UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

IHRP COMMUNITY MESSAGE TO CELEBRATE INTERNATIONAL HUMAN RIGHTS DAY!

To celebrate International Human Rights Day (December 10), I am pleased to provide you with an update on our program, and the amazing work we are doing to advance the field of international human rights law.

The first term is always a whirlwind. It is simply amazing what can be accomplished in a short period of time when we pair our incredibly talented students with partner NGOs who have the vision and creativity to effectively harness our students' enthusiasm and excitement.

This semester alone, the IHRP was profiled in international and Canadian media (Globe and Mail, Al Jazeera), granted permission to present oral argument as an intervener before the Supreme Court of Canada in the *Chevron* case, and provided our partner NGOs with countless briefs and memos.

We are also excited to launch a new IHRP alumni network to engage Faculty of Law alumni. If you are an IHRP alumni (i.e. past intern or clinic student), today you will receive an invitation to an exclusive launch event on January 28 featuring James Stewart (LLB75), Deputy Prosecutor of the International Criminal Court. Our non-alumni supporters are welcome to join us for a public event on January 29 featuring James Stewart in conversation with Richard Dicker of Human Rights Watch (details below).

Finally, to ensure the long-term sustainability of the IHRP and to tangibly demonstrate the value of the program to our stakeholders, we are launching of a monthly donor campaign. Please consider showing your support for legal education that transforms Canadian law students into global citizens: https://donate.utoronto.ca/ihrp

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ADVOCACY

Yaiguaje et al. v *Chevron Corporation*

Tomorrow, December 11, the IHRP, MiningWatch, and the Canadian Centre for International Justice (CCIJ), will present oral argument in an intervention before the Supreme Court of Canada in *Yaiguaje et al.* v. *Chevron Corporation*. The joint interveners provided the Court with submissions on the proper interpretation of private international law and corporate law principles in light of the international law obligation to provide effective remedies for human rights violations.

The Lago Agrio litigation is a decades-long struggle between Chevron and Amazonian indigenous peoples from Ecuador who are seeking compensation for extensive pollution of the Amazon Rainforest between 1972 and 1990. In February 2011, after years of litigation in Ecuador, an Ecuadorian court found Chevron liable in the amount of US$18 billion. The award was subsequently reduced to $9.51 billion on appeal. This award is now final for the purposes of Ecuadorian law. Chevron has wound up all of its Ecuadorian operations such that the plaintiffs have not been able to collect.

In 2013, the plaintiffs filed a claim in Ontario seeking to enforce the Ecuadorian judgment against the assets of Chevron Corporation and Chevron Canada.

The Supreme Court is considering the preliminary issue of whether the plaintiffs are able to attempt to enforce the Ecuadorian judgment in Canada. Relying on international human rights law, the joint interveners argue that established private international law principles regarding enforcement of foreign judgments should not be saddled with jurisdictional hurdles that would thwart the right to an effective remedy for victims of human rights violations. They also submit that there may be instances where the corporate veil must be pierced to ensure that transnational corporations are held accountable for human rights violations committed by their wholly-owned and controlled subsidiaries

“This case is essentially about access to justice for those harmed by transnational corporations,” says Renu Mandhane, director of the IHRP. Matt Eisenbrandt, Legal Director at CCIJ stated: “We are honoured to be interveners in this case along with our partners and to advocate for the position that Canadian courts should remain open to foreign plaintiffs, particularly those affected by transnational corporations, seeking to enforce judgments obtained in their countries.” Catherine Coumans of MiningWatch notes that “transnational corporations should not be allowed to avoid providing remedy to those they have harmed by evading court judgments against them, Canada can show leadership by providing access to justice for these indigenous victims.”

The IHRP, MiningWatch and CCIJ are represented by a team of UofT law alumni: Murray Klippenstein, Cory Wanless, and IHRP Director Renu Mandhane. IHRP clinic students Alison Mintoff (3L) and James Rendell (2L/MGA) have provided invaluable research assistance. “It has been an incredible experience to work on this case and see

how much work goes into researching and drafting a factum," said Alison Mintoff. "It's unbelievable that the IHRP afforded me to opportunity to contribute to advocacy before the Supreme Court of Canada before even graduating from law school" added James Rendell.

Read the Joint Intervener's submissions to the court

Kazemi et al. v. *Iran et al.*

In a disappointing decision released on 10 October 2014, the Supreme Court of Canada barred civil claims for torture committed by a foreign state, even where the victim is a Canadian citizen.

In July 2003, Zahra Kazemi, a Canadian citizen and journalist, died in Iran. She had been arrested for taking photographs of protestors in front of Evin prison in Tehran and, while in detention, was beaten, raped and tortured by Iranian government officials. She died as a result of injuries sustained.

In 2006, Ms. Kazemi's son, Stephan Hashemi, instituted proceedings in Canada against the Islamic Republic of Iran; the Ayatollah Ali Khamenei, Supreme Leader of Iran; Saeed Mortazavi, the Chief Public Prosecutor of Tehran; and Mohammad Bakhshi, former Deputy Chief of Intelligence of Evin Prison. The lawsuit sought damages on behalf of Ms. Kazemi's estate and the psychological harm to Mr. Hashemi.

The main question at the Supreme Court of Canada was whether Canada's State Immunity Act (SIA) was a complete bar to claims for damages related to the torture of a Canadian citizen abroad, and whether the provision was therefore contrary to section 7 of the Charter. The SIA is a procedural bar to civil lawsuits against foreign countries in Canadian courts except in exceptional circumstances. The SIA is meant to promote "comity" between nations and preserve national sovereignty.

LeBel J., writing for a majority of the Court, found that the SIA was a complete bar to Hashemi Kazemi's claim for redress:

> *Canada has given priority to a foreign state's immunity over civil redress for citizens who have been tortured abroad. This policy choice is not a comment about the evils of torture, but rather an indication of what principles Parliament has chosen to promote given Canada's role and that of its government in the international community.*

The IHRP and David Asper Centre for Constitutional Rights were interveners before the Supreme Court and argued that the right to a remedy is protected under international law, and is a principle of fundamental justice under s. 7 of the Charter (which protects life, liberty and security of the person).

The Supreme Court rejected that argument and instead found that:

> *While rights would be illusory if there was never a way to remedy their violation, the reality is that certain rights do exist even though remedies for their violation may be limited by procedural bars. Remedies are by no means automatic or unlimited; there is no societal consensus that an effective remedy is always guaranteed to compensate for every rights violation.*

Speaking to the Globe and Mail, IHRP director Renu Mandhane said: "There's something totally perverse that the State Immunity Act privileges the right of Iran to torture Canadian citizens over the right of Canadians to seek redress – and the Court says that's okay."

The Court did state clearly that the prohibition against torture is a preemptory international norm from which Canada cannot derogate and as such is likely a principle of fundamental justice in Canadian law. While the Supreme Court suggested that Parliament could enact legislation to create an exemption to allow civil claims for torture, the government has previously declined to do so despite intense advocacy and a private member's bill proposing just that.

According to Carmen Cheung, counsel for the IHRP and the Asper Centre, "This case illustrates that despite the Court's clear condemnation of torture, Canada has provided no real or effective remedy for victims. Parliament is free and open to change that law as they did for victims of terrorism."

In a lone dissent, Abella J. found that torture should not be included in the category of official state conduct that attracts individual immunity.

The IHRP and Asper Centre were represented by John Norris and Carmen Cheung, then-Acting Director of the IHRP. IHRP clinic student Megan Pierce provided invaluable research assistance.

Read the **IHRP and the Asper Centre's factum**

IHRP IN THE NEWS

Access to information now beyond reach of most Canadians (Globe and Mail)

Canada: Fight for the right to sue torturers (Al Jazeera)

Human rights groups argue against Chevron in Ecuador cleanup dispute (Globe and Mail)

Exception urged as court rules torture victims can't sue foreign countries (Globe and Mail)

SUMMER INTERNSHIPS PROFILED IN FALL EDITION OF *RIGHTS REVIEW*

Our latest edition of *Rights Review*, the IHRP's student-edited magazine, was published on October 21 and profiles the experiences and perspectives of our 2014 summer interns.

With this refreshed design, we have tried to make the publication more dynamic and engaging, while including more hyperlinks and navigation tools. This will make the publication easier to read both on screen and on a mobile device. We would welcome any feedback on further ways to improve.

EVENTS - SAVE THE DATE!

January 29, 6-8 p.m., Campbell Conference Facility, 1 Devonshire Place
$10 / Free for UT students

International Criminal Law at the Crossroads

Join us for an intimate conversation with James Stewart (LLB75), Deputy Prosecutor of the International Criminal Court, and Richard Dicker, Director of International Justice for Human Rights Watch. The discussion will be moderated by Assistant Crown Attorney Rita Maxwell (JD01).

Just over 10 years after the ICC began hearing cases, two of the world's most prominent international lawyers will discuss the Court's successes and ongoing challenges. They will address the jurisdictional limitations that impede the Court's engagement in Syria, explore whether the Court promotes "victor's justice" or "selective justice," and debate whether peace and justice can co-exist.

Presented by the International Human Rights Program (IHRP) at the University of Toronto Faculty of Law, Human Rights Watch, and the Munk School for Global Affairs.

Registration details to follow.