citizens in the process. In 1988, the IHRP sent its first seven summer interns into the field; this year we celebrate facilitating over 300 internships across the globe. In the past 10 years, the IHRP has expanded to include an international human rights clinic which has intervened before the Supreme Court of Canada, prepared complaints to the United Nations Human Rights Committee, and provided technical legal expertise to countless NGOs. *Rights Review* was launched in 2008 and will celebrate its 5th anniversary next year!

The release of this issue coincides with the launch of a unique and multi-disciplinary exhibition profiling the IHRP at the University of Toronto Art Centre. *Transformative Human Rights: 25 Years in the Field* is a photographic exhibition that profiles major advances in the field of international human rights law through the lens of IHRP students and alumni. A team of six J.D. students and seven Masters of Museum Studies students worked tirelessly over six months to put together a truly outstanding exhibition that promises to expose the broader University and Toronto community to the tremendous impact that Canadian law students can have on the development of international human rights law. And, though we have witnessed remarkable advances in the field over the past twenty-five years, there is still much work left to do. Looking forward, I expect the IHRP to continue to draw on its strengths as a Canadian university-based program with a distinctive voice that calls out for justice both at home and abroad.

From the Editors' Desk

This special anniversary edition is the culmination of months of hard work. Not only does this edition mark the 25th anniversary of the IHRP, it saw the largest number of articles ever submitted to *Rights Review*.

The entire *Rights Review* editorial board has also spent the last few months planning the *Transformative Human Rights* exhibition. We are very excited to launch this edition of *Rights Review* at the opening night of the exhibition.

This is also our last edition as Co-Editors-in-Chief. We would like to thank all of the writers who have contributed to *Rights Review* this year. We owe a special thank you to the members of our editorial board who worked tirelessly throughout the year and made our jobs much easier. It was a pleasure to work with you. Congratulations on a great year!

Morgan Sim and Christine Wadsworth

INSIDE THIS ISSUE:

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This year marks the 25th anniversary of the International Human Rights Program (IHRP) at the University of Toronto Faculty of Law, and this edition of the Rights Review *celebrates the program's achievements through the lens of its current students and alumni. The IHRP transforms law students into global citizens by involving them in cutting-edge international human rights work at a pivotal point in their careers. At the same time, the students' work helps transforms human rights law around the world.*

In order to trace IHRP students' contributions to developments in human rights law, we focus in this edition on gender-based violence, international criminal law, corporate accountability , and refugee rights to illustrate larger trends in international human rights law: protection of non-citizens, prevention and prosecution of crimes traditionally not acknowledged, and increased accountability for non-state actors. In anticipation of the IHRP's continued advocacy in the field, we also highlight the issues which will likely shape the next 25 years in human rights.

TRANSFORMATIVE HUMAN RIGHTS: BEHIND THE SCENES

Sylvie McCallum Rougerie, 2L, University of Toronto, Faculty of Law

For the last five months, the *Rights Review*'s editorial team has been hard at work on a unique project. For a few hours every week, we have been setting aside our casebooks to unleash our creative side: interviewing alumni, sorting through photographs, picking out frames, designing interactive maps, and meeting with Museum Studies students. Our hard work has culminated in the *Transformative Human Rights: 25 Years in the Field* exhibit, on display from February 9 to 22 at the University of Toronto Art Centre (UTAC). We are incredibly proud of this accomplishment, mainly because the creation of a photography exhibit was a process unlike any other that law students typically experience.

When *Transformative Human Rights* was first discussed, the six of us agreed to take on a small project to mark the IHRP's 25th anniversary. The original idea for the exhibit was simply to feature some photographs taken by IHRP interns. Recognizing our lack of expertise in photography, we decided to partner with the Masters of Museum Studies Program (MMSt) at the Faculty of Information. Like law students, MMSt students can receive credit for practical work related to their studies. Not one, but seven MMSt students thus came on board the *Transformative Human Rights* team. Slowly, the small project we had initially agreed to design developed into a much larger undertaking.

The MMSt and law students worked in pairs to develop the thematic sections of the exhibit, which feature work of IHRP students in the fields of refugee rights, gender-based violence, corporate social responsibility, and international criminal law. These teams browsed through twenty-five years of intern reports to determine which experiences to profile, and which photos to display. Another team developed a map and timeline marking the major human rights developments of the last 25 years, while a final team designed the concluding segment of the exhibit, which underscores the issues that will define the field of human rights in the next 25 years. Each team also brainstormed creative designs for their section, which, in the end, all had to be brought together by unifying themes, narratives, and designs.

Of course, delving into the unknown field of curation brought with it unexpected challenges. In the initial phases of the project, our creativity got the best of us. It wasn't long before we realized that some of our ideas, in addition to being expensive, were too big or small to fit the gallery space, required artistic or technical skills that our team didn't have, or didn't suit the overall design of the exhibit. Over the next few months, we had to learn to compromise, sometimes letting go of our ideas when it was to the greater benefit of the exhibit.

Without a doubt, the greatest challenge for all the students involved was working as part of such a large team, especially when its members came from such diverse backgrounds and possessed such different skills. Figuring out what each of us could contribute was a crucial part of the process.

Despite these ups and downs along the way, all of the students involved in the exhibit can say that we are genuinely proud of our accomplishments. Though *Transformative Human Rights* was an unexpectedly heavy commitment for all those involved, it is one that will stay with us for a very long time. ♦

The exhibition team for *Transformative Human Rights* is composed of: Stephanie Bissell (MMSt), Gillian Gallimore (MMSt), Sofia Ijaz (1L), Rumin Jehangir (MMSt), Lane Krainyk (2L), Shannon Linde (MMSt), Meaghan Lowe (2L), Sylvie McCallum Rougerie (2L), Rachel Meloche (MMSt), Morgan Sim (3L), Christine Wadsworth (2L), Jennifer Carter (Assistant Professor, Faculty of Information), Jennifer Orange (Adjunct Professor, Faculty of Law) and Renu Mandhane (Director, International Human Rights Program).

Gender-based violence is violence, whether physical or psychological, that targets a person because of his or her sex or gender role in society. The most frequent targets of gender-based violence are women and girls. One in every three women experiences physical, psychological, or sexual violence in her lifetime, such as domestic assault, stalking, or rape. While violence is often committed by someone the woman knows, such as a family member, other known offenders include armed groups and government officials. Due to discriminatory laws or customs, and/or the failure of police to properly investigate these crimes, gender-based violence often goes unpunished. Many women suffer in silence owing to shame and stigmas attached to these crimes.

Over the past 25 years, women in Canada and around the world have demanded that gender-based violence be recognized as a human rights violation that is addressed by the state. IHRP students are currently working with Canadian and international women's rights defenders to ensure women in Africa are protected from rape within marriage, and that girls in Kenya can live in their communities without the constant threat of sexual assault. Recent IHRP interns have worked on access to justice for rape survivors in Bangladesh and defending women's reproductive rights in Ireland.

IN KENYA, 160 GIRLS AREN'T AFRAID TO TALK ABOUT DEFILEMENT

Meghan Lindo, JD/MSW & Sylvie McCallum Rougerie, 2L, University of Toronto, Faculty of Law

Lucy* was three years old when she was brutally raped. She was found clinging to life in the rapist's home.

Her aunt reported the rape to the Kenyan police, but they refused to investigate. Only after weeks of persistence did the police finally come to Lucy's village to make the arrest. Upon arrival, the arresting officers demanded that Lucy's aunt pay 1500 Kenyan shillings and that she wash the officers' uniforms before they arrested the perpetrator. Lucy's rapist was later released on bail for the equivalent of $100 CAN.

Every 30 minutes, a woman or girl in Kenya is raped. Although a legal framework is in place to prosecute the perpetrators of rape or "defilement" – the term used for the rape of a girl child – police corruption, apathy, and ignorance stand in the way of justice. This climate of impunity is exacerbated by the pervasive stigma attached to rape in Kenyan society. Survivors are afraid to report the crime, police fail to investigate it, and the same stories continue to repeat themselves.

The 160 Girls project sets out to change this. The Equality Effect, a women's rights organization composed of Canadian and African human rights lawyers who are spearheading the project, plans to sue the Kenyan government for failing to protect underage girls from rape. The Equality Effect has partnered with Ripples International, a child welfare organization that operates a shelter for defilement

* Names have been changed

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Photo Credit: Fiona Sampson

Photo Credit: Meghan Lindo

Top: A young survivor and her family attend court for an update on the case against her alleged rapist.
Bottom: Canadian law students Meghan Lindo (Toronto) and Sasha Hart (McGill) celebrate the work of Ripples International – the NGO that shelters and rehabilitates young rape survivors in Meru.

DOMESTIC VIOLENCE AS A HUMAN RIGHTS VIOLATION: *GONZALES V. UNITED STATES*

Aleena Reitsma and Sarah Rankin, 1L, University of Toronto, Faculty of Law

The American Supreme Court's 2005 decision in *Castle Rock v. Gonzales* left many domestic violence and women's rights activists deeply concerned. In 1999, Gonzales' daughters were abducted by her estranged husband in violation of a protective order. That evening, Gonzales unsuccessfully attempted to get the Castle Rock Police Department to take action. Her husband later arrived at the police station, where he instigated a shootout that took his life. The bodies of the three abducted children were found in his truck afterward.

Gonzales sued the Town of Castle Rock, alleging that the officers' failure to use every reasonable means to enforce her restraining order against her husband violated the 14th Amendment's guarantee of due process. The Supreme Court ultimately rejected this reasoning, holding that domestic violence victims do not have a constitutional entitlement to enforcement of their protective orders. Police work, the Court ruled, involves discretionary decisions to exercise authority. Justice Scalia, writing for the majority, wrote that a benefit is not a protected entitlement if government officials have the discretion to grant or deny it. This result left domestic violence advocates effectively toothless in pursuing the aggressive enforcement of court orders for victims of domestic violence.

This was not the end of the road for Gonzales. She filed a petition with the Inter-American Commission on Human Rights (IACHR) on December 27, 2005, alleging violations of her fundamental human rights. The IACHR is an autonomous organ of the Organization of American States (OAS), created for the promotion and protection of human rights among its members. Among its activities, the IACHR receives, analyzes, and investigates petitions alleging human rights violations. After completing an investigation, the IACHR issues a report on its findings.

Although the United States has not ratified any Inter-American human rights treaties, human rights complaints can nonetheless be brought against the U.S. based on its signing of the *Charter* of the OAS and IACHR jurisprudence that holds that the *American Declaration of the Rights and Duties of Man* to be a source of binding international obligations for the OAS's member states.

The Commission found that the U.S. violated several rights protected by the American Declaration including: equal protection before the law, the right to life, the right to judicial protection, and the duty to provide special protection to certain vulnerable groups such as girl children. In its 2011 report on the *Gonzales* case, the IACHR specifically confirmed that domestic violence is a human rights violation.

Among its recommendations, the Commission included both remedies specifically for Gonzales and her family, as well as wider-ranging policy and law-reform related remedies that would help prevent future violations of human rights. It includes a recommendation that the U.S. undertake a serious, impartial, and exhaustive investigation into the deaths of the Gonzales' children and into the systemic failures that took place relating to the enforcement of Gonzales' protection order. The IACHR's recommendations also included the adoption of policies and programs aimed at "restructuring the stereotypes of domestic violence victims" and promoting "the eradication of discriminatory socio-cultural patterns that impede women and children's full protection from domestic violence acts."

Domestic violence activists are cautiously hopeful about the IACHR's report. Through its treatment of domestic violence as a human rights issue, it offers an alternative avenue to domestic violence survivors whose governments fail to adequately respond to systemic problems. The excitement about an alternative forum for these concerns at the international level is tempered by the fact that, to date, the United States has not implemented any substantive changes. Nonetheless, there remains optimism that continued and more widespread use of the IACHR and similar forums to address these kinds of problems may lead to more tangible improvements on the ground. ♦

DOMESTIC VIOLENCE AND HUMAN RIGHTS: AN INTERVIEW WITH PAM CROSS

Kiran Arora, 1L, University of Toronto, Faculty of Law

Domestic violence is an emerging topic in international human rights law. Starting with the *Velesquez Rodriguez* case, in 1989, international legal bodies began to recognize states' obligations to exercise due diligence in protecting individuals from third party violence. Several years later, international bodies began to apply this principle to domestic violence cases, the most recent example of which is the Inter-American Commission on Human Rights' case of *Jessica Gonzales v. United States* profiled in the above article.

The IHRP's Women's Human Rights Resources (WHRR) Working Group is working with Pamela Cross, a feminist lawyer and activist for women's equality, on an innovative project this term. Cross is currently managing a project, led by the *Law Commission of Ontario*, to develop a law school curriculum aimed at educating students on issues related to violence against women. By reviewing international case law on domestic and sexual violence, working group students will introduce an international human rights perspective into the curriculum. As a member of the Women's Rights Resources Working Group, I had the chance to speak with Pamela Cross about this project and its intersection with international human rights law.

Q. Can you tell us a little bit about the curriculum you are developing and its focus?

A. What we are doing is looking at violence against women across many areas of law. Often people think about violence against women as an issue that's restricted to family law or criminal law. We really want to look at it across the spectrum, including looking at violence against women as a human rights issue, both domesti-

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cally and internationally. Hopefully over time, we'll get to a place where every graduating law student in Ontario has had at least a basic exposure to information about violence against women.

Q. Where does Canada stand on this issue in comparison to other countries? Is there somewhere in particular that we should be looking to for leadership?

A. I certainly do not think Canada is leading the pack by any stretch of the imagination. I find it interesting to see quite a bit of leadership coming from countries where, historically, women have had fewer rights than they do here. A lot of countries in the Global South where women live in greater poverty than many Canadian women, are very committed to a meaningful constitutional process, especially when they're rebuilding after a revolution or a major change in government. One of the biggest challenges in Canada when you look at any issue related to women's equality is that the average Canadian can say, "Well, there's the *Charter* – women have achieved equality here." That complacency can be a significant handicap to ongoing work. If a woman is being murdered every week in a province like Ontario, we have not come close to solving the problem.

Q. How can international law help improve the way in which we handle violence against women in Canada?

A. The recent case, *Jessica Gonzales v. U.S.A.*, is a really interesting example of a case where the domestic law failed a victim of domestic violence at every level but she was able to turn to an international body to get some recognition that a wrong had been committed. The Inter-American Commission on Human Rights (IACHR) found that the United States violated the human rights of Jessica Lenahan (formerly Gonzales) and her children by failing to respond properly to her in the circumstance where she had obtained a restraining order.

I do not know of a Canadian family law case that has raised issue of the mother's human rights or made reference to section 15 of the *Charter* or an international document like *CEDAW* [*the Convention on the Elimination of all forms of Discrimination against Women]*. The reasons for that are pretty easy to understand. Most women in family court are either unrepresented or their resources are already stretched. When countries come together, when you look at some of the instruments that have been developed by bodies like the United Nations, the IACHR, and at the Pan-African work that has been done, you get closer to finding a solution. If we can look at that work and incorporate it in this country, we would be in a better position. Who knows where it will take us, but this is an opportunity to explore something that is very much underexplored. ♦

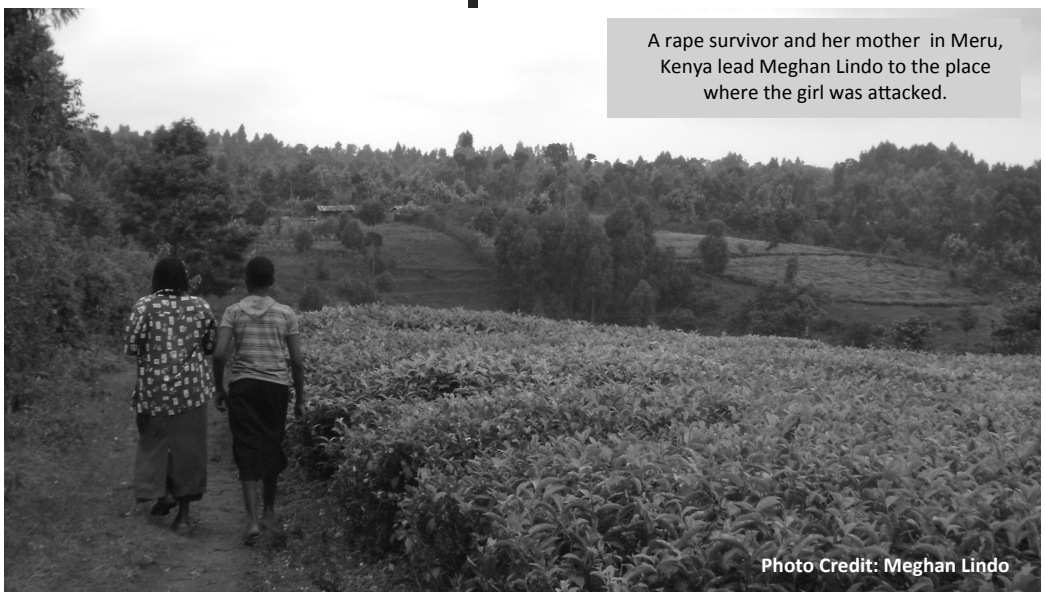
victims in the town of Meru, four hours outside of Nairobi. With Ripples' assistance, the Equality Effect has begun to collect stories from girls who are willing to take a stand against impunity.

Over the last several months, the IHRP Clinic has contributed valuable research on the international aspects of the case. As students in the Clinic, we have identified violations of the *Convention on the Rights of the Child*, as well as their relevance to the constitutional arguments that the Equality Effect plans to make. We have also researched how international law is incorporated under Kenya's new constitution.

This is not the IHRP's first time working with the Equality Effect. In 2011, IHRP Clinic student Morgan Sim traveled to Nairobi to participate in Equality Effect's annual lawyers' meeting, which brought together human rights experts from Canada, Ghana, Malawi, and Kenya. Meghan Lindo spent the summer of 2011 as an IHRP intern working with the Equality Effect and Ripples International in Kenya. She spent the summer gathering evidence and interviewing victims, police officers, social workers, and other key stakeholders. This April, one of the current Clinic students will again be traveling to the lawyers' meeting to participate in the next stage of the case: drafting the pleadings.

Lucy's story has a happy ending. Despite having to undergo multiple surgeries, she has recovered physically, though she will never bear children. Through the help of Ripples International, Lucy's aunt ensured that the perpetrator was rearrested and sentenced to life in prison. Unfortunately, the result in Lucy's case is an exceptional one, spearheaded by a team of exceptional advocates. The challenge ahead is great, but with the hard work and determination of so many human rights lawyers, students, and social workers, the project is certain to make a difference. ♦

The 160 Girls project was recently profiled in Chatelaine magazine, in which reporter Sally Armstrong described the case as "historic" and "the mother of all human-rights cases."



A rape survivor and her mother in Meru, Kenya lead Meghan Lindo to the place where the girl was attacked.

Photo Credit: Meghan Lindo

From Rhetoric to Accountability: Classifying Rape as a Weapon of War

Sylvie McCallum Rougerie and Jenny Yoo, 2L, University of Toronto, Faculty of Law

On November 21st, 2011, Julaine Eberhard, of the New York-based Global Justice Center, spoke to students at the Faculty of Law as part of the IHRP'S Speaker Series. Her presentation, entitled "From Rhetoric to Reality - How Classifying Rape as a Weapon of War can Translate into Enhanced Accountability and Real Benefits for Survivors" focused on the Center's work promoting accountability for sexual violence in conflict.

Sexual violence has occurred in conflicts since time immemorial. However, in recent years, rape has gone from being an opportunistic crime to a tactic of war. In certain conflicts, commanders now give systematic orders to rape as part of a broader military strategy. Between 20,000 and 50,000 women and girls were raped during the conflict in the Balkans in the 1990s. Between 250,000 and 500,000 women and girls were raped during the Rwandan genocide. In 2010, more than 8,000 women and girls were raped in the Democratic Republic of Congo (DRC). Major General Patrick Cammaert, a Former UN Peacekeeping Operations Commander in the DRC explained that, "It's now more dangerous to be a woman than a soldier in modern conflict."

Rape has become a popular weapon for two main reasons: it is inexpensive, and it is effective. Rape can cause severe harm to victims, with effects ranging from health issues, such as fistulas and HIV, to social marginalization. Furthermore, rape is an effective means of terrorizing and destabilizing populations. The social stigma attached to rape is one of the main reasons it is such a destructive weapon.

The Center looks at ways to combat the increasing prevalence of rape in conflict. Cases of rape and sexual violence can be prosecuted under international criminal law. The 1998 *Rome Statute of the International Criminal Court* states that crimes against humanity include "rape, sexual slavery, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity." Similarly, the statutes of *ad hoc* international criminal tribunals identify rape and other forms of sexual violence committed during armed combat as war crimes. However, due to the stigmatization of rape in many cultures, victims are not always willing to testify in court. For example, despite the International Criminal Tribunal for Rwanda's watershed judgment in *Prosecutor v. Akayesu*, which resulted in convictions on the grounds of sexual violence, prosecutors have subsequently struggled in securing convictions for rape and sexual violence, largely due to a lack of evidence.

Classifying rape as a weapon of war may provide additional legal avenues to deal with these crimes. The Center argues that the use of rape as a systematic tool of violence and control, to serve a specific military purpose, is equivalent to the use of weaponry In this respect, classifying rape as a weapon of war relies on the fundamental goals of international humanitarian law, which are to protect civilians and regulate the use of weapons.

Under the laws of war, some weapons are permitted if used against a "legitimate target." However, the intentional targeting of civilians in war is illegal.Other weapons are never permitted, regardless of whom they are used against. These weapons include forced famine and weapons of mass destruction such as nuclear, biological, or chemical weapons. Eberhard argues that rape can be conceptualized as a delivery system of a biological weapon (e.g. HIV). It is important to note that it is the *deliberate transmission of the virus in conflict*, not the virus itself, which is categorized as a weapon.

According to Eberhard, the Center's greatest contribution to date is a comprehensive legal brief, which is the first authoritative document outlining the legal implications of rape as a weapon of war under the *Geneva Conventions*. The brief has already proven to be a useful way to interact with military experts, who, as Eberhard puts it, tend to be receptive "when you speak their language." The Center is advocating for a change within the framework of the *Geneva Conventions* for two reasons: to connect with, and be accessible to, the military community; and to harness the influence of the International Committee of the Red Cross in interpreting international humanitarian law and the *Geneva Conventions*.

Increasing dialogue between women's rights advocates and military experts is only the first step in this daunting project. Eberhard made it clear that the Center's main goal is to change the way key stakeholders conceptualize rape and deliberate HIV transmission. The Center hopes this reconceptualization of rape and deliberate HIV transmission will bolster accountability, increase the enforcement of existing prohibitions, and put states on notice that they have an obligation to protect women – and all civilians – from the destructive effects of rape.

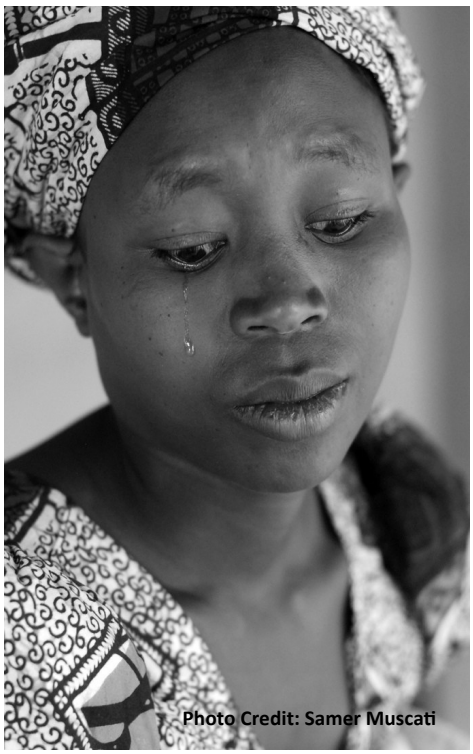


Photo Credit: Samer Muscati

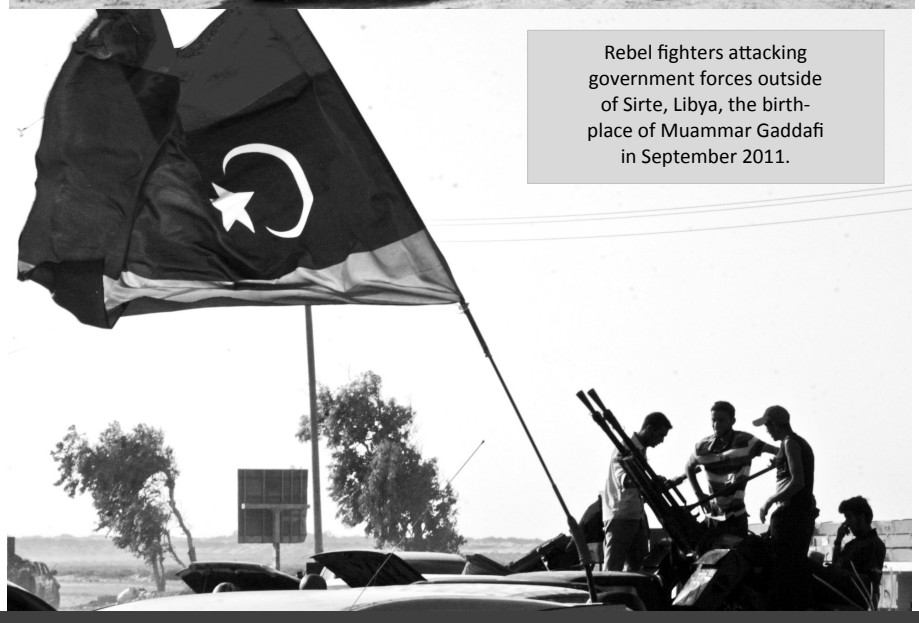
During the Rwandan genocide, an estimated 250,000 to 500,000 women and girls were raped. Almost all women who survived the genocide were victims of sexual violence, but the voices of rape survivors have been notably absent in accounts of the genocide. Alumnus **Samer Muscati** (interview on page 24) has co-authored a book that recounts the stories of these victims.

For real change to occur, Eberhard recognizes that domestic law and accountability mechanisms must also be harnessed. One of the Center's key objectives is to have rape classified as a weapon in at least one domestic legal system. Eberhard also noted that one of the Center's long-term objectives is to have rape classified as a weapon in the *Rome Statute*, which would create new accountability options for victims. To achieve these goals, the Center is working to create a network of like-minded states willing to advocate for these changes. Whether the Center will ultimately be able to achieve a paradigm shift in international humanitarian law has yet to be seen. However, it is clear that the current model is not working. ♦

International criminal law has its roots in the trials that followed the Second World War. Today, there are several institutions built on the legacy of the Nuremberg and Tokyo trials. There are special courts established to prosecute atrocities committed in the former Yugoslavia (1993), Rwanda (1994), Sierra Leone (1996), and Cambodia (2003). The permanent International Criminal Court (ICC) tries crimes committed after July 2002. The ICC can only prosecute crimes committed by citizens of ICC member states, or crimes committed within their territories, though, on an exceptional basis, cases can be referred to the ICC by the United Nations Security Council.

Successful enforcement of international criminal law depends on the support of the international community. States must provide financial support to the courts, assist with the arrest of fugitives, host tribunals and courts, and imprison individuals convicted of crimes. Canada is a longstanding champion of the Court and has enacted laws that allow for the domestic prosecution of international crimes. Every year, the IHRP sends interns to the various international criminal courts and tribunals where they assist prosecutors, defence counsel, and the judiciary with these complex cases.

Photo Credit: Alex Dziadosz



Rebel fighters attacking government forces outside of Sirte, Libya, the birthplace of Muammar Gaddafi in September 2011.

THE TRIAL OF SAIF AL-ISLAM GADDAFI: A TEST FOR THE ICC AND LIBYA

Sofia Mariam Ijaz, 1L, University of Toronto, Faculty of Law

On November 19th, 2011, the fugitive son of Muammar Gaddafi, Saif al-Islam Gaddafi, was captured in Libya's southern desert. After referral by the United Nations Security Council through *Resolution 1970*, the International Criminal Court (ICC) issued an arrest warrant for Saif on charges of crimes against humanity for his role in the regime's brutal crackdown on protesters. An arrest warrant was also issued for Abdullah Al-Senussi, a Colonel in the Libyan Armed Forces and the head of Military Intelligence.

Once Saif was arrested, an international debate arose over who would conduct his trial: the ICC, which issued the arrest warrant, or Libya, who has custody of the defendant? Soon after his arrest, Libya's newly formed National Transitional Council announced its desire to conduct Saif's trial inside Libya. Libyan Prime Minister-designate Abdurrahim El-Keib promised fair trial procedures: "We assure Libyans and the world that Saif al-Islam will receive a fair trial… under fair legal processes which our own people have been deprived of for the last 40 years." Despite such assurances, it is unclear whether Libya's embryonic government and judiciary are capable of

(Continued on page 9)

holding Saif's trial. The Libyan government has yet to establish control over the whole country, let alone an independent and fair judiciary. Militias continue to hold pro-Gaddafi supporters in secret detention centers, and violence continues in cities such as Tripoli and Bani Walid.

The ICC's policy of positive complementarity (the idea that the Court should complement and not replace domestic courts) would allow for Saif to be tried within Libya. However, to do so, Libya must formally challenge the ICC's jurisdiction (on the basis of Article 19 subsection 2(b) of the *Rome Statute*) on the ground that it is investigating and prosecuting the case itself.

The question remains, what happens to Saif in the interim? Does Libya have an obligation, in light of the arrest warrant, to surrender Saif until the ICC decides the jurisdictional issue? This situation presents an important test for the Court and its credibility. If Libya is obligated to hand Saif over, and refuses to do so, what would that mean for the future of the Court's international influence? The question of Libya's obligations and the ICC's jurisdiction are more than procedural in nature – they go to the core of issues concerning the Court's mandate, power, and credibility.

Article 89 of the *Rome Statute* creates an obligation for states to comply with a request of surrender by the Court. While the provision refers to States Parties, the provision appears to be equally applicable to Security Council referrals of situations to the ICC. Thus, while Libya, is not a party to the *Rome Statute*, the Security Council referral had the legal effect of subjecting Libyan authorities to the Court's jurisdiction. There is an exception to the Article 89 obligation where the accused has already been convicted or acquitted for a particular crime. In that case, the State "may postpone the execution of the request for surrender" until the Court decides on admissibility. However, this exception does not contemplate postponement where a challenge has been made to the ICC's jurisdiction based on complementarity – the type of challenge at issue here.

Other provisions in the *Rome Statute* seem to point to the contrary conclusion – that Libya is permitted to postpone a request to surrender custody of Saif. Article 19(8)(c), which deals with challenges to the admissibility of a case, enables the Prosecutor to "prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58." Therefore, it appears that the *Statute* does contemplate a situation where the state maintains custody of the defendant until the Court decides on admissibility. In addition, Article 95 of the *Rome Statute* enables a State to postpone a request by the Court (such as for surrender) "where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19." Since Saif's case involves an admissibility challenge under Article 19, this part of the *Statute* seems to point in favour of Libya being able to maintain custody of Saif pending a determination by the Court. However, the second part of that provision states that the postponement is possible, "unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19." Thus, it is not clear whether or not Article 95 deals only with challenges in respect of collection of evidence, or whether it applies to all admissibility challenges.

Upon these readings of the *Rome Statute*, it appears that Libya may not have a duty to turn over Saif while it challenges the jurisdiction of the Court. If this reading is correct, the Court has an interest in explicitly delineating this. If there is an obligation to surrender Saif, which international NGOs such as Human Rights Watch have publicly stated there is, and Libya disregards it, the Court will look weak if it is unable to compel Libya to comply.

The decision on jurisdiction over Saif's case will be a test of both the Court's influence and Libya's sovereignty. ICC Prosecutor Luis Moreno-Ocampo stated on a visit to Tripoli that if Libya could demonstrate its ability to conduct a fair trial, it would have the right to try Saif. However, the decision on jurisdiction will ultimately be made by ICC judges. As part of a formal challenge to the ICC's jurisdiction, Libya was required to provide answers about Saif's arrest and the conditions of his detention. Libya has yet to respond to the Court. The resolution of this issue will contribute to the international debate over where and how alleged war criminals should be tried. ♦

THE CASE FOR UNIVERSAL JURISDICTION LAWS

Naomi Snider, LLM, and Christine Wadsworth, 2L, University of Toronto, Faculty of Law

The Canadian Centre for International Justice (CCIJ) works with survivors of genocide, torture, and other atrocities to bring perpetrators to justice through domestic, foreign, and international courts. Naomi Snider and Christine Wadsworth worked with the CCIJ as IHRP Clinical Students to research the possibility of launching criminal prosecutions against perpetrators of atrocities.

Ending impunity for genocide, crimes against humanity, war crimes, and torture, is an international obligation. National authorities must be willing and able to prosecute individuals suspected of these crimes, irrespective of where the crime was committed or the nationality of the accused or victim.

Primary responsibility for prosecuting crimes belongs to the state where the crime occurred. However, there are numerous obstacles preventing states from effectively prosecuting these crimes. Victims and perpetrators often flee to other countries, perpetrators may remain in power, and domestic trials and detention conditions may not meet international standards. The creation of the International Criminal Court (ICC) was an important step toward ending impunity. However, the ICC can only act when national courts are unwilling or unable to carry out a prosecution. The ICC's jurisdiction is further limited to crimes committed after July 1, 2002 and crimes committed in states which are party to the *Rome Statute* (unless the situation is referred to it by the territorial state or the United Nations Security Council).

(Continued on page 11)

A Tough Job: Challenges for the First Prosecutors of the International Criminal Court

Andrew Max, 2L, University of Toronto, Faculty of Law

On November 14, 2011, the IHRP hosted Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), at the Faculty of Law as a part of its Speaker Series.

Moreno-Ocampo, whose tenure ends in June 2012, is the first Prosecutor of the ICC and his tenure has not been without controversy. Moreno-Ocampo has attracted significant criticism from a variety of sources for his performance while in office. African leaders have repeatedly criticized him for focusing on crimes committed in Africa while international criminal law experts such as Antonio Cassese, have vigorously criticized Moreno-Ocampo's handling of explosive crises such as the Darfur situation.

Moreover, Moreno-Ocampo's management style has been blamed for a series of senior departures from the Office of the Prosecutor (OTP). This controversy came to a head this summer in a publicly litigated dispute. Essa Faal, a senior lawyer in the OTP working on the Darfur cases, resigned and, less than a month after his resignation, began to work as defence counsel for Francis Muthaura, one of the suspects in the ICC's Kenya cases. Moreno-Ocampo challenged Mr. Faal's appointment.

In a gaffe this summer, Moreno-Ocampo mistakenly claimed that Saif al-Islam Gadaffi had been captured in Libya. Professor Kevin Jon Heller, a permanent contributor to the widely-read international law blog Opinio Juris, described Moreno-Ocampo's remark as a "rash public statement [that] simply reinforces his image - all too widespread, and all too justified - as an inept prosecutor far more concerned with publicity than the credibility of his office or the legitimacy of the Court."

Yet the very qualities assailed by Moreno-Ocampo's critics - his decisiveness, charisma, and desire for media attention - may be responsible for the ICC's rise to the centre stage of international events. Recently, Moreno-Ocampo was selected by *The Atlantic* as one of its 'Brave Thinkers of 2011' because he "put a fragile new institution on the map."

When Moreno-Ocampo began his work as Prosecutor in 2003, the ICC had yet to prove its legitimacy, and the court had an empty docket. In the eight years since he took office, the ICC has emerged as a relevant and important international institution. Over 20 proceedings are now ongoing, and numerous others are under investigation. The Court has indicted 27 individuals and issued arrest warrants for 18 people including two sitting heads of state: Sudanese President Omar al-Bashir and former Libyan President Muammar Gaddaffi. The verdict in the Court's first case, the *Prosecutor v. Thomas Lubanga*, is expected in early 2012.

At the beginning of his tenure, Moreno-Ocampo's international relations advisor said it would be "impossible" for the ICC to acquire jurisdiction through a United Nations Security Council referral, though this mechanism is provided for in the ICC's *Rome Statute*. Despite these initial doubts, the UN Security Council has twice referred situations to the ICC. The Security Council referred the Darfur situation in 2005 and the Libya situation in 2011 during the uprising in that country. These events indicate that the ICC has become a major player in the field of international criminal law and has cultivated widespread legitimacy despite the fact that several veto-yielding members of the Security Council have failed to sign on to or ratify the *Rome Statute*.

Deputy ICC Prosecutor Fatou Bensouda was recently elected to succeed Moreno-Ocampo as the next Prosecutor of the ICC. When she assumes of-

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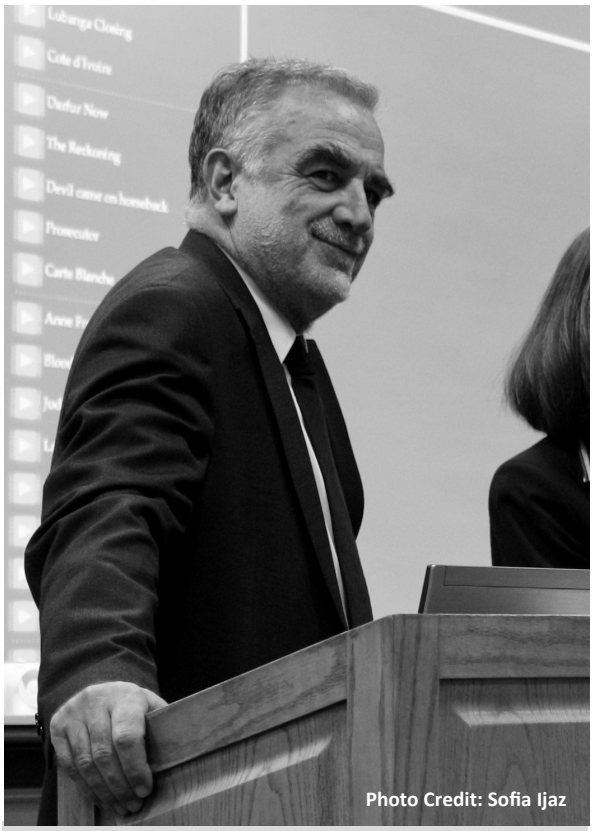


Top: Moreno-Ocampo visits the University of Toronto, Faculty of Law on November 14, 2011.

Bottom: Prosecution intern Andrew Max with Moreno-Ocampo and Bensouda in Summer 2011.

A TOUGH JOB (Continued from page 10)

fice in June 2012, she will have to grapple with problems stemming from Moreno-Ocampo's success, particularly the political implications of acquiring jurisdiction through Security Council referrals. Moreno-Ocampo believes that the biggest challenge facing the next Prosecutor will be to protect the autonomy of the OTP, especially in the face of increasingly complicated political dynamics.

For example, the recent violence in Syria, which has resulted in over 5000 deaths, has led to calls from the international community for ICC involvement. However, because Syria is not a party to the *Rome Statute*, the ICC cannot get involved without a UN referral. Despite international outrage at events in the country, moves to refer Syria to the ICC have been unsuccessful to date. Both Russia and China vetoed a UN Security Council resolution requesting NATO intervention in Syria, a move both of these permanent members supported months earlier in Libya.

The twin cases of Syria and Libya illustrate a rising concern that, as U of T Professor Patrick Macklem put it to Moreno-Ocampo during his visit, the Prosecutor may "become a tool of the Security Council." Scholars like Macklem are concerned that the Security Council could use the ICC to achieve certain ends when it desires them (e.g. Libya), while blocking intervention where it is not politically desirable (e.g. Syria). As the relevance of the Court and the consequences of its actions increase, so does the temptation for bodies like the Security Council to influence ICC decisions. As Professor Macklem noted, "It's going to be a challenge to maintain your autonomy… you are never going to go below the radar again."

Moreno-Ocampo offered two suggestions to his successor to ensure the ICC remains autonomous. First, there can be no political meddling in the staffing, oversight, and budget of the court. Second, the Prosecutor needs to ensure that, once a case is referred to the Court, politics are taken out of the equation and the case is pursued on its merits. This would send a signal to the Security Council, and the international community that once a case is referred, "the Court will act as a court."

Moreno-Ocampo is leaving a Court which has become increasingly important on the international stage but, ultimately, the burden of protecting the Court's autonomy will fall to Ms. Bensouda. ♦

UNIVERSAL JURISDICTION (Continued from page 9)

Universal jurisdiction laws can help fill the gaps in international legal regimes. Universal jurisdiction is a principle of public international law which allows states to investigate and prosecute persons suspected of serious international crimes committed outside the territory of the prosecuting state, regardless of the alleged perpetrators' or victims' nationalities, or where the crimes were committed. Over 125 states have enacted universal jurisdiction legislation for at least one international crime. Trials have taken place using the principle of universal jurisdiction in over 15 countries, resulting in over 50 charges and numerous convictions.

States with universal jurisdiction laws have adopted varying interpretations of universal jurisdiction. Universal jurisdiction laws often restrict the types of crimes that can be prosecuted, have strict limitations periods, or impose nexus requirements. This has led to differing degrees of justice depending on the state and the crime in question.

The piecemeal way in which universal jurisdiction legislation has been implemented in the United Kingdom illustrates some of the key obstacles to justice. In 2001, the *International Criminal Court Act 2001* (*ICCA*) established extra-territorial jurisdiction over British citizens and residents for genocide, crimes against humanity, and war crimes in internal armed conflicts (civil wars), as well as international armed conflicts committed after September 1, 2001. However, this resulted in impunity gaps for suspects not resident in the UK and for acts committed before 2001. As a result of these problems, the *ICCA* was amended to apply to crimes committed on or after January 1, 1991. The justification for using 1991 as the date from which extra-territorial jurisdiction should apply to allegations such as genocide and war crimes, which were recognized as international crimes in 1948 and 1949 respectively, is unclear. The legislation should instead establish jurisdiction as far back as is legally possible for each offence.

Spain's experiments with universal jurisdiction have also been fraught with challenges. Though Spain originally had one of the world's most comprehensive universal jurisdiction laws, the political fallout from a series of controversial prosecutions led to a narrowing of the Spanish law. The *Fundamental Law of the Judiciary* extends the jurisdiction of Spanish courts over crimes such as genocide, crimes against humanity, and terrorism. This law originally enabled courts to investigate and prosecute individuals suspected of international crimes, regardless of the alleged perpetrator's or victim's nationality, or where the crimes were committed. This allowed for numerous high-profile investigations including cases against Chilean dictator Augusto Pinochet, military officers involved in Argentina's "dirty war," Chinese officials implicated in the persecution of Falun Gong members, Israeli military officials implicated in abuses in Gaza, and American officials accused of torture at Guantanamo Bay.

In November 2009, the law was amended, making it more difficult to prosecute international crimes in Spain. Under the amended law, the alleged perpetrator must be in Spain, there must be victims of Spanish nationality, or there must be some other relevant link to Spain. It is still unclear how narrowly Spanish courts will interpret the "other relevant link to Spain" requirement.

Canada's *Crimes against Humanity and War Crimes Act* (2000) criminalized genocide, crimes against humanity, and war crimes. The *Act* allows Canada to prosecute any individual present in Canada who has allegedly committed those crimes, regardless of that individual's nationality or where the crimes were committed. It also covers crimes committed on Canadian territory, by Canadians anywhere in the world, and crimes committed against Canadian nationals. CCIJ estimates that approximately 2000 suspected war criminals and other human rights abusers live in Canada.

These are but a few examples that demonstrate the disparate treatment of universal jurisdiction worldwide. However, without a uniform commitment to widespread and broad universal jurisdiction laws, perpetrators of horrific crimes will go unpunished and victims will go without justice. ♦

AFRICA'S FAILURE TO ARREST OMAR AL-BASHIR

Vaishali Davé, Exchange Student from the University of Sydney

On October 19, 2011, Pre-Trial Chamber I of the International Criminal Court (ICC) issued the *Decision requesting observations about Omar al-Bashir's recent visit to Malawi* ('the Request'). This decision is the most recent in a series of attempts by the ICC to secure cooperation from African States in arresting Sudanese President Omar al-Bashir.

The United Nations Security Council referred the situation in Darfur to the ICC in 2005. Arrest warrants for al-Bashir were subsequently issued in March 2009 and July 2010 for crimes against humanity, war crimes, and genocide. The case is of enormous symbolic significance as it represents the first ICC arrest warrant issued against a sitting head of state.

Since August 2010, the ICC has issued requests for observations about al-Bashir's visits to Djibouti, Chad, the Central African Republic, and Kenya. Each of those four countries is a State Party to the *Rome Statute* and has obligations to act on the ICC arrest warrant against al-Bashir. However, the African Union has argued that the arrest warrant should be deferred and has also accused the ICC of only investigating crimes in Africa.

The most recent Pre-Trial Chamber Request for observations on al-Bashir's visit to Malawi followed the Registry's 'Report on the visit of Omar Al-Bashir to Malawi'. This report informed the Chamber that al-Bashir had attended a summit of the Common Market for Eastern and Southern Africa in Malawi on October 14, 2011. The ICC Registrar sent a letter to the Embassy of the Republic of Malawi in Brussels reminding Malawi of its legal obligations under the *Rome Statute* and asking for its cooperation in arresting al-Bashir, but no reply was received.

States Parties have a legal obligation to cooperate with the ICC under Articles 89(1) and 91 of the *Rome Statute*. The ICC is empowered to respond to a State's failure to comply with a request to cooperate by initiating proceedings under Article 87(7) and referring the situation to the United Nations Security Council. Regulation 109(3) requires that a State be given an opportunity to be heard on the matter before proceedings are initiated under Article 87(7).

The Kenyan experience suggests that the ICC may be ineffective in obtaining compliance from Malawi or punishing the State for violating its obligations under the *Rome Statute*. On August 27, 2010 the Pre-Trial Chamber referred Kenya's violation of its obligation to enforce the Omar al-Bashir arrest warrants to the United Nations Security Council. The Security Council has yet to take any punitive measures against Kenya. However, a recent change in domestic policy suggests that Kenya is committed to greater cooperation with the ICC on this issue. In November 2011, a Kenyan court issued its own arrest warrant for al-Bashir. Should al-Bashir enter Kenyan territory again, the Kenyan Attorney General and Minister for Internal Security would be obliged to arrest him under both domestic and international law.

Omar al-Bashir's case reflects a deeply divisive political debate raging in international criminal law: whether criminal justice should be foregone in favour of peace and reconciliation. Many African States believe the arrest warrants issued against al-Bashir imperil the peace process in the Darfur region and that granting amnesty or deferring arrest will facilitate negotiations, which could lead to increased peace and security in the area. The blatant refusal of Malawi and other members of the African Union to cooperate with the ICC in its prosecution of al-Bashir is indicative of this position.

Since the ICC depends on member states such as Malawi to act on arrest warrants, critics have questioned the effectiveness of the Court in light of these recent developments. The number of African states to which Omar al-Bashir has travelled with seeming impunity may cement his 'untouchability' as a political leader, and cast aspersions on the authority of the ICC. ♦

THE RECKONING – A LOOK AT THE FIRST 10 YEARS OF THE ICC

Aria Laskin, 1L, University of Toronto, Faculty of Law

In 1998, 120 countries voted in favour of adopting the *Rome Statute*, effectively establishing the International Criminal Court (ICC), an institution intended to fight impunity and enshrine a global system of justice. The *Rome Statute* came into effect on July 1, 2002. The following year, the first judges and Prosecutor of the ICC were sworn in. While the motivation behind creating the ICC was clear, these pioneering ICC staff members were responsible for determining how an international criminal court would work in practice. After ten years, it is time to examine the efficacy of the ICC in delivering on its mandate.

On the evening of October 19, 2011, the IHRP, along with the Canadian Centre for International Justice, presented a screening of *The Reckoning*, a film documenting the ICC's creation, development, and future prospects. The film focuses primarily on the ICC's first Prosecutor, Luis Moreno Ocampo, and his work investigating crimes and building cases in countries like Uganda, the Democratic Republic of Congo, and Sudan. The film also documents challenges related to the ICC establishing a role for itself and asserting its jurisdiction. The film highlights practical challenges such as the ICC's inability to apprehend Sudanese President Omar Al-Bashir, as well as political challenges such as the United States' historic opposition to the ICC. The film also covers the ICC's first trial, against Thomas Lubanga Dyilo, a Congolese rebel leader accused of recruiting child soldiers. Finally, the film highlights the peace versus justice debate, and the perception in some regions that the ICC and the pursuit of international justice can act as a hindrance to the pursuit of peace. Despite these challenges, an increasing number of countries have ratified the *Rome Statute* and the ICC has a heavy workload. While the challenges of scarce resources and

(Continued on page 13)

THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Alice Tsier, 2L, University of Toronto, Faculty of Law

On June 27, 2011, the Extraordinary Chambers in the Courts of Cambodia (ECCC) began initial hearings in case 002, the trial of the four most senior leaders of the Khmer Rouge regime. The case opened in a climate of increased criticism of the court from both external observers and court employees. Earlier in the summer, several members of the legal team of the Office of the Co-Investigating Judges (OCIJ) resigned in protest of the way investigations were conducted in case 003. Among those who resigned was Stephen Heder, a leading Khmer Rouge historian. On October 3, 2011 Human Rights Watch criticized co-investigating judges You Bunleng and Siegfried Blunk for failing to conduct "a genuine, impartial, and effective investigation" into cases 003 and 004, and called for their resignation. Mr. Blunk resigned a week later, citing government pressure as the reason for the lack of new cases before the court.

On October 18, 2011, against this backdrop of controversy and criticism, the Munk School of Global Affairs, in collaboration with the Documentation Center of Cambodia and the IHRP, hosted a symposium examining the challenges facing the ECCC. The symposium took place alongside an exhibition entitled, "From Impunity to Accountability? The Khmer Rouge Tribunal."

The event began with an introduction to the exhibit, and then moved to a panel discussion. On the panel were: Kunthear Thorng, a survivor of the Khmer Rouge genocide; Robert Petit,the former prosecutor of the ECCC; and Kate Robertson, a former intern at the ECCC and a student at the Faculty of Law. Andrea Russell, a lecturer on International Criminal Law at the Faculty of Law, moderated the discussion.

"I lost my childhood and my dignity," Mr. Thorng said, referring to his experiences as a child living under the brutal Khmer Rouge regime. In 1975, Mr. Thorng's father was taken away and executed by the Khmer Rouge. After his father's death, twelve-year-old Thorng ran away from home and spent the next seven years living first in temples, then in Khmer Rouge labour camps, and finally in a refugee camp in Thailand before coming to Canada in 1983. Mr. Thorng stated that there is a need for justice if the Cambodian people are to move forward. At the same time, however, Mr. Thorng pointed out that the average Cambodian does not understand why millions of dollars have been spent at the ECCC with seemingly little to show for it.

Victim frustration was a theme that ran throughout Kate Robertson's comments. Robertson's recent research has focused on victims' reparations at the ECCC. Individuals seeking reparations can either bring a civil claim directly against the accused (an endeavour that requires a significant amount of money) or go through the Victim Support Center. In each case, the level of detail required to support a claim is significant. In case 001, most of the claims for reparations were rejected. In light of this fact, Kate questioned whether the reparations truly serve the goal of reconciliation, or whether they simply exacerbate the frustration of survivors with an institution that seems unable to help them.

"When I talk about this, I end up talking about what we cannot do - about what this process cannot be expected to do," said Robert Petit, the final speaker on the panel. Petit explained, "My job is telling [victims] about what they cannot expect. What we cannot do." Despite this, Mr. Petit focused on the need for the work of the tribunal, despite the difficulties it has faced. This is in part because the trials of the ECCC represent the only official account of the Khmer Rouge years in Cambodia. Petit explained that, "Until 2 years ago, the 1975 – 1979 era was not taught to children." The Court, for better or for worse, creates an official narrative. Mr. Petit also described his interviews with survivors, at which old men and women would tell their stories. "Anyone who tells me that this [the work of the ECCC] does not matter should come to these sessions. It does matter – it matters to every survivor 36 years later."

When asked whether the costs of the ECCC were justified, Mr. Petit replied, "We don't ask this question in Canada – nobody asks, "Is the money well spent when someone is killed?" But we question it in the cases of the worst victimizations and worst crimes. Yes it's necessary; but what's done with theses judgments is up to civil society. ♦

THE RECKONING *(Continued from page 12)*

State Party cooperation remain significant, the ICC's future is presented in an optimistic light.

Following the film, there was a panel discussion regarding the role and efficacy of international criminal law. The panel consisted of: Mark Arnold, a civil litigator; Francisco Rico-Martinez, a human rights lawyer; and Louis Century, a 2011 IHRP intern on a defence team at the ICC. In discussing the role of the ICC and the ongoing peace versus justice debate, the panelists expressed their support for reconciliation, but as a complementary process rather than a replacement for legal remedies. The panelists seemed to agree with the film's optimistic portrayal of the future of international justice.

The challenge for the ICC moving forward is to capitalize on its momentum. "The central problem is no longer getting cases. The court has a handful of new cases and new accused, and now needs to transition into a stable institution," said Century. In his view, "The question people should be asking is how will the court ensure its effectiveness over the long-term?" ♦

A prisoner in the notorious Security Prison 21. The building was originally a high school before it was converted into a prison by the Khmer Rouge Regime.

Photo Credit: Lane Krainyk

Over the past 25 years, the number of corporations with international operations has doubled. Of the 70, 000 multi-national corporations, some now have more power and resources than small nations. These corporations are omni-present: their activities impact not only the business sector, but the way societies live and work.

The 1990s brought public attention to a range of corporate abuses: from Asian sweatshops and union-busting, to displacement of local and indigenous populations, financing of armed groups, and large-scale environmental disasters. In response to consumer pressure, many corporations began to monitor and self-regulate their activities to ensure compliance with basic human rights and environmental standards, and cultivate positive brand status. Most of these developments were entirely voluntary.

Pressure is now building to move beyond voluntary codes of conduct (or corporate social responsibility) towards introducing more robust and enforceable mechanisms. Last year, the United Nations Human Rights Council adopted the "Protect, Respect and Remedy" framework, which offers global standards to better manage business and human rights challenges. Ensuring that corporations heed basic human rights standards is a task left to national governments and domestic regulation. Unfortunately, most governments remain unwilling to enforce these standards.

INTERVIEWS WITH IHRP ALUMNI: CORY WANLESS

Nita Khare, 2L, University of Toronto, Faculty of Law

I recently had a chance to sit down with Cory Wanless to discuss his experiences with the IHRP, his current job in social justice, and corporate accountability in Canada.

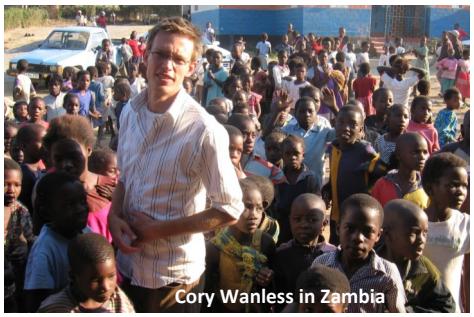
Wanless obtained his J.D. from the University of Toronto in 2008. While attending law school, he participated in an IHRP internship and led a working group project. His IHRP internship with a Zambian land rights organization during the summer of 2006 had a profound impact on him, and also became the first step in his career in social justice. During the course of his internship, Wanless saw first-hand the deleterious effects of mining activities on a local community in Zambia, with the displacement of farmers from their resource-rich land and the severe pollution of the local air and water supply. What was even more shocking to him was that the mine in question was owned by a Canadian corporation.

Returning to Canada with a new understanding of the mining industry and the developing world, Wanless founded an IHRP working group to bring attention to the lack of remedies available to local communities, like the one in Zambia, whose rights were being violated by mining companies. The working group prepared a report and participated in the 2007 national roundtables on corporate social responsibility (CSR) and the Canadian extractive sector in developing countries. The roundtables were held by the federal government with the aim of creating a CSR framework for Canadian extractive companies.

Wanless' experience during law school served to reinforce his interest in working in the area of social justice. After completing his J.D., Wanless went to work at Klippensteins Barristers & Solicitors. The law firm focuses primarily on civil litigation cases with a social justice component. At Klippensteins, he has been able to continue his work in the area of corporate accountability, representing individual clients and communities from the developing world in their civil claims against Canadian extractive companies in Canadian courts.

Speaking with Wanless about corporate accountability in Canada, he makes it clear that the current judicial mechanisms providing civil remedies to foreign individuals and communities who suffer harm at the hands of Canadian extractive companies are inadequate. When cases are brought forward in Canadian courts, corporations often rely on the principle of *forum non coveniens* as a type of "reverse forum shopping" in an attempt to have the lawsuit heard in the jurisdiction least likely to provide an adequate remedy. These corporations take advantage of the fact that the legal systems in developing countries often leave much to be desired, offering injured parties little to no options for redress.

Nonetheless, Wanless insists that we must remain cautiously optimistic that there will be a change in attitude in the Canadian legal system. Given the rise of globalism and transnational business, it is untenable for courts to find that Canadian corporations are not responsible to the people who are impacted by their operations, merely because the harms were not suffered in Canada. Cases will continue to be brought in Canadian courts, and our legal system will eventually have to recognize that it is unacceptable for Canadian corporations to get away with activities abroad that would not be acceptable in Canada. ♦



Cory Wanless in Zambia

REVENUE TRANSPARENCY IN CANADA

Nita Khare and Alice Tsier, 2L, University of Toronto, Faculty of Law

Every year, oil, gas, and mining companies pay enormous fees to governments in exchange for access to natural resources. The revenues generated by these governments are enormous, but tend not to benefit the people of these resource-rich nations. This phenomenon of persistent poverty in resource-rich countries is known as the "resource curse." One of the major causes for the curse is thought to be political corruption. Funds flowing to the government are siphoned off before they can reach the people.

According to Global Financial Integrity, a non-profit advocacy group, Africa alone has lost over $854 billion in the past 30 years due to the illegal diversion of funds. Greater revenue transparency is essential in order to hold governments accountable for the wealth they accrue by selling their countries' natural resources. Although revenue transparency does not solve the resource curse, it is an important first step towards accountability.

Canada is the global leader in the extractive sector, with over half of the world's public extractive companies trading on Canadian stock exchanges. However, while the move towards increased revenue transparency has gained greater momentum globally, Canada is falling behind.

The most significant development was the introduction of the *Dodd-Frank Act* in the United States, in 2009. The *Act* requires companies registered with the Securities and Exchange Commission to report how much they pay governments for access to minerals, gas, and oil, on project-by-project and country-by-country basis. In 2010, the Hong Kong Stock Exchange (HKEx) also came out with new reporting rules for extractive companies wanting to list on the HKEx. Most recently, in October 2011, the European Union Commission issued draft directives with new disclosure requirements for extractive companies, to be sent to EU member states for implementation. The directives require companies listed on EU stock exchanges and private companies based in EU member states to report how much they pay for access to oil, timber, gas, and minerals on a project-by-project basis.

Meanwhile, Canada has comparatively limited disclosure requirements for extractive companies, especially with regards to payments made to foreign governments. Some of the disclosure requirements are optional and are not required on a country-by-country basis. Furthermore, since reporting is only required on payments that are material, it is difficult to determine the total payments actually being made to foreign governments.

Holding governments accountable to their people is impossible if no information is available about how much money the governments earn by selling access to public resources. However, revenue transparency also has implications within our own borders. It is a crucial tool for protecting the interests of investors. Canada needs to join the global movement towards increased transparency and fill the significant gap in the global regulatory regime. ♦

INTERNATIONAL INVESTMENT LAW AND HUMAN RIGHTS

Jenny Yoo, 2L, and Tom Hatfield, 3L, University of Toronto, Faculty of Law

Since the 1990s, almost 3000 investment treaties have been signed, establishing ground rules for the treatment of foreign investors by host governments. These treaties contain protective instruments for foreign investors with respect to state measures that could diminish the value of their investments and assets. Currently, the International Centre for Settlement of Investment Disputes (ICSID), an institution of the World Bank Group, is the primary mechanism for international investment dispute arbitration. As of 2011, 157 countries had signed the ICSID Convention.

However, the ICSID's interpretation of international investment law neglects to consider state obligations under international human rights law. Formed in 2010, the IHRP's International Investment Law and Human Rights Working Group examines the intersection between international investment frameworks and international human rights standards. These overlapping regimes have yet to engage in dialogue with each other. This research project seeks to connect these parallel, yet currently divergent, spheres of law. We seek to provide a systematic analysis of the overlap between these two legal regimes by examining the extent to which international human rights issues are present and considered in international investment tribunal decisions.

To date, IHRP students have coded approximately 75 decisions of the ICSID tribunal, flagging human rights issues that were, or should have been, considered by investors, respondent states, and tribunal members. The working group will be producing a qualitative report highlighting the narratives behind the cases, with the goal of developing an awareness of the human rights implications from the ground level. Students will also be researching the regulations on, and potential for, making *amicus curiae* submissions at the ICSID tribunal. Through this vein of the project, the working group will reach out to public interest and non-governmental organizations that may be well positioned to participate in a future tribunal proceeding.

The larger vision behind this project is to provide a platform for increased recognition and consideration of human rights standards in the international investment regime. We hope to accomplish this by shedding light on the stakeholders that are consistently and systematically excluded from the arbitration process. Examining the absence of human rights standards in the administration of justice between states and investors will highlight the disconnect that exists between those who control state-investor relations and those who are directly affected by the results. ♦

The Way Forward in the Democratic Republic of the Congo after the *Dodd-Frank Act*

Sarah Almond Pike, 1L, University of Toronto, Faculty of Law

Spurred by the 2008 economic downturn, the *Dodd-Frank Act* was signed into U.S. law in July 2010. The American public has been focused on the Act's impact on the financial industry. However, buried deep in the body of the *Act* was Section 1502, dealing with a seemingly far-away issue: conflict minerals in the Democratic Republic of the Congo (DRC). Since 1998, approximately 5.4 million people have been killed in the DRC, the deadliest conflict since the Second World War.

Section 1502 notes the role minerals play in fueling conflict and gender violence in the DRC, and sets out disclosure requirements. Companies that source minerals from the DRC and adjoining countries must audit their supply chains and report any links to conflict to the Securities and Exchange Commission (SEC), which issues rules surrounding this reporting.

As discussed in the March 2011 edition of *Rights Review*, there was uncertainty as to how these requirements, which are still being developed by the SEC, would play out and how they would affect Canadian industry. As of 2008, Canada was home to three-quarters of the world's extractive companies and has major ties to the DRC. In 2010, Canadian mining investment in the DRC was estimated at $1.73 billion.

There have been numerous transparency initiatives in Canada, such as the establishment in 2010 of an Extractive Sector Corporate Social Responsibility (CSR) Counsellor. The position is currently held by Dr. Marketa Evans, former Executive Director of the Munk Centre for International Studies at the University of Toronto. The Counsellor's mandate is to review the CSR practices of Canadian extractive companies operating internationally. Though a progressive step, the Counsellor's power is limited because participation in the review process is voluntary. Therefore, a company under review can refuse to participate or withdraw from the process at any time.

There is currently no Canadian legislative equivalent to the *Dodd-Frank Act*'s Section 1502. One alternative suggestion was to have a Canadian securities regulator oversee a disclosure requirement analogous to that in the *Dodd-Frank Act*. However, with the Canadian Supreme Court's judgment in the *Reference re Securities Act*, which ruled against the constitutionality of a federal national securities regulator, it seems that Canada will continue to be one of a few G8 countries without such a body. It remains to be seen if individual provinces will enact conflict mineral legislation on their own, like California's *Bill 861*, which builds upon the *Dodd-Frank* provisions. Attempts thus far to enact national laws through the House of Commons, such as through the private members' bill tabled by New Democrat MP Paul Dewar in 2010, have been unsuccessful.

Still, many large Canadian companies, such as Blackberry manufacturer Research in Motion, fall under the *Dodd-Frank Act*, as they are listed on U.S. stock exchanges. Due to such cross-border implications, there already appears to be legislative impact despite the lagging SEC rules. In an October 2011 letter to the SEC, the United Nations Group of Experts on Congo (UN Experts) stated that fewer minerals in the DRC are funding conflict since the enactment of *Dodd-Frank*.

Others disagree that the outlook after *Dodd-Frank* is so positive. In a working paper published by the Center for Global Development, Laura Seay argues that *Dodd-Frank* has operated as a ban on all mineral trading in the area, putting thousands of legitimate miners out of work while doing little to end the violence. The UN Experts' letter noted that armed groups are trying to recruit miners. Clearly, *Dodd-Frank* is not a panacea for the long-standing conflict in the DRC.

In November 2011, the UN Security Council renewed the 2003 arms embargo and other related sanctions against the DRC for another year. The text of the UN resolution does mention conflict minerals. However, it also calls for attempts to strengthen the state, and for the DRC to cooperate with the International Criminal Court. This resolution serves as a reminder of the range of available and necessary tools needed to confront the continuing violence in the DRC. ♦

The "m-word": Regulating Private Military and Security Contractors

Sarah Harland-Logan, 1L, University of Toronto, Faculty of Law

Perhaps not surprisingly, private military and security contractors (PMSCs) hate being labeled as "mercenaries." As international law scholar Sorcha MacLeod put it, employees of PMSCs, "don't use the 'm-word.'" In *Shadow Company*, a documentary on private military contractors in Iraq, one PMSC employee who was interviewed explains that this term "has so many bad connotations." Instead, PMSCs choose to use neutral terms such as "consultant." However, the PMSC employee did concede that "mercenary" may be an accurate term since he and his colleagues are indeed in a combat zone "working for money."

According to modern warfare scholar Peter Singer, "One of the oldest professions in human history is that of mercenary." But MacLeod explained during her lecture for the IHRP speaker series that the modern private military contractor is "quite a recent phenomenon" that has developed over the last 10-20 years and has prospered in the neoliberal economic climate. In Singer's words, these "private military firms are business providers of professional services that are linked to warfare."

Legitimate PMSCs do not engage in actual front-line combat, but they can perform a host of security functions such as airport screening, providing protection for NGO personnel, and running prisons. The industry itself emphasizes a positive role for PMSCs in various aspects of global security, such as supporting reconstruction strategies.

The reality is far murkier. PMSCs have received negative publicity in many different conflicts and contexts. Perhaps the best-known of these incidents is the September 2007 incident in

(Continued on page 39)

EVEN THE RAIN: A MOVIE REVIEW

Qurrat-ul-ain (Annie) Tayyab, JD/MGA, University of Toronto

In 2000, the government of Cochabamba, Bolivia decided to privatize water. This created a drastic increase in the price of water for Bolivian citizens and led to violent protests. *Even the Rain* is the fictional story of a filmmaker, Sebastian, who travels to Bolivia to shoot a movie about the Spanish conquest of America. Sebastian wants to bring attention to the subjugation of the indigenous population in the New World, and is convinced by Costa, his producer, to shoot in Bolivia because workers and extras can be paid only two dollars a day. Sebastian decides to cast a local, Daniel, to portray Hatuey, a Taíno Cacique (chief) who led a rebellion against the Spaniards in the early part of the 16th century. Daniel is also one of the leaders in the protests against the privatization of water.

Even the Rain is more historical fiction than documentary, but its portrayal of the all-too-real water crisis of Cochabamba is just one of the interesting aspects of this film. For those unaware of the events in 2000, or of the debate around water privatization, the film provides a poignant introduction and uses real footage from the 2000 protests. Before the privatization decision, the government was unable to provide clean and affordable water to all of its population due to the poor condition of its infrastructure. To ameliorate this, the World Bank decided that it would make further loans to Bolivia conditional on water privatization. The company chosen to handle the water supply announced price increases, which people could not afford. In the end, the public demonstrations forced the government to revoke its contract with the private company. However, access to safe and affordable water remains a problem in Bolivia today.

The debate around water privatization is very active. Multiple studies have shown that a privatized water supply may be more efficient for end consumers compared to a public supply. In this regard, the film has an obvious bias: by drawing parallels between colonization and privatization, it characterizes water privatization as a purely exploitative and greedy option, whereas this may not always be the case.

The movie is more than a simple re-telling of the Bolivian story. The development of the main characters fosters introspection on the part of the viewers. Costa goes from being a cost-cutting cut-throat producer to someone who appreciates the power that he holds because of his access to money, which is juxtaposed with his helplessness in the grand scheme of the conflict.

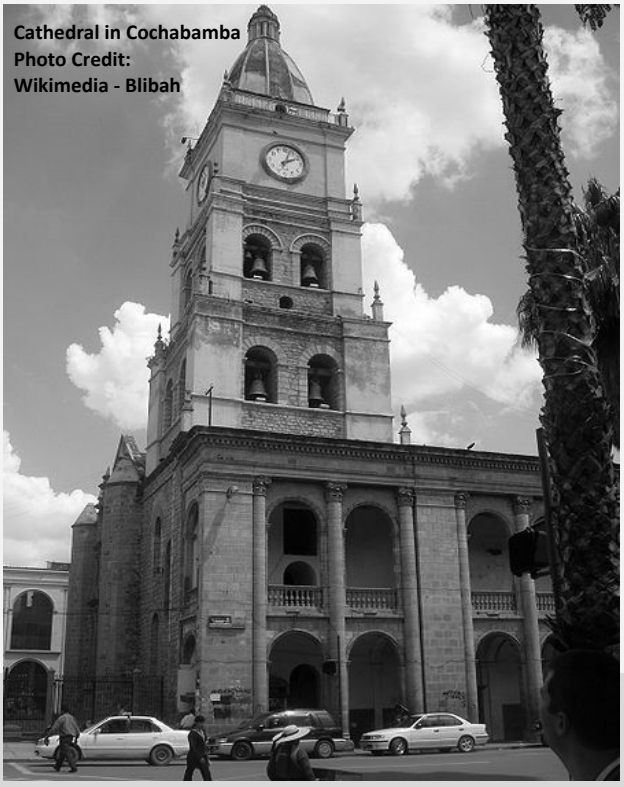
At the beginning of the film, Sebastian appears to have a firm understanding of how indigenous populations were exploited in the process of colonization, but he is later depicted as unable to understand their current struggle because of his narrow focus on creating the movie. This makes viewers question whether we are always able to see injustice happening around us, even though we may take pride in our anti-discriminatory, anti-oppressive views. Are we so caught up in our own lives and struggles that others seem less important? The ability of *Even the Rain* to generate such thought-provoking questions makes it a film that I would highly recommend watching. ♦

A Primer on the Cochabamba Water Wars: *Aguas del Tunari v Bolivia*

Chris Cairns, 3L, University of Toronto, Faculty of Law

In 1998, Bolivia received a loan from the International Monetary Fund aimed at controlling inflation and stimulating economic growth. One of the conditions of this loan was the privatization of government industries – including the state-owned water agency in Cochabamba, Bolivia's third largest city. In 1999, a $2.5 billion contract for ownership of Cochabamba's water agency was signed with the sole bidder, Aguas del Tunari (AdT), a subsidiary primarily of Bechtel and Abengoa.

One of the conditions imposed by Bolivia on this contract was the construction of a dam. To pay for this project and in order to upgrade the water supply and sewer system in Cochabamba, AdT raised water rates significantly. In a country where the minimum wage was less than $70 USD a month, many city-dwellers were hit with monthly water bills of $20 or more. Riots erupted. Army suppression of the revolt resulted in the death of an unarmed 17-year-old boy. With Bolivia no longer able to guarantee the safety of AdT employees, the company left and sued Bolivia for $25 million for breach of contract. International outrage and pressure against Bechtel, the primary shareholder, resulted in a settlement in 2006 where all financial claims were dropped in exchange for a statement absolving AdT of responsibility for the termination of the contract. ♦



Cathedral in Cochabamba
Photo Credit:
Wikimedia - Blibah

The past 25 years have featured some of the most devastating events in human history: the Rwandan genocide; ongoing oppression and exploitation in Burma and the Sudan; and recent conflicts in Afghanistan, Libya, and Syria. Conflict, human rights violations, and famine are underlying causes of displacement. More recently, Canada has recognized persecution on the ground of sexual identity and gender-based violence as a legitimate reason to flee one's own country. Today, more than 43 million people are unable to return to their countries of origin. Over 12 million live in over 700 refugee camps around the world. These people, on average, spend 17 years in exile. People fleeing war and persecution are separated from their communities and families, and lack meaningful citizenship.

IHRP students and partners work to protect the rights of refugees to seek safe haven, as established by the 1951 United Nations Refugee Convention. Many students have interned with the United Nations High Commissioner for Refugees, an organization founded 60 years ago to protect refugees.

REFUGEE CLAIMANTS BEFORE INTERNATIONAL TRIBUNALS

Lane Krainyk, 2L, University of Toronto, Faculty of Law

This semester, Carlin Moore (LLM) and I worked as IHRP Clinical Students with Legal Aid Ontario's Refugee Law Office (RLO). Through our placement with the RLO, we had the opportunity to draft submissions to the United Nations Human Rights Committee (UNHRC) and contribute to submissions to the Committee Against Torture (CAT). We were exposed to the important role played by these international tribunals in the refugee claim adjudication process. More poignantly, we grew familiar with the Canadian government's shortcomings in protecting the human rights of refugees in both the domestic and international context.

Refugees are typically driven from their country of origin by war, famine, political oppression, or persecution based on their ethnicity, religion, gender, or sexual orientation. Arriving in Canada, these individuals face a number of challenges. They have to find gainful employment, send their children to school, learn a new language, and adapt to life without their established support networks. Meanwhile, they often face an additional set of challenges while attempting to gain legal status in Canada.

Disputes on status between refugee claimants and the government are heard at the Immigration and Refugee Board (IRB), which is composed of politically appointed members. Though IRB decisions can be subject to judicial review, the review process does not explore the matter on its merits. Instead, it typically determines only whether the IRB has made any serious legal errors. Because of the limited mechanisms for review or appeal, IRB decisions are final in most cases.

Unfortunately, the government's decision to deport an individual, and IRB decisions allowing such deportations to go forward, are not always consistent with Canada's obligations under international human rights law. As a result, advocates are increasingly turning to international tribunals to challenge deportation decisions. One such international tribunal is the United Nations Human Rights Council (the UNHRC). Under the *First Optional Protocol* to the *International Covenant on Civil and Political Rights* (*ICCPR*), the UNHRC has the capacity to hear individual claims against states on alleged violations of the *ICCPR*. In previous cases, Canadian lawyers have argued that proposed deportations violate various rights under the *ICCPR* including the right to life, right to a free and fair trial, and the right to family.

Lawyers are also turning to the United Nations Committee against Torture (the CAT) to challenge deportations. The CAT hears matters strictly related to the prohibition on torture under the *Convention Against Torture*. With respect to deportation, Article 3 of the *Convention* is often relevant. It demands that a state not "refoule" (return) an individual to a state where they face a risk of torture.

Unfortunately, Canada has failed to abide by some of the past decisions of these international tribunals. In some cases, deportations have been executed despite UNHRC or CAT decisions holding that the individual's life would be at risk if deported, or that the individual may be tortured upon return to their country of origin. It reflects poorly on our country, purportedly a global leader in human rights, when we fail to adhere to these international decisions. Canada should go to much greater lengths to ensure that the rights of refugees are protected in both domestic and international proceedings. ♦

DEPENDENCE OR DEPORTATION: IMMIGRANT WOMEN IN ABUSIVE RELATIONSHIPS

Megan Andrews, 1L, University of Toronto, Faculty of Law

"There were blows to the head, kicks, punches, and that was the first time he beat me. I screamed, but I didn't call the police... I was embarrassed, I didn't want anyone to know, besides since he'd sponsored me, he could have me deported."

This testimony, taken from a 2001 study conducted by Status of Women Canada, reflects the experience of numerous immigrant and refugee women who find themselves trapped in abusive relationships. A large proportion of women who immigrate to Canada completely depend upon their spouses as sponsors or principal claimants. A recent proposal for 'Conditional Permanent Residency', along with the upcoming changes to refugee determination under *Bill C-11*, could exacerbate the systemic barriers that prevent such women from leaving an abusive spouse.

Last March, Citizenship and Immigration Canada (CIC) proposed introducing a minimum two-year period of 'Conditional Permanent Residency' during which a sponsored spouse must remain in a *bona fide* relationship or face deportation. The measure is intended to discourage so-called "marriages of convenience." The government has offered little statistical evidence to justify the proposal, citing "increased public concern" over marriage fraud.

Unfortunately, the change would come at a heavy cost to female immigrants who suffer abuse from their sponsors. According to a UNICEF report, abusive sponsors "use the tenuous quality of the other spouse's or partner's immigration status as a tool for manipulation and control." Applying for permanent residency is a costly process, and women without temporary status on their own are ineligible for work permits. As a result, female immigrants often find themselves dependent on their spouse for all of their financial needs. Abusers can take advantage of this dependence, threatening to withdraw their sponsorship if their partner reports them to the authorities. For women who are suffering abuse, the proposed conditional period would extend their time spent in an uneasy and terrifying limbo. It remains to be seen whether this proposal will pass into law.

According to Sayran Sulevani, an IHRP alum and immigration lawyer at the Barbra Schlifer Commemorative Clinic, the current refugee determination process is "by no means friendly" to women suffering domestic abuse. As with family-class sponsorship, a claim for refugee status is often made by a male immigrant acting on his family's behalf. Claims could progress from the initial application to the hearing without the claimant's spouse ever meeting independently with legal counsel. This process places the onus of disclosing abuse entirely on the victim's shoulders, yet provides no adequate mechanisms for her to raise concerns safely.

Unfortunately, recent changes to the refugee determination process could further diminish opportunities for victims of abuse to come forward. *The Balanced Refugee Reform Act*, or *Bill C-11*, will come into full effect in June of this year. The Act aims to accelerate the refugee determination process by ensuring cases will proceed to a hearing within 90 days. Currently the waiting period can stretch up to 18 months. To the CIC, this may represent an unnecessary delay, but for the lawyers who represent abuse victims, this time is crucial to build trust with their clients and assure vulnerable claimants that they can testify freely.

Bill C-11 has applied the same fast-tracking approach to the process of pre-hearing information gathering. Currently, refugee claimants and their family members are given 28 days to meet with a lawyer and prepare a 'Personal Information Form' explaining their reasons for seeking status. *Bill C-11* will replace this process with a single oral interview, taking place only 15 days after a claim is referred to the Immigration and Refugee Board, potentially without legal counsel present. The result, says Sulevani, is that refugees will be thrust into an unfamiliar institutional setting and given one shot to disclose painful personal stories. Primary claimants may be interviewed alongside their spouses, which could act as a powerful disincentive to victims of abuse coming forward. Even without their spouses present, victims may struggle to express their story through an interpreter. Overall, the interview process reduces the likelihood that these women will have a safe and confidential forum where they can bring claims. Without the opportunity to tell their stories on their own terms, or the time to build a trusting relationship with a legal advocate, many victims of abuse will continue to suffer in silence.

Rather than focusing on overblown concerns about "marriage fraud" and truncating the refugee determination process, the CIC should direct its efforts towards giving women a path to citizenship that does not require reliance on a potentially abusive spouse. The U.S.'s *Violence against Women Act* provides a useful model. Introduced in 1994, the *Act* allows victims of domestic abuse to apply for work permits and residency independently of their spouses. Abused immigrants in Canada are currently offered no comparable recourse. ♦


Photo Credit: Tarek Z. Ismail

The Transformative Human Rights *exhibition and this special anniversary edition of* Rights Review *profile many positive achievements in the field of international human rights law, yet much work remains. The right to basic health care, social security, water, education, cultural expression, and a healthy environment are yet to be protected or fulfilled for a vast majority of the world's people. The 2011 Arab Spring is an important reminder of the need to zealously protect our most basic civil and political rights: freedom of speech, freedom of association, freedom from arbitrary detention, and the right not to be subjected to torture.*

The IHRP's experience over the past 25 years highlights the importance of legal protection of human rights, and the transformative impact that Canadian law students can have at a local, national, and international level. Our work continues. This year, over 100 IHRP students will work alongside human rights defenders in 25 organizations covering 30 countries to ensure continued progress towards a more just world. The IHRP and the editorial board of the Rights Review *encourage you to explore ways in which you can play your part – whether through letter-writing, peaceful protest, volunteering, or donating funds.*

Women's Property Rights

WOMEN'S RIGHT TO PROPERTY IN POST-CONFLICT COUNTRIES

Danielle Glatt & Jessica Lam, 2L, University of Toronto, Faculty of Law

Many legal systems around the world fail to recognize women's equal rights to property, leaving women dependent upon their husbands or male relatives to provide housing and land on which to subsist. In post-conflict settings, women's access to property is particularly critical as many displaced women who have lost husbands or close male relatives return to their homes to find that they have no legal title to their land and, as a result, no means to support their families.

Despite these problems, the post-conflict phase also presents a unique opportunity to build legal frameworks that are responsive to the needs of women. Specifically, the constitution-making process is a central site for laying the foundations of a new society and entrenching the equal rights of all, including women's equal rights to property.

The IHRP's Working Group on Women's Property Rights in Post-Conflict Countries aims to produce a research package for UN Women. UN Women unites four previously distinct parts of the UN system focused exclusively on gender equality and women's empowerment. It now supports inter-governmental bodies in their formulation of policies, global standards, and norms whiles also helping Member States to implement these standards and holding the UN system accountable for its own commitments on gender equality. The research packing produced by the Working Groups will help to inform United Nations initiatives in the constitution-drafting process in post-conflict countries, such as Libya.

The 29-member IHRP Working Group has conducted a gender mapping of constitutional provisions in various post-conflict countries including South Africa, Mozambique, Bolivia, Liberia, Cambodia, the Democratic Republic of the Congo, Nepal, Zimbabwe, Burma, Iraq, Afghanistan, Montenegro, Germany, Rwanda, Guatemala, and El Salvador. The mapping was based on the analytical framework of the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW), which evaluates the language used (for example, pronouns referring to men and women), gender equality provisions, constitutional rights to property, and the relationship between customary law and the formal justice system. The results of the mapping have been extremely varied from country to country, with some constitutions failing to prohibit gender discrimination (e.g. Afghanistan) whereas others explicitly recognize women's equal rights to property (e.g. South Africa).

The next part of this project will involve analyzing the impact of these constitutional provisions on women's rights to property. The Working Group will do so by examining legal frameworks, the customary legal system, and relevant case law. Our purpose will be to highlight strengths and gaps in constitutional provisions regarding gender equality and women's rights to property. We hope to show through our project that gender equality must be at the forefront of the constitutional drafting process so that women's rights to property are entrenched as a founding principle of the post-conflict state. ♦

THE HONEYMOON IS OVER:
JUBILATION AND DESPAIR IN THE WORLD'S NEWEST STATE

Marianne Salih, 1L, University of Toronto, Faculty of Law

Following 56 years of revolution and guerrilla warfare, two million deaths and the displacement of over four million people, South Sudan finally achieved independence on July 9, 2011. However, the jubilation that came with freedom is quickly subsiding as the country now faces the daunting task of building a nation from scratch in a region plagued with gross underdevelopment and rampant warfare.

There is no shortage of internecine violence in South Sudan, which is home to about 200 ethnic and linguistic groups and at least seven active rebel organizations. With scarce resources and widespread poverty, ethnic violence and cattle-raiding have become commonplace. The current ethnic violence, between the Loue Neur and Murle tribes in Jongeli state, broke out just a month after independence - though the conflict has its roots in decades of civil war and ethnic tensions. This conflict took on a frightening new dimension in 2006, when the tactic of stealing not only cattle, but also women and children, was adopted by both sides. This has helped elevate recurring tribal spats into a larger conflict.

Approximately 4,500 people (mostly women and children) have been killed this year by the violence - 600 people in a single day in August - and the numbers are rapidly increasing as fighting continues. The trails of corpses are said to stretch for miles - just yards away from UN compounds and medical clinics. Hundreds of children have been abducted, and approximately 100,000 people have fled towns where they are unprotected and beyond the reach of aid agencies, which fear for the safety of their own workers. Heavily armed militias on either side, which include child soldiers, are burning entire towns to the ground as they march through, spoiling what few resources exist in an already impoverished nation.

The ubiquity of modern weapons, after decades of civil war, has increased the scale of ethnic violence dramatically, and resulted in a deadly cycle of retaliation. The methodical slaughtering of entire villages has raised fears of a new genocide - both ethnic groups have declared their intention to wipe the other side off "the face of the earth."

The South Sudanese government, itself composed of rival ethnic groups that fought bitterly in Sudan's long civil war (including members of the Loue Nuer and Murle tribes), is finding it difficult to control the situation. Militias are hiding in the dense brush, while the army, which is composed largely of ex-guerrilla forces, is poorly trained and ill-equipped. Bad roads make it difficult for the army to pursue marauding rebels or bring aid to displaced villagers. UN peacekeeping forces have resorted to tracking rebels by helicopter, but when they land to prevent a massacre, they find that they are greatly outnumbered and in danger of being killed themselves. Unable to offer protection, the UN has advised villagers to "flee for their lives."

External conflict with (north) Sudan, is another problem. South Sudan must transport its main export, oil, through the north, as it is landlocked and has no refineries. Sudan has exploited this dependence, charging usurious prices for use of its ports and refineries, and blocking shipments when the South does not pay. Last November, Sudan bombed a refugee camp in South Sudan. More recently, under the pretext of "security," Sudan has amassed troops near the border with the south - where it is constructing a new air-base. Major violence along the border has forced aid organisations to withdraw.

Another challenge facing South Sudan is underdevelopment. Currently, 98% of the country's revenue comes from oil exports, but its crude deposits are expected to run out in just 20 to 30 years. Corruption is devastating the South's economy. In the last six years alone, around $7 billion of oil revenue has gone unaccounted for by the South Sudan Legislative Assembly - the semi-autonomous regional government which operated under the Sudanese government in the north prior to South Sudan's independence. The country has a 14% maternal mortality rate (one of the worst in the world), one in five children is acutely malnourished, one in ten dies before the age of five, and 75% of adults cannot read. Despite these staggering statistics, more than 40% of South Sudan's national budget goes to military spending.

The situation is expected to worsen as up to 1 million South Sudanese living in the North are set to emigrate over the coming year as their Sudanese citizenship rights are revoked. They face arduous months in make-shift transitional detention camps, but their spirits are kept up by something they have never had before – the promise of a free, independent, national home. Unfortunately, what they find on the other side of the border may not be so promising. ♦

Photo Credit: Eva Tache-Green

ON EGYPT:
FREEDOM DENIED? THE UNCERTAIN FUTURE OF RELIGIOUS MINORITIES IN THE 'NEW' EGYPT


Photo Credit:
Wikimedia—Jbarta

While international observers and commentators have hailed the "Arab Spring", the momentary euphoria of regime change has been replaced by a deadly reality and uncertain future for many Egyptians. Left unprotected by the transitional military regime, Egypt's religious minorities have been subjected to increasing pressure and attacks from religious extremists acting in the void left by the end of decades of dictatorship. Resounding victories by Islamist parties in the recent elections have added to the uncertainty by raising fears that even the most basic freedoms of Egypt's religious minorities will be undermined.

A "COLD, DEADLY WINTER"

Sam Plett, 2L, University of Toronto, Faculty of Law

The fall of the Mubarak regime was supposed to usher in a new era of freedom, hope, and change for Egyptians. However, for Egypt's religious minorities, the hope of the "Arab Spring" has since given way to fear and renewed oppression. Under increasing attack by extremists seeking to consolidate power and faced with the prospect of a constitution drafted by hard-line Islamist parties, the future for Egypt's Christian minority is uncertain.

Instead of an "Arab Spring," Egypt's religious minorities have been plunged into a "cold, deadly winter," says Rev. Majed El Shafie, President and founder of Toronto-based human rights organization One Free World International (OFWI).

Rev. El Shafie has experienced such persecution first-hand. Born in Egypt, he was imprisoned and severely tortured after converting to Christianity and calling for equal rights for Egypt's Coptic Christian minority – which makes up approximately 10% of the population. Sentenced to death, he fled to Canada, where he founded OFWI in 2002. Today, Rev. El Shafie maintains an extensive network of contacts in Egypt, which OFWI has used to monitor the treatment of religious minorities since the Egyptian revolution.

According to OFWI's sources, there were at least 12 significant attacks on the Christian minority during the first 8 months following the revolution, claiming the lives of over 50 Christians. In May 2011, a mob of Islamic extremists burned down two churches in the Imbaba district of Cairo, killing 12 and leaving approximately 200 wounded. This horrific wave of violence has made its way into Egyptian schools. In October 2011, a 17-year old Coptic student was beaten to death by a group of classmates as their teacher looked on. The student had refused to remove the cross he was wearing.

Not all of the recent attacks on Coptics Christians can be attributed to extremists or fringe groups. On October 9, 2011, the world watched in horror as Egyptian security forces viciously attacked a crowd of Coptic demonstrators calling for government protection from the escalating violence. In a massacre that left at least 26 dead and over 300 wounded, soldiers fired indiscriminately and drove armoured vehicles into the crowds, crushing demonstrators in their path – events captured with sickening clarity on video.

The first post-Mubarak elections have done little to ease the fears of Egypt's religious minorities. In fact, the dramatic rise of hard-line Islamist political parties threatens to eliminate the separation between state and religion, truncating religious freedom. Egypt's minorities could be marginalized even further by potential constitutional reforms that would deny them equal rights with the Muslim majority.

The basic right to believe (or not to believe) and to practice (or not to practice) the religion of one's choice is central to the very notion of human dignity. Religious freedom is a pre-requisite for true equality under the law. In societies where religious freedom does not exist, other related rights, such as freedom of expression, are inevitably violated.

As Egypt proceeds on a path of 'democratic transition,' it is important to remember that democratic elections alone are not the answer. A democracy that is not based upon and committed to upholding basic, universal human rights such as freedom of religion will merely place the minority at the mercy of the majority. Egypt's institutions and its constitution must give all Egyptians, regardless of their religion, equal rights. Any other approach would amount to a betrayal not only of Egypt's religions minorities, but of all vulnerable segments of the population.

At this critical juncture in the history of democracy in Egypt, it is unclear what the 'new' Egypt will look like. For Egypt's religious minorities, what was once the promise of a new beginning has given way to uncertainty and a growing fear of what tomorrow will bring. ♦

GUARANTEES FOR RELIGIOUS MINORITIES REMAIN UNCERTAIN IN THE BATTLE OVER EGYPT'S NEW CONSTITUTION

Louis Tsilivis, JD/MGA, University of Toronto

Following Egypt's uprising against the Mubarak regime, Egypt's political parties were deeply divided over when the new constitution should be drafted. Liberal parties generally wanted the constitution to be written before parliamentary elections, so as not to have the drafting of the constitution dominated by Islamists who were expected to win dramatically at the polls. The Muslim Brotherhood's Freedom and Justice Party and other Islamist groups believed that the constitution should be written *after* the elections – when Egyptians had selected a parliament.

In order to bridge the divide between Egypt's liberal and Islamist parties, the Supreme Council of the Armed Forces (SCAF) – the transitional military regime's governing body – suggested that all political parties agree to a set of supra-constitutional principles that would be included in a future constitution and could not be amended, regardless of when and who drafted the constitution. On August 14, 2011, SCAF presented its list of supra-constitutional principles, which included the right to religious freedom.

The Muslim Brotherhood refused to support the document, arguing that agreeing to constitutional principles before the election would be contrary to democracy. Furthermore, SCAF incensed Islamists and liberals alike by including irrevocable provisions guaranteeing the military special privileges and powers, such as protection from parliamentary oversight. These clauses poisoned the entire document, ruining any chance that Egypt's political classes would accept it. While SCAF later amended the most controversial clauses on military privileges, massive street protests led by the Muslim Brotherhood, led Essam Sharaf, SCAF's caretaker Prime Minister, to submit his resignation on November 21, 2011. After Islamist parties won a landslide in Egypt's first post-Mubarak parliamentary elections on December 6, 2011, the Muslim Brotherhood's Secretary-General, Mahmoud Hussein, declared the supra-constitutional principles to be "dead" – having died with Sharaf's resignation.

While it remains uncertain whether a post-Mubarak constitution will include guarantees for religious freedom, support among Egypt's religious establishment may prove helpful in achieving that aim. Scholars at Cairo's prestigious Al-Azhar University, the most influential Islamic school in the world, have put together the so-called "Al-Azhar Document", which promotes many of the same principles as the SCAF document, including guarantees for religious minorities. The Al-Azhar Document has won endorsement from the Coptic Church, Egypt's liberal parties, and from many moderate Islamist groups.

The current political situation in Egypt means that there are no guarantees as to whether protections for religious minorities will be included in a future constitution. Religious persecution and violence may persist, possibly even with informal state support. A future Egyptian government needs to be committed to religious pluralism in order for any constitutional guarantees to have effect. Any religious guarantees must include all religious minorities. The Al-Azhar Document specifies guarantees for Christians and Jews, but does not extend such rights to other groups such as Egypt's persecuted Baha'i community. For now, it remains uncertain whether a future Egyptian government will take an inclusive and active approach to religious freedom. ♦

WHAT HAPPENED TO BAHRAIN?

Abbas Ali Kassam, 2L, University of Toronto, Faculty of Law

When the Arab Spring broke out, it was an exciting time for pro-democracy and pro-human rights activists around the world. People everywhere witnessed as the people of Libya, Syria, Egypt, and Bahrain took to the streets. The revolutions of Libya and Egypt were successful in ousting their dictatorial rulers, and the revolt in Syria is carrying on strong. But what happened to Bahrain? Is there something that distinguishes Bahrain from these other states?

In February 2011, concurrent with the Arab Spring, protests and civil resistance against monarchial rule in Bahrain broke out. These peaceful protests focused on achieving greater political rights and equality for the majority Shia population, who have been historically oppressed by the Sunni monarchy. The protests were met with the usual tactics employed by a dictator refusing to leave power: police brutality, warrantless arrests, torture, and a significant number of civilian casualties. What makes Bahrain different from the other states of the Arab Spring is its friends, allies, and the valuable resources that reside beneath its deserts.

The international response to the cries of the Bahraini people was silence. American President Barack Obama, in an address to the UN General Assembly in September 2011, spoke about the Arab Spring. He called for regime change, and applauded the protests in Libya, Syria, and Yemen. However, when he addressed the situation in Bahrain, his tone changed notably. He did not mention the peaceful protests nor did he speak about regime change. Bahrain is different from the other countries that had protests during the Arab Spring because it is a small, oil rich nation whose regime is backed by the other oil-producing gulf nations which, in turn, provide oil to Western states. Its position as an oil exporter gave the Bahraini government the political leverage to avoid condemnation from the Western world.

The oil exportation and political situation of Bahrain can be distinguished from other states that experienced revolutions because of the foreign influence of Saudi Arabia and the United Arab Emirates (UAE). These two nations supplied troops to the Bahraini government during the Bahraini protests. Their support for Bahrain can be traced to their similar monarchial governments. Undoubtedly, the governments of Saudi Arabia and the UAE were concerned that the demands of the Bahraini people would resonate with their own citizens.

(Continued on page 25)

On Iraq:
Interviews with U of T Law Alumni: Samer Muscati

Sofia Mariam Ijaz, 1L, University of Toronto, Faculty of Law

A year ago, a seismic shift took place in the Arab world. People rose up, revolted, and refused to be denied their rights. So far, three long-standing regimes have fallen in Tunisia, Egypt, and Libya. Protestors march on, blood continues to be spilled, and regimes in Syria, Bahrain, and Yemen still stand. However, there are countries that have been left out of the narrative of the Arab Spring - Iraq and the United Arab Emirates (UAE) amongst them. I spoke with one of our alumni, Samer Muscati (JD 2002), to talk about his work inside these two countries, and why the uprisings there have largely been ignored.

Photo Credit: Samer Muscati

Samer Muscati is a lawyer, photographer, and researcher in the Middle East and North Africa Division of Human Rights Watch (HRW). His work has taken him to Rwanda, Iraq, and East Timor. His latest focus at HRW has been on Iraq and the UAE.

I asked Samer why the international media has left Iraq out of their narrative on the Arab Spring, despite the fact that protests, albeit much smaller in scale than the ones in Egypt or Syria, have occurred inside the country. Is it because Iraq's protests are not large enough to capture the world's attention? Or is it because their demands are not as radical? Iraqi protestors have not called for regime change, but rather for an end to corruption, high unemployment, and poor public services. Or is Iraq simply too dangerous to cover? Samer believes the reason for the lack of coverage is probably a bit of all of the above. But he added that the reality is, "No one cares about Iraq anymore."

The media is tired of hearing about Iraq, and even though the story is no longer about war and occupation, it has not captured the level of attention of other uprisings in the region. This is despite the fact that tens of thousands of Iraqis have

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Photo Credit: Samer Muscati

Top: "I went back yesterday to a squatter community north of Baghdad where about 300 families, mostly displaced, live on a disused garbage dump. Still no services or support of any kind from Iraq's Ministry of Displacement." Samer Muscati, March 29, 2011.

Bottom: Old men sit across from a protest in downtown Halabja, Kurdistan, and watch as dozens of demonstrators wave flags and chant for an end to corruption.

SAMER MUSCATI *(Continued from page 24)*

publicly protested over recent months. As recently as December 23, 2011, several thousand Iraqis demonstrated against Prime Minister Nuri al-Maliki. During Iraq's "Day of Rage" protests last February, 29 protesters were killed and hundreds were detained. Despite the lack of international attention, human rights activists, NGOs, and researchers like Samer continue to keep their eye on Iraq's uprisings, and the crackdown by security forces.

In addition to Iraq, Samer has been campaigning against the arrest and detention of activists in the UAE who have been calling for political reforms. In November, he monitored the state security prosecutions of five activist bloggers charged with publicly insulting the UAE rulers. All five were found guilty and given two to three year jail sentences. The harsh sentences were an overreaction by the government to the surrounding regional changes, Samer told Al-Jazeera English in an interview. Yet, despite the UAE's attempts to silence dissent, the fight for these jailed activists and for freedom of expression will continue. "We will be relentless," Samer said. "The campaign will only continue until these men are freed."

What tomorrow holds for the remaining leaders of this region in transition is unknown. But what can be said with near certainty is that it will be impossible for the regimes still standing to go back to the old world order.

Samer is currently in Baghdad covering demonstrations, continuing his work on securing freedom of expression for Iraqis. ♦

BAHRAIN *(Continued from page 23)*

The Bahraini government also successfully censored the internet and foreign media. The government has banned websites that speak out against the government in Bahrain, and has prevented the Bahraini people from accessing social networking sites such as Facebook or Twitter. In our current information age, the internet and social networking function as a medium through which individuals can organize and make information globally accessible in an instant. Access to social media would have better enabled the people of Bahrain to coordinate grassroots efforts to further their rights. While other Arab Spring States also censored the internet and foreign media, Bahrain is again distinguished because the international community was complacent in its censorship. Western media outlets still pick up and broadcast the civilian videos of the protests in Syria, but there is perceived silence in Bahrain.

The 2011 uprising in Bahrain illustrates the importance of political influence on international human rights. Bahrain employed similar tactics to other states that experienced revolutions during the Arab Spring. Nevertheless, while several of these other regimes have already crumbled, Bahrain has been successful so far in limiting the effect of the protests. The Bahraini uprising exemplifies the need for free expression for the oppressed. However, freedom of expression may not be enough. Before real change can take place, the Bahraini people must express their will, and then the world must listen to their cry and amplify their call. The international community cannot allow Bahrain and its allies to silence their citizens. The people of Bahrain are crying out: it's up to the world to listen and not lay complacent. ♦

WHY LIBYA AND NOT SYRIA?: THE POLITICAL AND MORAL COMPLEXITIES OF HUMANITARIAN INTERVENTION

Naomi Snider, LLM Student, University of Toronto, Faculty of Law

Security forces in Syria have killed over 5,000 citizens since violence between protestors and government forces broke out in March 2011. As violence continues to escalate and the sanctions imposed by bodies such as the European Union and Arab League prove ineffective, the question as to whether international military intervention is justified or necessary becomes ever more pressing. While the United Nations Security Council authorized military intervention within weeks of violence breaking out in Libya, it has not imposed any sanctions in Syria, despite almost eleven months of ongoing violence. The Security Council's disparate response to two brutal regimes raises fundamental questions regarding the moral permissibility and practical viability of humanitarian intervention.

There are two schools of thought which dominate the debate over the merits of intervention in Syria. One side supports direct military intervention in a manner similar to what occurred in Libya. The other side warns that foreign military intervention in Syria could escalate the conflict into civil war. While supporters of international intervention often view intervention as a matter of morality, opponents of intervention see it as a political rather than humanitarian choice. By invoking this dichotomy, both sides of the debate fail to acknowledge that humanitarian intervention involves a complex interplay between morality and politics. Whether intervention in a sovereign state to relieve suffering is justified is an inherently moral question, while the viability of intervention necessarily involves moral, political, and military calculations.

Advocates of military intervention in Syria argue that the ongoing atrocities create a moral imperative to act and view Russia and China's October 2011 veto of a United Nations Security Council resolution condemning Syria's brutal crackdown on civilians as an example of politics prevailing over morality. Such critics argue that the failure to act militarily demonstrates the UN's inconsistent moral standards and the dominance of self-interest in its decisions. However, the humanitarian crises in Syria and Libya are dissimilar in certain key aspects. Even if we accept that the situation in Syria is sufficiently serious to justify intervention, there may be legitimate reasons not to intervene. Military intervention must stand a real chance of stopping the abuses it targets for it to be morally and politically justified. In order to determine whether the international community should intervene, we must therefore consider the likely consequences of military action.

The human cost of intervention in Syria would likely be much higher than in Libya. Whereas NATO was able to use air power alone to protect civilians in opposition-held strongholds in Libya, the Syrian government still controls every city, which means that effective intervention would likely require ground troops. Syria's military is more than eight times larger than Libya's. Whereas Gaddafi's regime was isolated, the Syrian government retains a prominent role in the Arab community as an ally of Iran. The anticipated interference of Iran, either directly or through its al

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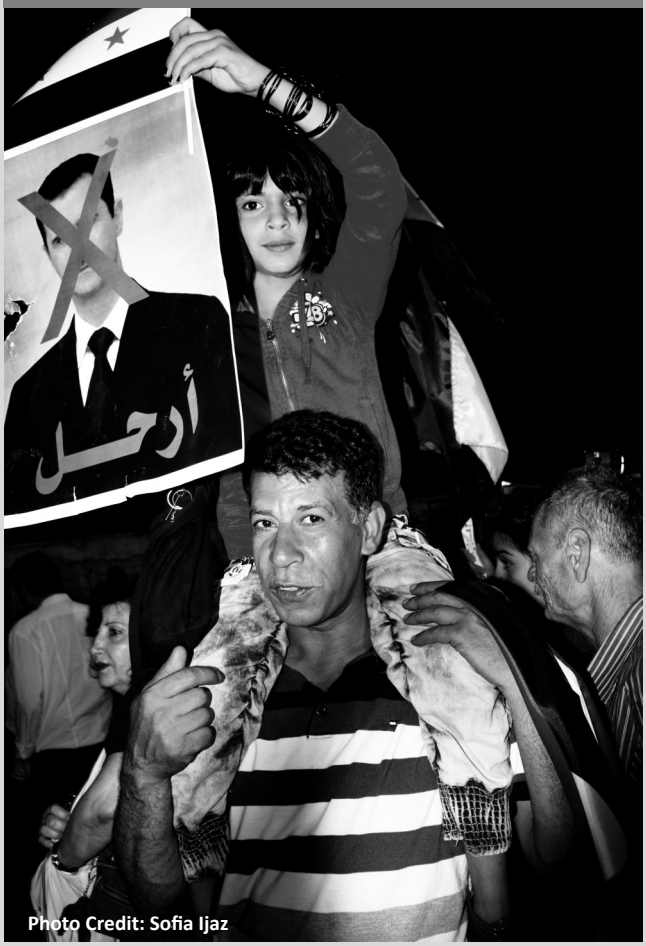
Protesters in Ramallah march in solidarity with the Syrian people.



HUMANITARIAN INTERVENTION (Continued from page 25)

lies, in order to support the Syrian regime, means that the human cost of intervention could be significant.

Even if intervention could protect the citizens of Syria in the short term, the long term success of intervention is uncertain. The "on the ground" protestors are leaderless, and the newly formed Syrian National Council is divided among liberals, Islamists, and secularists. Without a cohesive opposition force, the overthrow of the al-Assad regime could lead to the emergence of another authoritarian regime or further fragmention and possibly even civil war. Those who argue that intervention in Libya would be an apolitical humanitarian mission without squarely facing the political issue of what role the international community can and should play in post-conflict reform are naive. Limiting the mandate of intervention to the short-term goal of ending the current atrocities runs the risk of creating long-term instability in the country. If the final goal of humanitarian intervention is to protect civilians from state violence in a sustainable way, an approach taking into account longer-term considerations should be adopted. However, making regime change the 'end goal' of intervention in Syria creates the risk of intervention being viewed as a Western attempt at dictating the course of Middle Eastern politics. Those who argue for military intervention in Syria must carefully weigh the moral and political costs of such an action rather than resting their claims on the fact of intervention in Libya. ♦

CONCEPTIONS OF PERSONHOOD

Jordan Katz, 1L, University of Toronto, Faculty of Law

On November 8, 2011, voters in the state of Mississippi went to the polls to elect a new governor, usher in a number of state representatives and commissioners, and also decide how to define who qualifies as a person. Initiative 26 presented the following question to the electorate: *Should the term "person" be defined to include every human being from the moment of fertilization, cloning, or the equivalent thereof?*

While Mississippi's 'personhood initiative' was defeated by a 58 to 42 percent margin, the broader movement to define personhood from the moment of conception appears to be growing.Similar 'personhood initiatives' may appear on ballots in at least seven other states in 2012, namely Oregon, Nevada, Montana, Kansas, Ohio, Alabama, and Florida.

Proponents on both sides of the personhood debate use rights-based dialogue to advance their cause. Personhood USA, the leading advocacy group for the 'personhood' movement, defines personhood as "the cultural and legal recognition of the equal and unalienable rights of human beings."

This debate has wider ramifications for access to contraception and abortion rights. Indeed, 'personhood initiative' supporters and pro-life advocates hope to circumvent existing anti-abortion laws on constitutional grounds. In extending personhood to the moment of fertilization, they argue that the unborn would benefit from the equal protection clause of the 14th Amendment of the United States Constitution, which prohibits states from making or enforcing laws that "deny to any person within its jurisdiction the equal protection of the laws." Unsurprisingly, opponents of these initiatives, including women's rights advocates and medical experts, have raised alarms about the

ALYNE'S STORY: HOLDING BRAZIL ACCOUNTABLE FOR A MATERNAL RIGHTS FAILURE

Teresa MacLean, 1L, University of Toronto, Faculty of Law

Alyne da Silva Pimentel Teixeira, a Brazilian woman, was 6 months pregnant when she began suffering from severe nausea and abdominal pain. She sought treatment at her local health care centre. Although her symptoms indicated a high-risk pregnancy, urgent tests to determine whether a miscarriage had occurred were not performed. Instead, Alyne was sent home with some medication and cream.

Alyne's condition continued to worsen. Days later, she returned to the centre and her stillborn fetus was delivered. She subsequently experienced severe haemorrhaging, dangerously low blood pressure, and was vomiting blood. Although the health care centre was ill-equipped to deal with her condition, she was not moved to another hospital until four days after initially seeking treatment. Tragically, Alyne passed away on November 16, 2002, due to a failure to receive appropriate and timely obstetric care.

Regrettably, Alyne is not alone. According to the World Health Organization, over 500,000 women and girls die each year due to pregnancy-related causes and millions more suffer pregnancy related complications that are not adequately treated. Approximately 99% of those deaths occur in the developing world, predominantly among poor women living in rural areas. Preventing maternal mortality and morbidity is medically simple, yet states in the developing world fail to provide women with access to adequate health care. Family planning, safe and legal access to abortion, and skilled pre and post natal care can effectively eliminate nearly all maternal deaths. However, under circumstances where there are numerous demands on limited resources, women's health is rarely prioritized.

This issue was at the forefront of the *United Nations* (*UN*) *Millennium Development Goals* (*MDG*). Specifically, *MDG 5* addressed the need to reduce the maternal mortality rate by 75% and provide universal access to reproductive health care by 2015. Some progress has been made, with some countries cutting their maternal mortality rate in half. However, rates have fallen short of the annual decrease of 5.5% required to meet *MDG 5*. For example, in sub-Saharan Africa, the average decline has only been 0.1%.

Many of the direct causes of maternal mortality are related to women's poverty and other socio-economic factors including education and geographic location. The slow progress represents a systematic failure to recognize women's right to health care. In its Eleventh Session, the UN Human Rights Council (HRC) officially recognized that the "unacceptably high global rate of preventable maternal mortality and morbidity is a health, development and human rights challenge." The prioritization of maternal health is reliant on recognizing reproductive rights as a form of basic human rights.

Alyne's mother, with the aid of the Center for Reproductive Rights, brought her case before the UN Committee on the Elimination of Discrimination against Women (the Committee). It was alleged before the Committee that the Brazilian government had violated Alyne's rights to life, health, and legal redress. These rights are guaranteed both in Brazil's constitution and in international human rights treaties. In a landmark 2011 decision, the Committee found that Brazil had failed to fulfil its obligations under Articles 2 and 12 of the *UN Convention on the Elimination of All Forms of Discrimination against Women*. Brazil failed to "ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period."

The Committee determined that Alyne was discriminated against based on her gender, racial status, and socio-economic background. She was of African descent and lived in one of Rio de Janeiro's poorest areas. There are large disparities within Brazil's maternal mortality rates. Vulnerable women experience the highest rates largely due to racial and socio-economic factors.

Alyne's case is significant because it is the first maternal death case brought before a UN treaty monitoring body. The recommendations issued include ensuring women's right to safe motherhood and affordable access to healthcare, including emergency obstetric care, regardless of economic or racial background. The Committee also viewed Alyne's preventable death as a human rights abuse. The use of legal advocacy in her case shows that the international community can hold a state accountable for its failure to provide basic human rights in the form of reproductive healthcare. The effects of Alyne's case on access to healthcare in Brazil are yet to be seen. Hopefully, out of Alyne's tragic passing will come an era where states truly make maternal health a priority. ♦

possible consequences of such changes. In theory, a personhood amendment could criminalize all forms of post-fertilization contraception, such as Plan B and other emergency contraception. It would also curtail if not eliminate in-vitro fertilization, some forms of stem cell research, and any other procedure that utilizes or destroys fertilized eggs. Furthermore, a successful initiative of this sort could bring a fetus' right to life into conflict with a woman's right to life or liberty. It could also criminalize abortions that are necessary to preserve the health of the mother, creating a complicated legal morass for medical practitioners.

The continued discussion of personhood initiatives makes it clear that abortion remains a salient issue in American politics. In Canada, the dialogue surrounding the definition of personhood and fetal rights remains similarly open. Though there are few if any legal restrictions on abortion as a result of successful challenges to Canada's former abortion laws under Section 7 of the *Charter*, there have been an increasing number of calls for legislative exploration of the personhood question. In December 2011, Ontario Conservative MP Stephen Woodworth, the member for Kitchener Centre, noted in a press release that Parliament has a "responsibility" to examine whether human rights protections extend to the unborn. Whatever the result of these challenges, debate over the rights of the unborn on both sides of the border appears ready to accelerate in the coming months. ♦

See No Evil?
The Human Rights Implications of Chinese Investment in Africa

Jordan Katz, 1L, University of Toronto, Faculty of Law

Across Africa, new roads, telecommunications projects, and health clinics are springing up in cities previously untouched by Western aid. This development is driven largely by Chinese investment. Chinese development in Africa has increased alongside its thirst for petrochemical and mineral resources. This demand, combined with a rapidly waning supply of proven deposits in China, drove China to establish resource operations and trade linkages with Africa, development that accelerated in the 1990s. From oil drilling in Angola and Sudan, to timber harvests in the Congo, to copper mines in Zambia, the Chinese presence is felt across the African continent.

As billions of dollars of Chinese aid and investment continue to pour into African countries, many academics and observers are asking: at what cost? China has long had a stated policy of non-interference, whereby, in return for access to resources and investment opportunities, it does not interfere in the internal affairs of its trading partners. This 'see no evil' approach has frequently fuelled accusations that China facilitates and perpetuates human rights abuses.

Alarm bells rung as a result of China's investments and arms sales in Sudan in the early 2000s. China's threatened use of its veto power at the United Nations Security Council prevented serious UN action on the Darfur issue. Ultimately, *Resolution 1769,* which established joint military operations in the Sudan, omitted economic sanctions. While Western companies like Canada's Talisman Energy withdrew its investments in Sudan due to reputational and social responsibility concerns, Chinese investment in the country continued.

While the story of China's investment in Africa and its effect on human rights abuses is not new, the storyline is subject to increasing complexity. Amidst accusations that China provided political and financial cover to the Bashir and Mugabe regimes in Sudan and Zimbabwe respectively, many observers argue that its substantial investment in local firms and infrastructure has accelerated economic growth, and that economic development will ultimately promote human rights.

Dambisa Moyo and other scholars who advocate for a 'trade not aid' policy have criticized Western, 'strings-attached' aid. Instead, they suggest that Chinese support of export-based development greatly increases the prospects for broad-based economic prosperity on the continent. The International Monetary Fund forecasts GDP increases of over 6% in 2012 for many African export-oriented economies.

Yet, often lost among these broader geopolitical debates are substantive considerations of the on-the-ground human rights implications of Chinese investment in Africa. Whether it amounts to exploitive and predatory profiteering or constructive engagement and development, it cannot be denied that China's substantial investment in Africa – with trade amounting to over $120 billion in 2010 – has re-shaped the continent's human rights dialogue, particularly as it pertains to labour and environmental practices.

The situation in Zambia illustrates the evolving dynamic of China-Africa relations and its effects on human rights. Relations with China have become a touchstone for Zambian domestic politics. In 2011, Michael Sata of the opposition Patriotic Front, won the presidency, on a populist platform that criticized the previous government's support for Chinese investment on the grounds that it has not brought diversified economic growth to the country. Indeed, in 2010, the Zambian copper industry produced $7.2B (USD) or 70% of the country's exports, and yet two-thirds of the population still lived below the domestic poverty line of $1.25 a day. The World Bank country report on Zambia notes that, despite 7.6% GDP growth in 2010, "Zambia's economic growth has not translated into significant poverty reduction, with 59%of the population living below the poverty line and 37% considered in extreme poverty."

The darker side of the Zambian foreign investment regime was brought to the fore in a Human Rights Watch report released in November 2011, entitled *"You'll Be Fired If You Refuse: Labor Abuses in Zambia's Chinese State-owned Copper Mines"*. The report is based on more than 170 interviews with employees of copper mining operations run by Chinese state-owned enterprises and other multinationals. It illuminates a number of health and safety violations, instances of physical abuse, anti-strike action, and other oppressive labour practices that run afoul of nascent Zambian labour laws and International Labour Organization standards. As the report argues, "China's state-owned enterprises in Zambia's copper mines appear to be exporting abuses along with investment."

Chinese investment has generated billions of dollars in multilateral trade and spurred new rounds of economic growth in many African countries. Yet China has shown little commitment to human rights obligations that accompany its investments, particularly in countries with weak regulatory and enforcement regimes. As international observers continue to shed light on the abusive practices that underlie their operations, the question remains whether China will acknowledge its responsibilities. ♦

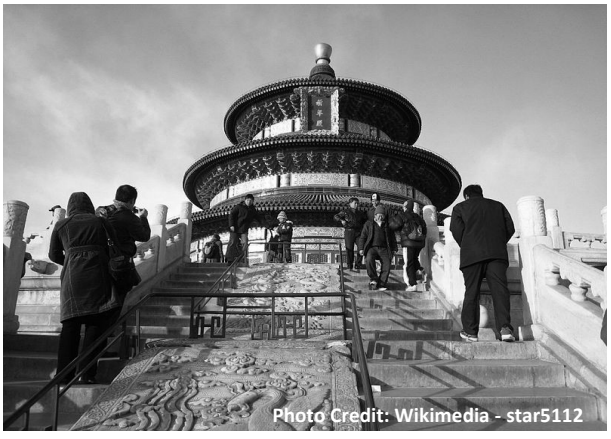


Photo Credit: Wikimedia - star5112

THE CANCELLATION OF MYITSONE: WHAT DOES IT MEAN FOR REFORM IN BURMA?

Vincent Wong, 2L, University of Toronto, Faculty of Law

On September 30, 2011, Burmese President Thein Sein announced the suspension of the $3.6 billion Chinese-backed Myitsone Dam project, explaining that the dam was "contrary to the will of the people." The move marks an unprecedented stand by the Burmese government towards China, the regime's most important economic and political ally.

The dam suspension has drawn widespread applause from the Burmese public, NGOs, and the international community. Unsurprisingly, the reaction of Chinese officials and investors has been a mix of incredulity and frustration. The president of the China Power Investment Corporation (CPI), Lu Qizhou, has threatened to pursue legal action.

The Myitsone Dam is one of the largest dams in the Confluence Region Hydropower Project, a massive initiative headed by the CPI to satiate China's growing domestic energy demands by harnessing hydroelectric power from the river systems of Northern Burma. Myitsone is located on the Irrawaddy River, just south of the confluence between the Mali and N'Mai rivers in Kachin State – a rather precarious location given the long history of recurring armed conflicts between the Burmese army and the ethnic Kachin Independence Army in the area. The dam site was the target of a bombing in April 2010, which killed four Chinese construction workers.

Prior to the suspension, the Kachin Independence Organization joined with local villagers, activists, environmentalists, scholars, and even pro-democracy leader Daw Aung Sang Suu Syi to build public awareness and mount an opposition campaign against construction of the dam. The campaign outlines a litany of environmental and social grievances associated with the project, including massive flooding causing irreparable ecosystem degradation, displacement of over 10,000 ethnic Kachin people, forced eviction, widespread deforestation, destruction of cultural heritage sites, and a military buildup which could potentially provoke civil war. The campaign also lambasted the government and partner corporations for failing to make the impact assessments it conducted public, and for failing to institute financial transparency and accountability measures.

The opposition campaign was bolstered by recent liberalizations in internet and media censorship, which has allowed campaign information to spread. The Myitsone Dam suspension is but one development in a recent wave of political concessions brought on by the newly formed quasi-civilian government. Other developments include the release of Daw Aung Sang Suu Kyi from house arrest, amnesty for a limited number of other political prisoners, installation of a national human rights commission, ceasefire agreements with various ethnic militant groups, and re-registry of the National League for Democracy as an official political party. There have also been historic visits from American Secretary of State Hillary Clinton and British Foreign Secretary William Hague. Observers hope that this thawing of the regime's previously hard-line policy will lead to comprehensive reforms and a movement towards true democracy.

However the question remains: are Burma's recent reforms sincere, or do they betray some ulterior motive? Marie Lall of BBC News attributes Burma's changing stance not to Western sanctions or a newfound love of democracy, but rather to a pragmatic approach towards achieving three economic and political objectives: winning the Association of Southeast Asian Nations (ASEAN) chair in 2014, implementing the ASEAN free trade area, and winning upcoming elections in 2015. Other theories explaining the recent concessions include a desire to move away from Burma's political and economic dependence on China or the need to build government legitimacy following a 2010 election which was marred by fraud and voter intimidation. Regardless of the true motives behind these changes, this new approach represents a major change from the traditionally repressive tactics of the Burmese regime.

Myitsone is being used as a rallying cry for civil activists in other areas of the country, where foreign-backed extractive sector projects continue to result in serious human rights violations. Opposition groups are pushing hard for the suspension of other projects pending good-faith consultation with affected stakeholders. Already, this renewed vigor has borne fruit, culminating in the January 9 cancellation of a 4,000 MW coal-fired power plant project in Dawei.

Although there are reasons to be skeptical, the Myitsone suspension is a positive human rights development in a country which has long suffered from oppression and violence. ♦

AI WEIWEI: CAUSE CÉLÈBRE AND ACTIVIST

Lauren Binhammer, 1L, University of Toronto, Faculty of Law

While backpacking across Europe in May and June of last year, the unfolding story of Chinese artist Ai Weiwei was on the lips of everyone I met. On April 3, 2011, in the midst of a crackdown on human rights activists, the Chinese government arrested the internationally renowned artist, detained him without charge, and denied him access to a lawyer. His family was never formally notified.

I remember standing in a packed room at the Tate Modern in London, looking at Ai's Sunflower Seeds exhibit: millions of hand-painted porcelain sunflower seeds, piled in the centre and roped off. Security guards watched, presumably making sure that no one pocketed a seed. Everyone was silent, staring at the exhibit, and the atmosphere was charged. According to the Tate Modern, sunflower seeds, a frequently shared snack, carry connotations of compassion and friendship for Ai. They also conjure up images from China's Cultural Revolution, when propaganda depicted the people as sunflowers surrounding Chairman Mao, the sun.

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THE CASE FOR GOOD SAMARITAN LAWS

Matthew Lau, 1L, University of Toronto, Faculty of Law

Yueyue, a 2 year-old girl, was run over by a van in the Chinese city of Foshan on October 13, 2011. The incident led to international outrage when surveillance footage went viral on YouTube and other video sites, showing at least 18 people pass by the girl, ignoring her while she lay bleeding on the road. A second vehicle ran over her already maimed body. Yueyue was eventually aided by a city worker, but later died in hospital from her injuries.

Public reaction to this tragedy has focused on its causes and how it could have been prevented. Some commentators claim the incident represents a reflection of Chinese society's moral shortcomings. Others blame the bystander effect, a social psychology phenomenon where the presence of others in a situation causes a diffusion of responsibility. However, much of the attention has focused on Good Samaritan laws in China – or the lack thereof.

Good Samaritan laws, coined after the biblical parable of the Good Samaritan, refer to the area of law protecting rescuers. These laws try to encourage acts of rescue by removing disincentives for bystanders such as the risk of liability and financial loss for injuries suffered by the person they attempt to rescue.

The controversial 2006 case of Peng Yu illustrates the consequences of the lack of Good Samaritan laws in China. Peng Yu assisted an elderly woman to the hospital after she had tripped and broken her leg. The woman later brought a legal action against him. The court ordered Peng Yu to pay 40% of the woman's medical costs, because his behaviour and the fact that he stayed with her at the hospital suggested "according to common sense" that it was highly possible that he had caused her fall.

Should China and other jurisdictions enact Good Samaritan laws to encourage rescue? This author believes that respect for human rights involves the obligation not to unlawfully take life, but also the positive obligation to protect life. In the Yueyue incident, a life could have possibly been saved if bystanders had intervened, even just by pulling the girl off the road to prevent her from being run over a second time.

Fortunately, Yueyue's death was not in vain. The tragedy recently prompted the city of Shenzhen to draft China's first Good Samaritan law. The proposed law protects rescuers from liability for the condition of the person they help, except in cases of gross negligence, and punish victims who fraudulently blame their helper. If a rescuer is accused of wrongdoing, the burden of proof will lie on the accuser.

Good Samaritan laws have been adopted in many jurisdictions outside of China. Some Canadian common law provinces have enacted legislation, such as Ontario's *Good Samaritans Act, 2001,* which removes liability for damages caused by negligence of the rescuer except in cases of gross negligence. However, with the exception of situations involving special relationships, such as a parent-child relationship, the common law does not recognize a general duty to rescue. While Good Samaritan legislation effectively reduces disincentives to rescue, bystanders can still legally elect to do nothing.

Some civil law jurisdictions have taken a more extreme approach by creating a legal duty to rescue, supported by criminal sanctions. For example, the Quebec *Charter of Human Rights and Freedoms*, creates a duty to rescue when a life is in peril, either personally or by calling for help, unless such action involves danger to the rescuer. Similar laws exist in most European countries. This may encourage more rescues, but critics argue that these laws infringe on the individual liberty of bystanders. Some of these critics argue that the duty to rescue is only a moral duty, not a legal one.

Yueyue's death has contributed to an important debate over the necessity as well as the sufficiency of Good Samaritan laws. The world will be watching China's experiment with this doctrine. ♦

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Public calls for Ai's release spread around the world. In Berlin, I saw a banner on the front of the Martin-Gropius-Bau, an exhibition hall, calling for Ai's release from prison. The Guggenheim Museum in New York City launched an online petition which gathered more than 140,000 signatures. On April 17, in Toronto, protestors sat outside the Chinese Consulate as part of the worldwide 1001 Chairs protest – a protest for those who would not stand for Ai's imprisonment.

Ai was eventually released on bail after 81 days of detention. In an interview with TIME Magazine in December, he stated that, without the support of the Chinese and international artistic and political communities, he would not have been released.

Despite the continued crackdown on activists, Ai has suggested that the explosion of social media and internet use has empowered those with limited political power to distribute their opinions widely. The support that he has received provides some indication that this notion is correct.

Since his imprisonment, Ai has continued to be a target of government scrutiny. On November 1, 2011, the Chinese government accused Ai of tax evasion, and demanded that he pay the equivalent of $2.38 million CAN in back taxes and fines. Donations from international and Chinese sources flooded in to help pay the fine. Some locals attached *yuan* to pieces of fruit and threw them over the fence of Ai's studio, while other donors, including the German government's human rights commissioner, sent money via the internet. On January 6, 2012, Ai announced that the government had agreed to review the allegations against him. In another remarkable show of support, many supporters posted semi-nude photos of themselves on the internet in protest when the government began investigating Ai on pornography charges.

Access to Information

THE ANATOMY OF AN ACCESS TO INFORMATION COMPLAINT

Rebecca Sutton & Elizabeth Bingham, 2L, University of Toronto, Faculty of Law

Canada's *Access to Information Act* is meant to ensure that government information is public and accessible to citizens. However, as long as governmental institutions fail to embrace the ethos of access, the goal of accountability will remain elusive.

As IHRP Clinic students, we began a project in 2011 which was designed to apply an international human rights lens to the treatment of federally-sentenced women with disabling mental health issues in Canada. Unfortunately, we have spent the past four months diverted from this goal, embroiled instead in the labyrinthine bureaucracy of Canada's Access to Information system.

To move forward with this project, we are in need of concrete information and statistics relating to female inmates with mental health issues in Canadian prisons, including: the use of force, the use of segregation, the number of trained psychologists on hand, and self-harm by inmates. This information should reside with the Correctional Services of Canada (CSC), so this was the first place we looked.

We encountered obstacles from the outset. First, the CSC's Access to Information and Privacy Division broke down our comprehensive request for information into twelve different files, each to be handled separately. We were then informed that the CSC would not be able to respond to all of our requests at once and we were asked to prioritize only four. This was merely the beginning of the obstacles.

In one instance, after three months of back-and-forth correspondence regarding the scope of our request for one file, the CSC informed us that the information we requested was exempted from disclosure entirely. In another case, the CSC asked that we pay over $5000 in search fees in order to receive the information.

By the time the CSC informed us that they considered their response to our request completed, we had received a grand total of eight publicly available documents. Each of these documents related to the problems associated with the highly publicized in-custody death of Ashley Smith in 2007.

At this juncture it is incredibly difficult to imagine that the (lack of) response from the CSC to our requests is grounded in good faith. Rather, it seems that the institution's references to missed timelines, unpaid fees, and unreasonable requests on our end constitutes little more than a stalling technique designed to discourage us from pursuing the issue any further.

If the Canadian government truly wants to encourage transparency and accountability, it will require a major shift in the culture around access to information at institutions like the CSC. Rather than attempting to withhold information wherever possible, their perspective should be one of access, unless there is a valid reason otherwise. ♦

Although unable to leave China due to the terms of his bail, Ai continues to work. He has an ongoing solo exhibition in Taiwan's Taipei Fine Arts Museum, aptly titled Absent. Sunflower Seeds has moved to a gallery in New York City. Speaking to TIME Magazine, Ai stated that as long as he can make a "good effort," his work as an activist will continue.

Ai's release may be a victory for activists, but questions remain as to the significance of this victory for others who continue to be detained for political dissent, particularly those without the advantage of celebrity. Long-time activist Chen Wei is among them. Chen was convicted of incitement to subversion and sentenced to nine years in prison last December, on the basis of four essays that he authored and posed online calling for freedom of speech and reform of China's one-party system.

It remains to be seen whether the crackdown on activists like Ai and Chen will persist. Chen's nine year sentence appears to be the heaviest given so far as part of China's attempt to quash calls for its own "Jasmine Revolution". What is clear from Ai and Chen's cases is that Chinese activists will continue to face arrests in the absence of international pressure to the contrary. ♦

Involuntary Detention of XDR-TB Patients

Danielle Glatt, 2L, University of Toronto, Faculty of Law

In 2007, Andrew Speaker, an American lawyer, was diagnosed with extensive drug resistant tuberculosis (XDR-TB), a highly contagious and deadly strain of tuberculosis. Despite advice from the Centers for Disease Control and Prevention (CDC) that he not travel, Speaker took several commercial flights. While travelling, Speaker infected several others, including seven Canadians and two Czech citizens.

Tuberculosis can usually be treated with a course of four first-line drugs. If these drugs are not administered properly, multi-drug-resistant TB (MDR-TB) can develop. MDR-TB can be treated with second line drugs, but they are more expensive and have a greater number of side effects. XDR-TB develops when second-line drugs are misused or mismanaged. Because of XDR-TB's extreme level of drug resistance, treatment options are seriously limited. It is therefore vital that treatment for TB be managed properly from the start.

Thankfully, the CDC was mistaken when it came to Speaker's original diagnosis. After further analysis, the CDC announced that Speaker had contracted MDR and not XDR TB. Nonetheless, the risk he posed to others was still high.

Speaker was the first person infected with TB to be put in isolation by an order of the United States government since 1963. In Canada, similar laws allow the state to put patients in isolation without their consent if they pose a significant risk to public health. In North America, the Speaker incident was an isolated case and has therefore quickly faded from the public consciousness. However, in the developing world, XDR-TB and the issues surrounding court ordered isolation continue to warrant attention. In 2010, 58 countries had confirmed cases of the disease, and the incidence of XDR-TB has risen in many countries including South Africa, Moldova, Zambia, and Kenya.

World Health Organization (WHO) guidelines suggest that, if confinement is necessary, the confinement should adhere to the *Siracusa Principles* on the limitation and derogation of provisions in the *Internactional Covenant on Civil and Political Rights* (ICCPR) and the decision to confine should ultimately be subject to review and appeal. There is no doubt that forcible confinement of patients raises many ethical and legal questions, including the extent to which human rights and civil liberties can be violated in the name of limiting public health risks. Further complicating these ethical and legal questions is the fact that poor and marginalized populations are the most likely to be quarantined and have their civil liberties taken away.

In South Africa, patients are isolated with limited to no access to their families, no review of their confinement, and no counselling for the psychological effects of confinement. They do not qualify for unemployment insurance during confinement even though the patients are often the sole source of their family's income. Confinement facilities are often poorly kept and unregulated.

Within the last couple of years, major organizations have begun to work together to address the problems associated with XDR-TB in developing countries. In connection with the WHO and UNAIDS, a tuberculosis task force has been developed to respond to the human rights violations associated with the involuntary detention of XDR-TB patients. The task force's primary aim is to pursue a human rights based approach to TB prevention, diagnosis, care, and support. Information on the challenges faced by detainees could play a key role in legal reform of health policies related to TB. The task force plans to develop human rights indicators related to TB. These indicators will be based on experience in multiple fields and may be useful tools in combating rights violations.

At this stage, there is an opportunity for civil society groups to provide input on a wide range of issues, including the need to coordinate and integrate the HIV/AIDS and TB responses and to focus on developing a human rights friendly approach to diagnosis and treatment. While isolation may be necessary in some cases, efforts must be taken to ensure that those who are diagnosed with TB do not suffer human rights violations. ♦

Chaining and Imprisonment: Mental Health Rights in Somalia

Stefanie Freel, Master of Global Affairs, Munk School of Global Affairs, University of Toronto

For over twenty years, Somalis have experienced the devastating effects of civil war. The insecurity, corruption, and violence that accompany civil war are all factors likely to exacerbate the onset of mental disorders. While the worldwide prevalence of mental disorders stands at 10%, this number is estimated to double in conflict-affected states such as Somalia, where up to one third of the population is thought to experience some form of mental-health disorder. For example, the prevalence of schizophrenia in the Somalian city of Hargeisa is estimated at 265 per 1000 individuals, whereas its world-wide prevalence is estimated at 4.6 per 1000 individuals. Compounding the multiple factors predisposing the population to mental health issues, such as traumatic loss, displacement, war trauma, substance abuse, and poverty, is the lack of health care infrastructure and the widespread stigma surrounding mental disorders.

The imprisonment and/or chaining of the mentally ill represent common mental health treatments in Somalia. The practice involves chaining the arms or legs of a mentally ill individual to a rock, tree, bed, or other structure. According to the World Health Organization (WHO), chain containment not only constitutes a widespread practice within Somalia, but is a socially accepted form of medical treatment. With causes of mental disorders believed to be spiritual in nature, individuals suffering from mental disorders are depicted as 'dangerous' and 'crazy' by a large portion of Somali society. Consequently, patients are virtually stripped of their basic civil, cultural, socio-economic, and political rights while being denied access to health care, education, and sanitation facilities.

(Continued on page 34)

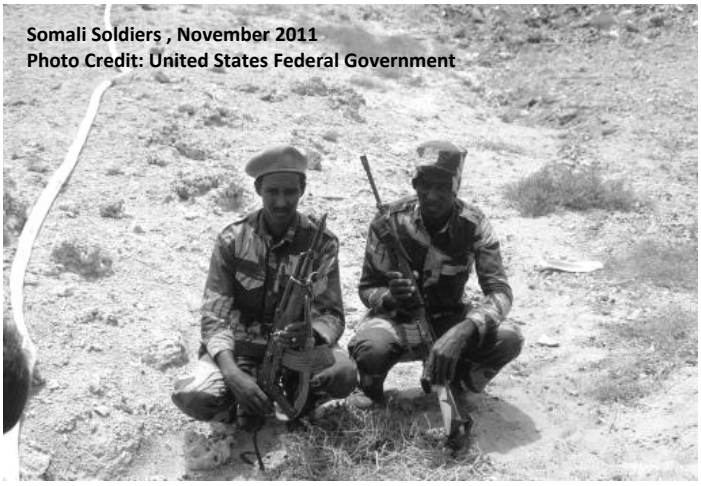
BUYING TIME: THE BLACK MARKET IN HUMAN KIDNEYS

Sarah Harland-Logan, 1L, University of Toronto, Faculty of Law

The massive global shortage in human kidneys is a little-known, but tragic problem of supply and demand. According to economist Roger Mendoza, more than 500 million people suffer from chronic kidney disease. British transplant recipient Rod Lenette, who stayed on the donor waiting list for over four years, described this experience as "waiting for a bus that never comes." Lenette was lucky: for many others, a donor kidney never arrives. One American doctor, Richard J. Howard, published this startling calculation: every 11 minutes, a new patient is added to the U.S. waiting list and every day, 18 Americans die on it. Think about how many people will have been added and removed from that list by the time you finish reading this issue of the *Rights Review*.

It is not surprising, given this shortfall, that an underground industry known as "transplant tourism" has emerged to provide kidneys for desperate, wealthy, and typically Western patients. The World Health Organization (WHO) estimates that the underground industry accounts for between 5 and 10% of all kidney transplants. These kidneys are harvested from desperately poor "vendors", most of who live in the developing world. As the WHO has pointed out, transplant recipients routinely pay up to $200,000 U.S. dollars for a kidney, while vendors may receive only $1000. Moreover, an array of studies of these vendors' health outcomes has revealed high rates of complications, hospitalization, and death. Many of these vendors will never fully recover their health or be able to return to full-time work.

On the record, the international community is firmly united in its profound distaste for this practice. The WHO's *Guiding Principles* on transplantation state that "cells, tissues, and organs should only be donated freely." The most recent statement from the World Health Assembly, the decision-making body of the WHO, maintains that "the principles of human dignity and solidarity [...] condemn the buying of human body parts," particularly as a form of "exploitation of the poorest and most vulnerable." Similarly, the EU *Action Plan on Organ Donation and Transplantation* aims to increase the availability of donor kidneys while decrying the practice of organ vending. Only one country, Iran, permits the sale of human kidneys. Yet, despite this overwhelming consensus, the black market continues to flourish. It is reasonable to expect that this will continue unless the supply of legally obtained donor kidneys increases.



Somali Soldiers , November 2011
Photo Credit: United States Federal Government

Two controversial legal approaches have been proposed to address this intractable problem. The first involves creating an 'opt-out' system. Several European countries have switched from the 'opt-in' donation system used in North America, where potential donors must sign a card or otherwise indicate their wishes to be a donor, to an 'opt-out' system in which every deceased person possessing viable organs is treated as a donor in the absence of evidence that he or she did *not* wish to donate. This 'opt-out' system is designed to increase the supply of available organs. It also aims to eliminate the discrepancy between the high number of people who support organ donation and the lower number of registered donors. A 2005 Gallup survey found that 95% of Americans favour organ donation, but only 52% of Americans are registered donors.

Although more research is needed, 'opt-out' systems seem to obtain generally good results. Two recent studies by Alberto Abadie and Danielle Hamm suggest that the donation rates of countries with opt-out legislation are, on average, 25-30% higher than those with opt-in systems.

However, in 2006, a team of doctors argued that a significant shortage of kidneys would persist even in a perfect opt-out system, where 100% of medically viable cadaver kidneys were available for transplant. In other words, any system that categorically disallows organ vending condemns some people to die unless they turn to the black market. Bioethicist Linda Wright argues that opt-out systems violate the presumed donor's rights since they do not operate on the basis of *informed* consent.

By contrast, the other proposed remedy, legalizing a limited organ market, places great emphasis on informed consent. Advocates of this system argue that carefully regulated national markets could save thousands of lives, while empowering potential vendors to make a fully informed choice and to benefit from good medical care and meaningful compensation. Indeed, there have been different proposals for donor compensation for donors, ranging from a one-time payment of approximately $80,000 to subsidizing the cost of university tuition for the vendor's offspring. However, this approach also faces widespread and fervent objection on ethical grounds. While these objections take many forms, they mainly centre on the widely held view that commercializing parts of the human body promotes the devaluation of human life. There are also concerns that these economic incentives could be exploitative of economically marginalized communities.

Both proposals have serious ramifications for the rights of potentially large segments of the population. Human rights lawyers should be actively involved in crafting a solution to the kidney shortage problem which saves lives while minimizing the infringement of other individuals' rights. ♦

CHAINING (Continued from page 32)

Even more alarming is the duration of chain containment experienced by individuals suffering from mental disorders. Accounts of patients being chained for up to eight consecutive years have been reported by the Italian NGO Grupo per le Relazioni Transculturali. Many patients are contained and chained for the majority of their lives. The amalgam of chain containment practices, isolation, and social stigma may not only aggravate existing mental disorders, but also spur additional medical problems such as severe physical injuries, trauma, and suicide.

Though not a signatory, the failure of the Somali government to halt such egregious treatment of its most vulnerable citizens violates the guarantees outlined in the United Nation's *Convention on the Rights of Persons with Disabilities.* Established in 1993 to ensure equal rights and freedoms for persons with disabilities, the *Convention* holds states accountable under international law for the equal recognition of the mentally ill before the law, appropriate access to health care and rehabilitation, and the right to life. Specifically relevant to the case of Somalia is Article 11, which emphasizes the onus of the state in assuring the protection of persons with disabilities in situations of risk "including situations of armed conflict, [and] humanitarian emergencies […]".

To ensure an end to human rights abuses of the mentally ill in Somalia, the government must focus on improving health care facilities and access to psychiatric care, as well as raising community awareness of mental health issues. Principles of equality, non-discrimination, freedom from inhumane and degrading treatment, and the right to autonomy, as outlined in the Unites Nations' *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* (1991) should constitute the basis for a future mental health policy. Unfortunately, in an impoverished state like Somalia, where large parts of the country continue to be dominated by warring factions, this issue is unlikely to be a priority in the near future. With so many competing demands for very limited resources, the needs of the country's mentally ill will almost certainly be dealt with last. ♦

ADDRESSING CHALLENGES FACED BY LGBT REFUGEE CLAIMANTS

Matthew Oh, 3L, University of Toronto, Faculty of Law

In 1992, the Immigration and Refugee Board of Canada (the Board) wrote the following in one of its decisions:

> In the panel's opinion, the lack of documentary evidence before the panel indicates that there is no law against homosexuality in Jordan or if there is one it is not applied in practice. In the panel's opinion, the lack of documentary evidence about homosexuals in Jordan also indicates that homosexuals are not persecuted in Jordan.
> *P.(E.U.) (Re),* [1992] CRDD No 397.

The Board may not have had all of the evidence before them at the time. However, homosexuals in Jordan face discriminatory laws and social biases. In 2008, a decade in a half after this judgment by the Board, the military governor of Amman, Jordan is alleged to have said that his homophobic campaign would continue until "we eradicate any trace of male homosexuals in the society."

LGBT people throughout the world remain an often hidden, but persecuted minority. A lack of documentary evidence of harassment is more likely to be the result of oppression rather than a sign that persecution is not taking place.

The IHRP's Sexual Orientation and Gender Identity (SOGI) Working Group believes that when persecution of LBGT communities occurs, a lack of evidence should not stand in the way of an otherwise legitimate refugee claim. Our working group assists refugee lawyers by providing them with country conditions reports that detail the situation for LGBT persons. We look at legal protections and how those protections are enforced. Our reports survey jurisprudence, legislation, scholarly materials, and NGO or media reports in hopes of providing the documentary evidence which refugee lawyers cannot collect themselves.

We recognize that the refugee law bar faces challenging time limitations in the refugee determination process, and that resources can often be strained for lawyers who practice in this area of law. Since the IHRP working group began in 2007, we have completed at least 32 country conditions reports which are now available on the IHRP website. Further, we continue to update and add reports based on the needs of refugee lawyers who contact us for assistance.

Last semester, our students completed new reports on Nepal and Peru. They also updated the Mexico report. In these reports, we found a common theme: newly emerging legal protections for LGBT people do not necessarily translate into meaningful protection in practice. While the decriminalization of homosexual acts is certainly an important first step, that development alone cannot be a conclusive indicator of the conditions for LGBT people.

For example, though anti-discrimination and same-sex marriage laws are in place in certain parts of Mexico, we found reported instances of police misconduct where police officers arrested LGBT people and charged them with prostitution on the basis of nothing more than being found in a gay bar. In our Peru report, we recount a reported instance of rape by police officers against a gay man that occurred as a result of his sexual orientation. Though a judge ordered that the officers be detained in that case, the order was ignored and the officers were released.

In our Nepal report, we noted that, while homosexual acts were decriminalized in 2007 and significant progress is being made, NGOs continue to report instances of persecution of LGBT people at the hands of police.

These reports are not isolated and they illustrate the point that legal changes and protections do not necessarily signal a satisfactory change in country conditions. It is important that LGBT refugees are able to receive up-to-date, comprehensive documentary evidence on whether, in spite of favourable legal developments, they would likely face persecution in their country. We believe that the SOGI Working Group provides an important service to refugee lawyers and we are proud of the work that our members have done this year. ♦

THE FIGHT FOR GLOBAL LGBT RIGHTS

Atrisha Lewis, 2L, and Zahra Ahmed, LLM, University of Toronto, Faculty of Law

In 2010, homosexual acts were still criminalized in 76 countries. Amongst these 76 countries, 7 had laws making homosexual acts punishable by death. The Commonwealth represents a large portion of these countries with 77% of Commonwealth nations having laws on the books that criminalize homosexuality. This high concentration in the Commonwealth is partially due to the legacy of British colonialism since Commonwealth nations inherited British sodomy laws.

The criminalization and persecution of lesbian, gay, bi-sexual and transgender (LGBT) people has gained attention and become a focus of international policies, and law, especially since 2006 with the adoption of the *Yogyakarta Principles*, which apply existing international human rights law to sexual orientation and gender identity. However, LGBT rights are a relatively new concept outside of Canada and a handful of other countries. Elsewhere, LGBT rights are often denied on the basis of culture or religion.

The Envisioning Global LGBT Human Rights Project (the Envisioning Project) is an international research project that will document and analyze: the criminalization of LGBT people; the LGBT flight from violence and persecution; the decriminalization efforts of human rights organizations; and the interaction between international human rights treaty bodies, monitoring mechanisms, and LGBT rights initiatives. The project brings together an interdisciplinary team involving four Ontario universities and one South African university. The project also brings together organizations and individuals from Toronto, India, the Caribbean, and Africa.

The Envisioning Project is housed at York University and has three major goals. The first goal is to create a network of support and communication between Canadian LGBT organizations and LGBT organizations in the Global South. This is especially important because, according to a 2009 Human Rights Watch report, LGBT organizations are chronically under-resourced and severely isolated. The Project hopes to improve skills exchange and capacity enhancement between Canada and the Global South by conducting applied research and creating documentary videos. The Project hopes that the interaction these efforts foster will minimize isolation and empower LGBT organizations in the Global South.

The second goal of the Envisioning Project is to research and document the criminalization of people on the basis of their sexual orientation or gender identity, with the ultimate objective of challenging these laws. The third goal is to document the contemporary movements to remove laws that criminalize people on the basis of their sexual orientation or gender identity/ expression. Documenting these efforts may allow for greater cooperation between organizations and more effective advocacy.

The IHRP has partnered with the Envisioning Project in order to provide law students with practical human rights research and advocacy experience. As members of the IHRP Clinic, we were tasked with researching and analyzing state interactions with the United Nations on LGBT issues. This project was especially enriching as we had the opportunity to work with some of the leading LGBT human rights activists and academics including Douglas Elliott and Kimberley Vance.

Over the course of the fall semester, we researched and produced 10 country specific memos. These memos outlined state positions on LGBT issues. State positions were ascertained by examining voting records relating to various LGBT issues and state submissions to various human rights bodies. The memos also tracked United Nations responses to the state's position on LGBT issues. In determining the UN response, we looked at UN human rights treaty bodies' reports and recommendations.

The memos we produced reflect a broad range of state attitudes towards LGBT rights. Unsurprisingly, Canada and South Africa were two countries with progressive LGBT human rights policies. Documenting the laws and policies of these states is helpful to the Project because these countries can serve as models to other Commonwealth nations. The other countries we researched included Belize, Botswana, Guyana, India, Jamaica, Kenya, Saint Lucia, and Uganda. Unfortunately, this latter group of countries did not have the same progressive attitude towards LGBT rights.

Our involvement in the Envisioning Project continues this term. From these memos, we will identify outstanding issues and develop questions for state representatives, domestic LGBT NGOs, and United Nations officials. These questions will be put to various stakeholders in March when one of us attends a Human Rights Council meeting in Geneva to conduct further interviews and gather information. The answers from these interviews will hopefully fill in the gaps in our research and help us understand some of the inconsistent voting patterns on LGBT rights issues at the United Nations. ♦

CHILD TRAFFICKING IN INTER-COUNTRY ADOPTIONS

Katherine Georgious, 1L, University of Toronto, Faculty of Law

On July 29, 2011, a Guatemalan judge issued a landmark decision requiring an American couple, Timothy and Jennifer Monahan, to return their adopted 6-year-old daughter to her Guatemalan birth mother. This child is just one of many from Guatemala who were allegedly kidnapped or coercively taken from their birth mothers by corrupt adoption agencies and 'legally' given to American parents with falsified records of their family history and orphan status. Though the Monahans have not been implicated in any wrongdoing in the case, to advocates of adoption regulation, the case is just one of many examples in which adoptive parents and governments in the developed world have willfully turned a blind eye to child trafficking for the sake of successfully processing inter-country adoptions.

By early 2008, Guatemala was second only to China as a source of children for adoptive parents in the United States. In 2007, American parents adopted 4,726 Guatemalan children. Approximately 1% of Guatemalan children born at that time were expected to be raised as American citizens. Guatemala was a common source for adoptive children because it was one of only a few countries in which the government did not regulate inter-country adoption proceedings. For a fee of approximately $30,000 (USD), potential adoptive parents could process an adoption with a private notary in a span of approximately nine months - a relatively short time for an inter-country adoption. The lucrative nature of the child-trafficking business and the lack of adoption regulation meant notaries could earn a stable source of income through these practices.

In December 2007, Guatemala's Congress passed legislation subjecting adoption to government regulations. Since the legislative change, inter-country adoptions from Guatemala have, for the most part, been indefinitely halted. However, it is only now that the full extent of the previous system's problems has come to light and is being litigated in court.

While corruption within the Guatemalan adoption industry is being examined, the underlying problems that allowed such practices to occur in the first place have not been properly addressed on a global scale. Despite the fact that Guatemala was not complying with international standards, and is a non-member of the *Hague Convention on Inter-country Adoption* (*Hague Convention*), adoptive parents and their governments were not deterred from taking part in the inter-country adoption process.

Since 2007, when most nations indefinitely suspended inter-country adoptions with Guatemala, adoptive parents have turned to other countries that are not signatories to the *Hague Convention*, such as Ethiopia, to be able to adopt quickly; and their governments are doing nothing to stop this. *Hague Convention* guidelines need only be followed if both nations involved in an inter-country adoption are parties to the *Convention*. As such, despite Canada and the United States both being signatories to the *Hague Convention*, they do not need to follow *Hague Convention* guidelines when processing adoptions from non signatory countries. This renders the *Hague Convention* powerless in situations when enforcement of its policies is most necessary.

Advocates for safer inter-country adoption proceedings argue that those adopting from Guatemala willfully ignored red flags for years in order to adopt more quickly. Chris Denton, a Minnesotan woman who tried to adopt in Guatemala described what she witnessed when she moved to Guatemala in the spring of 2007: "There are drivers for adoption, there are discounts for adoptive parents, so it is a business, it's a market […] and there's a lot of talk of corruption, there's a lot of talk of women making babies for money." These widespread rumours of corruption also exist in nations like Cambodia, Ethiopia, and Haiti. However, like in Guatemala, the rumours are ignored for the sake of expediently giving hopeful parents a child, and a presumably orphaned child a home.

The expedient nature of adoption proceedings should be a cause of concern for adoptive parents, not a selling point to adopt from that nation. However, the reverse still remains true. When China began implementing stricter regulations for international adoptions, processing times doubled, and the number of US adoptions from China decreased from 7,903 in 2005 to 5,453 in 2007. Those numbers continue to fall.

Despite the Guatemalan court ruling, it is uncertain whether the Monahans will be forced to return their adoptive child to her birthmother. To be enforced, the Guatemalan ruling must first be brought before an American court. Regardless of how the case is ultimately resolved, at least one set of parents will have lost their child due to a process that is supposed to create families, not destroy them. ♦

SEXUAL SLAVERY IN THE 21ST CENTURY

Ramin Wright, 1L, University of Toronto, Faculty of Law

UNICEF estimates that over two million children around the world are currently involved in commercial sexual exploitation against their will. Sexual exploitation is classified as a form of forced labour by the International Labour Organization, thereby making the child sex trade a heinous example of slavery in the 21st century.

Thailand, Cambodia, and India are hotspots of forced child prostitution, where unsuspecting girls are whisked away to the backrooms of brothels. A Cambodian brothel owner will pay cooperative parents the equivalent of $70 USD for their daughters, with the price increasing if the girl is very young. However she is acquired, the girl is kept in a locked room until her first customer arrives. Young virgins are extremely valuable to brothel owners, who can charge up to $400 USD for a few days with the girl in a hotel room. The girls are often too scared to attempt escape. Beatings, electrical shock, and solitary confinement in unsanitary cells are used without remorse to punish a girl who so much as displeases a customer by not smiling.

(Continued on page 39)

CHILDREN'S RIGHTS: A SUMMER IN RURAL KENYA

Marianne Salih, 1L, University of Toronto, Faculty of Law

"*These are African children. They are different: they have to be beaten*." This was the axiom that would be patiently explained to me, dozens of times, by the teachers in rural Kenya with whom I had come to discuss children's rights. Needless to say, the task that my team and I had undertaken would be a difficult one.

We had arrived in Sabatia - a large, impoverished, agrarian district of Western Kenya - in May of 2010, as part of a development project with Students for International Development (SID), a non-profit campus group from the University of Toronto. SID undertakes a variety of development projects focused on areas as diverse as health, education, agriculture, and anti-corruption. The project that I had chosen to lead was less concrete than the others, but every bit as important: a children's rights initiative. That summer, I would design educational workshops on the children's rights protected by international legal instruments such as the UN Convention on the Rights of the Child and deliver these workshops to the 100 primary schools in Sabatia. Although this work was extremely rewarding, the challenges were great, and the results mixed.

Information on children's rights is hard to come by in Kenya. The government barely collects, let alone publishes, statistics on topics such as child abuse and corporal punishment. Consequently, we had to collect the necessary information ourselves.

The primary causes of children's rights violations in Sabatia are poverty, lack of education, and cultural beliefs that justify child abuse. Poverty is the most significant problem. The rights of children to food, shelter, medicine, and education are contingent upon the availability of money and resources. To make sure that these rights are realized, entire communities must be lifted out of poverty - a task that even the largest and best-funded development projects have difficulty tackling. The other causes of children's rights violations, abuse justifying cultural practices and lack of education, are somewhat less insurmountable. So, these latter two issues were the main focus of our project.

During my time in Sabatia, some of the cultural practices that harm children proved easier to discourage than others. Convincing the villagers to stop lighting cooking fires indoors in order to avoid causing eye and lung problems was relatively straightforward. Other practices more deeply rooted in folk wisdom and traditions proved much harder to discourage. The most egregious of these abusive cultural practices included: the widespread use of severe corporal punishment, the mistreatment of children with special needs, and a total aversion to sex education.

Despite laws prohibiting it, corporal punishment such as caning is almost universally believed to be the only effective means of discipline in Sabatia. The non-violent alternatives we proposed were often met with laughter and incredulity. When we told teachers and parents that children in Canada behave themselves without caning, they would smile kindly and explain the peculiarities of African children that make beatings necessary. African children were "different," they assured us - intransigent, obstinate, corrigible only by violence. The violence employed by teachers and parents is often severe. I met a seven-year old who was beaten bloody by his father for bathing at night rather than in the morning. The father of a child in a nearby school had recently cut off his son's hand for stealing. Abuse like this is regular, but rarely, if ever, reported.

Mistreatment of special-needs children is another widespread problem. Serious stigma persists in some parts of Kenya about certain disabilities. One example of this stigma is the belief that epilepsy is contagious. As a result, special-needs children face bleak life-prospects. They are quarantined in their homes, often by their parents, and have little hope of receiving an education or the care that they need.

Lack of sex education is another major children's rights issue. Sexual education is taboo in Sabatia. Strong religious beliefs limit current sex education to appeals for abstinence. Contraceptives are barely discussed, let alone accessible. Abstinence, however, is unrealistic: most Sabatians lose their virginity between the ages of 12 and 14; unplanned pregnancies and infection with HIV/AIDS are common. Teenage mothers are often forced out of school. Uneducated and burdened by religious stigma, many end up homeless, suicidal, or victimized by sex-traffickers. The children of young mothers receive sub-standard care at all stages of development, and often develop mental and physical disabilities.

Although our work focused only on one district, several independent studies have found similar trends in rural villages throughout Kenya, and in many other African states. Although this sort of endemic child abuse often shocks Western sensibilities, we must understand that these behaviours have cultural roots, and reversing such deep-seated practices takes time, delicacy, and, above all, patience. Although dedicated activists continue to promote change in attitudes towards issues like corporal punishment and sex education, it may take a generation or two for the new ideas to take hold. ♦

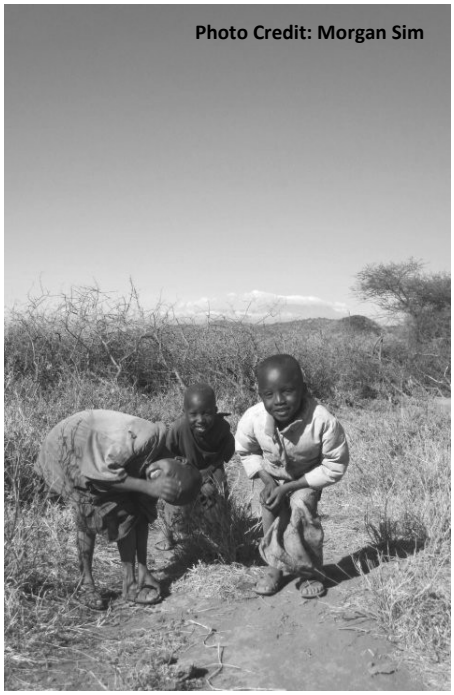


Photo Credit: Morgan Sim

HUMAN RIGHTS VIOLATIONS IN THE POST-9/11 ERA

Daanish Samadmoten, 1L, University of Toronto, Faculty of Law

Most people remember exactly what they were doing on September 11, 2001. However, 9/11 will be remembered for more than just the terrible events that occurred that day. 9/11 has had profound implications on human rights in the decade since the attacks. Obama vowed to usher in progress on human rights issues, but instead there have been a series of human rights violations under the Obama administration.

While there are numerous examples of human rights violations, the most egregious of these are the recent passage of the *National Defence Authorization Act* (*NDAA*) and the failure to close the detention centre at Guantanamo Bay. According to the American Civil Liberties Union (ACLU), not only is the indefinite detention provision in section 1021 of the *NDAA* unconstitutional and illegal, it also violates international law because it is not limited to individuals captured in combat. Section 1021 of the *NDAA*, which permits the President to order the U.S. military to arrest and detain even American citizens "without trial, until the end of hostilities", violates the basic right of due process guaranteed by the fifth and sixth amendments to the U.S. Constitution. Consequently, this section also violates Article 11 of the *Universal Declaration of Human Rights*, which calls for the presumption of innocence and public trials.

Prior to the December 2011 enactment of the *NDAA*, the American government already claimed the authority to detain without trial what were then termed "enemy combatants". This alleged authority was exercised by the Bush Administration in the infamous detainment of U.S. citizen Jose Padilla at a military prison for three and a half years without trial. Though President Obama's signature of the *NDAA* was accompanied by a signing statement claiming his administration would not use section 1021 against American citizens, the ACLU points out that the statement would not apply to subsequent administrations that may choose to interpret the law differently.

The American regression in the human rights arena is further demonstrated by President Obama's failure to close Guantanamo Bay within a year of taking office, one of his major campaign promises. The *NDAA* has made the task of closing Guantanamo Bay this year virtually impossible, as a result of sections 1026 and 1027, which prohibit the use of funds to transfer detainees to the U.S. or any foreign country. Over the last ten years, 779 prisoners have been held at Guantanamo Bay. Of the 171 prisoners currently held at Guantanamo Bay, the Obama administration plans to prosecute only 32, but only one prisoner has been formally charged. The Obama administration said it plans to indefinitely detain 46 of the remaining prisoners, without bringing charges against them. It seems that the military prison may become a permanent feature in post-9/11 American life.

It now appears that the failure to close Guantanamo Bay is simply one data point in a trend of regression on human rights issues. This trend suggests that it is possible that in trying to prevent another terrorist attack of the magnitude of 9/11, the U.S. has done more harm to itself than a terrorist ever could. This increasing list of human rights abuses may be eroding the values which lay at the heart of the nation. In trying to protect itself, the U.S. may have traded some of its most cherished liberties for more security. In my opinion, this is not the sort of trade a democratic country should make, for as Benjamin Franklin once said, "Those who would give up Essential Liberty to purchase a little Temporary Safety, deserve neither Liberty nor Safety." ♦

SHE WAS THERE: ALUMNA LAURA GRENFELL

Morgan Sim, 3L, University of Toronto, Faculty of Law

Laura began her work as an IHRP Intern for Human Rights Watch (HRW) in New York City the day before September 11th, 2001. Not only did the attacks affect her ability to get to work on the 33rd floor of the Empire State Building, they also affected the subject matter of her research there.

Laura was working on a report addressing women's rights in Afghanistan and, with the impending American invasion of that country, the report she was helping to draft became much more urgent. This report, "Humanity Denied", details the systematic and unrelenting rights abuses suffered by women under the Taliban and throughout the country's civil war. Laura's research at HRW informed several articles on Afghan women which she would later publish, in addition to the doctoral thesis she wrote on the rule of law in states where traditional or customary law is prevalent.

She has since joined academia at the University of Adelaide's Faculty of Law, where she founded and administers a human rights internship program very similar to the IHRP. ♦

Photo Credit: Laura Grenfell

THE 'M-WORD' (Continued from page 16)

Nisour Square, where employees of Blackwater shot and killed 17 Iraqis in Baghdad's public square.

Blackwater had been a member of the International Stability Operations Association (ISOA), which requires its members to sign a Code of Conduct including an obligation to respect humanitarian standards. When the ISOA announced its intent to investigate Blackwater, Blackwater left the association, changed its name to Xe Services, and continued its security operations. Today, "Xe" remains one of the largest US State Department contractors, operating in both Iraq and Afghanistan.

The role of PMSCs in global security operations continues to expand, but Blackwater's story sheds light on two crucial problems with the regulation of PMSCs. First, voluntary self-regulatory schemes (such as that of the ISOA) are woefully inadequate when it comes to punishing and preventing occurrences such as the Nisour Square shootings. More broadly, PMSCs can act with total impunity in situations where state actors could (at least in theory) be held accountable for committing human rights violations.

MacLeod is a member of the PRIV-WAR Steering Group, a research project coordinated by the European University Institute. It seeks solutions to these complex regulatory problems, with a view to strengthening the regulatory framework to ensure that PMSCs comply with international human rights law. McLeod believes that governments must work to develop a range of both "reputational carrots" and "regulatory sticks" to improve PMSCs' accepted standards of practice, since some of these corporations will not respond to "carrots" alone.

In June 2011, the UN Human Rights Council unanimously endorsed a report prepared by John Ruggie, the Special Representative of the UN Secretary General on human rights and transnational corporations and other business enterprises. The report gives guidelines for the implementation of Ruggie's "Protect, Respect, and Remedy" framework. It suggests that "a smart mix of measures – national and international, mandatory and voluntary" is needed to increase respect for human rights in corporate contexts.

Despite that recommendation, international organizations (including the UN) and national legislatures have tended to rely almost exclusively on soft law and PMSC self-regulation, rather than working toward the symbiosis between hard and soft law that MacLeod envisions.

During her lecture, MacLeod also shared advice for aspiring corporate lawyers on what steps they can take towards an ethical and effective style of practice. In her view, it will be increasingly unwise, perhaps impossible, to "be a corporate lawyer and [yet] ignore what's going on in the world around you." By taking courses in international law and human rights, future corporate lawyers can take steps toward playing a positive role in the process that Harold Koh, current Legal Adviser of the US Department of State, calls "norm-internalization." This refers to the exertion of "societal pressure . . . to assimilate with a higher normative standard." It is clear that, for many PMSCs, a far higher standard is necessary. ♦

SEXUAL-SLAVERY (Continued from page 36)

The money that a parent receives for their daughter is not a payment, but an advance on her future earnings. The brothel owner then swindles the advance into a debt that the girl must pay off with sexual services before she can begin to earn a meagre salary. Of course, brothel owners continuously add to this debt with charges for food, shelter, condoms, abortions, and even a painful surgery designed to allow the girl to be re-sold as a virgin. A girl will only be set free when she is too old or too sick with HIV/AIDS to attract customers. Until that day, she can be sold to as many as twenty men per night, for approximately $2 per customer as a non-virgin.

This situation is not without hope for a better future. The New York based Somaly Mam foundation, founded by and named after an escaped sex slave, is dedicated to raising awareness and curbing the forced sex trade in Southeast Asia, with shelters in Cambodia, Vietnam, and Laos. Shelters are available for girls who escape or are rescued from brothels, offering them a new beginning. Frequent police raids are making it increasingly difficult for brothels engaged in child prostitution to thrive. Laws in Australia, Canada, Hong Kong, the United Kingdom, and the United States also condemn so-called sexual tourists, making it a crime for a citizen to engage in illicit sexual conduct abroad. These efforts leave me hopeful that sexual slavery will see a steady decline in the years to come. ♦

Arab-Bedouins: An Overlooked Minority in Israel

Carlin Moore, LLM Student, University of Toronto, Faculty of Law

Imagine military helicopters flying low, approaching from a distance. Imagine military vehicles pulling up to your doorstep with bulldozers following close behind, ready to destroy your home. This was the description I was given as I sat in a tent in an Arab Bedouin village, called Al-Arakib, which had recently been destroyed by the Israeli government.

Arab Bedouins represent approximately 12% of the Arab minority in Israel. The majority of Arab Bedouins live in the Negev desert. It is there that I saw firsthand villages and buildings which had been destroyed by the Israeli government.

The Bedouins currently living in Israel are descendants of nomadic or semi-nomadic tribes. The Arab Bedouins consider the Negev desert to be their ancestral home. Prior to the creation of the state of Israel in 1948, Bedouins engaged in agriculture, commerce, and cattle herding. During the 1948 Arab-Israeli war, which resulted in the creation of the state of Israel, a vast majority of the Bedouins living in the Negev desert were displaced to surrounding countries. Those remaining (about 11,000 out of a population between 65,000-95,000) were relocated to restricted zones called the Siyag (also known as the "Siege" area), located in the northeastern Negev. These zones have low agricultural fertility, and constitute only about ten percent of the land which the Bedouins occupied prior to the war. In the Siyag, the Israeli government prohibited the building of permanent structures, forcing the Bedouins to live in makeshift shacks and tents. Over time, these areas became permanent settlement areas for the Bedouins as they were not allowed to return to their ancestral lands.

The Negev desert is now populated by a large number of Israelis who have established villages, towns, and even a university on the land. The desert is also home to a number of Bedouin villages, referred to by the Israeli government as "unrecognized villages." In these unrecognized villages, Bedouins are prohibited from building permanent structures, accessing basic municipal services, or competing in the labour market. Because of these restrictions, the Bedouin villages consist mostly of tents and shacks.

The Bedouin community argues that they have title to the land because they occupied it prior to Israeli independence. During the 1950s and 60s, many were given permission by Israel to remain on the land in the Siyag. However, the 1953 *Land Acquisition (Validation of Acts and Compensation) Law* gave Israel the right to register land confiscated between May 1948 and April 1952 in its own name, if certain conditions were met. For example, one such condition held that land not currently possessed by its original owner could be transferred to the government. Because the displacement of the Bedouin had already been completed, this law allowed for massive land transfers to the Israeli government.

In 1969, the *Land Rights Settlement Ordinance* gave the Israeli government the right to confiscate land which was defined in the Ottoman Land Law as "dead lands." Dead lands were those which the Bedouins had neither cultivated nor officially registered during Ottoman and British land registration periods. Most Bedouins never registered their land due to a lack of knowledge about registration procedures. The Israeli government argues that the failure to register signals the fact that the land does not belong to the Bedouins.

In light of the laws passed by the Israeli government, court rulings upholding government claims to the land, and the "unrecognized" status of the Bedouin villages, the Israeli government regularly posts eviction notices, demolishes any permanent structures erected in Bedouin villages, and destroys crops sown by the Bedouins. These policies are effectively destroying the Bedouin way of life.

Even in the townships, the government fails to provide adequate and equal services - despite the fact that the Bedouins are citizens of Israel. The Bedouin townships are amongst the poorest communities in Israel. In addition, the townships suffer from high unemployment and crime, as well as a lack of transportation, municipal services (such as banks and libraries), and educational services.

Photo Credit: Tarek Z. Ismail

The Negev Coexistence Forum for Civil Equality arranged a tour for our group to visit two unrecognized villages (Al-Arakib and Al-Sira) and a township (Hura, one of the seven official government planned towns for the Bedouin in the Negev). The Forum is comprised of volunteers, educators, and human rights advocates who pressure the Israeli government on the issue of civil and human rights in the Arab Bedouin community in Israel. They also work closely with other NGOs to file petitions with the court regarding discriminatory government practices. The Forum works to draw attention to the human rights violations against the Bedouin community, as these issues receive little publicity. Yet, there is still much more work that needs to be done for the Bedouin community in Israel. ♦