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COMMITTEE*Audrey Macklin**Alexis Archbold**Rebecca Cook**Karen Knop**Trudo Lemmens**Patrick Macklem**Mariana Moto Prado**Andrea Russell***'FINDING A WAY': POLITICAL DISSIDENCE IN AN AUTHORITARIAN STATE***Lane Krainyk, 2L at the University of Toronto Faculty of Law*

The Burmese people just “find a way.” This is what a Burmese friend told me one day as we sat overlooking the Moei River, watching people use inner-tubes to cross the “closed” Myawaddy-Mae Sot, Thai-Burma border.

This summer, I interned with the Burma Lawyers' Council, a legal organization based on the Thai-Burma border that is active in the pro-democracy movement in Burma. Through my experiences, I was fortunate to meet individuals from all parts of Burma, who represent many of Burma's numerous ethnic groups. That the Burmese people continue to find a way despite living under one of the most oppressive regimes in the world is a message that was central to my internship.

Some international observers have suggested that recent developments in Burma are indicative of a gradual transition towards democracy. These so-called “developments” have included allowing opposition leader Daw Aung San Suu Kyi to make speeches and ending the practice of printing that the Voice of America and the BBC are “killer broadcasts designed to cause troubles” in every edition of the state-run New Light of Myanmar newspaper. Some argue that current President Thein Sein could be a moderate leader and that the authority of Burma's generals is being weakened as democratic institutions are slowly strengthened and the country opens up to increased international investment and trade.

Those who advocate this position should look closer. The aforementioned developments have done nothing to limit state violence against Burma's most marginalized people, increase respect for human rights, or move any closer to establishing a genuine democracy. In a democracy, dissidents are not imprisoned for more than twenty years for “crimes” such as “illegally” entering their own country, associating with “unlawful associations” (read: independent media institutions), or using technology to be critical of the government. In a democracy, land is not arbitrarily confiscated without compensation in order to build compounds for the military or pipelines for foreign investors. In a democracy, the military does not recruit child soldiers. In a democracy, the government does not use forced labour to build roads and infrastructure that is then utilized by the military in its many wars against minority ethnic groups.

The government of Burma insists that democracy can be introduced “only through [the] Constitution” (referring to the Constitution that was passed in a sham referendum in 2008). However, the Constitution serves only to entrench impunity by guaranteeing protection for the ruling generals from prosecution for their actions over the last two decades, consolidating the authority of the ruling elite, and increasing the power conferred on the government. Constitutional provisions such as the “Right of Non-Existence of Political Parties” ensure that the

(Continued on page 13)UNIVERSITY OF TORONTO
FACULTY OF LAWINTERNATIONAL
HUMAN RIGHTS
PROGRAM



Greetings from the IHRP Director: Renu Mandhane

Welcome to the 2011 intern edition of *Rights Review*,
the International Human Rights Program's
Signature publication.

The IHRP is delighted to welcome back to the law school twenty IHRP summer interns who were provided with transformative experiential learning opportunities while working to increase the capacity of their host organizations. Students interned at diverse organizations including the United Nations High Commission for Refugees (Nepal), Inter-American Commission for Human Rights, International Criminal Tribunal for Rwanda, and Human Rights Watch, as well as a host of grassroots NGOs in Africa, Latin America, and Asia. Reading the returning interns' articles is a highlight of the Fall and I am sure you will agree that their reflections are both eye-

opening and inspiring.

It is hard to believe that 2012 will mark the 25th anniversary of the IHRP summer internship program. To celebrate the IHRP's anniversary, we are collaborating on a retrospective exhibition at the University of Toronto Art Centre entitled *Transformative Human Rights: 25 Years in the Field*. The exhibit is bringing together law and museology students as they track IHRP student experiences against major developments in the field of human rights. It will be launched along with the next edition of the *Rights Review* on February 9th, 2012. Stay tuned for more details!

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From the Editors' Desk

We are very excited about our first issue of the year! This edition features the unique stories of the 2011 IHRP interns. These articles demonstrate the wide variety of work available in the field of international human rights. Interns travelled to countries as diverse as Brazil, Nepal, Tanzania, and Palestine working on projects addressing everything from refugee rights to women's rights to international criminal law.

We hope that these articles will inspire a new crop of IHRP interns to seek out opportunities for summer 2012. One of the great benefits of being a member of the U of T Law community is being able to learn from our peers' amazing experiences. We would encourage students interested in pursuing internships in international human rights to reach out to our writers for more information about their experiences.

This is a great year to be involved in *Rights Review*, as we prepare to celebrate the IHRP's 25th Anniversary. The *Rights Review* Editorial Board is involved in the *Transformative Human Rights* art exhibit, which will chronicle advances in the field of international human rights through the lens of IHRP intern experiences. To coincide with this event, a special edition of *Rights Review* will be launched in February. This issue will include articles on current issues in the field of international human rights and will look back on the careers of IHRP alumni.

Finally, we would like to thank all of the writers who contributed articles and the members of our Editorial Team who have been committed to this publication. We are looking forward to the rest of the year!

Morgan Sim and Christine Wadsworth

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160 GIRLS: FIGHTING FOR THE ENFORCEMENT OF CHILD RAPE LAWS IN KENYA

Meghan Lindo, 3L JD/MSW

This summer I interned with the Equality Effect, a network of Canadian and African women's rights lawyers advocating for gender equality in Ghana, Kenya, and Malawi. I was involved in a project called *160 Girls*. The *160 Girls* test litigation is being designed to interpret numerous provisions of Kenya's new Constitution, while seeking to compel the Kenyan state to enforce its existing laws against child rape ('defilement').

Approximately every 30 minutes, a woman or girl is raped in Kenya. Despite the introduction of laws against defilement in 2006 (sections 8 and 9 of the *Sexual Offences Act*), the rate of sexual violence against children is still on the rise because offenders are not held accountable for their crimes. The Kenyan police are largely responsible for denying justice to victims of defilement. In seeking out police assistance, girls are met with apathy, ignorance, insensitivity, and sometimes suffer further abuse at the hands of police officers. Reports of defilement may

never be investigated or may be so poorly investigated that a successful prosecution is nearly impossible. Physical evidence (e.g., bloodstained clothing, DNA evidence) may go "missing" due to police negligence and corruption, causing the complainant's case to fail or be abandoned.

Sections 27 and 53 of Kenya's new Constitution, introduced in 2010, specifically provide that the Kenyan state must protect children against abuse and from discriminatory treatment. The Equality Effect is seizing this opportunity to bring a test case against the Kenyan state, seeking remedies which will apply nationwide to improve the situation of girls facing sexual violence. The 160 girls, all victims of child rape, will act as representative litigants in this case.

Once in Kenya, I travelled from Nairobi to Meru, an agricultural

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Photo Credit: Meghan Lindo

LEFT: A girl and her mother leading Meghan Lindo to the place where she was defiled by a man living in her community. The man had not been arrested and continued to pass by her house almost every day.

RIGHT: The Boudhanath Stupa in Kathmandu at sunset



Photo Credit: Ben Liston

SEEKING REFUGE IN A TROUBLED LAND

Ben Liston, 3L at the University of Toronto, Faculty of Law

"Why would these people come to Nepal?"

I have been asked that question a lot during and after my internship working with urban refugees in Kathmandu. The answer often offered in Nepal – a type of urban refugee myth – is that human smugglers promise an escape to Naples and then claim misunderstanding when asylum seekers are unceremoniously deposited at the neglected Tribhuvan International Airport. I don't like this answer because it is almost certainly untrue and it makes the desperation of the asylum seekers seem equal parts tragedy and comedy. I witnessed very little comedy at the Kathmandu branch office of the UN High Commissioner for Refugees (UNHCR) in Nepal.

Notwithstanding such homonymic hogwash, the question still begs to be answered. Why would hundreds of asylum seekers fleeing political oppression in Sri Lanka, civil war in Somalia, or religious persecution in Pakistan travel by land, sea, and air to the poor mountain nation of Nepal to claim refuge? Nepal is a devel-

oping nation ranked 138th in the *Human Development Index*. Its government has not signed the 1951 *Convention Relating to the Status of Refugees* or the 1967 *Protocol*, and considers all asylum seekers to be illegal migrants. Why come here?

Every story is unique, but each includes, at its core, anxious flight and refuge desperately sought and an eventual, often reluctant, arrival in Nepal. Once there, asylum seekers apply to be recognized as refugees by the UNHCR and, if successful, they will live on the accompanying subsistence allowance for years while holding out hope that one day another country will agree to resettle them.

For my internship, I dealt primarily with the first stage of the refugee claim: country of origin information research and refugee status determination. It was, at least initially, an intimidating position. After two years of legal education, I would determine whether an asylum seeker was a refugee: whether he has a well-founded

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INTERNATIONAL CRIMINAL LAW

FIGHTING IMPUNITY AT THE ICC

Andrew Max, 2L at the University of Faculty of Law

The timing of my internship at the International Criminal Court this summer could not have been better. I was able to work on important stages of two different cases while exciting things were happening at the court, including the issuance of arrest warrants for crimes committed in Libya and the false rumours of Saif Gaddafi's arrest.

The ICC is a permanent court that has jurisdiction over the most serious crimes against humanity and war crimes – including, among many others, the use of child soldiers, rape, murder, genocide, and persecution. Crimes may fall under the jurisdiction of the court when they occur in a country that has ratified the Rome Statute or because of a UN Security Council referral. The Office of the Prosecution ('OTP') is the part of the court that investigates crimes and prosecutes individuals. I interned for the Prosecution Division, which is the section of the OTP that actually litigates the cases.

Initially, I worked on the ICC's first case, *The Prosecutor vs. Thomas Lubanga*. The accused is charged with conscripting, enlisting and using child soldiers in the Democratic Republic of the Congo (DRC). The trial-phase was wrapping up as I arrived and our team was preparing the 250-page closing brief (1500 footnotes!), summing up a trial that lasted nearly two years.

The team was small and we worked together closely, at times crowded around desks into the

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Andrew Max with ICC Prosecutor Louis Moreno-Ocampo and Deputy Prosecutor Fatou Bensouda, on the front steps of the Court.

Photo Credit: Andrew Max

BUILDING A DARFUR DEFENCE

Louis Century, 3L JD/MGA

It has been a whirlwind few months in the often snail-paced field of international criminal law. Since May, the International Criminal Court (ICC) has issued a surprising arrest warrant against then-sitting president Muammar Gaddafi of Libya; Ratko Mladic was finally extradited by Serbia to The Hague to stand trial for the Srebrenica massacre and other crimes; closing oral arguments were made in the *Lubanga Case*, the ICC's first trial, which now awaits judgment; and pre-trial hearings commenced for six high-profile Kenyans, most sitting politicians, accused of orchestrating post-election violence. News and gossip surrounding these momentous events were a constant presence during my summer in The Hague, though I was not directly involved in any of them. I spent my summer working for the Defence Team of Abdallah Banda and Saleh Jerbo, two Darfuri rebels accused of war crimes before the ICC.

On September 29, 2007, Banda and Jerbo, then military commanders in two different rebel factions in Darfur, allegedly attacked an African Union peacekeeping base, resulting in the death of 12 peacekeepers and the pillaging of the base. The charges they face include: murder as a war crime, intentional attacks against peacekeepers or peacekeeping equipment, and pillaging. The case is noteworthy for a variety of reasons.

For one, while this is not the only Sudanese case at the ICC, it is the only case in which proceedings have begun. Arrest warrants have been issued for sitting president Omar Al-Bashir, government minister Ahmad Harun, and Janjaweed leader Ali Kushayb. However, all three remain at large. This creates a situation, perhaps surprising to followers of the Darfur conflict, in which the only individuals being tried by the ICC for crimes in Darfur are those fighting against the regime widely accused of genocide and crimes against

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INTERNING AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Christine Wadsworth, 2L, and Ryan Liss, 2011 JD Graduate

This summer, the IHRP sent three students to Arusha, Tanzania. We interned at the International Criminal Tribunal for Rwanda (ICTR), along with another Faculty of Law student, Sonja Pavic. The ICTR is an *ad hoc* international criminal tribunal established to prosecute crimes committed during the Rwandan genocide. We were privileged to observe and participate in the practice of international criminal law from inside one of its most ground-breaking institutions.

In Judges Chambers – Christine Wadsworth

Beginning in high school, I dreamed of working for the United Nations. My three months interning in Chambers at the ICTR allowed me to realize that goal and return to a country I had fallen in love with years before as a volunteer. Chambers staff provide support to the ICTR's judges by conducting research, helping manage cases, and assisting in the drafting of legal documents. I spent the first part of my internship working on the *Prosecutor v. Nyiramasuhuko et al. (Butare)* judgement. The *Butare* case has been going on for over ten years. It joined the cases of six accused, including the first woman to be convicted of genocide by an international court. I worked with a large team of judges, legal officers, associate legal officers, and interns to prepare the written judgement. One of the most exciting parts of my internship was seeing the *Butare* judgement released in an ICTR courtroom. All six accused were convicted on charges ranging from direct and public incitement to genocide, genocide, and crimes against humanity. Three of the accused received sentences of life imprisonment.

Once the *Butare* judgement was released, I moved to the Office of the President to work for Judge Khalida Rachid Khan and her Spe-

cial Assistant. This position was an incredible opportunity to work with an internationally renowned judge on a daily basis. I assisted in the drafting of Judge Khan's speech to the General Assembly. I also did considerable research on international criminal law jurisprudence regarding gender and sexual violence. ICTR judgements have been responsible for significant advances in the recognition of gender-based and sexual violence as crimes that can be prosecuted at the international level. For example, the ICTR's first judgement, *Prosecutor v. Akayesu* (1998), provided the first definition of rape in international law. (*Akayesu* also marked the first time that the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* was enforced.) Working on a large judgement and then for the ICTR President allowed me to participate in both the legal and policy work of the ICTR.

Prosecuting Genocidaires – Ryan Liss

I spent two months working with the Appeals Division of the Office of the Prosecutor (OTP-ALAD). The OTP-ALAD prepares cases for appeal upon the completion of trials. Within ALAD, I worked on the *Prosecutor v. Ndindiliyimana (Military II)* appeals team and directly with the Chief of Appeals on a variety of projects. *Military II* joined the cases of four accused who are former Chiefs of Staff of the Rwandan Army and National Police. The trial judgement was delivered the week prior to my arrival. Within a day or two of arriving, I was put to work writing a memo on the issue of the application of the doctrine of superior responsibility in a specific context that arose in the case. While the issue has been considered by the ICTY, the jurisprudence is conflicting and much criticized. The ICTR had not previously addressed the issue.

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LEFT: Sonja Pavic, Ryan Liss, and Christine Wadsworth at the ICTR.

RIGHT: ICTR Interns on Mount Kilimanjaro



Photo Credit: Christine Wadsworth



Photo Credit: Meaghan Lowe

PROSPECTS AND PROBLEMS FOR RESOURCE EXTRACTION IN COLOMBIA

Meaghan Lowe, 2L at the University of Toronto, Faculty of Law

My internship in Colombia working on mining related issues was a rewarding opportunity, particularly since the Canada-Colombia Free Trade Agreement recently entered into force. I interned at Gaia Amazonas, a Colombian NGO that supports Amazonian indigenous communities with ensuring cultural and environmental sustainability through indigenous administration and conservation of over 24 million hectares of collectively owned ancestral land known as *resguardos*. Indigenous ownership of these lands was recognized by the 1991 Constitution of Colombia. However, the subsoil belongs to the state, allowing the government to manage oil and mining concessions. As the Colombian government's economic plan is focused on advancing mining development, Gaia Amazonas enlisted me to advise on international standards for extraction on indigenous lands.

Security in Colombia has improved considerably over recent years. Nevertheless, persistent human rights violations and government corruption remain key obstacles to the protection of indigenous rights and environmental governance. Colombia contains one of the world's highest numbers of displaced indigenous peoples due to internal armed conflict, resource extraction, and deforestation. In Colombia alone, over 65,000 hectares of the Amazon is deforested per year. Approximately 20% of the world's greenhouse gas emissions are the result of deforestation and land-use changes.

My internship focused in part on assisting Gaia Amazonas with responding to a mining title issued within the Yaigojé-Apaporis National Park, which is a million hectare area of Amazon conservation. Extraction within a national park in Colombia is illegal. However, a small Canadian mining company, Cosigo Resources Inc. was granted

a title to extract gold within the national park. The Minister of Mines and Energy, Carlos Rodado Noriega, identified the issuing of this title as indicative of government corruption within the *Ingeominas* office, which is responsible for issuing mining titles. While I was in Colombia, disciplinary proceedings were initiated against eight *Ingeominas* officials for allegedly participating in the granting of titles in the national park. These investigations are pending.

The Yaigojé-Apaporis National Park is located within a region co-owned by 60 indigenous communities from 12 different ethnic groups, as collective inalienable property. Indigenous leaders requested the creation of the national park to preserve *Yuisi* or *La Libertad*, which is a religious site that is considered the foundation of the *Yuruparí* culture and the source of shamanic wisdom and initiation rights. The title

held by Cosigo cannot be exploited unless the national park designation is rescinded. The only ground for rescinding a national park's status is improper indigenous consultation. Five communities spilt from the majority and formed the their own association, *Asociacion de comunidades indigenas Taraira-Vaupes* (ACITAVA). A representative of ACITAVA submitted a *tutela*, a writ for protection of constitutional rights, before the Constitutional Court arguing that the national park was created contrary to the legal process of free, prior, and informed indigenous consultation. The majority of the communities approached Gaia Amazonas for assistance drafting an opposing *tutela* contesting the issuing of the title. No official decision has been made regarding either *tutela*.

Learning about the Colombian Constitutional Court and the *tutela* was one of the most rewarding aspects of my work. The *tutela* is a legal mechanism established by article 86 of the 1991 Constitution, which allows any Colombian citizen to appeal government actions or omissions that violate their fundamental constitutional rights. Thousands of *tutelas* are submitted yearly, as neither a lawyer nor any formal drafting procedures are required. In Colombia, where poverty would otherwise limit access to justice, the *tutela* offers an affordable and convenient mechanism for defending constitutional rights. Therefore, while the administrative system may suffer from corruption, the constitutional system is - at least in theory - highly protective of human rights.

In light of the instability caused by administrative corruption, Gaia Amazonas is working with civil society, government, and industry to create a roundtable to agree upon industry standards and monitors for extraction in the Amazon. The most research-intensive part of my internship was focused on producing a report on impact benefit agreements between extractive companies and indigenous communities, which will support the upcoming multi-stakeholder discussions.

My internship provided me with the opportunity to learn about the strength of the Colombian constitutional system and the challenges of government administration and NGO advocacy in a country beset by internal armed conflict and a culture of impunity. While legal mechanisms, such as the *tutela*, have helped create the basis for securing equality of human rights, significant barriers such as corruption persist. This experience revealed the limits to corporate social responsibility as a substitute for regulating extractive companies operating abroad. During my time in Colombia, small exploration and development companies, previously unknown to me, were responsible for serious mining violations. With little to no economic downside, such companies are incentivized to deviate beyond what is principled and fair, risking reputation to gain access to sites with huge resource potential in order to create massive shareholder value. The actions of such companies pose serious repercussions for the reputation of the Canadian extractive sector in Colombia. *As an industry leader, Canada has the ability to influence how other countries' mining companies operate abroad.* ♦

THE WORLD'S WATCHING EYES

Charu Kumar, 2L JD/MGA

When I told my parents that I was going to Brazil for the summer, they were not thrilled. Having heard numerous horror stories about drug-related violence and disappearances, they were naturally worried about my safety. However, when I first began seeking out potential internships, Brazil was a country that ranked very high on my list of preferred destinations precisely because of its internal conflict, which has led to many human rights violations.

I have always been curious as to how a

country like Brazil, which is a major actor on the world stage, can get away with undermining the basic rights of its citizens. Compared to a lot of other countries, there exists a huge gap between Brazil's international promises with respect to human rights and the reality inside the country. For instance, despite Brazil's transition to democracy in the mid-1980s and its public acceptance of the *UN Convention Against Torture* in 1989, prisoners in Brazil are regularly tortured, beaten, and killed. In fact, many prisons, such as in the state of



Photo Credit: Meaghan Lowe

Espirito Santo, actually have a designated torture room.

So you can imagine how excited I was when I landed an opportunity to work on the *Foreign Policy and Human Rights Project* in Sao Paulo, Brazil. This project was initiated by the human rights NGO *Conectas Direitos Humanos*. It was created in 2005 when a number of human rights activists at *Conectas* realized that Brazil was not living up to its international commitments.

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VICTIMS RIGHTS AND REPARATIONS AT THE ICTJ

Katherine Robertson, 2L at the University of Toronto, Faculty of Law

This summer I worked at the International Center for Transitional Justice (ICTJ) in New York as an intern in the Reparations Program. The ICTJ is an interdisciplinary research organization that works at the nexus of human rights, transitional justice, and policy analysis. The ICTJ seeks to prevent and address human rights violations by confronting legacies of gross violations and developing solutions that promote accountability and create more just societies. The ICTJ focuses on reparations initiatives that provide redress to victims of gross human rights violations and international crimes through court-ordered reparations or government initiated programs. The ICTJ has integrated legal research and analysis in a policy-oriented manner to provide substantive and technical assistance to policymakers, civil society and victims' organizations.

I worked on a team composed of three experts in the area of reparations and transitional justice. My colleagues are incredibly active and knowledgeable in contemporary and politically sensitive issues in the field, and are often called to consult with government actors, judicial institutions, and international organizations. Our work this summer focused on seeking reparations measures at the International Criminal Court and in countries including Cambodia, the DRC, Kenya, Liberia, Timor Leste, Tunisia, and Egypt.

I assisted in drafting a submission to the government of South Africa's Department of Justice concerning draft legislation designed to provide victims who participated in the Truth and Reconciliation Commission with reparations in the form of health and educational benefits. The submission was made on behalf of the South African Coalition for Transitional Justice, which includes several victims associations and other organizations. Our team focused on the constitutional rights of victims in South Africa, South Africa's obligation to provide reparations under international law, and the possibility that the reparations program could be under-inclusive. In the legislation's current form, thousands of victims identified by vari-

ous victims associations will not be eligible to receive reparations.

Another research assignment undertaken by a colleague and myself involved conducting a comparative analysis of victims' application forms for reparations from judicial institutions, government programs, and truth commissions. Each form was assessed for its ability to solicit accurate and pertinent information. The results of our analysis were compiled into a briefing paper for legal and policy practitioners involved in designing reparations programs.

My final project involved writing an ICTJ Factsheet on civil party participation and reparations at the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Court mandated with bringing the most responsible members of the Khmer Rouge to justice for crimes against humanity, war crimes and genocide. The issue of reparations is prominent at the ECCC as the Court is currently preparing for its largest trial to date, which involves thousands of victim participants, and since the ECCC's Supreme Court decision on the reparations order in its inaugural case is expected by the end of the year. The factsheet serves to update the public on the legal challenges concerning reparations and victim participation to be resolved by the court in the coming year.

My experience this summer was very informative and challenging. I discovered just how much knowledge and insight is required for researchers at the ICTJ to provide useful advice on some of the transitional justice community's most pressing challenges. The organization has gained its credibility by forging linkages with grassroots organizations and experts in each of its country programs, as well as publishing research that accurately reflects the in-country situation. The skills necessary to do this are something that could only have been learned doing hands-on work at the organization and I am so grateful for having had this experience. ♦

DEFENDING REPRODUCTIVE RIGHTS

Aimee Letto, 3L at the University of Toronto, Faculty of Law

I spent the summer of 2011 at the Center for Reproductive Rights (the Center) in New York City. The Center is a non-profit legal advocacy organization that uses the law to advance reproductive freedom as a fundamental right that all governments are legally obligated to protect, respect, and fulfill. I was assigned to the Center's International Legal Program, which collaborates with women's advocates around the world to promote and defend internationally recognized reproductive rights.

During my internship, I drafted a press document to publicize a recent Center victory at the European Court of Human Rights, compiled background research for a shadow letter that will be submitted to the Committee on the Elimination of Discrimination Against Women, summarized case law on emergency contraception for a

United Nations Population Fund newsletter, and researched medical confidentiality standards. The projects that I found to be the most interesting were in the area of United Nations advocacy. I arrived at the Center with a lot of interest in how the UN works to protect human rights, but with only a vague understanding of what actually happens there. Through research projects with the International Advocacy division, I started to get a clearer picture of how the UN treaty bodies function and the ways in which non-governmental organizations can help shape, promote, and protect international human rights standards by interacting with those bodies.

One day, the interns filed out of our Wall Street office and took the subway uptown to the United Nations Plaza. After posing for our official security passes and passing through the various security checkpoints, we made our way to a meeting of the Committee on the Elimination of Discrimination Against Women and the govern-

THE NEED TO ENGAGE WOMEN IN POST-CONFLICT RECONSTRUCTION

Jessica Lam, 2L at the University of Toronto, Faculty of Law

I spent this summer in New York, interning at UN Women in the peace and security cluster. UN Women (United Nations Entity for Gender Equality and the Empowerment of Women) is the newest body within the United Nations. It focuses on five priority areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of the peace and security processes; enhancing women's economic empowerment; and making gender equality central to national development, planning and budgeting.

I worked on policy and programming initiatives related to the protection of women's rights in conflict and post-conflict zones. My major project was to draft UN Women's written submission to the *Committee on the Elimination of All Forms of Discrimination against Women* on the protection of women's rights in conflict and post-conflict situations. My written submissions were then presented orally to the Committee. They contributed to the elaboration of General Recommendations for Member States on the implementation of certain provisions of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) aimed at ensuring women's security both during and after war.

Drawing on UN Women's expertise, I wrote a report on access to justice, women's participation in the peace building process, violence against women, and women's economic opportunities. The purpose of the report was to provide meaning to relevant CEDAW articles and highlight major issues of concern to UN Women. This required me to complete extensive research on CEDAW and relevant UN Security Council Resolutions, as well as several international human rights instruments.

While working on this project, I was given the opportunity to consult with UN Women country offices, think tanks and research

institutes. I also met with woman leaders and peacekeepers in the field. I heard stories about gross violations of women's rights, as the experience of many women in post-conflict zones continues to be characterized by insecurity, violence, and impunity.

Justice systems that may have been weak, compromised or ineffective prior to conflict, are often further undermined by the conflict. The absence of effective legal frameworks to protect women reinforces existing inequalities and insecurities. The scale of

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Photo Credit: Jessica Lam

ment of Costa Rica. This type of meeting is where the Committee evaluates whether a State is abiding by its obligations under the Convention on the Elimination of Discrimination Against Women (CEDAW). One of the tools that the Committee uses to conduct this evaluation are "shadow letters" or "shadow reports", submitted by a non-governmental organizations. These reports outline areas where the State may not be fulfilling their obligations.

The meeting was particularly meaningful for me because, at this point, I had spent several weeks compiling research for a shadow letter that would be submitted to the Committee. Seeing how these letters are used in practice brought my advocacy work full circle. There is no better way to understand how international law works than to see it in action.

While my work projects were focused on international human rights law, being at the Center also provided exposure to the work

of the United States Legal Program. Domestically, the Center is working to engage the UN system to implement United States' human rights obligations. It was fascinating to learn just how heated the political controversy is over reproductive rights in the USA. For example, this summer the Center kicked off a "Trust Texas Women Campaign" to fight an intrusive bill that would prevent women in Texas from getting an abortion unless they first have an ultrasound and listen to their doctor describe the image in detail. Following the Texas Campaign in the courts and in the media was an exciting way to see how the law can be used to protect women's human rights in the domestic context.

Last, but certainly not least, New York City is in fine form during the summer months. The staff welcomed the interns, planning social events around the city, including a karaoke night in Times Square and a walk across the Brooklyn Bridge to enjoy a slice of Grimaldi's pizza. I am so grateful for this wonderful experience. ♦

MY SUMMER WITH THE INTERNATIONAL LABOUR ORGANIZATION

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

Halfway through my summer in Cambodia I finally discovered why it is that the United Nations needs SUVs. For the first two months I spent in Phnom Penh working for the ILO, this was one of the things that made me uncomfortable – knowing that we (the whole project, including me) had a driver with an SUV at our beck and call. It was a constant reminder of the luxury that came with working in a position that is not supposed to be about luxury at all. And yet, as we slowly made our way towards a village 40 minutes off the main road in the province of Kampong Speu, I finally got it. There was physically no way that a normal car could make it through these back roads. Especially not in the rainy season, which turns back-country Cambodia into a combination of rocks and mud.

We were on my final research trip of the summer. Our destination was a remote village where we would try to find a factory worker who had gone on maternity leave and interview her about her experiences. We were hoping to visit three villages that day and interview three women. We moved at a snail's pace – the road wouldn't allow us to move any faster. Every so often, when we saw a farmer, my boss would roll down his window and ask for directions to the village. Once we got to the village, he began to ask directions to the young woman's house. As we moved, we picked up a tail. All the village children and whichever adults were not planting rice followed our car, curious as to why we were here. By the time we got to the worker's house, a small crowd was gathered there, waiting expectantly.

My work this summer involved numerous research trips to find out how maternity leave laws are applied in garment factories. My goal at the end of these three months was to have a report on maternity leave that could be published on the ILO Better Factories Cambodia website. The report would summarize the existing law and describe the way in which it is applied in factories. Because this is work that my boss needed done, I was fortunate to have at my disposal the resources needed for the project. These included a driver, a translator, and a government liaison that called factories and asked the owners to let me interview



Photo Credit: Chea Sophal

workers, management, and union heads. In total, I spoke to more than a hundred people across three provinces. Factories in Cambodia definitely do not have an open door policy for visitors and, without the support of the ILO, I would not have been able to get inside.

Half of my summer was spent in factories and half was spent in the office researching the garment industry and Cambodian labour law. The ILO has been monitoring garment factories for the last ten years and storing that information in a database. I ran queries in the database to get numbers for industry-wide compliance with maternity leave laws over the last year for the purposes of my project. Through my interviews, I collected case studies that show how the laws play out in real life, and how individual workers, managers, and union members experience the process of maternity leave. I also had the opportunity to give a presentation on my findings to a monitoring team that is responsible for checking compliance with all labour laws. My final report will be published in mid-October. My report compiles all of the existing decisions on maternity leave from the Arbitration Council. It also includes all Ministry of Labour directives that relate to maternity protection.

Outside of work it was also an incredible summer. I took Khmer lessons three times a week and I can do all of the basics now: order food at a restaurant, ask for directions, bargain at the market, and talk about my job. My attempts at speaking Khmer never failed to break the ice at worker focus-groups in factories.

I also witnessed the work of the Extraordinary Chambers in the Courts of Cambodia. Several of my friends work at the court. On June 27, when the initial hearing for case 002 opened, my coworker Kunthea and I were in the second row from the front – perhaps a meter away from Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith, infamous leaders of the Khmer Rouge. We arrived two hours early for the hearing, but the courtroom filled up in minutes.

I do not feel like I've even begun to scratch the surface in terms of really understanding Cambodia and all of the work that is being done there by different organizations. However, I feel like I have been able to do quality work this summer and meet a lot of people such that I would be able to come back and continue my legal career in Cambodia. ♦

ACCESS TO JUSTICE FOR RAPE SURVIVORS IN BANGLADESH

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

Across the globe, sexual violence has been recognized as a devastating experience that needs to be prevented and remedied. Yet many rape survivors still do not receive the support and services that they need to overcome their traumatic experiences.

In early May, I boarded a plane to Dhaka, where I spent three months interning with Bangladesh Legal Aid and Services Trust (BLAST), a legal aid clinic that serves the poor and marginalized across Bangladesh. While I knew that I would be called upon to help the organization in various ways, I also had a personal goal in mind: to find a research topic that would contribute to the organization's women's rights initiatives, which include public interest litigation, advocacy, and public legal education.

Inspiration struck when my supervisor shared a newly published Human Rights Watch report on the state of medico-legal examinations in India. The report painted a depressing picture of the reality for rape survivors. We wondered whether these problems were also present in the Bangla-

deshi system. Over the next few weeks, I interviewed lawyers, judges, doctors, and representatives of women's rights organizations, hoping to shed some light on the practical barriers to the collection of medico-legal evidence in sexual assault cases.

What I discovered was unsettling, to say the least. While a medical report is always submitted to the court, the results of the examination are often inconclusive, in part due to delays in collecting the evidence. These delays are frequently caused by the survivor's unawareness of the steps to be taken; as a result, she may wait several days before reporting the assault. Some of the other challenges that I discovered include geographic distance from hospitals, the exorbitant cost of DNA tests, and the corruption of doctors. These barriers are significant because although, in theory, the absence of conclusive medical evidence does not preclude a conviction, in cases where the medical report states that there were "signs of rape", the conviction rate is exponentially higher.

One of the most alarming findings was that the finger test, a form of vaginal examination that has been condemned by the Supreme Court in neighbouring India, is also a common practice in Bangladeshi hospitals. The finger test is behind the problematic use of the phrase "habituated to sex" on medico-legal reports – a finding that defence lawyers often use to attack the survivor's moral character. In addition to being legally irrelevant, forensics specialists across the globe have recognized the finger test as being scientifically untenable, as well as unnecessarily invasive.

While Canada's system is certainly not perfect, it was still quite a shock for me to confront the difficult reality of rape survivors in Bangladesh. However, thanks to the amazing lawyers and activists that I met, I am hopeful that the conditions for these women will improve. BLAST expects to use the results of this study as part of its new initiative, "Growing Up Safe", which will provide health, legal, and social services to women and girls living in slums. ♦



Photo Credit: Sylvie McCallum Rougerie

ARREST AND DETENTION IN THE OCCUPIED PALESTINIAN TERRITORIES

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

“Every time I am called to appear before your courts, I become nervous and afraid. Eighteen years ago, my sister was killed in a courtroom, such as this by a staff member. In my lifetime, I have been nine times imprisoned for an overall of almost 3 years, though I was never charged or convicted. During my imprisonment, I was paralyzed as a result of torture by your investigators. My wife was detained, my children were wounded, my land was stolen by settlers, and now my house is slated for demolition.”- Bassem Tamimi, father of four and human rights activist in the West Bank, in a statement to the military court at his trial on June 5th, 2011.

There are thousands of stories in Palestine. You see them in the faces of young men sitting on street corners, unemployed and frustrated, and in the elderly, tired from decades of dislocation and humiliation. You hear them in the shouting of soldiers and the grinding of metal gates at checkpoints. You feel them in the heavy night air, when arrest raids are taking place under the cloak of darkness. Despite all the different ways military occupation affects daily life, the experience of imprisonment is one that almost all living in the Occupied West

Bank, East Jerusalem, and the Gaza strip share. I will relay some of these stories which I came to know during my time in Palestine, working with the prisoner’s rights group, Addameer, and witnessing trials at the Israeli military courts this summer.

Since the beginning of the Israeli military occupation in 1967, over 700,000 Palestinians have been arrested and detained under a set of military orders which govern civilian life. As per *The Guardian*, this means that an estimated 20% of the *entire* Palestinian population (or 40% of the *entire male* population according to Addameer) has been imprisoned at some time during their lives. Palestinians arrested by Israel and charged with criminal and security violations are tried in either of two military courts located in the West Bank. Some however are held in administrative detention without charge or trial for periods of up to 6 months, a term which is renewable indefinitely pursuant to Article 285 of Israeli Military Order 1651. According to Israel’s Military Courts Report (2007), approximately 90% of all those charged are convicted. While Israel is permitted as an occupying power to establish military courts to try the civil-

ian population, these courts are far from meeting basic requirements of international law regarding fair trial rights. For example, in contravention to the right to have adequate time and facilities to prepare a defence as per Article 14 (3) (b) of The International Covenant on Civil and Political Rights (ICCPR), a detainee can be held without access to counsel for 90 days. Furthermore, lawyers for the detainees face significant obstacles in preparing a defence due to court documents being written in Hebrew, incomplete disclosure of prosecution materials (deemed “secret evidence”), and difficulties meeting clients held in detention centers or prisons inside Israel. In contravention to the right to trial without undue delay as per Article 14 (3) (c) of the ICCPR, a detainee can be held for interrogation for 8 days without being brought before a judge. This interrogation period can be extended for an initial period of 90 days, which can be renewed for a subsequent 90 days; this means that a detainee can be held for 188 days in interrogation without charge. In addition, military officers have incredible leeway in determining what constitutes a violation. Pursuant to various military orders, such as Israel Defence Forces Military Order No. 101, a whole host of civic activities may be deemed offenses, including publishing “material having a political significance,” carrying a Palestinian flag, or attending a demonstration.

I witnessed the military trials of cases Addameer was working on at the Israeli Military Court in Ofer. Inside half a dozen trailer-like courtrooms, four to five detainees are tried during a given session, which lasts approximately 15 minutes. On August 14th, I attended the trial of 18-year old Mahmoud from Hebron. (I am not using the detainee’s real name as proceedings against him are ongoing). Mahmoud was accused of raising his hand in defiance of a soldier. Court proceedings are conducted exclusively in Hebrew, a language, in the vast majority of cases, not understood by the accused Palestinians. Translation is provided by an Israeli soldier. Mahmoud, who met his lawyer for the first time at the beginning of the proceedings, quickly tried to explain in Arabic that he did not raise his hand in defiance, but rather to cover his face in



FINDING A WAY (Continued from page 1)

political environment remains hostile to any legitimate political opposition. As a result, neither democracy nor protection for basic human rights can be achieved through the current constitutional framework.

Through all of this, the Burmese people continue to find a way. In fact, activism has thrived despite the government's extensive efforts to suppress dissidence. During my time with the Burma Lawyers' Council, I was exposed to the work being done by former political prisoners who run campaigns against the unlawful imprisonment of thousands of prisoners of conscience. I learned how human rights activists carefully document, at great personal risk, unconscionable human rights abuses by the Burmese army in Karen state and how lawyers working inside Burma fight for the rights of workers and political opposition leaders.

I feel incredibly fortunate and grateful for the projects I had the opportunity to work on this summer. I drafted a submission to the *United Nations Committee for the Rights of the Child* on the legal status of children. I contributed to submissions made on behalf of imprisoned Burma VJ video-journalists to the UN *Special Rapporteur for Freedom of Expression*. I also published several

articles in Mizzima News on what one lawyer I worked with called "hot" issues such as land confiscation.

Without a doubt, the highlight of my internship was teaching a Government and Politics course at the Peace Law Academy, the Burma Lawyers' Council's legal education institution for Burmese youth. Broaching topics such as electoral systems, constitutional rights, and statelessness with a group of incredibly passionate and intelligent Burmese refugees and migrants was an enormously educational and rewarding experience.

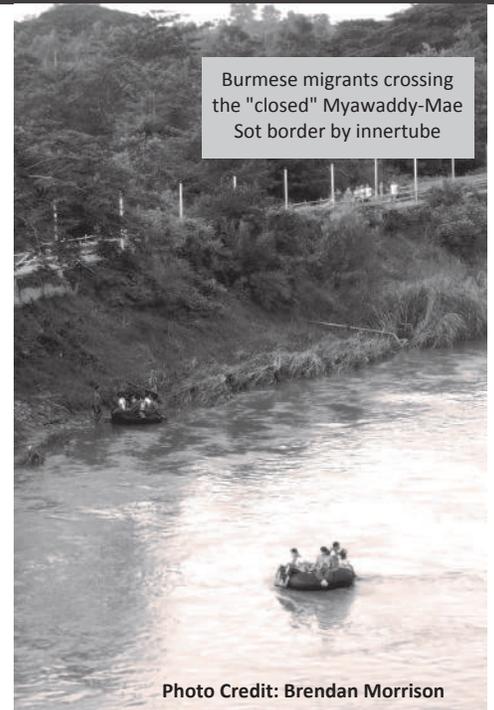
On my last day at the Peace Law Academy, one of my students, speaking on behalf of the class, asked that I share my experiences with my friends and family upon my return to Canada. He asked me to share the considerable challenges facing the Burmese people as they continue to struggle under authoritarian rule. Though the Burmese people are "finding a way," fighting for their rights to be respected in an unbelievably hostile environment, no genuine transition will occur so long as the current regime is able to continue consolidating and arbitrarily exercising its power. ♦

order to prevent the soldier from photographing him. When his lawyer (who only spoke Arabic) explained to the court what happened, the translator mistranslated the statement "preventing the soldier" as "hitting the soldier." Another Palestinian lawyer in the room, who understood Hebrew, stood up and attempted to correct the mistake, but was silenced. Immediately, the verdict was pronounced: guilty of assaulting a soldier. (I was only able to follow this interchange because I speak Arabic).

At the same session, sixteen-year old Ziad (also not his real name) was being tried for throwing stones at a military jeep. "Throwing stones" was the most frequent charge in the trials I witnessed this summer. According to a July 2011 report by the Israeli Human Rights NGO B'Tselem, between 2005 and 2010, 835 Palestinian minors were arrested and tried on charges

of throwing stones; all except one were found guilty. During Ziad's trial, his father requested multiple times to address the Court. He was repeatedly silenced. Desperately, Ziad's father interrupted one last time, "My child is sick. He has thalassemia and was in the hospital undergoing a blood transfusion at the time you are accusing him of throwing stones. It's impossible. He is weak, he doesn't go out." The translator, unable to find the word for "thalassemia" in Hebrew, shrugged and told the judge to carry on. Ziad was found guilty and charged a penalty of 5,000 shekels.

As an observer at the trials, I was also able to meet family members of the detainees. For most, it was the only time they were able to meet their sons, brothers, fathers, and husbands throughout the course of detention. This is because eighteen of nineteen Israeli prisons are located outside of the occupied territory, an illegal practice



Burmese migrants crossing the "closed" Myawaddy-Mae Sot border by innertube

Photo Credit: Brendan Morrison

NOTE: It was recently announced that the Burmese government will release a number of political prisoners. Though this is cause for cautious optimism, the number of prisoners rumoured to be released represents a fraction of Burma's political prisoners. This move will do little to advance respect for human rights more generally or to improve the lives of millions of Burmese citizens suffering from ongoing oppression.

under Article 76 of the Fourth Geneva Convention. Once, an excited sister next to me whispered loudly to her brother, past the guards sitting between them, that she found the perfect girl for him. A new bride mouthed to her recently arrested husband that she was pregnant. These flashes of news from outside made the prisoners smile, despite the grave situation before them.

Only after spending time in the Occupied Territories have I come to understand the different ways in which military occupation impacts daily life – routine imprisonment being one of the most debilitating effects. Occupation is a phenomenon far outside my ordinary frame of reference as a Canadian citizen. I continue to be struck by the profound patience demonstrated by those who face it every day, in all its forms. ♦

FIRST NATIONS AND TRIBAL WATER RIGHTS IN THE YUKON WATERSHED

Megan Strachan, 2L JD/MGA

I spent this summer in Alaska, working for the Yukon River Inter-Tribal Watershed Council (YRITWC). This internship allowed me to focus on First Nations rights in the Yukon Territory, specifically looking at how these rights can be interpreted in the context of water allocation, usage, quality, and governance.

YRITWC is a unique international, inter-tribal treaty organization, consisting of 70 First Nation tribes throughout the Yukon River Watershed, including tribes in Alaska, the Yukon Territory, and British Columbia. YRITWC aims to preserve and protect the Yukon River, and provides training and education on a range of issues, from water quality testing to alternative energy. Every two years, tribal and First Nations leadership gather in a community in the watershed to share information, give feedback to YRITWC, and participate in presentations. This year's Summit was in Ruby, Alaska (called the "Gem of the Yukon").

One day of the Summit was dedicated to First Nations and tribal water rights: what do "water rights" mean legally, practically and potentially on both sides of the border? I worked closely with a team of lawyers based in the lower 48 states and Canada, with my research focussing on water rights in the Yukon Territory. I researched the content of the Yukon First Nations' Final Agreements, as well as the accompanying Self-Government Agreements. I investigated the relationship between the territorial government, First Nations governments, and the federal government, trying to discern what these relationships and different spheres of jurisdiction mean for water management and governance in

the Yukon. I also did extensive research on the environmental assessment and permitting processes that grew out of First Nations treaty negotiations. Our team's collective research culminated in a presentation at the Summit.

Attending the Summit in Ruby, a small village only accessible by boat or plane in the interior of Alaska, was an incredible experience. However, my appreciation of the Yukon River and the people who depend on it began before the Summit, on an 8 day canoe trip called the Healing Journey. We began our trip only 60 miles below the Arctic Circle and travelled downriver 140 miles to the Native village of Tanana. Along the way, we talked with Alaskan Natives about the changes in the river, what they hope to see in the future, and how the salmon were running that year. We also dragged a scientific probe behind one of the canoes and took water quality samples every 30 miles. The Healing Journey is an initiative that has gained international attention as a method of collecting scientific data, reconnecting with the environment, and gathering and sharing traditional knowledge.

I had a remarkable experience this summer. I sharpened my legal research skills, I gained a deep knowledge of First Nations rights, and I acquired some insight into the differences between Aboriginal rights in the Yukon and Alaska. Beyond all of this substantive knowledge, I had the opportunity to visit several villages, to spend a week canoeing on the Yukon River, and to watch the leadership's traditional decision-making model in action. ♦

Megan was an
IHRP/Asper Centre Intern



Photo Credit: Megan Strachan

WOMEN IN POST-CONFLICT RECONSTRUCTION (Continued from page 9)

human rights violations committed during conflict is often too overwhelming for a developing criminal justice system to handle. Even where prosecutions are possible, retributive justice alone is an insufficient response to the need for comprehensive justice in the post-conflict period. Many practitioners in the field believe that the process of rebuilding legislative and institutional frameworks and developing specific processes to deal with the legacy of past violations presents a unique opportunity to build a judicial system that is responsive to the priorities of women and girls.

All of this requires that women be involved at the very beginning of peace talks in order to secure women's equal participation in the public and political life of the country. By consulting with women's organizations and civil society groups around the world, as well as studying UN Women programming in depth, I realized that the inclusion of women in the state-building process is crucial to the establishment of democratic practices of consultation and norms of inclusion.

UN Women has pushed heavily for the UN interagency task force on Libya to engage women and consult with women's organizations for the post-conflict planning and reconstruction of the country. During my internship, I assisted the UN task force on Libya by researching Libya's legal frameworks, including its constitution, judiciary, and laws. I learned that women's organizations and civil society groups are illegal in Libya and, as a result, these groups must operate underground and with few resources. It has been extremely difficult to find and communicate with women leaders in Libya, as they fear for their own safety and security. If the international community chooses to focus their efforts on power-sharing arrangements within Libya without listening to the voices of Libyan women, there is a grave risk that women's rights and priorities will be pushed to the sidelines. ♦

INTERNATIONAL HUMAN RIGHTS ADVOCACY IN THE CAPITAL

Gunwant Gill, 3L at the University of Toronto, Faculty of Law



Eager young minds descend on Washington, D.C. each summer, endeavouring to capture the quintessential D.C. intern experience. Unlike many of my fellow D.C. interns, however, I did not spend the summer advocating on behalf of a political party or big business. Instead, I spent my summer peddling the not-so-glamorous wares of human rights, as a legal intern with Human Rights Watch (HRW).

In a city where your connections and your political affiliation are spoken in the same breath as your name, the task of an impartial human rights advocate is far from straightforward. Thankfully, a cadre of passionate, intelligent, and seasoned HRW staff helped

me navigate this difficult terrain. Among these experts were a former special assistant to President Bill Clinton and a former *habeas* counsel to Guantanamo Bay detainees. One was even the subject of a documentary, entitled “The Dictator Hunter”.

With their guidance, I undertook several substantive projects in the terrorism and counterterrorism division at HRW. Among other projects, the division monitors and reports on the progress of the rule of law in Afghanistan. Tasked with examining whether ongoing Afghan criminal trials accord with Afghan and international due process law, I produced a handful of legal memos and developed, in the process of this two-tiered analysis, a comprehensive understanding of the evolution of basic legal rights in Afghanistan.

The majority of my work centered on the HRW Report “Getting Away with Torture: The Bush Administration and the Mistreatment of Detainees”. The report, several years in the making, calls for criminal investigations of former senior Bush administration officials for practices such as waterboarding, the Central Intelligence Agency’s rendition program, and the torture of detainees at Guantanamo Bay. To bolster the legal arguments advanced in the report, I examined the federal criminal laws under which administration officials could be charged and explored means by which the

statute of limitations for such crimes could be extended. Furthermore, I considered the applicability of conspiracy charges against the Department of Justice lawyers who crafted the so-called “torture memos”. Seeing the report in hard copy and getting the chance to deliver it to the office of the U.S. Attorney General, Eric Holder, gave me a taste of the personal satisfaction that comes from undertaking such meaningful work.

Being in the political hub that is Washington, D.C., I experienced the interplay between non-governmental organizations, politicians, and lawyers first-hand. Witnessing the crafting of a cohesive advocacy strategy by HRW and like-minded groups in their bid to influence the parameters of the Authorization of the Use of Military Force (AUMF), brought home the vital task of human rights lobbying. The AUMF is the central statutory enactment related to the war of terrorism as it authorizes the use of “all necessary and appropriate force against those nations, organizations, or persons [whom the President] determines planned, authorized, committed, or aided the terrorist attacks...” Interning in D.C. also allowed me to immerse myself in policy discussions by attending international law events and speaker series on a regular basis. Overall, my HRW internship was professionally satisfying, personally enriching, and has intensified my desire to pursue a career in international human rights law. ♦

INTERNING AT THE ICTR (Continued from page 5)

After drafting the memo, the issue of superior responsibility became the focus of much of my work at the ICTR. I had the opportunity to work closely with my supervisor writing the legal opinion that advised the Prosecutor on which issues to appeal in the *Military II* case. This transitioned into an active role drafting the Notice of Appeal, and eventually the Appeal Brief. Once again, I had the opportunity to draft the section on superior responsibility. The opportunity to be so involved in defining the contours of a significant element of international criminal law surpassed all the expectations I held prior to the internship. While I had been eager to work with the ICTR specifically because of the breadth of its existing jurisprudence (compared to the ICC and to other Tribunals), in the end it was working with the gaps in the case law

that proved to be the most exciting aspect of my work.

Visiting Rwanda, Climbing Kilimanjaro, and other Adventures

The experience of living and working in Arusha was unforgettable. We lived in the shadow of Mount Meru, went on hikes and bike safaris, and became connoisseurs of Arusha restaurants. One of the best parts of our internships was the opportunity to live and work with the amazing legal staff at the Tribunal. Working alongside legal practitioners gave us new insight into the life of an international criminal lawyer.

There were also many opportunities for travel and adventure. We went to Rwanda, where we visited genocide memorials and saw some of the places where events in our cases transpired. Visiting Rwanda provided

important context to the work we did this summer. We spent a week climbing Mount Kilimanjaro along with other ICTR interns. The scenery was breathtaking, and reaching the summit of Africa’s tallest mountain (and the world’s tallest freestanding mountain) was a great physical challenge. We also spent a weekend on the beach in Zanzibar. We saw wildlife, including giraffes and elephants in Nairobi and mountain gorillas in Rwanda. Christine was also able to return to a school that she helped build seven years before in Dodoma, Tanzania.

Our ICTR internships were excellent opportunities to work in the field of international criminal law. The legal skills we developed will be an asset no matter what path our legal careers take. Above all, we are grateful for the friends and mentors we gained during our time in Tanzania. ♦

160 GIRLS (Continued from page 3)

hub five hours North of Nairobi and in view of Mt. Kenya. In Meru, I worked with a local child welfare NGO that established a shelter for girls who have been raped and are at risk in their communities. The shelter, called *Tumaini* (which means “hope” in Ki’Swahili), was where I had an office—I called it my ‘home base’—which gave me the opportunity to interact with some of the 160 girls on a regular basis. Hope is an appropriate sentiment at the shelter. It is a place where girls are free to play and learn as children, and where they receive counseling to help them recover from the trauma of rape.

Throughout my internship, I accompanied Kenyan social workers through every step of a defilement investigation, from the initial contact with the reporting person to the judgment in a criminal case, where applicable. I participated in home visits and interviews with victims, met with police officers and local children’s authorities regarding specific cases, and followed the cases through the court process as an interested party. I documented my findings, identifying the players, explaining the process, and highlighting the challenges involved in seeking justice. I also had the opportunity to strategize with Canadian and Kenyan lawyers about the viability of various avenues to bring this case to the Constitutional

Court. I became immersed in Kenyan domestic law as I researched a variety of questions related to evidence, procedure, and substantive constitutional law.

Being involved in *160 Girls* was an incredible experience. I particularly enjoyed the unique opportunity to work on important human rights litigation at the grassroots level and in the boardrooms. I had the chance to work with a team of brilliant Kenyan and Canadian lawyers, as well as dedicated Kenyan social workers and volunteers who live this work every day. I am also grateful to have met many of the inspiring young women and girls who are able to tell their harrowing stories so that others may not have to live through the same. Through this internship, I gained invaluable experience in international human rights work which I will carry with me throughout my legal career. Moreover, I left Kenya with a sense of fulfillment, having contributed to a cause that I care deeply about, and a renewed sense of purpose, understanding the ways in which I can use my legal training to create positive change.

I would like to thank the International Human Rights Program and the Equality Effect for the opportunity to engage in groundbreaking women’s rights litigation in Kenya. It was a truly rewarding experience. ♦

SEEKING REFUGE (Continued from page 3)

fear of persecution, whether she is lying, and whether they have other options. To be an arbiter of such personal information and consequential determinations was, and is still, unsettling.

In an otherwise empty room, I’d sit at a desk across from the nervous claimant, and sometimes an interpreter, asking and listening and transcribing on a computer. Ask: what happened? Listen: death and torture and hideouts and setbacks and fear and family and on and on. Type. Repeat. And always, at some point I would arrive at the inevitable question: “Why did you come to Nepal?”

Photo Credit: Ben Liston



Photo Credit: Meghan Lindo

**Interested in contributing
to the *Rights Review*?**

If you would like to join our writing
team please contact us at:

ihrrightsreview@gmail.com

Each of the urban refugees in Kathmandu has this distinct journey, some personal ordeal of travel from one form of hardship to another. They carry memories not only of the persecution fled, but also of the travel, massive effort, expense, and sacrifice, all to end up in another dire situation. No money, no status, no rights, no common language and, once the expired visa fees start to accumulate, practically no way out. You cannot describe such a turn of events as “bad luck.” The term is too feeble. I would just stay silent and start to type again.

These are people journeying from worse to bad, a journey that engenders hope only relative to its prior absence. I met people whose wives, husbands, mothers, fathers,

sisters, brothers, children, friends, and neighbours were killed, sometimes in front of them. For them, Nepal’s poverty, pollution and various legal or social barriers are frustrations, not tragedies.

Still, the frustrations are real and they can be overwhelming. Despite the remarkable efforts of the UNHCR staff that I witnessed and marvelled at throughout the summer, there are times when dedication and sympathy are not enough. When a refugee blocks the road to insist on more assistance, or physically threatens a staff member to demand resettlement, or attempts to hang himself from the gate to feel that his voice is heard, there’s very little you can do. Occasionally, the best efforts of the best people fall frustratingly

short. You can never do enough, there’s not the time, capacity or the legal framework necessary. The best intentions, the best people, and the sturdiest principles, might end up sadly inadequate in practice. So, why would anyone come to work with refugees in Nepal?

The answer I prefer is a deflection. There are other, tougher questions, with answers that require a balance not between principle and practice, but between life and death. Working with the urban refugees in Kathmandu, the UNHCR is struggling with the former tension in order to tip, every so often, ever so slightly, the balance of the latter. ♦

SOUTH AFRICA’S SECTION27

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

This summer I developed a new appreciation for how constitutions can be used to advance social rights. Part of my experience in first year Constitutional Law involved heated small group debates on whether the sometimes vague provisions in the Canadian Charter of Rights and Freedoms could be interpreted to protect rights to strike, to health care, and to housing. As an IHRP intern at SECTION27 in Johannesburg, I spent much of the summer occupied with a completely different constitution. SECTION27 is involved in constitutional litigation in support of the advancement of social and economic rights, especially the right to health. The post-apartheid South African constitution has been described as one of the most progressive constitutions in the world. Unlike the Canadian constitution, it explicitly lays out the right to health (section 27), the right to strike (section 23), the right to housing (section 26), and the right to basic education (section 29). As I explained to a South African that the Canadian Constitution’s section 2(d) Freedom of Association has been interpreted in a manner that excludes the right to strike, our vastly different conceptions as to what constitutes basic rights and freedoms became readily apparent.

The ability of the South African government to uphold the numerous rights in their Constitution is often hindered by other competing interests. In a country like South Africa, where the state is dealing with enormous poverty and infrastructure issues, there are legitimate financial con-

straints that limit the government’s ability to realize many constitutional rights. For example, one of South Africa’s most groundbreaking socio-economic rights judgments, *Government of the RSA & Others v. Grootboom & Others, 2001*, concerns the right to access adequate housing. The Constitutional Court held that the State must, at a minimum, devise and implement a coherent, coordinated program designed to provide relief for those in desperate need. However, in spite of this declaration, little has changed for most South Africans. When Irene Grootboom, the named claimant in that case, died in 2008, she was still without housing.

Part of SECTION27’s strategy in advocating for the realization of basic human rights is to partner with grass roots civil society organizations. SECTION27 believes that litigation should be used to strengthen and empower social movements and that constitutional litigation is most effective when backed up by marches, media, and legal education. As Mark Haywood, the Director at SECTION27, put it, “Without an accompanying mobilization of civil society, the use of the courts may deliver little more than pieces of paper, with a latent untapped potential”.

In this regard, SECTION27 has been involved with the Treatment Action Campaign (TAC) in landmark cases surrounding the right to health. For example, in *Minister of Health & Others v. Treatment Action Campaign & Others (TAC)*, the

Constitutional Court held that the failure to develop and implement a Prevention of Mother to Child Transmission (PMTCT) HIV/AIDS program violated the Constitution’s guarantee of access to health care services. Mother to child transmission of HIV can occur during pregnancy, during delivery, or while breastfeeding. In the TAC case, the Constitutional Court ordered the government to fulfil its positive obligations in respect to the right to health and implement a comprehensive PMTCT program in the public health system. While litigation was the primary means for securing the right to treatment, TAC was also engaged in an aggressive campaign of human rights education, HIV treatment literacy, demonstrations, and protests. Since the TAC case was successfully litigated, the incidence of mother to child transmission of HIV has dropped significantly in South Africa and 95% of antenatal clinics offer testing and anti-retroviral drugs for PMTCT. Without the TAC’s accompanying HIV literacy campaign, the very women the program was designed to assist may not have utilized the PMTCT services.

This summer helped me develop a broader conception of what a constitution can be and the rights that a constitution can protect and advance. A constitution can provide a framework not only for abstract principles, but also for positive government intervention, laying the foundation upon which social movements can push for greater protection for health, housing, and other social rights. ♦

FIGHTING IMPUNITY (Continued from page 4)

early hours of the morning. The period immediately before the filing deadline was busy. This was the first case before the court and our submission had to be perfect. On the eve of the deadline, the whole team ate dinner together and then went back upstairs to hunt for errors until the early morning. After a few hours of sleep, we returned to work. About one hour before the deadline, the fire alarm went off in our building. Hoping it was an ill-timed drill, our team barricaded itself in an office and kept working until we were forced out at the last minute. We filed the brief on time and celebrated with senior members of the OTP, including the Prosecutor, Louis Moreno-Ocampo.

Closing arguments in the *Lubanga* case took place while I was still at the court. One of the Prosecution's speakers was 92-year-old Benjamin Ferencz, previously a prosecutor at Nuremberg. Angelina Jolie was also in attendance. It was thrilling to watch the ICC's first case, which I had the privilege of working on, come to an end.

For the rest of the summer, I worked on a new case before the Court. Some of the

most exciting assignments were urgent responses to defence filings. Within a few hours I was required to read the defence filing, strategize with the team on how best to respond, conduct research, and then draft a Prosecution filing. I assisted with drafting more substantial submissions, including the Document Containing the Charges, analysed victim applications for participation in the proceedings, and worked closely with the Investigative Division. As our time in court drew near, I also had the opportunity to analyse defence evidence.

The highlight of my summer was attending the court appearance we had spent so much time preparing for. I was able to watch as the Prosecution set out the case-in-chief, using text I helped draft. In court, I took notes and provided information to Prosecution lawyers for use during oral arguments. From the Prosecution's table, I watched many heated exchanges between Prosecution and Defence lawyers and exciting cross-examinations. That evening, the Prosecutor, Louis Moreno-Ocampo, stopped by our office to discuss the case.

Lawyers, academics and journalists often criticize the decisions of the OTP and its

personnel. My time at the ICC allowed me to observe first-hand the unrelenting pressure on the people actually making these decisions. The domestic and international political considerations that lie behind many litigation decisions are extraordinarily complicated. As well, substantial (and often unavailable) resources are required to gather evidence, protect witnesses, and comply with the ever-increasing duties imposed on the Prosecution by the ICC judges. For instance, in one case I worked on, the Prosecution was obliged to create and disclose a 20,000 page chart analyzing the evidence it intended to use.

My colleagues this summer included lawyers, professors, and law students from all over the world. It was exiting to meet and work with such a diverse group of people. During my two weeks of holiday, I travelled to Paris, Normandy, and Barcelona. My roommate (also a U of T Law student) and I drove to a music festival in Germany one weekend. We also attended the Queen's Day and the Pride festivals in Amsterdam.

I would like to thank the IHRP for such an incredible experience! ♦

DARFUR DEFENCE (Continued from page 4)

humanity. Nevertheless, the case proceeds. Trial is set to commence later this year or early in 2012.

Banda and Jerbo were never arrested. Rather, they voluntarily complied with summons for their appearance at the ICC. They continue to cooperate with the ICC, meaning they are not detained and travel to the Court when called upon. This is unprecedented in the short history of the ICC (with the exception of fellow Darfur rebel Abu Garda, whose charges in relation to the same attack were not confirmed by the Pre-Trial Chamber due to insufficient evidence).

The approach of the Parties to the evidence is also unusual. In May, the Prosecution and the Defence made a joint submission (publicly available) agreeing to certain key elements of the charges: the confidential agreed facts "narrow, to a very significant extent, the issues in dispute between the parties and will facilitate the fair and expeditious conduct of proceedings." Indeed, the Accused have agreed to only contest three specific issues at trial on the basis of

the agreed facts. First, whether the attack on the [peacekeeping base] on 29 September 2007 was unlawful. Second, if the attack is deemed unlawful, whether the Accused persons were aware of the factual circumstances that established the unlawful nature of the attack. Third, whether [the African Union Mission in Sudan] was a peacekeeping mission in accordance with the Charter of the United Nations.

These issues – touching on the use of force and the status of peacekeepers in international law – are different from the kinds of issues more commonly raised by the Defence at international tribunals and the ICC. My work largely involved analyzing evidence with an eye to these three contested issues, as part of long-term preparation for trial. I wrote internal memos on the consistency of evidence relating to specific factual questions or events; summarized and analyzed the strengths and weaknesses of past witness statements; and reviewed, organized, and drew conclusions from other disclosed evidence. This factual, evidence-based work gave me a clear sense of the process of building a Defence case before the ICC.

The rest of my work consisted of a variety of legal tasks relating to pre-trial procedural matters ongoing between the parties: issues of witness re-interviews and proofing; conflict of interest jurisprudence; witness protection measures and disclosure obligations; and procedures for translation and interpretation. These more short-term assignments in response to back-and-forth filings by the Parties complemented the long-term evidence analysis that occupied the rest of my time.

The *Banda and Jerbo Case* holds the potential to make interesting contributions to international criminal law – on the expeditiousness of ICC trials, the compliance with summons, the benefits and challenges of agreed evidence, and substantive issues in international humanitarian law on the use of force and the mandate of peacekeeping missions. I look forward to following the trial and watching evidence on the three contested issues play out in court. I am grateful to the IHRP for giving me the opportunity to participate in the development of this case. ♦

2011 IHRP Interns

Louis Century - International Criminal Court (Defence)
Gunwant Gill - Human Rights Watch (NYC)
Danielle Glatt - Section 27 (South Africa)
Sofia Ijaz - Addameer (Palestine)
Lane Krainyk - Burma Lawyers' Council (Thailand)
Charu Kumar - Conectas (Brazil)
Jessica Lam - UN Women (NYC)
Aimee Letto - Centre for Reproductive Rights (NYC)
Meghan Lindo - Equality Effect (Kenya)
Ryan Liss - International Criminal Tribunal for Rwanda (Prosecution)
Ben Liston - United National High Commissioner for Refugees (Nepal)
Meaghan Lowe - Gaia Amazonas (Columbia)
Andrew Max - International Criminal Court (Prosecution)
Sylvie McCallum Rougerie - Bangladesh Legal Aid and Services Trust (Bangladesh)
Sonja Pavic - International Criminal Tribunal for Rwanda (Prosecution)
Mary Roberts - Inter-American Commission for Human Rights
Katherine Robertson - International Centre for Transitional Justice (NYC)
Alice Tsier - International Labour Organization (Cambodia)
Nevena Urosevic - Centre of Human Rights, University of Chile (Chile)
Christine Wadsworth - International Criminal Tribunal for Rwanda (Chambers)

WATCHING EYES (Continued from page 7)

The project seeks to leverage the media, partnerships with other NGOs, and international mechanisms such as treaties and political relations to pressure the Brazilian government for change.

During my time with Conectas, I completed a number of both short and long-term assignments, all of which had the common goal of strengthening the *Foreign Policy and Human Rights Project*. My major project involved preparing a comprehensive research report on the World Health Organization (WHO). With a specific focus on access to life-saving medication—particularly access to HIV/AIDS medication within the Global South—Conectas is currently partnered with a number of health-focused NGOs in Brazil. In the past, Conectas relied largely on the United Nations Human Rights Council to be the instrument for domestic change—paying little attention to what the WHO may have to offer. My project served the purpose of advising Conectas on how they can strategically utilize the international mecha-

nisms offered by the WHO in their collaborative “right to health” advocacy efforts within Brazil and the Global South.

Aside from research, I attended a number of conferences and seminars that furthered my understanding of how foreign policy and human rights interact. For example, I attended a two-day conference titled “Emerging Democratic Powers: Civil Society Engagement in Foreign Policy and Human Rights”. There, I was able to engage with human rights activists from all over the world—including activists from Egypt, Indonesia, South Africa and Kenya—and learn about how they strategically pressured their respective governments to honor international human rights obligations.

My experience at Conectas was, in one word, amazing. Working with the organization was my first opportunity to work on human rights issues in an international setting. More importantly, the time I spent at Conectas opened my eyes to an alternate avenue for protecting human rights. As a law student, I had assumed that I would

utilize the judiciary while pursuing human rights advocacy. However, the *Foreign Policy and Human Rights Project* taught me that one cannot always rely on a country’s legal system to be the ambassador of change. There are many countries around the world, such as Brazil, which witness a growing gap between their government’s external promises and the reality inside the country. In many of these cases, the judiciary is an inadequate and ineffective medium for change. This is the very reason why NGOs like Conectas have sprung up all over the world, trying to apply international pressure to advance human rights.

My work at Conectas made me realize how important it is to gain an understanding of the dynamics and political agendas that underpin international relations if one is to use such mechanism to advocate for human rights. My experience at Conectas is what inspired me to fill out a rush application for the Masters of Global Affairs and pursue it concurrently with my JD. ♦

International Investment Law and Human Rights Working Group

Tom Hatfield (3L) and Jenny Yoo(2L) are leading a group partnered with Professor David Schneiderman to continue an empirical study examining the intersection between the international investment framework and international human rights standards. Students will provide a systematic analysis of the overlap between these two legal regimes by examining the extent to which international human rights issues are present and considered in international investment tribunal decisions. This empirical study will drive forward a deeper understanding of state-investor tribunals by bringing to the forefront human rights implications from the marginalized perspective of third parties. Examining the absence of human rights standards in the administration of justice between states and investors will highlight the disconnect that exists between those who control state-investor relations and those who are directly affected by the results.

Sexual Orientation and Gender Identity (“SOGI”) Working Group

Led by Matthew Oh (3L), Emily Shepard (3L), Maggie Fish (2L), Robert Hares (2L), Azeezah Kanji (2L), and Andrew Max (2L), SOGI will continue to respond to research requests from refugee lawyers this year. Lawyers will be advised of SOGI’s presence through listservs, word of mouth, networking, and referrals. This year, SOGI also intends to update past research reports that may have since become dated, and proactively begin new research reports either on countries not yet covered in our previous reports or on particular fact situations. (A catalogue of SOGI’s past country conditions memos can be found on the IHRP’s website.)

Women’s Human Rights Resources Working Group

Nita Khare (2L) and Sylvie McCallum-Rougerie (2L) are leading a working group partnered with Bora Laskin Law Library and the Law Commission of Ontario which will update and improve an exist-

ing catalogue of resources on international women’s rights issues currently housed at the Bora Laskin Law Library website. The group will also assist the Law Commission of Ontario to develop curriculum focused on the intersections between international human rights and violence against women for use in law schools across Ontario.

Women’s Right to Property in Post-Conflict Democracies Working Group

Jessica Lam (2L) and Danielle Glatt (2L) are leading a working group which will provide U.N. Women with a memorandum outlining the nexus between constitutional protection of gender equality and women’s right to property in post-conflict democracies. The memo will be used by policy analysts and lawyers at UN Women to assist in constitutional drafting in post-conflict situations, especially vis-a-vis Libya. Students will focus on selected comparator post-conflict democracies, analyze their constitutional equality protections, analyze the legal protection of women’s property rights, and draw linkages between these.

2011 IHRP Clinical Projects:

Canadian Legal Initiative for Extractives: Promoting Revenue Transparency

Partner Organization: Revenue Watch Institute (New York)

Bringing an International Human Rights Perspective to the “160 Girls” Litigation

Partner Organizations: Equality Effect (Canada); The Federation of Women Lawyers (FIDA)(Kenya); Ripples International Women’s Shelter (Kenya)

Envisioning Global LGBT Human Rights through the UN Human Rights System

Partner Organization: Envisioning Global LGBT Human Rights, an international research project housed at York University

Right to Access Judicial Remedies for Failed Refugee Claimants in Canada

Partner Organization: Refugee Law Office (RLO), Legal Aid Ontario

Rights for Canadian Federally-Sentenced Women with Disabling Mental Health Issues

Partner Organizations: Canadian Association of Elizabeth Fry Societies (CAEFS); Disabled Women’s Network – Canada; Native Women’s Association of Canada

Pursuing Accountability for Crimes against Humanity through Domestic Litigation

Partner Organization: Canadian Centre for International Justice (CCIJ)



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