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Rights Review


Photo Credit: Mark Landsman

this issue

Egypt: A View From The Ground

Eva Tache-Green, first year, University of Toronto, Faculty of Law

I arrived in Cairo in the evening of February 11th 2011. It had not been an easy trip. When I left Toronto the night before, Hosni Mubarak, Egypt's embattled President, had just delivered his third speech, defying expectations by failing to resign. My activist friends in Tahrir square, the epicenter of the 17-day revolution, responded by threatening to march on the presidential palace, a move my boyfriend, a Reuters reporter on the ground in Cairo, predicted would result in a blood bath.

The journey from Toronto to Cairo was my longest hiatus from twitter and Al Jazeera since January 25th, the day pro-reform protests began in Egypt, and the date that has become the name of the revolution.

Walking through the deathly quiet Cairo airport, I tried not to attract attention, conscious that things could have changed for the worse in the hours I was in the air. Once through customs and walking towards a taxi, I gingerly asked my driver: "What is the news?" "Mubarak has left," he told me seriously. I stopped in my tracks, switched to Arabic, and said "Bigayd?" – "For real?" "Half an hour ago," he said. He was not joking. I was soon surrounded by a troop of taxi drivers, laughing and shouting, each offering his own version of events, thrilled by my astonishment at the news that Mubarak had left, resigned, gone, given up. As one of the drivers said proudly, shutting the door for me: "Bye, bye Mubarak!"

Driving into Cairo, we passed scenes that would become iconic in the following days: youth climbing onto yellow army tanks waving the flag of their newly liberated nation.

Less than an hour after landing, I was in Tahrir Square, fully immersed in, what I think is safe to say, the largest post-revolutionary party of all time. The cheers, the chants, and the face painting rendered more meaningful by the presence of army tanks, burnt out buildings, and bandaged head wounds. And everywhere thousands of people whose faces said: "We did this!"

Of course, exactly what they did is something that will take longer than 18 days to determine. Mubarak's departure did not leave a vacuum: the beloved military have control of the country and remnants of Mubarak's regime hold key positions in the interim caretaker government. At the many revolutionary parties I attended, where people broke curfew to dance in circles and chant the "best of" from the revolution, talk returned constantly to the serious road ahead. Have we witnessed a military coup or a revolution? How can we move forward until we have cleaned out the regime? Why focus on the composition of the interim government, when they will be gone in six months? What about the constitution? How much change is enough?

My friends at these parties are intellectuals, activists and artists, but this level of political consciousness was not limited to such circles. Everywhere I went in Egypt, everyone I talked to had an opinion, a stark contrast to the years I lived here between 2007 and 2010 when people usually answered questions about politics with a grumble and a shrug. Now, a waiter carefully listed his top five choices for president, a taxi driver argued that nothing will change until the dreaded Ministry of the Interior is disbanded, a hotel clerk demanded that Mubarak go on trial, and my favorite, a shop keeper who

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UNIVERSITY OF TORONTO FACULTY OF LAW
INTERNATIONAL HUMAN RIGHTS PROGRAM

Greetings from the IHRP Director: Renu Mandhane

Welcome to the Spring edition of Rights Review, the International Human Rights Program's Signature publication.

The IHRP would like to sincerely thank this year's editors for their hard work, which included developing a new layout for the publication and soliciting an unprecedented number of articles. The IHRP also extends a warm welcome to next year's editors in chief, Morgan Sim (2L) and Christine Wadsworth (1L). The IHRP would also like to welcome the incoming Assistant Editors, Lane Krainyk (1L), Meaghan Lowe (1L), Sofia Ijaz (1L) and Sylvie McCallum-Rougerie (1L). All are already well-known "IHRP-ers" and will bring much talent to the publication.

This term the IHRP Faculty Advisory Committee, chaired by Professor Audrey Macklin, has been absorbed in an extensive strategic planning exercise. To assist in the process, we conducted extensive research on human rights programs at U.S. and Canadian law schools, met with numerous representatives of civil society, and solicited feedback from IHRP student leaders, recent alumni, and law students. Our research confirms that our program does a remarkably good job of training students and responding to the needs of civil society, and is very comparable to offerings at top-tier U.S. law schools, especially in terms of our clinical legal education and summer internship program. That said, it is always beneficial to take stock, think deeply about our guiding principles, and consider ways in which to sustainably grow. Our strategic planning exercise has allowed us the opportunity to do just that. We hope to unveil our strategic plan in the coming months and begin implementation over the summer. Stay tuned…

Finally, as the year draws to a close, I would like to thank all our student volunteers and community partners for their commitment to the IHRP. I encourage you to flip to the back page for an update on our current projects – these accomplishments would not have been possible without our volunteers and community partners. We look forward to thanking you all in person at our March 24th volunteer appreciation party.

From the Editors' Desk

It is the end of another great year with the Rights Review. The Rights Review is a student-run publication that was created by students to highlight the work of the IHRP and provide an opportunity for students to critically engage with current human rights issues and topics throughout the world. This year we were constantly inspired and motivated by the eagerness and energy of students interested in writing for Rights Review. Without the enthusiasm of our writers, the dedication of the editorial board, and the support and input of Renu Mandhane, the Rights Review simply would not be possible.

This edition in particular highlights issues and cases personally relevant to the writers, such as our cover piece from Eva Tache-Green that recounts her experiences in Egypt during the recent uprisings. One of next year's new Editors-in-Chief, Morgan Sim, tells us about her involvement in Kenya with the 160 Girls Project. Other personal stories come from Gulnaz Naamatova, who provides an in-depth look at the relatively unknown practice of bride-kidnapping in Kyrgyzstan, and Josephine Wong, who used her experiences as a 2010 IHRP intern to inspire her article on Liu Xiaobo. We thank everyone for their hard work this year and wish the best to the incoming Editorial Board.

Becca McConchie and Natasha Kanerva

Inside this issue:

Rights Review Editorial Staff

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Côte D'Ivoire: Descending Back Into Civil War?

Christine Wadsworth, first year, University of Toronto, Faculty of Law

As protests have spread across the Arab world, international attention has shifted away from the on-going post-electoral violence in Côte d'Ivoire. Côte d'Ivoire held its first presidential election in a decade on Nov. 28, 2010. International observers, the United Nations (UN), African Union (AU), European Union (EU), and Economic Community of West African States (ECOWAS) recognized opposition leader Alassane Ouattara as the winner of the election. Electoral Commission results gave Ouattara 54% of the vote and incumbent President Laurent Gbagbo 46%. However, the Constitutional Council, run by an ally of Gbagbo, scrapped hundreds of thousands of votes from Ouattara strongholds in the north of Côte d'Ivoire, allowing Gbagbo to declare himself the winner. Months after the election, Gbagbo still refuses to hand over power to Ouattara.

This crisis threatens to reignite tensions in a country that is already fragmented along ethnic, religious, and political lines. The recent history of Côte d'Ivoire provides important context to the current political turmoil. Côte d'Ivoire is the world's largest cocoa producer and, post-independence, it enjoyed prosperity and political stability unmatched in neighbouring countries. The higher standard of living available in Côte d'Ivoire brought an influx of immigrants, many of whom shared ethnic and religious ties with people from northern Côte d'Ivoire, who are predominantly Muslim. This influx led to xenophobia and discrimination against northerners supported by claims that northerners were not true Ivorians. Northerners claimed they were refused national identity cards and the right to vote. Ouattara was banned from running for President in previous elections because his father hails from Burkina Faso.

In 2002, a segment of northern soldiers mutinied, marched on the commercial capital, Abidjan, and gained control of most of northern Côte d'Ivoire. The civil war that ensued split the country between the rebel-controlled north and the government-controlled south. During the civil war and its aftermath there were violations of international humanitarian law by security forces loyal to Gbagbo and by the New Forces rebels situated in the north. These abuses included summary executions, torture, the recruitment of child soldiers, and attacks on the UN. There has been virtually no accountability for these crimes. A power-sharing government took over in 2007, but the provision of citizen identification cards, voter registration, and the disarmament, demobilization and reintegration of northern forces proved problematic.

The political standoff between Gbagbo and Ouattara, who hails from northern Côte d'Ivoire, threatens to reignite these tensions. Since the November election, there have been increasing clashes between Gbagbo's government forces and Ouattara supporters, which include New Forces fighters. Ouattara and his alternative government have established a headquarters in the Golf Hotel in Abidjan. Gbagbo's forces have blockaded the hotel, but 800 UN troops are securing the hotel in an attempt to protect Ouattara.

Conditions have rapidly deteriorated since the election with increasing violence and human rights abuses. UN peacekeepers say they are unable to provide security for all civilians. A Human Rights Watch report in late January documented a campaign of violence by Gbagbo's security forces against members of Ouattara's coalition, ethnic groups from northern CÙte d'Ivoire, Muslims, and immigrants from neighbouring countries. There has been heavy fighting between Gbagbo's forces and fighters believed to be linked to the New Forces in the Abidjan neighbourhood of Abobo. The UNHCR reports 200,000 people are displaced within Abidjan alone.

Gbagbo's forces seem to be using increasing levels of violence against the opposition, including largely peaceful protestors. Troops loyal to Gbagbo killed at least seven women during an all-female demonstration in Abobo on March 3 calling for him to surrender power. There are reports of Gbagbo's forces abducting wounded protestors from a hospital

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2011 Summer Interns

Louis Century (2L)
International Criminal Court (Defence)
The Hague, Netherlands

Gunwant Gill (2L)
Human Rights Watch
Washington D.C., U.S.A.

Danielle Glatt (1L)
Section 27: Catalysts for Change
Johannesberg, South Africa

Sofia Ijaz (1L)
Human Rights Watch and Addameer
New York and Ramallah, Palestine

Lane Krainyk (1L)
Burma Lawyer's Council
Tak, Thailand

Charu Kumar (1L)
Conectas
Sao Paolo, Brazil

Jessica Lam (1L)
UN Women
New York, U.S.A
(through Brews program)

Aimee Letto (2L)
Centre for Reproductive Rights
New York, U.S.A

Megan Lindo (2L)
Equality Effect
Meru, Kenya

Ryan Liss (3L)
International Criminal Tribunal for Rwanda (Prosecution)
Arusha, Tanzania

Political Crisis Continues in Zimbabwe

Lane Krainyk, first year, University of Toronto, Faculty of Law

In the last number of weeks and months, the world has been transfixed on efforts around the globe to remove longtime dictatorial leaders from political office. In each country, the challenges faced by pro-reform opposition groups are unique. Efforts of those working to democratically unseat longtime President Robert Mugabe from the helm of Zimbabwean politics are no different.

Since political repression threatened to spiral into massive social upheaval following the 2008 parliamentary election, little has changed in Zimbabwe. Over the last three years, Zimbabweans have been forced to deal with enormous degrees of political repression, diminished access to healthcare, declining agricultural production, and unbelievable inflation rates that have made the Zimbabwean dollar virtually worthless.

During this period, Mugabe and his ZANU-PF party have continued to develop youth militias, detain political dissidents, and intimidate Zimbabwean human rights and social justice organizations. His selective distribution of food aid exclusively to supporters has resulted in a food insecurity crisis that journalist Sebastien Berger has referred to as "man made hunger."

Following an opposition victory in the 2008 parliamentary elections, Robert Mugabe knew his hold on the presidency was vulnerable. After an initial vote with unclear results, ZANU-PF supporters incited violence against opposition politicians and their supporters. This forced presidential candidate for the Movement for Democratic Change (MDC), Morgan Tsvangirai, to withdraw from the run-off presidential election. As violence between supporters of the parties escalated, Tsvangirai and Mugabe buckled to international and domestic pressure calling for coalition negotiations. The parties were able to form a power-sharing Government of National Unity with Mugabe retaining his title as President and Tsvangirai becoming Prime Minister.

Despite managing to mitigate a spiral into increased political violence, the coalition government has failed to provide stability or bring resolution to ongoing political and social strife in Zimbabwe. While Mugabe has refused to recognize the power-sharing agreement where it proves disadvantageous to his authority, Tsvangirai and the MDC's efforts to engage in political and social reform have been frustrated by an uncooperative ZANU-PF. Contrary to the power-sharing agreement, Mugabe has refused to swear MDC ministers and governors into positions reserved for them by the agreement. As a result, promised constitutional reforms that would guarantee greater political and social freedoms have not been passed.

Photo Credit: Natasha Kanerva

With no movement towards increased freedoms, several recent developments have been disturbing but unsurprising. MDC leaders continue to be arrested and detained unlawfully by the Zimbabwe Republic Police. For example, Douglas Mwonzora, co-chairman of the parliamentary committee that is supervising the creation of a new constitution, was recently taken into custody and denied access to his lawyers.

The government continues to target peaceful action by public activists. Political dissidents are routinely targeted for persecution on the basis of plotting to unseat Mugabe. For example, families aligned with the MDC were recently forced to flee a community on the outskirts of Harare when they were targeted by politically motivated violence.

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"There Is No Civil Rights Here"

Shane Moffatt, Forest Campaigner, Greenpeace Canada

Peaceful protests at the G20 in Toronto

Photo Credit: Greenpeace / Tim W...

"There is no civil rights here," a York Regional Police officer informed a young man standing outside of the G20 security perimeter in downtown Toronto on June 27, 2010. The same officer also states, "This ain't Canada right now," and an onlooker implores, "You guys are supposed to be representatives of the people, the community." All of these exchanges are available for viewing on YouTube.

Across the water, in England, a university student with cerebral palsy, Jody McIntyre, was dragged from his wheelchair by London Metropolitan Police officers during student protests in December 2010. He is thereupon subjected to a series of questions by a BBC interviewer that is best described as Monty Python-esque, beginning with, "There is a suggestion that you were rolling towards the police in your wheelchair – is that true?"

Both videos spotlight ordinary people being treated as dangerous subversives for exercising their interconnected rights to free speech, assembly and peaceful protest. Both videos achieved what the mainstream media couldn't or wouldn't – in the case of the above G20 video and others like it, capturing the view from the street; in the case of Mr. McIntyre, providing a forum for widespread critical examination of the media's complicity in undermining civil liberties (over half a million views and counting).

Meanwhile, according to an October 2010 report by the Anti-SLAPP (Strategic Litigation Against Public Participation) Advisory Panel to the Ontario Attorney General, "significant numbers" of Ontarians are routinely, clandestinely, being silenced from speaking out on matters of public interest by wealthy corporations or individuals using the threat of legal action. Notably absent a media furore, the Panel has recommended the adoption of a *Protection of Public Participation Act*.

This term – "public participation" – is a broad but crucial one. It encompasses a range of democratic values such as free speech, freedom of assembly, freedom of conscience, the right to protest and open access to information. Unless we can exercise these rights in practice and thereby make our opinions known, between elections, as individuals and communities regarding decisions that affect our daily lives and futures, democracy is a hollow shell.

When public protests are delegitimised or prevented outright and corporations silence public debate at the wave of a writ, it has become impossible to ignore Justice L'Heureux-Dube's 1991 admonishment in *Committee for the Commonwealth of Canada v Canada* that the purpose of the *Charter* (i.e. the free exchange of ideas, open debate of public affairs, the effective working of democratic institutions and the pursuit of knowledge and truth) is entirely thwarted when only the "favoured few have any avenue to communicate with the public."

In a related development, the Canadian Radio-Television Telecommunications Commission is apparently not satisfied with the current prohibition on broadcasting "any false or misleading news" and is seeking to replace it with "any news that the licensee **knows is false** or misleading **and** that endangers or is likely to endanger the lives, health or safety of the public [emphasis added]." Carte blanche if you can pay.

Combine an increasingly permissive approach to truthfulness in the mainstream media with the Canadian government's shamefully inadequate freedom of information laws and you have a recipe for disaster. The availability of accurate information being the *sine qua non* for meaningful public participation, one can only hope this will further fuel the use of freely accessible public fora (YouTube, Vimeo, Flickr, Twitter, Wikipedia) by new media outlets and individuals to keep us informed, engaged and alert to our threatened democratic rights. ◆

Ben Liston (2L)
United Nations High Commissioner for Refugees
Kathmandu, Nepal

Meaghan Lowe (1L)
Gaia Amazonas
Bogota, Colombia

Andrew Max (1L)
International Criminal Court (Prosecution)
The Hague, Netherlands

Sonja Pavic (2L)
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Mary Roberts (2L J.D. / M.A.I.R.)
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Kate Robertson (1L)
International Centre for Transitional Justice
New York, U.S.A.

Sylvie McCallum-Rougerie (1L)
Bangladesh Legal Aid and Services Trust
Dhaka, Bangladesh

Alice Tsier (1L)
International Labour Organization
Phnom Penh, Cambodia

Nevena Urosovic (2L)
Centre for Human Rights, University of Chile
Sanitago, Chile (firm-funded)

Christine Wadsworth (1L)
International Criminal Tribunal for Rwanda (Judges Chambers)
Arusha, Tanzania


Photo Credit: Gulnaz Naamatova

Bride Kidnapping in Kyrgyzstan

Gulnaz Naamatova, L.L.M. Candidate, University of Toronto, Faculty of Law

Every summer break, I visited my grandmother, who lives in the mountain village of Kyrgyzstan. I particularly remember one childhood day. I had been told to clean the house with exceptional diligence, since my uncle was bringing me a "new" aunt. That was the day I learned about bride-kidnapping. My uncle and his friends left the house after a boisterous breakfast. My grandmother and my other aunties started cooking national dishes. In the afternoon, my uncle returned and I could hear the cries from the car - a woman burst out: "I refuse to stay here. Please, let me go." About five young men brought the crying young women into the house and handed her to the elder women. Kids, youngsters and elders were shouting with pride and celebration: "We brought a bride!" Neighbors gathered at house. I snuck into the room where the young "bride" was kept. An old woman was trying to put a white scarf on her, which is a sign of marriage. The girl was still crying and refusing to put it on. Next to her stood her sister, convincing her to stay to become a wife, saying that everyone is being kidnapped, as a Kyrgyz tradition, and if she refuses to stay she will become unhappy. After an hour of this coercion, the young lady excused herself to go to the washroom and made an attempt to run away from the house, but the men standing outside of the house brought her in again. In the end, she gave up and agreed to be a wife to my uncle. Currently my uncle and aunt are living in the same village with my grandmother and raising three daughters. Despite the fact that bride-kidnapping is illegal, it considered to be a custom and one of the usual ways of marriage in Kyrgyzstan.

The bride-kidnapping phenomenon

In the Kyrgyz language, "bride-kidnapping" is "ala-kachuu," which is literally translated as "grab and run". Bride-kidnapping is the abduction of a woman with the purpose of marrying her. In rare occasions, bride-kidnapping can be consensual, but the vast majority of bride-kidnappings are non-consensual. Consensual bride-kidnapping occurs when couples agree to this custom as a good tradition, or in cases where the parents refuse to provide consent to the marriage. Non-consensual bride-kidnapping occurs when the woman never agreed to marry and does not consent to the tradition. The majority of cases involve women who have seen the man once or twice before in their lives, and some involve women who have never seen the man before, or conversely, have known him for an extended period of time.

A Human Rights Watch report provides several reasons for the decision of a man to kidnap a bride without her knowledge or agreement. There are often economic reasons, as the man can avoid paying a dowry to the bride's family. (None of my sources identified an average dowry amount, but from my relatives I understand that the average sum is one thousand US dollars, which is then varied depending on the social status of the woman.) Other sources indicate that to kidnap a bride is less troublesome and avoids the wasted time, money and worries of courtships. However, as sociologists Russell Kleinbach, Medina Aitieva and Mehrigul Ablezova indicate, the Kyrgyz tradition of bride-kidnapping also reveals embedded social concepts of marriage and love, as well as the status of men, women and parents in the society.

Marriage plays a vital role in Kyrgyz society. Aitieva states that the man's family persuades him to marry or kidnap. Parents want their sons to marry early, establish a stable

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Disqualified (soon to be demoralized) in Venezuela:

The case of Leopoldo Lopez

Tom Hatfield, second year, University of Toronto, Faculty of Law

On March 2nd 2011, Leopoldo Lopez sat in front of the Inter-American Court for Human Rights (IACRH). He pled that the Venezuelan government denied his political rights enshrined in the American Convention on Human Rights by disqualifying him from running for election as mayor of the capital city of Caracas. The mayor of Caracas holds a powerful political position in Venezuela.

Mr. Lopez is a bright star in Venezuelan politics. He was mayor of Chacao, one of five municipal districts of greater Caracas, from 2000 to 2008. He had extremely high approval ratings and was planning his candidacy for mayor of greater Caracas. His reputation for progress and transparency lead to his award for third-best mayor in the world by World Mayor, and the Transparency International award for transparent government.

Photo Credit: LuisCarlos Diaz, Flickr

Mr. Lopez is also a strong voice of opposition to the current government of Hugo Chavez and the leader of Voluntad Popular ("The People's Will"), a grassroots social and political movement. At the end of his last term in 2008, Mr. Lopez went to register himself for reelection and was denied. The comptroller general disqualified him from running, along with 277 other politically significant people in Venezuela.

The IACHR is a supranational judicial body created by the Organization of American States (OAS) to enforce the human rights standards of the American Convention on Human Rights. Article 23 of the Convention gives every person the right to participate in public affairs, to be elected and to have access to the public service. These rights can be limited only by enumerated grounds, including sentencing by a competent court in criminal proceedings.

Although the government has circulated suspicions of corruption involving Mr. Lopez in the past, no charge was ever laid, no trial commenced, and no sentencing occurred. Mr. Lopez claims that his rights under Article 23 (1) of the Convention are being denied.

If we assume for the moment that Mr. Lopez is successful in his application , he still faces serious obstacles to quashing the disqualification order in Venezuela. To have real impact, any order from the IACHR would have to be enforceable in a Venezuelan court.

There are two ways in which Venezuela can argue that its government is not bound by the provisions of the Convention. The first is by saying that the provisions of the Convention are not self-implementing. That means that the ratification of the Convention through the legislature of Venezuela does not pass its provisions into domestic law. The government of Venezuela can contend that the provisions of the Convention need to be passed into domestic law independently in order for any enforcement of the provisions to occur.

Whether the terms of the Convention are self -implementing is debatable. In "Some Problems Presented by the Application and Interpretation of the American Convention on Human Rights", Edmondo Vargez Carinno, former legal advisor to Chile, wrote that some provisions of the Convention are self-implementing and some are not. He says that we must look at the language of the specific provision. Provisions that are programmatic are not self-implementing. For example, a provision that says "the laws of a party state shall give equal rights to women and men," is programmatic because it lays out a general program to which the laws of a country should adhere.

On the other hand, provisions that grant specific rights to citizens, ie. "Woman and men shall have equal rights", are self-implementing. Article 23(1) – the provision on which Mr. Lopez is relying – states the following: "Every citizen shall enjoy the following rights and opportunities:… (b) to vote and to be elected in genuine periodic elections…" Therefore, according to Mr. Carinno's interpretation, Article 23(1) is self-implementing and forms part of Venezuelan domestic law. If this is the case, then Mr. Lopez should be able to take the IACHR judgment to the domestic courts of Venezuela and have it enforced as a breach of domestic law.

However, assuming for the moment that the Article 23(1) is not self-implementing, Mr. Lopez can argue that Venezuela has a monist view of international legal obligations where by all such obligations, regardless of specific wording, are implemented into domestic law automatically upon ratification by the legislature. This approach contrasts with a dualist approach to international law whereby international and domestic legal orders are exclusive of each other. A dualist view would conclude that obligations under the Convention are part of the international legal sphere and cannot be adjudicated by a domestic court.

Unfortunately, Venezuela's constitution is silent regarding whether the state is dualist

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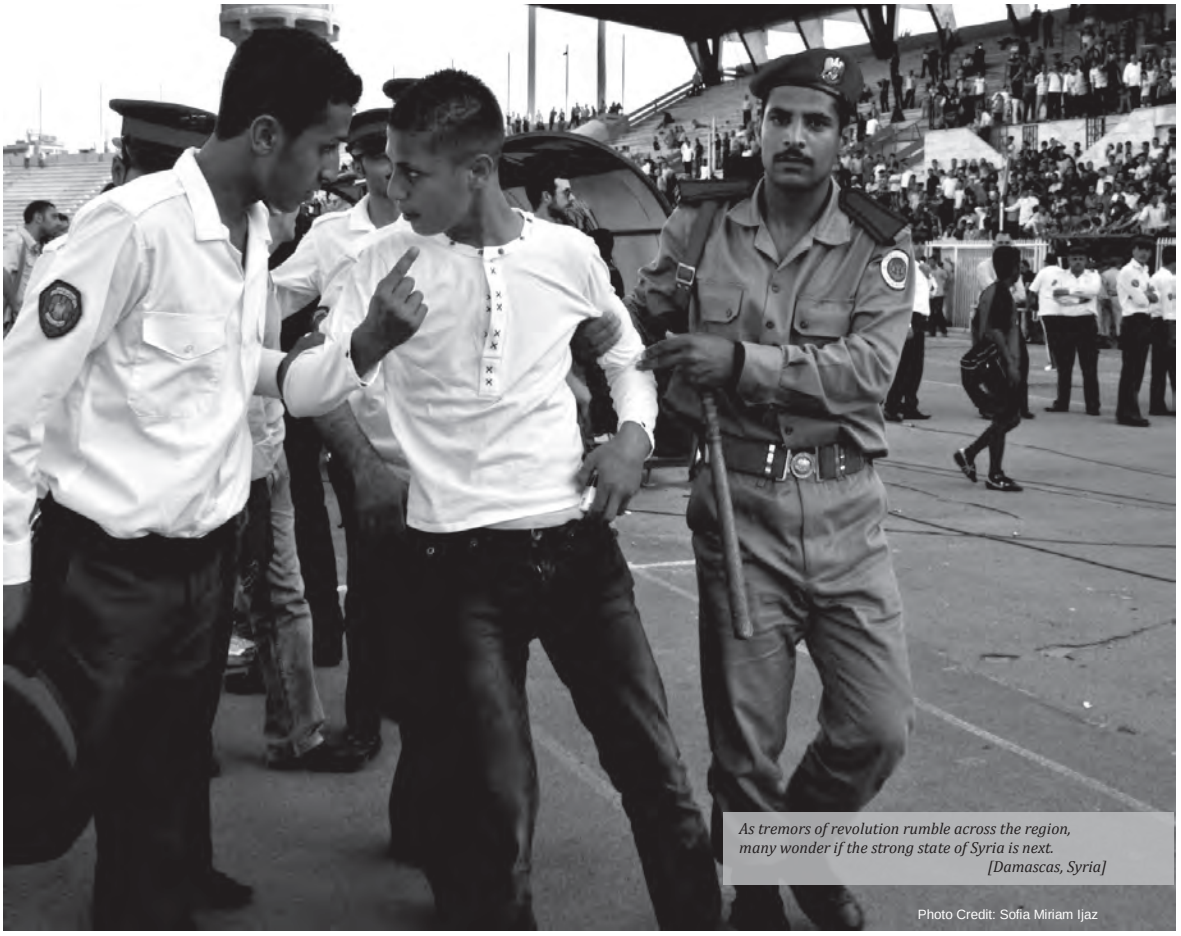
The People Want The Regime To Fall

Sofia Ijaz, first year, University of Toronto, Faculty of Law

Few could have predicted that the tragic death of Mohamed Bouazizi, a Tunisian street vendor, would set in motion revolutions across the Middle East and North Africa. Bouazizi's life of struggle and humiliation led him to a final desperate act of protest: setting himself on fire. This act resonated with Tunisians and Arabs across the region – too many of whom understand what it means to live a life without a voice and without dignity.

The events in Tunisia inspired a seismic shift amongst these people, awakening the region to the possibility of change. A new type of Arab unity has been born which, unlike the pan-Arabism of the 1960's, does not draw its inspiration from an anti-imperialist or anti-Israeli impulse. The revolutionary ideology of today rallies around the desire for human rights, domestic progress, and a genuine liberation from the dead hand of the one-man state.



As tremors of revolution rumble across the region, many wonder if the strong state of Syria is next. [Damascas, Syria]

Photo Credit: Sofia Miriam Ijaz

While each movement has its own roots and causes, there is a basic common denominator when it comes to people's demands: democratic rights. From Algiers to Tripoli to Cairo to Sana'a, the same chant could be heard in the street: *"Al-sha'ab yurid isqat al-nizam!* [The people want the fall of the regime!]*"* This common thread also explains why so many could relate to Bouazizi's struggle. The kind of daily "petty bureaucratic tyranny" to which Bouazizi was subjected - forced bribes, confiscation of property, arbitrary interrogations - are commonplace in the Arab world. The eruption of anger throughout the region is a result of decades of state oppression, hypocritical rulers, and the silencing of dissent - abuses present in each country feeling the rumbling of revolution (albeit to varying degrees).

The message is clear: the old ways of maintaining power will not work anymore. Moreover, it seems that a pillar upon which many regimes (such as those in Libya, Syria, and Iran) have stood on, i.e., their vows to fight for the Palestinian cause and against U.S. influence, no longer justifies imposing martial laws and authoritarian rule.

Take Gaddafi as an example. He promoted himself as a warrior against Israel and the West. However, today, as we witness the "lashings of a dying beast," it is clear that this image means nothing. His actions have drowned out his words, and he has been revealed as a brutal and disturbed man. With huge swaths of his country in revolt, and hundreds (at least) already dead, the power of rhetoric has given way for the call for democracy.

Syria is another example of why the power of anti-Israeli rhetoric has been shaken. Although Bashar al-Asad still sits in a much more comfortable position than his counterparts, the regime has felt pressure to make limited concessions. Syria has now officially unblocked Youtube and Facebook. Lifting the state's ban does not have a significant practical effect, given that most people accessed these sites through proxy servers anyways. However, it is important in showing that there is a concern amongst the ruling elites that the tremors of revolution might reach Syrian soil. Although Syrians are quiet for now, without real reform, the regime's justifications for keeping emergency law – in force since 1963 under the pretext of the ongoing war with Israel – may fall on deaf ears.

Iran's Ahmedinejad is another clear example of this shift towards looking inward, although in Iran, this shift preceded the Arab revolutions. Despite his very public hatred for Israel and defiance of the U.S., Ahmedinejad has alienated a huge portion of the Iranian population, especially the youth. Alt

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In the Middle East

The Plight of Libya's Sub-Saharan Migrant Workers

Alexander Corbeil, M.A. Candidate, Political Science, University of Toronto

While much of the Western media on Libya has focused on the internal dynamics in the rebel stronghold of Benghazi and the clashes between pro- and anti-Gaddafi forces, there has been a lack of a concrete and concise effort to quantify the cost in suffering for migrant workers within this North African country. Stories involving the evacuation of Western and Asian international workers have made the headlines of various media services from the *Toronto Star* to the British Broadcasting Corporation in recent days. With the increasing help of international organizations such as the United Nations International Organization for Migration and the generous donations of both private and public contributors, an estimated 213,000 migrant workers have recently escaped Libya. This is a great accomplishment and a testimony to the responsiveness of the international community to horrific events.

That being said, the United Nations special envoy to Libya, Abdelilah Al-Khatib, has correctly pointed out that this number only represents 15% of the estimated 1.5 million foreign workers within the country. Many of these workers have lost their possessions, employment, and places of residence at the hands of both anti- and pro-Gaddafi forces. Furthermore, Gaddafi's regime has barred many migrant workers, specifically those from Bengal, Egypt and Sub-Saharan Africa, from crossing into neighboring Tunisia in an effort to escape the increasing violence. As the conflict continues to escalate with increasing pressure on the Libyan rebels after the regime's decisive victory at the strategic oil port of Ras Lanuf, the future of migrant workers has become increasingly worrisome.

Migrant workers have been harassed, murdered, robbed, and humiliated by both sides in this vicious conflict. The victims of the worst of these atrocities, specifically the abuses perpetrated in the rebel-held east, have been workers originating from Sub-Saharan Africa. Human Rights Watch, in two reports from 2006 and 2009, documented racially-motivated attacks against African workers, a legacy that has partially resulted in the current hostile situation.

Further adding insult to injury has been the multiple reports of the use of African mercenaries by Gaddafi's regime in an attempt to forcefully put down civilian protests and rebel advances toward the capital. This has led to the targeting of African workers in the east under the guise of retribution and the unfounded belief among some that these workers may in fact be Gaddafi mercenaries. Murders and even sporadic cases of rape have been documented within the region as

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EGYPTIAN REVOLUTION *(Continued from page 1)*

answered my question about the future of Egypt by looking me in the eye and saying the important thing is that we get to choose: "I choose my shirt and I choose my shoes, now I have the right to choose my president."

I feel unbridled optimism talking to these people, or walking through Tahrir and witnessing firsthand the collectivism that made the revolution famous: fast food restaurants turned into field hospitals, human chains protecting female participants from male in the most crowded areas, hundreds of young people, Egyptian flags tied over their shoulders like capes, wielding brooms and paint brushes in an effort to clean up the notoriously dirty streets. (One young man fervently told me: we will have the cleanest revolution in the world!)

Yet concern about the future of Egypt is creeping back, mostly in the form of the military. On February 25th, protesters gathered in Tahrir to celebrate the one month anniversary of the beginning of the revolution, but also to demand an end to emergency law, one of the promises the military has yet to keep. After midnight, the military moved in with plain clothed security men beating the remaining protesters in an effort to clear the square. This was the first time the military used force on the protesters, and served as a wake up call that they cannot be entirely trusted.

Trusted or not, the military is ubiquitous and will necessarily play a definitive role in the future of Egypt. Their tanks are everywhere, military police in red berets direct traffic in the clogged streets, and anyone who wants to know where the country might be going has to 'friend' the Armed Forces on Facebook. Every mobile in the country, including my own, receives messages from the Armed Forces, asking for support, cooperation and patience. In other words, stop striking and go back to work.

The night after the military used force in Tahrir, I met with activists at Houreyya, a famous downtown drinking spot whose name literally means "Freedom". The problem is not the military, they said. The problem is us. We got lazy about the revolution. A week later, after more protests, the Prime Minister appointed by Mubarak was gone, proving once again that Egyptian activists will steer this revolution in the right direction. ◆

Photo Credit: Amirah Sami

The Gay Rights Landscape of Uganda: Knowing the Challenge

Evan Rankin, Masters of Global Affairs, University of Toronto

The issue of gay rights in Uganda (and much of the rest of sub-Saharan Africa) has been given recent prominence by a proposed law put forward in the Ugandan parliament that would effectively criminalize homosexuality. For practitioners of human rights, however, Western accusations of ignorance and homophobia are not enough to begin to address such a deep-rooted phenomenon. If we are to effectively apply human rights laws, we need a deeper understanding of the roots of homophobia in sub-Saharan Africa.

Homosexuality has existed in the African context from time immemorial. Some major historical factors, however, have moulded a highly xenophobic discourse around sexuality. The relevant starting point is the colonization of the continent in the 19th century. Despite a bevy of anecdotal evidence to the contrary, the popular colonial belief was that Africa fell in the "non-Sotadic" zone of the world, meaning that homosexual behaviour was absent. This helped provide a justification for colonialism on the basis that Europeans needed to guard Africa against the "Sotadic" zones, including the Arab regions in the north and the Portuguese colonies.

Despite this widely-hld view, missionaries encountered relatively openly practiced homosexuality. Faced with this "immoral" behaviour, Christian missionaries imported their Victorian mores and began attempting to "teach it away" through schools and the pulpit. The effects were profound: one man testified that "I was an *inkotshane* [mine wife] myself once; I gave it up when I heard it was an evil thing… When I learned in the Book [the Bible] it was wrong I stopped it." It was also impressed on the local populations that homosexuality was "un-African". This notion – along with its religious forbearance – has survived to the present day and remains present throughout much of the anti-gay discourse.

The colonization of minds and bodies created the conditions for the colonization of everything else. The sum effect of this colonialism was the destruction of traditional African notions of masculinity and its markers: jobs no longer paid well enough to allow men to marry, obtain land or have children. The French psychopathologist, Franz Fanon, understood colonialism in the same way, describing "the experience of colonialism as emasculating to colonized men".

Predictably, this emasculation became a powerful driver of the anti-colonial nationalist movements that emerged in the 1960's and 1970's. As African men repacked their conception of masculinity, they did it in such a way that made linkages between their subjugation and the often violent denial of their masculinity. As a result, the new nationalist movements became hyper-masculine, making the "possibilities for tacitly admitting and tolerating sexual ambiguities drastically reduced". This xenophobic formulation of masculinity and its connection with nationalist movements has remained intact in many regions.

The religious character of sub-Saharan Afri

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A Crash-Course in Kenyan Law and Constitutional Litigation

Morgan Sim, second year, University of Toronto, Faculty of Law

Morgan Sim with 160 Girls Lawyers

Photo Credit: Morgan Sim

Harambee, the phrase emblazoned on the Kenya coat-of-arms, is a Kiswahili word literally meaning "*all pull together*". Having never traveled to Kenya before, my recent experience in Nairobi working with *The Equality Effect* could not have more perfectly reflected this spirit of community working towards a common goal. I was blown away by the diversity of backgrounds and experiences which gathered around a long table at our hotel with an unwavering unity of purpose: we were there to seek justice for the hundreds of girls in Meru, Kenya who have been raped and who will be raped before we complete litigation demanding the state to enforce its laws protecting them.

The Equality Effect is an international network of human rights advocates developing creative legal solutions to address the inequality of women and girls in Africa. The organization is directed by Fiona Sampson, former Director of Litigation for the Women's Legal Education and Action Fund (LEAF), who came to know a number of the organization's African partners while studying for her Ph.D. at Osgoode Hall law school. I first became involved in the organization's work on the criminalization of marital rape in Ghana through the International Human Rights Program's (IHRP) clinical course last semester, just as the 160 Girls Project on legal protection against defilement in Kenya was taking shape. Continuing as a practicum student this semester, I was able to complete research for February's strategy session in Nairobi and, through the support of the IHRP, had the opportunity to participate in what turned out to be a week-long crash course in Kenyan law and constitutional litigation.

Rape is an endemic problem in Kenya. Women and girls in Nairobi's slums live under the constant threat of sexual violence, and rape has been used repeatedly as a tool of political repression throughout the country (such as after the 2007 presidential elections). Girls throughout the country are particularly vulnerable and are regularly the victims of defilement or the rape of a minor. Orphans whose parents have died from AIDS are often abused by extended family members, female students are frequently abused at school by their male teachers, and men rape unimaginably young girls who they know are virgins because men believe this will cure them of HIV.

The crime of defilement is so widespread in Kenya and the impunity for this crime so entrenched in the practices of Kenya's law enforce

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Liu Xiaobo: The Empty Chair at the Nobel Peace Prize Awards Ceremony

Josephine Wong, third year, University of Toronto, Faculty of Law, 2010 IHRP Intern at Human Rights in China, New York

On October 8, 2010, the Norwegian Nobel Committee announced Liu Xiaobo as the winner of the Nobel Peace Prize 2010 for his "long and non-violent struggle for fundamental human rights in China." On December 10, 2010 in Oslo's City Hall, the prize was awarded in Liu's absentia. For the first time since 1935, the peace prize was awarded while the winner was in detention and where the right to have a representative to collect the prize on his behalf was denied: Liu was serving his jail sentence in China for "inciting subversion to state power," and his wife was under house arrest in the country.

The "empty chair" during the ceremony is a manifestation of two significant implications: the international community's condemnation of China's downward-spiraling human rights record, and China's politicization of "rule of law" to justify systematic persecutions of human rights activists.

About Liu Xiaobo: Two Decades of Human Rights Activism

Liu Xiaobo holds a Ph.D. in literature from Beijing Normal University, has been a visiting scholar at Columbia University, and has been a long-time advocate of political reform and human rights in China. On June 2nd of the 1989 Democracy Movement, he initiated a hunger strike in Tiananmen Square. Following the June 4th crackdown, he was detained on "counterrevolution" charges until he was convicted in January 1991.

In subsequent years until June 2009, Liu wrote nearly 800 essays that criticized the government, denounced human rights violations and called for the recognition of the June 4th massacre. Most notably, he organized and participated in the drafting of *Charter 08*, a manifesto signed by more than 350 Chinese intellectuals and human rights activists calling for political reform. During this period, he was placed under house arrest and ordered to serve three years of Reeducation-Through-Labour. *Charter 08* was due to be published on the 60th anniversary of the *Universal Declaration of Human Rights*. Two days before its release, the Beijing Public Security Bureau detained him at an unknown location.

On June 23, 2009, he was formally arrested for "inciting subversion of state power." On December 25, 2009, he was convicted and sentenced to 11 years of imprisonment and two years of deprivation of political rights. On February 9, 2009, the Beijing Municipal High People's Court dismissed his appeal.

In Liu's essay trial statement entitled "I have no enemies", which Liu intended to have read at his trial but was never heard, he stated that, "In order to exercise the right to freedom of speech conferred by the Constitution, one should fulfill the social responsibility of a Chinese citizen. There is

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Photo Credit: Vox Asia, Flickr.com

In July 2010, the United States passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* to promote financial stability through greater accountability and transparency. The International Human Rights Program, in partnership with Publish What You Pay Canada and the Revenue Watch Institute, hosted the *Roundtable on Canadian Securities Regulation: Harmonizing Canada-US Disclosure Requirements in the Extractive Sector*. The roundtable brought together business, government, civil society and academia to discuss the potential impact of the US legislation on the Canadian regulatory regime and the best way forward for Canada as a major global player in the extractive industries.

Can Enhanced Disclosure Eliminate Conflict Minerals in the DRC?

Meaghan Lowe, first year, University of Toronto, Faculty of Law

One of the core ingredients that fire our mobile devices, laptops and iPods is Coltan, a conflict mineral and a rare earth compound that garners relatively little attention in public discourse. With 80% of the world's Coltan located in the Democratic Republic of the Congo (DRC), its extraction has fueled countless atrocities in an already war-plagued country.

Bubbling consumer concerns over the use of conflict minerals has led to several legislative responses in the developed world. An aggressive response is found in section 1502 of the *Dodd-Frank Act*, which will require companies listed on US stock exchanges for which DRC or adjoining country-based conflict minerals are necessary inputs to their products to publicly disclose measures taken to determine the source of such minerals. Further, companies will be required to provide a description of the manufactured products that use conflict materials. The objective is to help protect investors from risks associated with corrupt and unstable governments, and to promote greater consumer awareness about conflict minerals to discourage their use in manufacturing.

Canada is known for some of the most transparent disclosure requirements for extractive companies in the world. However, the *Dodd-Frank Act* leapfrogs some of Canada's disclosure requirements and Canada is pondering whether to follow America's lead, forcing additional regulatory requirements on Canadian based companies. The hope is that if Canada and Europe aligns with the US and sets a new international standard, the rest of the world's major players, such as China and India, will follow suit.

Canada is cautious. Adopting the Dodd-Frank approach may have substantial ramifications for Canadian-based extractive companies. Canada is home to 50% of the world's extractive companies and the economy derives much profit from them. Enhanced transparency has the potential to increase costs to comply with the legislation. There is concern that additional costs may encourage Canadian based companies to relocate to less burdensome regulatory regimes.

However, the costs of the regulations may be offset in a number of ways. Increased transparency provides investors with better knowledge around the predictability of profits caused by potential supply disruptions or litigation risk, which could attract additional capital to the sector. Transparency would help limit the funding that goes into supporting conflicts, which ensures a stable supply of materials and reduces the risk of price spikes resulting thereof. Addition

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Is Canada Doing Enough to Battle the Resource Curse?

Nita Khare, first year, University of Toronto, Faculty of Law

The resource curse refers to countries and regions that are rich in natural resources, but are unable to distribute the wealth generated from these resources to their general population. One of the major causes for this is thought to be political corruption, as the funds flowing to the government are siphoned off before they can reach the people. According to Global Financial Integrity, a non-profit advocacy group which provided calculations exclusively to Reuters, Africa alone has lost over $854 billion in the past 30 years due to the illegal diversion of funds.

Recently, due to extensive lobbying efforts by pro-transparency civil society, the United States has recognized this issue and is taking action. Section 1504 of the *Dodd-Frank Act* attempts to combat political corruption by mandating all companies in the extractive sector and who are listed on an American stock exchange to disclose all significant payments made to foreign governments for access to their oil, gas and minerals, on a project-by-project basis. The importance of such increased transparency is recognized by Karen Lissakers, the director of the Revenue Watch Institute, who states that "[f]ull disclosure of payments to governments gives citizens information critical to curbing corruption and arms investors with a powerful tool to help lower their risk."

Canada is also known to have some of the most comprehensive disclosure requirements for extractive companies. Still, the regulations are found wanting. The disclosure on payments made to foreign governments under certain circumstances is only option. Also, disclosure is not required on a disaggregated basis (i.e. by country or project). Finally, the disclosure is minimized by financial materiality requirements (disclosure is only required if the information reaches a certain materiality level), making it difficult to determine how much is actually being paid to foreign governments. As such, the requirements are not as strong or uniform as is generally suggested. It was noted by one of the participants in the Roundtable that our apathy towards lack of enforcement for anti-corruption measures may be contributing to decreased valuations of companies listed on our exchanges for the purposes of capital transactions, because of uncertainty arising from lack of transparency. Thus, even from an economic perspective, Canada could benefit from stronger regulations.

There are still some hurdles to be overcome before Canada could adopt reform similar to the *Dodd-Frank Act*. The Securities Exchange Commission (SEC) legislation is still in draft, and there is a possibility it could be de-fanged in its final form. It is still being determined

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Heading Home: IDPs and the Secession of South Sudan

Sylvie McCallum-Rougerie, first year, University of Toronto, Faculty of Law

When they were announced last February, the results of South Sudan's referendum came as no surprise: with a majority of 98.83 %, the citizens of South Sudan overwhelmingly chose to secede from the North. Overall, the referendum was touted as a success: most accounts reported that a fair, legitimate voting process was achieved, and the international community embraced the result. South Sudan is now set to become an independent nation in July 2011.

The referendum, however, is only one step towards South Sudan's goal of independence. Many challenges lie ahead, as the North and South Sudanese governments prepare to negotiate a number of crucial issues, including border demarcation. The oil-rich region of Abyei, situated between the North and the South, will remain at the heart of this debate.

One of the most significant issues that both sides will face is the status of internally displaced persons (IDP). For many years, Sudan has been home to the world's largest IDP population, with most estimates placing the number of IDPs between 4.5 and 5.2 million.

Sudan's widespread internal displacement has many root causes, including a decades-long civil war between the National Congress Party, representing the Arab North, and the Sudan People's Liberation Movement, representing the Christian and animist South. Although the conflict was theoretically put to rest in 2005 with the signature of the Comprehensive Peace Agreement, violence has continued to unfold in many regions straddling the border between the North and the South. Inter-tribal conflict has also contributed significantly to internal displacement patterns, particularly in South Sudan. These disputes often have deep historical roots, concerning land use and resource distribution. The extreme poverty and scarcity of resources in the South notably exacerbate these problems.

In addition, ongoing conflict between government militia and rebels in the Western region of Darfur has displaced over two million individuals in the last decade. The expulsion of foreign aid agencies by Sudanese president Omar al-Bashir, as retaliation against an arrest warrant issued by the International Criminal Court, has led to further displacement from Darfur towards both the North and South.

With South Sudan's date of independence drawing nearer, large numbers of IDPs living in the North are expected to return to their communities of origin in the South. In fact, this movement has already begun: approximately 200,000 IDPs returned to South Sudan between November 2010 and January 2011 in order to participate in the milestone vote.

Challenges to Reintegration

All IDPs attempting to reintegrate their communities face significant challenges; however, South Sudan's current circumstances suggest additional barriers will stand in the way of a smooth return home. Some of the major obstacles that may lead to a failed reintegration include a lack of access to food and water, a lack of access to services (including health care and education), and a

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Counter

Does the Convention do more harm

Annie Tayyab says…

The *Convention on the Rights of the Child* (CRC) is the first binding international instrument addressing the rights of children specifically. It incorporates the full range of human rights, i.e. civil, cultural, economic, political and social rights. While the CRC contains some general difficulties in enforcement that stem from its nature as an international instrument, it is ultimately a valuable contribution to international law.

While the CRC has been criticized for having a Western bias, its value as an international legal instrument is undeniable. The fact that the treaty has been drafted by mostly Western liberal democracies does not undermine the legitimacy of the document – the CRC has successfully been ratified by almost all of the United Nations states (140 signatories). In fact, the United States is one of the countries that has yet to sign on to the treaty. Clearly, this indicates that the concept of children's rights is a universal ideal that states strive to protect, and that these values are not necessarily correlated to any specific Western liberal democracies. For various reasons, the drafting of international documents have been undertaken by mostly Western developed countries (including trade negotiations, development projects, and definitions of human rights), but this does not diminish the value of these documents *per se*. For example, the *Universal Declaration of Human Rights* (UDHR) was drafted mostly by Western democratic states, yet it has become a valuable part of international law. As the CRC is predicated upon the preambles and Article 25 of the UDHR, the values espoused in the CRC are undoubtedly important and relevant in the discussion of international human rights.

The CRC can be seen as a platform for international and domestic advocacy in protecting human rights. States are permitted to make reservations when they signed on to the document and many have done so, citing cultural relativism (amongst other arguments). For example, when the UK ratified the CRC in 1991, it made several reservations citing its immigration policies and security concerns. The fact that states are able to make reservations is not a problem with the CRC, but is rather a telling example of the reality of international law, and states should take responsibility for this rather than blaming the international legal instrument in question. The CRC in fact provides an important foundation for domestic and international advocates. Going back to the UK example, public pressure finally persuaded the UK government to sign the CRC in full in 2008, leading to changes in the way the state deals with child migrants and asylum seekers in the context of criminal law.

Furthermore, the CRC's optional protocols are valuable additions to the regime. While one can point to the shortcomings of the CRC as a result of political compromise, it must be acknowledged that children's rights are onerous for states to enforce and the current framework is a mutually satisfactory compromise for the current 140 signatories. In addition, the compromises in the CRC are mitigated through two existing optional protocols, with a third optional protocol currently being developed. These protocols allow countries to broaden their scope of protection if a broader scope is feasible in relation to their state development. It is noteworthy to mention that most states have signed both of these optional protocols: there are 139 parties to the optional protocol dealing with child soldiers, and 141 parties to the optional protocol on child trafficking, prostitution, and pornography. While the current CRC regime is not perfect, it is one of the best possible alternatives in the current international law framework.

The CRC is a legally binding document that provides a legitimate foundation for children's rights advocacy: it sparks international and domestic mobilization, provides a framework upon which NGOs ground their claims and has legal effect that guides domestic courts in enforcing these international obligations. For example, in New Zealand, the Court of Appeal held that the Minister for mmigration could not simply ignore the CRC. The Court ordered the Ministry to re-evaluate an immigration claim with the best interests of the claimant's child as a primary factor for consideration. Another positive effect of the CRC is Canada's *Youth Criminal Justice Act*, which was drafted to align Canadian criminal law as applied to youths with the standards of the CRC. It is evident that the CRC has made positive, concrete impact over time – and will continue to do so through further entrenching the concept of children's rights in our societies.

Finally, in all of this, it is important to keep in mind the question: what are the alternatives? The examples of some of the changes the CRC has already brought about, e.g. in the UK and Canada, demonstrate that it is certainly better than there being no convention at all. Of course, this does not mean that it does not have any weaknesses. The point is simply this: in all our criticizing, the salutary effects of the CRC should not be forgotten. ◆

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on the Rights of the Child than good?

Point

Heather Cohen says...

The *Convention on the Rights of the Child* (CRC) exhibits many of the problems displayed by international law in general. In particular, by trying to satisfy everyone, it can be argued that it has satisfied no one. There are four main areas of criticism associated with the *Convention*: its drafting process was biased, the provisions offer too little protection, it still has not been ratified by the United States (US), and it lacks enforcement mechanisms.

Many countries criticize the CRC for being a Western document, and it is true that developed countries were over-represented in the drafting process. The *Convention* is largely based on Western ideals of childhood, focusing on children's individuality as opposed to the more hierarchical notion of family seen in Africa and Asia, which emphasizes children's growth as members of society. Perhaps the biggest issue with this biased drafting process is that states often use these cultural differences as justification not only for why they are unable to meet CRC standards, but for why they have not even attempted to implement the *Convention*. For example, China uses its culturally-entrenched notions of sexism as an excuse for its failure to revise its fertility control policy. While cultural relativists may sympathize with parties in this respect, those who excuse slow implementation on the basis of cultural differences are usually those who benefit the most from the status quo.

In addition, states often use these cultural relativist arguments to justify the declarations and reservations that they make to the *Convention*. For example, 22 of the 57 Islamic states have included some form of reservation to their ratification of the *Convention*. Some of these caveats may completely undo certain provisions of the CRC. One such common reservation allows for state government discrimination against children born out of wedlock. Another caveat prevents children from converting religions, violating their freedom of religion.

These differences are not just cultural, but may often be political. Judicial practices and political elites in Argentina made implementing legislation that incorporated the CRC very difficult. Likewise, the characterization of sexual abuse as a legal rather than a social problem in Lithuania has meant that services to victims are very poor. The *Convention* also seems to be more difficult to apply in countries with civil law traditions. Furthermore, the all-encompassing nature of children's rights has proved problematic for the implementation of the CRC, as efforts must often be coordinated across government agencies.

In drafting the *Convention*, there were a number of contentious issues that necessitated certain compromises. These compromises made it possible for states to manipulate the *Convention* to better suit their interests, but afford little protection to their children. The first of these compromises is in the definition of who is a child. One of the major criticisms of the CRC is that it only applies to children after birth. Defenders of the *Convention* point out that the preamble protects the rights of pregnant women, but this argument ignores the fact that the preamble is not binding. Another problem with the definition of a child is the age at which protection ends. Article One provides that "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." States can thus effectively choose at which age they wish the *Convention* to no longer apply.

Another set of provisions providing too little protection are those related to child soldiers. The CRC lowers the age of protection for child soldiers to fifteen. In effect, because the *Convention* is holistic, for child soldiers, this lowers the age of applicability for all the other rights as well. It should be noted that the *Optional Protocol on the Involvement of Children in Armed Conflict* raises the age of protection for child soldiers to eighteen. Nonetheless, this *Protocol* is only optional, and the age of protection for voluntary enlistment remains at fifteen.

A final provision that allows for state manipulation is Article Three. This article states that the best interests of the child shall be "a primary consideration." However, state parties often, conveniently, interpret the meaning of "primary" as a non-exclusive consideration to accommodate other interests. That is, governments often do not give primacy to the interests of children, claiming that while child interests are considered, other factors have led them to arrive at a politically-motivated decision.

There are only two states which have yet to ratify the CRC: Somalia and the US. As a failed state, it is clear why Somalia has yet to sign onto the *Convention*. However, the case is not so clear for the US, which signed onto the CRC in 1995 but never submitted it to Congress for ratification. The failure of one of the world's most powerful countries to implement the *Convention* undermines the legitimacy of the CRC by suggesting that it is somehow problematic.

As it currently stands, there is no complaint mechanism for violations of the CRC. The Committee on the Rights of the Child was created by the *Convention* to monitor the progress of parties in meeting the CRC's goals. Should states fall short of the standards set out in the *Convention*, the Committee's only option is to report these failures through the process laid out in the CRC. There are currently negotiations underway to create some sort of complaint mechanism for the *Convention*, but it looks as if this will, at most, be in the form of an optional protocol. Without effective enforcement, the CRC is virtually worthless. Horrendous abuses continue to be committed against children all over the world, some of which are committed more regularly and with more impunity now than they were before the *Convention* was implemented. The CRC gives the illusion of rights protection without any of the benefits. ◆

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Tibetans-in-Exile: Citizenship, Identity and Future

Jenny Yoo, first year, University of Toronto, Faculty of Law

Contemporary Tibetan history is marked by patterns of invasion, assimilation, and separation. Adding to the challenges facing this community's cultural and social survival is the recent recognition of citizenship for members of the Tibetan population in India. While celebrated as a landmark for the project of Tibetan identity-building, the granting of citizenship rights will simultaneously increase the barriers that Tibetans will face in reaching the goal of returning to a free homeland.

Throughout the 1950's, Tibet was territorially, socially, and politically integrated into the greater Chinese state. Those who remained in Tibet faced anti-religious movements and a national project of identity and ideology assimilation. With the failed uprising of 1959, the Dalai Lama fled, and the Tibetan government-in-exile was established in Dharamsala, India with a mandate of restoring a free Tibetan homeland. Referred to as the population-in-exile, the Tibetan diaspora around the world is bound by a common culture, religion, and heritage. However, Tibetans abroad are increasingly integrating into their host countries.

The recent granting of Indian citizenship to a Tibetan, 25-year-old Namgyal Dolkar, has been celebrated by some as recognizing the identity of "stateless" individuals. Initially denied citizenship by the Ministry of External Affairs, Dolkar took her case to the Delhi High Court where it was held that, under the *Citizenship (Amendment) Act 1986*, she was eligible for Indian citizenship. According to this statute, any person born in India†on or after January 26, 1950, but prior to the commencement of the Act on July 1, 1987, is a citizen of India by birth. While Dolkar's case was covered under the provisions of the Act, for Tibetans born between 1987 and 2004, only those with at least one Indian parent are eligible for citizenship. For those born after 2004, both parents must be Indian citizens.

The High Court's ruling complicates the landscape of Tibetan identity and citizenship, and its potential impact on the future of Tibet has led to concerns amongst some. The integration of Tibetans abroad into their respective host countries could impact the Dalai Lama's goal of restoring a free and independent Tibet. As stated by Thubten Samphel, the Secretary of the Department of Information and International Relations in Dharamsala: "If we in India *en masse*†become Indian citizens, it will leave a very negative impact on the psychology of Tibetans living in Tibet. They will lose hope and we will also cease to be representatives or spokespersons of Tibetans. They will think that Tibetans abroad have given up hope and that they are not acting on our behalf."

The citizenship language in the *Charter of Tibetans-in-Exile* portrays an expectation that Tibetan refugees will retain Tibetan citizenship unless they have "*had* to adopt citizenship of another country under *compelling* circumstances…" (emphasis added). Recent developments in the granting of Indian citizenship increase the complexities surrounding Tibetan identity, status, and hopes for a return to the homeland. It will become increasingly difficult to secure the return of Tibetan refugees to an autonomous Tibetan body. ◆

Tibetan Pilgrams in front of sacred Mt. Kailash

Photo Credit: Nicole Simes

MIDDLE EAST REGIME CHANGE *(Continued from page 8)*

hough he has clung on to power, his legitimacy is in question and it is unclear how long his anti-Western stance will support him.

Now, none of this is to say that the Palestinian cause or a push against American influence is no longer important. These issues continue to be at the forefront, and will remain there so long as Palestinian land is occupied and the U.S. conducts reckless foreign policies. Nevertheless, there seems to be a huge shift amongst the people, who are no longer willing to sacrifice their rights and freedoms for what has been mostly a rhetorical fight. No more can Egypt's emergency rule (which has been in place since the 1967 Arab-Israeli war) or Gaddafi's self-promoted warrior image justify robbing people of their rights.

If the West is serious about promoting democracy in the Middle East, it has to come to terms with the fact that what is happening on the grounds is democracy in its most honest and raw form. It cannot promote the statements of fear mongers, such as Israeli Prime Minister Benjamin Netanyahu, who say that what has happened in Egypt raises a threat to peace, stability, and the interests of all "civilized people." It needs to stop asking whether Egypt is the Iran of 1979, or whether the revolutions are going to usher in Islamist governments. The revolutionary ideology is not about declaring war on Israel or institutionalizing "radical Islam." To believe this is to fundamentally misunderstand these historical and peaceful revolutions. Notice that neither Israeli nor U.S. flags were burned, nor were anti-Western slogans chanted in the streets. Listen to the people and observe their actions and you can see that this is not about the West.

The revolutions are about people's desire for freedom, dignity, and the right to define their own future. To create fears that Egypt, Tunisia, Libya, or any other Middle Eastern/North African nation will bring in a "Hamas-type democracy" is to not only belittle the people of the region, but it makes a mockery of democracy itself. ◆

LEOPOLDO LOPEZ *(Continued from page 7)*

or monist. Mr. Carinno believes that most Latin American states in this position would follow the European tradition of monism and that "we can conclude by saying that in the majority of Latin American countries, once the American Convention on Human Rights has been ratified, it will become an integral part of domestic law and it will be possible to invoke its provisions before domestic courts and administrative organs, as any internal law can be invoked."

Sadly, even if Mr. Lopez receives an IACHR order and that order is automatically enforceable in Venezuelan court, Mr. Lopez's most demoralizing challenge will be against the Venezuelan judiciary itself. According to the Inter-American Commission on Human Rights, the Venezuelan judiciary seriously falls short of standard benchmarks of independence. The government of Hugo Chavez has removed the tenure guarantees that ensure proper separation of powers between the executive and the judiciary. Currently, all but a few judges on the Supreme Court can be removed at will by the government. Even if Mr. Lopez is successful, there is little hope that a Supreme Court that so heavily influenced by the executive branch will enforce an IACHR order that is contrary to Chavez's interests.

In his address to the IACHR, Mr. Lopez said that not only his rights and those of the 277 other disqualified citizens were at stake. He declared that this decision will set a precedent for the region and establish the IACHR's willingness to hold accountable those who breach the American Convention on Human Rights. However, even if the IACHR protects these rights to the fullest extent possible, the Court's power and effectiveness could be undermined because of the lack of independence of domestic judiciaries. ◆

ZIMBABWE *(Continued from page 4)*

Two major issues remain that are particularly problematic in respect to current violence and prospects for reconciliation. First, Zimbabwe's constitution has not

yet been finalized and put to a referendum. This means that many basic rights and freedoms do not yet have a legal basis. Secondly, Mugabe's insistence that he can call an election unilaterally, before a constitution is ratified, means that Zimbabwe could potentially be faced with another election in the absence of a new constitution.

The current power-sharing agreement calls for a new constitution to be passed before an election can be called. Prime Minister Tsvangirai has indicated that, in light of ongoing struggles to finalize the constitution, a referendum will likely not take place until August or September. He has suggested that, as a result, it is unlikely that an election will take place in 2011. Tsvangirai has also suggested that an election should not be held in the absence of electoral reform; specifically, the creation of an independent electoral body and reforms to voter registration.

Meanwhile, President Mugabe has recently asserted that he intends to abandon constitutional negotiations and call for an election to take place as early as June. He has used the government's ZANU-PF-induced negotiation gridlock as proof that the coalition is not working and that an election is necessary. Though the agreement has no clause regarding its gestation period, Mugabe has insisted that it was a two-year agreement that has expired and therefore, as President, an election can be called at his unilateral instruction. These positions are a marked departure from both Mugabe's past statements and the terms of the power-sharing agreement.

Mugabe's indefensible positions may have severe ramifications going forward. Open hostilities between the governing parties make it

highly improbable that their relationship will improve. This is due at least partly to the fact that President Mugabe has every incentive to maintain the status quo, as division and disorder in Zimbabwean politics and communities only strengthens his hold on power. The fact that his personal influence and ability to control the electoral process may be diminished by a new constitution provides further incentive to impede negotiations. If an election is held before a constitution is passed, Zimbabweans may face yet another decade of Mugabe rule. ◆

Liu Xiaobo *(Continued from page 11)*
nothing criminal in anything I have done. [But] if charges are brought against me because of this, I have no complaints."

In response to the Nobel Peace Prize, he said that, "This award is for the lost souls of June Fourth…it was due to their non-violent spirit in giving their lives for peace, freedom, and democracy."

China's Human Rights Record and the International Community's Reaction

The Norwegian Nobel Committee, in its press release in announcing the 2010 award, pointed out that China has become the world's second largest economy over the past few decades, and that this "new status must entail increased responsibility." The Committee goes on to underscore that China's citizens do not enjoy political rights, in particular the freedom of speech and association guaranteed by international agreements and Article 35 of China's Constitution.

China's response to the award was two-fold: fury at the international community abroad and censorship of foreign media within the State. China's Foreign Ministry stated that Mr. Liu was a criminal, and the decision to award him the prize was an "obscenity." China also threatened diplomatic relations with Norway, even though the Nobel Prize Committee is independent of the Norwegian government. China's state-run media perpetuated the notion that the Nobel Prize was an "arrogant showcase of Western ideology…[it] disrespected Chinese people and meant to irritate China" (Global Times Newspaper). Access to foreign reports on Liu was also blocked.

Prior to becoming an industrial powerhouse as it is today, China has always maintained that international human rights standards are too onerous for a developing country to

uphold, but has attempted to appease the international community through various avenues. For example, US-China human rights dialogues resumed in May 2010 after two years; and in high profile cases of torture and enforced disappearance of specific rights activists, such as Gao Zhisheng, China staged a "reappearance" for him to speak before foreign media in March 2010, before he disappeared again in April of the same year. His location is still currently unknown (Gao was a human rights lawyer who represented marginalized groups).

Now, no longer able to rely on its status as a developing country, China's temperamental reaction to this award demonstrates two points. First, China is unwilling, and does not intend, to move towards honouring its international human rights obligations. What was initiated as a strategy of appeasement has now turned into outright refusal. Second, perhaps more optimistically, is that the awarding of the prize in the face of China's disapproval demonstrates that the international community is unafraid to speak out against human rights violations committed by even the most powerful economies of the world. China's reaction reflects its enormous discomfort in the face of increasing international pressure – and it will need to step up to its international obligations if it is to become an integrated player in the international community.

The Law of Inciting Subversion to State Power

The Chinese government justified its reaction using the "fact" that Liu was a criminal in China. Liu was convicted of "inciting subversion to state power". Article 105(2) of the *Criminal Law of the People's Republic of China* states:

> *Whoever incites others by spreading rumors or slanders or any other means to subvert the State power or overthrow the socialist system shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; and the ringleaders and the others who commit major crimes shall be sentenced to fixed-term imprisonment of not less than five years.*

The court found that in drafting and organizing the signing of *Charter 08* and publishing six essays between 2005 and 2007, Liu incited others to overthrow the country's state power and the socialist system. In closing, the court concluded that "his criminal acts were grave, and he should be punished according to the law."

An intriguing part of this judgment is the court's reiteration that Liu was sanctioned "according to law." It appears that the Chinese judiciary system takes the rule of law very seriously, and uses it as a standard of measuring justice. Ironically, by enacting such an archaic crime as law, the Chinese government uses the very concept of "rule of law" to justify the political persecutions of rights activists.

Gao Mingxuan, Professor at the Renmin University of China School of Law, pointed out that other countries, such as the US, also have laws that confine freedom of speech in similar contexts. For example, Article 2385 of the US *Criminal Code* criminalizes "advocating overthrow of Government by force or violence."

However, Gao failed to note that the last time Article 2385 was used was in 1971. Between 2001-2007, at least 38 people (including Liu) were convicted under this law in China, and all of these convictions were found based on involvement in political and human rights activism. Article 2385 qualifies the offence with "by force or violence", and therefore, it is not violating the freedom to *peaceful* means of expression or demonstration. Conversely, in practice, China's law is wielded against such peaceful means: Liu was convicted under this law for simply publishing essays and organizing a peaceful petition.

Furthermore, in a democracy, there are safeguards that prevent disproportionate violation of rights under the cover of politically sensitive laws. For example, an independent judiciary will seek to balance the rights violated against the salutary effects of the policy, and seek to minimize any violations. Moreover, citizens are allowed to vote for a different governing party in the future if they are dissatisfied with the status quo. Therefore, while similar laws are enacted in developed countries, those laws seek to protect the institutional structure of a government and condemn violent acts of terrorism, and not to protect a particular ruling party.

The political affiliations of Chinese courts are accentuated with the use of this law to imprison political activists. Nowhere in Liu's judgment had the court referred to a Chinese citizen's constitutional right to freedom of expression (Article 35) and right to criticize state organs (Article 41). Instead, the court found that he "used the Internet's features of rapid transmission of information, broad reach, great social influence and high degree of public attention…to openly slander and incite others to overthrow our country's state power and socialist system."

The court did not protect against, but instead perpetuated, blatant disregard and violation of Liu's political rights without analysis and scrutiny of the country's laws. The effect of this law is not to protect the country's *institutional* structure as it is in other developed countries, but rather to allow the Communist Party to strengthen its grip on power under what is supposedly "rule of law."

Moving Forward

While China has experienced unprecedented economic growth, it has not shown good faith in progressing towards its international human rights obligations. Instead, it has used highly politicized laws to justify the imprisonment of many human rights activists. The international community, however, is unafraid to speak up against these horrendous, systematic abuses and has shown integrity in standing up to a rising economic power. This sends a strong message to China that the international human rights institution is robust and will not stand by human rights violations silently. In the face of this, the Chinese government must rethink its approach to its human rights record. As Salil Shetty, Secretary General of Amnesty International puts it, "The Chinese government may have succeeded in keeping Liu Xiaobo's chair empty, but, in his absence, that chair speaks volumes." ◆

Interview: Coming To A Theatre Near You

Laura Berger, first year, University of Toronto, Faculty of Law

Out of a quiet studio in brownstone Brooklyn, Propeller Films is putting together a documentary that explores questions of genocide and the world's response. Entitled Watchers of the Sky, *the film is due out in 2012. Propeller has a background of bringing complex social issues to the silver screen. Director Edet Belzberg's first film, which earned an Oscar nomination, followed the lives of street children in Bucharest, Romania. Recently,* Rights Review *spoke with Amelia Green-Dove, one of the film's producers, about the intersection between film and human rights.*

Q. I understand that *Watchers of the Sky* was inspired by Samantha Power's book *A Problem from Hell* – not the most obvious choice to adapt into a film. What were the challenges involved in translating political issues onto the screen?

A. The book was used as inspiration, not necessarily as a storytelling template. Raphael Lemkin's story, which the book tells so eloquently, is in many ways the heart of the film. Lemkin was the man who invented the very word genocide, and almost singlehandedly got the UN to pass the Genocide Convention, and yet who died a forgotten hero with very few people today knowing his name.

The trick to good storytelling is not necessarily adapting political questions but instead remembering that everything, including political issues, is secondary to story and character.

Q. What are the challenges inherent in working from Brooklyn but trying to address issues that touch far-flung reaches of the globe? How did you go about working in post-conflict areas, with little time on the ground?

A. [There are] challenges, but they can be overcome. Mostly it just takes time and effort (and money). It takes multiple trips to your location, and being in constant contact with people on the ground. Often Edet doesn't go into a place with cameras out – we'll spend a while doing the research and the legwork and earning people's trust before we take out a single camera….

Language and culture are never really as big a barrier as we fear them to be. Being sensitive, and trying to learn a little of the language, is important. But having a great translator and guide (a local "fixer" in film-speak) means you can do anything and go anywhere.

Q. Do you have any advice for human rights lawyers for how to use film and other media in their work?

A. Film has the undeniable power to bring issues to the forefront of people's consciousness, and to spotlight otherwise ignored issues…. Good storytelling bridges the gap between "us" and "them," while film can also help add context and educate people.

But, like all tools, film is just one tool in your toolbox as a human rights lawyers or an activist. Don't just turn the theater lights up and think that all your work has been done. There need to be real discussions after films, Q&As, and when films are brought into schools, they need to be accompanied by study guides…. Films are also [good] to pair up with a specific campaign that has a specific "ask." After audiences see a film like *An Inconvenient Truth* or *No Impact Man*, most people ask "but what can I do?" As an activist you need to have that answer ready. ◆

Cote d'Ivoire *(Continued from page 3)*

in Abobo. Water and electricity have been cut off to areas that support Ouattara. On the other side, there have been reports of the killing of members of Gbago's security forces in pro-Ouattara sections of Abidjan.

There have also been reports of violence in Côte d'Ivoire's western regions along the border with Liberia. Human Rights Watch has documented the recruitment and deployment of Liberian mercenaries by Gbagbo's forces and thousands of Ivoirian refugees have fled into Liberia, meaning this conflict has the potential to destabilize other countries in the region.
There has been strong international condemnation of Gbagbo's refusal to hand over power. Approximately 10,000 UN peacekeepers remain in the country and former colonial power, France, still maintains a military base there. ECOWAS suspended Côte d'Ivoire's membership, tried to mediate, and threatened to intervene if Gbagbo refuses to step down. The AU suspended Côte d'Ivoire's membership for undemocratic behaviour. The AU's Peace and Security Council originally granted the presidents of Burkina Faso, Chad, Mauritania, South Africa, and Tanzania a month to attempt resolution, but that time frame has been extended until the end of March.


Photo Credit: Marco Chown Oved

On March 4, 2011, US Secretary of State Hillary Clinton condemned Gbagbo's acts of violence. Clinton said Gbagbo and his security forces "have shown a callous disregard for human life and the rule of law, preying on the unarmed and innocent". Clinton said that Gbagbo should step down immediately.

Despite nearly universal condemnation, Gbagbo seems committed to retaining control of the presidency. Gbagbo has rejected amnesty offers and Ouattara refuses to entertain suggestions of power-sharing arrangements. Gbagbo's ability to maintain power will depend on his access to finances and the continued support of the military. Ouattara's government spokesman, Patrick Achi, has noted the importance of controlling the economy to force Gbagbo to step down. Achi stated, "The heart of power is in finance so this is one of the ways we hope to use to gain control." The West African Bank has blocked Gbagbo's access to Côte d'Ivoire's funds and World Bank president Robert Zoellick asked the West African bloc to freeze loans to Côte d'Ivoire. If Gbagbo is unable to pay the military, his hired mercenaries, or his political supporters, Ouattara could gain the additional support he needs to claim his rightful place as the democratically elected leader of Côte d'Ivoire. How this crisis is handled will set an important precedent for African democracy. ◆

RESOURCES IN THE DRC *(Continued from page 12)*

ally, companies and consumers may be willing to pay higher prices for conflict-free minerals, a end result which occurred in the diamond business through the Kimberly Process.

Another major concern raised during the roundtable is the implementation of s. 1502. Translating the transparency requirements into the Coltan market requires tracking the movement of goods through a complicated web of product flows across the globe. Artisanal miners in the DRC mine Coltan by hand, sell it to traders, who then sell it to smelters that process it into a form that can be used to make transistors. Transistor makers sell it to chip companies who then in turn sell it to handset or laptop makers, and many of which outsource their own handset production. Section 1502 requires the end-user of the product, such as Research in Motion (RIM), to track inputs from the top down. It may be difficult for a supply chain manager working at RIM in Ontario to guarantee that its mobile phones are conflict-free.

Even if such tracking is possible, can Coltan mined in the DRC truly be conflict-free? If the rebels cannot receive payment directly from large corporations, they can increase engagement in other types of illegal activities to make up for the income shortfall. For example, the rebels could erect more armed toll crossings to capture additional payments from non-rebel miners and extract "security" payments from legitimate mining companies. Hence, it is possible that rebel forces could continue to thrive in a "conflict-free" system by taxing the economy indirectly.

Another concern is that the regulation may increase the complexity of sourcing commodities from the DRC and encourage companies to avoid the region completely. The reduction in trade could put thousands of miners out of work and have the unintended consequence of acting as a recruiting machine for rebel forces. The worst of all outcomes would be that conflict actually increases as rebel forces fight over remaining economic hubs. The underlying problem in the DRC is that it has a weak and corrupt government which enables rebel forces to thrive and tax the economy in multiple different ways: whether rebels profit from Coltan directly by owning a mine, or via toll roads or "security" payments, the fact that they exist and operate freely in the DRC is problematic. It is not certain that placing requirements on companies to track the flow of commodities through their supply chains will strengthen the DRC government to combat rebel forces.

Section 1502 of the *Dodd-Frank Act* should be investigated further in Canada. There are substantial benefits of transparency to investors, as it provides greater stability to capital markets protecting against supply or price shocks, which will attract more capital into the sector. Further, similarly to the Kimberly Process, adopting regulation such as those contained in s. 1502 could increase awareness of the atrocities associated with conflict minerals and create demand for products free from their use. While regulation by itself will not oust rebel forces from the DRC, the hope is that it will provide a vehicle by which to transfer market power to civil society and reduce the rebels' stronghold on the DRC. ◆

RESOURCE CURSE *(Continued from page 12)*

whether the information will only need to be furnished to the SEC instead of filed. One of the key differences between information that is furnished rather than filed is that the former has lower liability implications for corporations under SEC regulations. Another issue that has not yet been determined is whether the information will be required to be audited. Without any level of assurance being provided from an independent third party, the reliability of the information becomes uncertain and the value of this legislation will be diminished.

The structure of the Canadian regulatory system also presents a unique challenge in implementing such reform. With 13 separate provincial and territorial securities agencies, the system has been criticized for its sluggish rate at implementing changes to regulations and for inconsistent enforcement standards across jurisdictions. Some of these issues may be resolved through the current reference to the Supreme Court of Canada on whether the federal government has the authority to create a national regulatory body. If the Supreme Court decides in the federal government's favour, Parliament can approve the proposed *Securities Act* that will hopefully improve our regulatory framework.

Despite these obstacles, Canada needs to begin taking a stronger stance against the resource curse through legislative reform. We are the biggest player in the global extractive sector. It is time for us to take ownership of our role of as the leader in this industry, set an example in transparency initiatives, and ultimately urge other key players to take a stance on this issue. ◆

SUDANESE IDPS *(Continued from page 13)*

lack of employment opportunities. In South Sudan in particular, a region characterized by extreme poverty, communities are unlikely to even provide basic necessities for the sudden influx of returnees. For those people whose villages were destroyed in the civil war, the difficulty will lie not only in reintegrating into their community, but also in rebuilding it.

Violent clashes between tribes are also unlikely to cease in the near future. The large number of small arms in circulation, a result of the civil war, has increased the potential for violence in inter-tribal conflict, creating an additional barrier to stability and reintegration.

As a result, the growing number of IDPs returning to the South in the wake of its independence may only perpetuate existing problems. When IDPs fail to reintegrate into their communities of origin they are often forced into a pattern of secondary displacement, which can lead them either to their initial region of displacement or to a different region altogether. In previous years, the government of South Sudan has been reluctant to allow IDPs to resettle in urban areas in the South, promoting a strict policy of return to their community of origin.

Minority Rights

It is also unclear what minority rights, if any, will be afforded to the South Sudanese who have settled permanently in the North, and vice versa. With the Muslim and Christian populations of Sudan now divided, each with their own representative government, some fear that the religious and ethnic minorities on either side of the border might be persecuted – an outcome all too likely in the North, given president al-Bashir's prior human rights transgressions. In the South, the drafting of the constitution will be a key opportunity to affirm minority rights, but it remains to be seen whether minorities' concerns will be heard and considered in the drafting process.

In sum, the fate of internally displaced persons in Sudan is largely unknown at this time. Unlike refugees, IDPs do not receive any special protection under international conventions, leaving them vulnerable to the decisions of domestic governments. The major question in coming months will be whether Sudan and South Sudan's governments will be able and willing to assist IDPs as the secession once again alters their way of life. ◆

The Ombudsman in Kerala, India

Joshua J.M. Stark, first year, University of Toronto, Faculty of Law

In a dusty white walled courtroom, an elderly man is shouting and waving his arms. "A tree is overhanging his property and polluting his pond" whispers my Malayalam translator. "He wants it removed, but the *panchayat* has done nothing". His embattled target is another elderly man, the current Ombudsman of Kerala. He is here in the city of Kannur for two days to hold sittings and hear grievances, although they are not all as colourful as this one.

The Ombudsman is originally a Swedish institution which has since been adopted widely across the world. Ontario residents might be familiar with the provincial Ombudsman, who has recently investigated police actions during the G20 protests. While there are a variety of ways in which the institution functions, the core purpose is to receive, investigate and resolve citizen's complaints against governments. The intent is to create an independent and powerful check on government bodies – state bureaucracies, service providers, and other state institutions.

In the south Indian state of Kerala, the Ombudsman institution has taken on a novel form. It has a limited jurisdiction: it can only see cases related to local self-government institutions. For example, it oversees cases against a *panchayat* – a level of government similar to a municipality, which might govern a single village or a larger region containing several villages.

The institution functions effectively like a court, albeit one where some rules of procedure are simplified. A citizen files a complaint and is given a date for a hearing at one of the Ombudsman's sittings across the state. Once both parties are present at the hearing, they present their cases. The Ombudsman can then resolve the case by issuing a reward or injunction. Or, if he believes more information is necessary, he may order an investigation through the Deputy Director of Panchayats, who investigates cases and produces reports. In the case discussed above, the Ombudsman may request a report with photos and measurements of the tree and pond in question, along with relevant local bylaws. At the next available sitting the report will be presented and the Ombudsman will make a further decision.

Boats in Kerala, India

Photo Credit: Anastasia Tubanos

Many of the complaints submitted to the Ombudsman deal with very serious matters. The Ombudsman frequently resolves issues about the provision of safe drinking water, non-payment of wages, unlawful construction, and the allocation of houses designated for the poor. Sometimes these are cases of mismanagement, but corruption is also common. For example, *panchayat* officials are known to enter false names into government work projects, and then collect the wages themselves.

Unfortunately, the Kerala Ombudsman has not received the support it needs from the state government. Since 2001 the Ombudsman has requested funds for an independent investigation team, and has been consistently denied. As it stands, the Ombudsman must rely on local officials – usually the Deputy Director of Panchayats – for all investigations. This is problematic since these officials are not trained or experienced in such work. More importantly, as employees of the *panchayat*, there is an obvious conflict of interest in asking them to investigate the actions of their employer.

Despite the apathy towards funding, the state government has not been overtly hostile to the Ombudsman. This may be due to the uniquely limited scope of the Kerala Ombudsman. The state government – which decides the Ombudsman's budget and appointment – is beyond the reach of the Ombudsman. Perhaps this is for the best: if the Ombudsman was seen as a threat, the state government might use its effective control over the organization to manipulate its behaviour. While having an elderly man yell at him about a tree is bearable, it is unlikely that the Ombudsman could withstand the same from the Chief Minister. ◆

BRIDE KIDNAPPING *(Continued from page 6)*
family life, take over the household and continue the family line. A documentary by Petr Lom on bride-kidnapping in Kyrgyzstan reveals through interviews that the concept of love takes a different form in the Kyrgyz marriage setting from that which is pictured in Western society. The Kyrgyz concept of love is characterized through the love of parents to children or the routine life of two. Speaking to the issue of a social hierarchy within bride-kidnapping, Handrahan asserts that bride-kidnapping reinforces male dominance and manhood. The Human Rights Watch report included an interview from a governmental human rights official, who stated that Kyrgyz women are very shy and do not know how to deal with men. Therefore, some women are grateful to be kidnapped; otherwise, they would never get married and have children.

Some have expressed the view that women hint that they want to be kidnapped, and others, like the governmental official, believe that women are too shy to express their opinions to men and bride-kidnapping is therefore in their best interest. In my view, this failure to express open opinions on love and marriage is also difficult for men, as well as the whole of Kyrgyz society. Men and women are not educated on sexual and reproductive health, or on how to build healthy pre-marriage relations. This lack of communication has created an environment for the tradition of bride-kidnapping to exist.

According to Kleinbach, who has conducted a number of solid sociological research projects on bride-kidnapping in Kyrgyzstan, the phenomenon of bride-kidnapping is also practiced widely in Kazakhstan, Turkmenistan and the Caucasus. In Kyrgyzstan, according to the Human Rights Watch report, the cases of bride-kidnapping are on the rise and rose sharply after the collapse of Soviet Union, especially in rural areas.

Legislation and enforcement

Bride-kidnapping is a violation of national and international laws, yet in practice it is rarely prosecuted and socially is not considered to be a crime.

Bride-kidnapping is illegal under the *Criminal Code* of the Kyrgyz Republic. Article 155 of the *Code*, as of the last 2009 amendments, states that, "forcing of a woman to enter into marriage or continue the marriage cohabitation; as well as abduction of a woman to enter into marriage against her will…is punished with a fine of 100 and up to 200 of Calculated indexes, or up to 3 years of limitation of freedom". The Calculated index was created to avoid currency inflation adjustments and it currently amounts to 100 soms. 100-200 Calculated indexes would amount to 200-400 Canadian dollars. A limitation of freedom is stipulated under Article 46-3, which provides for the restriction of freedom within the convicted person's residency without isolation from the society, under the supervision of specialized state body. Part 2 of the Article identifies that the "limitation of freedom is imposed for the crimes of minor gravity". Article 155 was amended in 2007, lessening its penalty from imprisonment up to 5 years to limitation of freedom for up to 3 years. The legislators did not provide a reason for this amendment.

Bride-kidnapping is a violation of numerous international human rights treaties that Kyrgyzstan has ratified. There are specific articles and conventions that apply: Article 16 of *Universal Declaration on Human Rights*, Article 23 of the *International Covenant on Civil and Political Rights*, Article 10 of the *International Covenant on Economic, Social and Cultural Rights*, Article 16 of the *Convention on Elimination of All Forms of Discrimination against Women*, and the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage*. All of these documents stipulate the right of a woman to enter into marriage freely and with her full consent.

Despite domestic criminalization and international human right entitlements, bride-kidnapping is almost never raised before the national courts. A survey conducted by Sarah Amsler and Kleinbach revealed that 82.5% of kidnappings resulted in the marriage, and only in 16.6% of cases was the marriage stopped by the woman's, or her parents', refusal. The survey further concluded that the woman will stay at the man's house once she is kidnapped due to social stigma or curses. The women who refuse to stay in a marriage do not sue their abductors because of the same social norms that surround bride-kidnapping. The Human Rights Watch report reveals an interview with a policeman who did not consider bride-kidnapping to be a crime and acknowledged that he kidnapped his wife too. Lom's documentary depicts a father of a kidnapped girl who turned to the police, but the case never was investigated, nor prosecuted.

The role of law

Unfortunately, no legal studies have been conducted on bride-kidnapping. I identify this problem as legal and institutional as well as social. I believe that through legal tools the social changes could begin that will empower women to exercise their right to consent to marriage.

Kyrgyzstan has an obligation to respect, protect and fulfill women's human rights under the international human rights treaties that it has ratified. The state has an obligation not only to take all appropriate measures to eliminate discrimination in marriage and ensure free and fully consensual marriage, but also to eliminate pervasive gender stereotypes based on the superiority of men and inferiority of women.

The obligation to *respect* requires that the Kyrgyz governmental agencies refrain from taking any direct or indirect measures that would result in preventing individuals from the right to a free and fully consensual marriage. Law enforcement officials and the judiciary have an obligation to refrain from denying or limiting access to justice for women. Legislators should refrain from identifying bride-kidnapping as minor crime with light punishment.

The obligation to *protect* requires the Kyrgyz governmental agencies to take measures that prevent third parties from the practice of bride-kidnapping. Kyrgyzstan is obliged to address the bride-kidnapping violation by non-state parties. Law enforcement officials are obliged to protect women and file law suits against abductors. Judges are obliged to protect women through prompt, gender-sensitive, and effective means. As Cook and Cusack state, the obligation to protect also includes the duty to conduct awareness-raising on biases and prejudices. The state has to ensure effective protection of women from this human rights violation through all of its agencies.

The obligation to *fulfill* requires the Kyrgyz governmental agencies to undertake positive measures to abolish bride-kidnapping through the adoption of appropriate legislation as well as administrative, budgetary, judicial, promotional and other measures. Legislators must recognize bride-kidnapping as serious breach of human rights of women and impose greater accountability. The state is obliged to take effective steps to set a plan for the eradication of harmful practices like bride-kidnapping through education and training of law enforcement bodies and the judiciary.

Due to the pervasiveness of the bride-kidnapping custom in the Kyrgyz society, the state has to take effective, prompt and operative measures to eradicate the continuation of this harmful practice for women. The role of law is important in shaping social norms. It is vital to recognize bride-kidnapping as a serious crime that violates women's fundamental human rights and freedoms. ◆

Panelists (left to right): Fara Siddiqui, Ahmed El-Maati, Barbara Jackman, Professor Kent Roach

Photo Credit: Safoura Zahedi

Only Because You're Muslim

Sofia Ijaz, first year, University of Toronto, Faculty of Law

Ahmed El-Maati was detained and tortured in Syrian and Egyptian prisons for 790 days with, according to the 2008 Iacobucci Commission of Inquiry, the complicity and contribution of the Canadian Security Intelligence Service (CSIS). He was released without charge.

El-Maati is a Canadian citizen.

El-Maati, along with his lawyer Barbara Jackman, Professor Kent Roach, and Faraz Siddiqui – a young Muslim Canadian activist who was detained in Lebanon in 2009 – sat on the panel for the Muslim Law Students Association's event, "Anti-Terror Measures Directed at Muslims in Canada," on March 2nd, 2011.

Jackman described the role of Canadian officials in El-Maati's case: "It's what I would call opportunistic rendition. Canada didn't kidnap him and put him on a plane. They knew he was going to travel [to Syria] to visit – to get married actually; and so they advised the others – the Americans we think, and likely the Syrians in order to ensure that he would be detained. And he was."

Such actions by government officials go unchecked in the realm of national security. Professor Roach cited the government's power to "over-claim" secrecy as a recipe for abuse: "The Canadian Parliament is the only advanced legislature that I know that does not let elected officials see secret information[…] if you don't see the secret information, you can't hold people to account."

Canada began issuing security certificates in 1991. In addition, there is an "inadmissibility" provision in immigration law which holds that, if there are reasonable grounds to believe that you are a member of a terrorist group, you are inadmissible for immigration to Canada (*Immigration and Refugee Protection Act*, s. 34(1)). The court's broad interpretation of "member" is the key problem with this provision. A broad understanding of who qualifies as a member of a terrorist group means that the provision captures even those who pose no threat to Canada – Jackman noted the example of a Palestinian who worked at a PLO hospital.

In reality, this provision further victimizes those fleeing persecution - i.e., refugees: "People who have fled their country because of severe oppression are often from a minority group that has taken up arms – so you think of the Kurds, the Tamils, the Palestinians. They've all had representative organizations involved in armed conflict." Jackman cautions, "You don't have to be a member of a terrorist organization to be caught by the provision."

El-Maati's case is emblematic of the injustice faced by Canadian Muslims, but he isn't alone. Maher Arar, Muayyad Nureddin, and Abdullah Almalki are all Canadians who met similar fates, and the story of injustice is more widespread than the media lets on. Siddiqui recalled his detention by the Lebanese army, who believed he was part of Al-Qaeda and was holding a fake passport. As a brown-skinned Muslim, he didn't look all that "Canadian" to those detaining him. For Siddiqui to be released, the Canadian embassy needed only to verify his citizenship. They refused.

Siddiqui, in feeling the weight of El-Maati's injustice, said, "sometimes I feel embarrassed to even bring my topic up." But, he aptly pointed out, "I realize that the relative insignificance of [it] is its most important aspect. "

Complicity in torture. Abandonment. Detention without charge. Demonization. This is what Canada has subjected its own citizens to. It is unacceptable. ◆

Panel Discussion: The 160 Girls Project

Alice Tsier, first year, University of Toronto, Faculty of Law

''In Kenya, every 30 minutes a girl is raped." This is the chilling statistic that Fiona Sampson, the executive director of *The Equality Effect,* offers to explain the urgency of her organization's work. "That means that while we speak here today, three women will be raped." Sampson was the first speaker at a panel discussion co-sponsored by the Law and Feminism Series and the IHRP. The panelists discussed the 160 Girls Project – an *Equality Effect* initiative that seeks to bring justice to rape victims in Kenya. Speaking with Sampson were Christine Kung'u, a human rights lawyer from Kenya and L.L.M Candidate at the University of Toronto, as well as Mary Eberts, a human rights lawyer and the current Ariel F. Sallows Chair in Human Rights at the College of Law, University of Saskatchewan.

The 160 Girls Project aims to achieve justice for girls in Kenya by securing an order calling on the state to enforce its own existing laws against sexual violence. The initiative is still in its earliest stages and there are several legal paths the organization could take in order to secure the desired remedy. One unique aspect of this project is that it will draw on the Canadian experience in advancing women's rights as a starting point for the systemic equality analysis which it hopes to develop in whatever course of litigation the organization and its partners in Kenya choose to pursue. *The Equality Effect* draws on the Canadian experience under Section 15 of the *Charter*, at the express request of its African partners. The reason for this is that the work is so urgent that there is no time to start from scratch and, in Sampson's words, "reinvent the equality wheel."

Police violations of victims' rights are an ongoing barrier to justice in Kenya. Kungu'u described the experiences that girls and their families face when they choose to bring rape cases to the attention of the police. First, girls and women face the threat of violence and rape at the hands of the police. Second, there are numerous financial barriers to achieving justice. Police officers will refuse to drive out to rural communities to investigate rape, citing a lack of gas for their cars and forcing victims to pay. A third barrier is the inefficiency of the judicial system – cases drag on for so long that victims and their families give up, wanting to move on with their lives. Finally, the stigma associated with rape prevents individuals from going to the police for fear of the information spreading in their communities.

The Canadian experience has some starting points to offer for attempting to combat police behaviour through the courts. The legal team can draw on successful cases such as *Jane Doe v. Metropolitan Toronto Commissioners of Police* (1990), 72 D.L.R. (4th) 580 (Ont.Div.Ct.). However, the Canadian experience includes a lot of "undone work and mess-ups along the way," according to Eberts. Often, after the initial steps are taken, women find that the processes of the justice system work against them, allowing their attackers to escape punishment. Eberts spoke as well about formal and informal structures of impunity that prevent women from achieving empowerment through the law and the need to be sensitive to the ways in which discretion (such as a prosecutor's discretion as to whether or not to bring charges) can turn into a mechanism of oppression. Eberts' speech was a reminder that, although Canada's experience had much to offer for a project such as 160 Girls, there still remains a lot of work to be done for women's equality here at home. ◆

Restorative Justice and Post-Conflict Societies

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Growing up, at some point or another, irrespective of how true it may be, we have all been taught that good triumphs over evil. That eventually, after all the pain, suffering and death, the bad guy ceases to exist, leaving society free to once again resume its normal course of life. But what happens when, in the aftermath of widespread violence, a society is so torn apart that it can barely bandage itself back together, let alone move on?

For instance, after the end of the nine-year civil war in Sierra Leone, the well-documented acts of murder, mutilation, rape and abduction left the community scarred and the civilians paralyzed. Although many of those responsible for the nightmare had been punished, the victims of such horrific acts were left with permanent wounds. In these kinds of cases, the question becomes whether punishment alone is sufficient to administer justice in post-conflict societies.

Andrea Russell, an Adjunct Professor of International Criminal Law at the University of Toronto and a pioneer in the study of genocide and war crimes, specifically addressed this matter in the seminar titled "Restitution and Restoration: A Question of Justice". During her speech, Dr. Russell emphasized that in post-conflict societies, punishing the offender alone is not an effective means of administering justice because the needs of the victims and society at large are left unaddressed. Therefore, corrective bodies must implement mechanisms that serve a larger purpose than mere punishment or simple restitution.

For this very reason, the past few decades have seen the rise of a concept called restorative justice, which seeks to address the needs of those affected by the wrongful acts and to restore the torn society once more to a functional state. For instance, in 1999, immediately following its nine-year civil war, Sierra Leone, with the help of the World Bank, undertook a reintegration and rehabilitation program. Its purpose was to, first, reintegrate ex-combatants into society and, second, to assist in the recovery of the war-affected communities.

Another institution breaking down the dichotomy between restitution and retribution is the International Criminal Court, which opened its doors to the public in 2002. The ICC, responsible for correcting human rights violations around the world, has incorporated a large restorative justice component into its practices.

For example, understanding how important it is for victims to gain closure, the ICC allows those affected by crimes to actively participate in the proceedings so that they may one day become whole again. Furthermore, aside from having a trust fund for the victims, the ICC often allows for reparation orders, whereby the offender has to pay the victim an amount to compensate the harm suffered.

It is therefore clear that, although punishment and restitution remain a significant part of administering justice, it is often only one of the many steps required in achieving that end – especially in societies recovering from widespread human rights violations. ◆

In The Classroom: Selected 2010-11 IHRP Events

September 15 – Kirk Boyd, Berkeley Law School – "'The International Movement for Enforceable Human Rights"

September 29 – Andrea Prasow, Human Rights Watch – "Military Commissions in Guantanamo: Rejection of International Law, or Reinterpretation?

October 13 – Melissa Upreti, Centre for Reproductive Rights – "Pursuing Accountability for Human Rights Abuses Associated with Maternal Mortality in India"

November 19 – UN 1267 Terror Blacklist Symposium – Keynote: UN Ombudsperson Judge Kimberly Prost

February 9 – Noura Erakat, Georgetown University – "Is it Just Wrong or Illegal? Situating the Gaza Blockade between International Law and the UN Response"

February 15 - Danielle Saada, Former Head of Justice Section with the UN in Haiti – "The Rule of Law, Development and Human Rights in Haiti: One Year after the Earthquake"

March 4 – Corporate Accountability Symposium – Keynote: Beth Stephens, Rutgers University, formerly of the Centre for Constitutional Rights

March 15 - Jomary Ortegón Osorio, Restrepo Lawyers' Collective – "The State of Human Rights in Colombia"

160 Girls in Kenya *(Continued from page 10)*

ment agencies, that it is hard to know where to begin when developing a legal strategy demanding accountability. Kenya's laws on sexual assault are good and the country's new constitution, passed last summer, entrenches an extensive bill of rights. As the lawyers, magistrates, and law professors around the table discusses the positive and negative aspects of pursuing a criminal, civil, or constitutional claim, the social workers and other front-line care-providers ensured our work was grounded in the girls' actual experiences in dealing with the effects of rape and their frustrated efforts thus far to end impunity. Keeping the victims' experiences front and centre, we began by discussing the remedy we hope to achieve and worked backwards from there.

The card presented to Sampson at the end of the week's session was decorated with pieces of traditional Kenyan fabric and read, "*People working together can move an elephant into a house.*" While there may be years of heavy lifting ahead of us in the 160 Girls Project, it was truly inspirational to watch such a diverse and enthusiastic group of women come together to plan how exactly it is we might fit that elephant through a door frame. *All pulling together*, I feel confident will we succeed. ◆

Libyan Migrant Workers *(Continued from page 9)*

many workers attempt to flee to neighboring Egypt and Niger. In the regime-controlled west of Libya, migrant workers have been subjected to strip searches and the confiscation of identification as they attempt to reach the Tunisian border – a fruitless effort for many, as they are immediately detained in an attempt to force them back to work.

Various institutions of the United Nations and non-governmental organizations have repeatedly voiced concern about the plight of African workers in Libya, a warning that seems to have fallen upon deaf ears both within the country and in the international realm. While the United Nations High Commissioner for Refugees has called for both warring parties to recognize the "vulnerability of Sub-Saharan workers and to ensure their protection," no concrete efforts have been taken by either side to ensure their safety. The result has been the accosting of and violence toward Africans by Libyan youth and armed gangs on both sides of the conflict.

Furthermore, as relief missions and evacuations have taken place on a large scale by countries ranging from Canada to China, there has been zero effort to assist in the transport of Sub-Saharan nationals to their respective home countries. This despicable lack of humanitarian assistance to those most vulnerable has resulted in the Emergency Director for Human Rights Watch, Peter Bouckaert, calling for nations participating in humanitarian missions to recognize that "[t]he Sub-Saharan African workers are in dire need of evacuation because of the threats they face in Libya." In addition, Bouckaert has rightly called for these countries to aid in the transportation of African nationals to their respective countries immediately.

The inability of many of these nations, in particular Somalia and Eritrea, to evacuate their citizens from Libya and the surrounding impromptu refugee camps has had the effect of placing the protection of these workers solely in the hands of the international community. Countries which have the resources and logistical ability to protect and evacuate these workers should do so. Safety should not be a luxury for those holding citizenship from more affluent countries. Human life is not a commodity based on fiscal resources and the logistical capabilities of one's home country, but rather a right, one which has been made apparent by various international treaties and declarations. The European Union, Arab League, United Nations, and various international bodies should ensure that their member states put forth the necessary resources to ensure the safe rescue and passage of these and other workers away from mounting persecution within Libya.

While the United Nations World Food Program has announced a $39.2 million emergency operation to feed over one million refugees over a three month period in Libya, Tunisia and Egypt, this alone cannot protect against the mounting humanitarian crisis that is surely to result. The African continent knows all too well that temporary refugee camps have the habit of becoming permanent hives of poverty, malnutrition and the proliferation of HIV/AIDS and a vast swath of communicable diseases. The international community and the citizenry of Western countries should put pressure on governments involved in the evacuation and relief process to ensure the safe return of those most vulnerable in the ongoing Libyan conflict. ◆

Photo Credit: Mark Landsman

Interested in contributing to the *Rights Review*?

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GAY RIGHTS IN UGANDA *(Continued from page 10)*

can homophobia also remains notable. Not only is the homophobic rhetoric of several African Bishops built on homophobia imported in part by missionaries, but it was internalized by many of the current leaders in Africa during their upbringings in Christian missionary schools. Bishop Barbara Harris of Massachusetts was succinct in describing homophobia's lineage:

"the vitriolic, fundamentalist rhetoric of some African, Asian and other bishops of color…was in my opinion reflective of the European and North American missionary influence compounded in the Southern Hemisphere nations during the 19th, 10th and early 2nd centuries."

Because of this, African leaders including Mugabe and Museveni were not exposed to traditional African sexual modes, nor homosexuality as anything other than sinful and "un-African". Between Christian indoctrination and a colonially spurred nationalistic hyper-masculinity, political elites are able to mobilize mass support on the basis of homophobia.

This is not the complete picture, however. Part of the resurgence of hatred in places like Uganda can be attributed to ultra-conservative American evangelists arriving in Uganda and elsewhere to propagate a message of discrimination and bigotry. This is partially a strategy to stop gay rights from progressing in American churches. By creating fissures and entrenched disagreements within the global organizations that help set policies for American churches, specifically of the Anglican and Episcopal denominations, gay rights will not progress in US churches. Notable among these missionaries is Scott Lively, who had a hand in creating the so-called Uganda Anti-Gay Bill.

Regardless of intentions, the methods used to stir up homophobia draw on the historical context. Homosexuality is labelled as "un-African", just as it was during colonialism, and painted as a threat to the family (an appeal to very strongly held African communal values). That homosexuality is framed as "un -African" also lends credence to the notion that it is an import from the West; a decadent colonial remnant or a Western conspiracy (both notions appeal to extremely nationalist sentiments, as described above). These are tacitly supported by Lively's denunciations of a "gay agenda" seeking to recruit and corrupt African youth.

Leaders like Museveni are able to piggyback on Lively's proselytizing by declaring their own homophobia, thereby winning popular support. Stated more generally, if post-colonial leaders declare their antipathy towards a Western conspiracy (a notion massaged by Lively), it is essentially a statement of nationalism, which wins support. The relationship is symbiotic: both the leader and the reverend win credibility and resources from the other. Interrupting symbiosis by delegitimizing the discourse of homophobia or disconnecting it from the nationalist narrative is a crucial first step in achieving gay rights in sub-Saharan Africa.

Gay rights have a long way to go in many places around the world. Only through perseverance and more importantly, a thorough understanding of the local context, can actions be taken that facilitate the emergence of tolerance for queer individuals. In this short essay, I have presented a basic outline of some of the major drivers of homophobia in sub-Saharan Africa in an effort to create a sense of awareness among future rights activists, who I hope will take up the cause of gay rights in the region. ◆

Ending Excessive Pre-Trial Detention in Uganda

This semester, students completed a comprehensive report on pre-trial detention in Uganda, which includes recommendations targeted to the Ugandan government to end associated rights violations. The report is unique in that it combines legal research with empirical analysis of data collected by our partner, Avocats Sans Frontiers (Uganda Mission), from over 2000 prisoners currently imprisoned pending trial. The students worked closely with Dr. Jerry Brunner in the Department of Statistics at the University of Toronto to complete the empirical analysis. This month, one of our students will be traveling to Uganda to publicly launch the report and consider possible test-case litigation strategies.

Ending Impunity for Violence against Journalists in Mexico

Having returned from a fact-finding trip to Mexico City in the Fall, students completed a report on violence against journalists in Mexico, which will be co-authored with PEN Canada and a coalition of Mexican NGOs. We expect to publicly launch the report in the Spring, and are also in discussions with Mexico NGOs in respect of related advocacy projects. This semester, students also had the opportunity to meet with John Raulston Saul, the President of International PEN, and Marian Botsford Fraser, Chair of the Writers and Prison Committee of International PEN, discuss their work.

Public Legal Education Campaign re: Marital Rape in Ghana

In collaboration with Equality Effect, our student researched and prepared a week's worth of law school curriculum dealing with the criminalization of marital rape in Ghana; the curriculum will be delivered by Professor Elizabeth Archampong this month at the Kumasi campus of Ghana Law School. Our student is now drafting public legal education materials on marital rape targeted at illiterate rural communities in Northern Ghana. In February, she traveled to Nairobi to participate in the development of strategic litigation for the Equality Effect's '160 Girls' project.'

Analyzing the Humanitarian Law Aspects of the Omar Khadr Case

This term, the IHRP partnered with Avocats Sans Frontières (Canada) to draft a report on the treatment of and charges against Omar Khadr under the Guantanamo Military-Commission. Our student will assess Khadr's status under International Humanitarian Law and Public International Law, and he will soon be travelling to Quebec City to meet with our partners. The report is expected to be published later this year.

Land Rights for the Mayan People of Belize

Our student is assisting Moira Gracey, a lawyer with Carranza LLP, who is representing several Maya communities from Belize in their claim for recognition of title to their customary lands. Our student is conducting comparative research on the recognition of Indigenous governance in other countries in order to support the Maya in their negotiations with the government of Belize.

Rights for Refugees Fleeing Persecution on the Basis of their Sexual Orientation or Gender Identity

Through this project, which is in its fourth year, students provide country-specific research for refugee lawyers advancing claims based on sexual orientation and gender identity persecution. This year, students completed research on St. Lucia, Latvia, Guatemala, Honduras and, soon, Bangladesh. Students have also made an effort to become active in the refugee law community, by putting out a broad call for research requests, and inviting two prominent refugee law lawyers - Michael Battista and El-Farouk Khaki - to speak at the Faculty. Significantly, we launched a research portal through the IHRP site to host all its past reports. The portal has already received many hits, sometimes hundreds for particular country reports.

Accountability for Mining Companies Overseas

The students' user guide to the Review Process of the CSR Counsellor for the Extractive Sector is nearing completion. Student research and writing regarding the steps in the process, practical considerations, and alternative options for affected communities has been compiled and sent to our partners, KAIROS, and the Canadian Network on Corporate Accountability, for feedback and final approval. With the assistance of volunteer students from the York-Sheridan School of Design, we hope to publish the report by the end of March and to translate it into Spanish and French.

Another IHRP student is working with Revenue Watch Institute to conduct securities law research regarding possible means to require companies listed on Canadian stock exchanges to publish what they pay to governments for natural resource exploration and extraction on a country-by-country and even project-by-project basis.

Bringing a Human Rights Perspective to International Investment Arbitration Decisions

Together with Professor David Schneiderman, students launched an empirical study to determine the extent to which human rights are considered in international investment arbitration decisions. The first step in the project was to define the human rights obligations that could arise in the context of the complex commercial disputes. From there, students set out to analyze (or "code") at least fifty reported decisions. In addition to the quantitative analysis, students undertook qualitative research by documenting human rights abuses that arose in the cases. The goal is to shed light on the way in which human rights standards are systematically absent from international investment disputes, even though they are often reported on in the media. We hope to discuss this trend in an interim report to be published this summer.

Rights for Prisoners with Disabling Mental Health Issues

The Working Group's mandate is to support the Canadian Association of Elizabeth Fry Societies to explore international remedies for the unjust treatment of mentally ill prisoners in Canadian penitentiaries. This term, students conducted research as to rights violated and the mechanisms for holding the Canadian government accountable in international law. By the end of the year, students will draft a memo outlining the most efficacious procedure for launching a complaint and the possible remedies to be sought from the Canadian government. ◆