Human Rights Advocates

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HRA Celebrates its 30th Anniversary

By Jeremiah Johnson

On October 25th, 2008, Human Rights Advocates celebrated its 30th Anniversary at UC Berkeley's Boalt Hall School of Law. The event provided participants a unique opportunity to not only talk about the substantive work of HRA, but also socialize with fellow human rights colleagues and friends. The evening began with food and drinks served on the terrace accompanied by live music. We then moved to the Goldberg Room for a panel discussion on racism and international human rights standards.

Left to right: Julianne Cartwright Traylor, Connie de la Vega, Jose Lindgren Alves and Sandra Coliver

The discussion, entitled *Dialogue on Racism and International Human Rights Standards – 60 years after the adoption of the Universal Declaration of Human Rights*, featured Jose Lindgren Alves, Sandra Coliver and Connie de la Vega, three distinguished advocates dedicated to protecting human rights against racism. The panelists focused on freedom of expression, religion, and affirmative action within the context of racism and human rights. Articles by the presenters on their topics follow in the newsletter. HRA has been actively involved with issues regarding racism and human rights. Just last year, HRA's work at the Committee on the Elimination of Racial Discrimination addressed affirmative action, juvenile life without parole and migrant workers.

The 30th anniversary celebration also served as a fitting tribute to the late Frannie and Frank Newman. We were so happy and honored to have their daughter, Holly, and husband, Richard, join us for the evening's festivities. Also joining us for the celebration were long-time HRA members and supporters like Kathy Burke, Joan Miura and Eileen Maloy, among others. This event brought together student volunteers and founding members in a true celebration of their invaluable contributions in the field of human rights and also served as a real reminder of their ongoing spirit that remains within HRA. Human Rights Advocates looks forward to another 30 years of advancing human rights at the United Nations and beyond.

Contents

Tributes to Frank and Frannie Newman	2
CERD and the Question of Religion	3
Affirmative Action Requirements of CERD	4
Freedom Of Expression	5
Expansion of the Toxic Wastes Mandate	6
Bringing Justice to Cambodia	8
HRA Welcomes Laurel E. Fletcher	9
Save the Date: Human Rights Film Festival	10

Tributes to Frank and Frannie Newman at HRA's 30th Anniversary Celebration

By Julianne Cartwright Traylor

HRA's 30th Anniversary Celebration was dedicated to the memory of Frank and Frannie Newman for their inspiring devotion to the promotion of human rights for all. The following are excerpts from my presentation on that occasion.

Frank C. Newman

Frank had an extraordinary career as a law professor, Dean of UC Berkeley's Boalt Hall School of Law (61-66), Justice on the California Supreme Court (77-82), and internationally renowned law reformer – among other roles. He was a pioneer and innovator and made many contributions working and teaching international human rights law not only at Boalt Hall, but also to the development of the field of human rights curricula of law schools everywhere, and in public life itself. He was instrumental in advising members of the U.S. Congress in the early 1970s "pre-Jimmy Carter" era who wanted to incorporate human rights provisions into the U.S. Foreign Assistance Act. In addition to advising members of Congress such as Congressman Donald Fraser, Chair of the House Committee on International Relations, he advised many international diplomats and many sought his counsel or received it whether they liked it or not!

Frank showed students and practitioners enhanced possibilities for using law for social justice and reform. He was a mentor to so many of us present at the anniversary celebration and was at the core of the genesis of HRA itself. He has been responsible directly and indirectly for several generations of human rights advocates and educator activists. He always encouraged students to be bold and creative when devising strategies and tactics to deal with human rights issues. When we would get bogged down in our discussions about strategies and tactics, he would ask us "how is this going to help people's human rights?" That was the bottom line for him. This mantra has served us well in all of these years.

I met Frank when I was a graduate student in the Political Science Department at UC Berkeley. My academic advisor recommended that I speak with Frank about taking classes and doing research with him at Boalt in the field of international human rights law and policy. This first meeting would change the direction of my academic and professional life.

Frank did not stand on any ceremony with his students. He took them to meetings and exposed them to as many experiences as possible in all arenas, both domestic and international. His mind was constantly moving, but he did stop to smell the roses – literally, as he took students on trips to places such as the UC Botanical Gardens and, when in Geneva for UN human rights meetings, on hiking and skiing trips in the Swiss Alps.

We have missed him since he died in 1996, but his spirit lives on in all of us whom he mentored.

Frannie B. Newman

Most of us were fortunate enough to meet Frannie through Frank. However, she meant more to us than as Frank's life partner of 56 years. As a Phi Beta Kappa graduate with undergraduate and graduate degrees in Psychology from Stanford, Frannie was a pioneer and innovator in her own right. She had a pioneering career in the paralegal field which had been recognized by the American Bar Association in 1969. She was a founding member of the San Francisco Association of Legal Assistants. She was one of the first paralegals at the firm of Morrison & Foerster, moving on to Hansen Bridgett and then to Shartsis Friese, where she retired in 1998 after 23 years of service.

Frannie was responsible for continuing Frank's work and legacy in the field of human rights in a number of ways. For example, she was instrumental in the naming of the Franck C. Newman International Human Rights Law Clinic at the University of San Francisco School of Law under the direction of Connie de la Vega.

She has been a key financial supporter of HRA's and the Clinic's work, including that of funding a generation of young human rights activists and advocates. She got so much pleasure and satisfaction out of meeting the Frank C. Newman Interns and hearing their report backs from their participation in UN meetings in New York and Geneva. Not only would she join us for these activities, but she also joined us for hikes and other activities as well.

As many of you know, Frannie died in June of last year. We were able to get together to pay tribute to her at the Faculty Club last Fall. We will miss her, but as Boalt Hall Professor David Caron has noted, "If Frank was the spirit of the group [Human Rights Advocates], then Frannie was its heart and she will be sorely missed."

The Genesis of HRA

As a bit of history for newer members, let me say a few brief words about the genesis of HRA.

In 1977, a number of us were at the February

session of the UN Commission on Human Rights convened in Geneva. Switzerland. Several us of stayed at the Jan Masaryk Center across the street from the UN's European Headquarters, the Palais des Nations. To make a long story short, a conversation between Rita Maran and me about the need for starting an organization to work on these on-going human rights issues both at the UN and back home in the U.S. led to further discussions, and in 1978, Kathy Burke, Lee Halterman, Rita, and Connie signed our Articles of Incorporation and HRA was officially born.

Rita then went to represent HRA before the UN Economic and Social Council Committee on NGOs and HRA was officially granted consultative status with the UN. In all of these years, our accreditation was challenged only once. Using our diplomatic skills – including those of former Board Member Cindy Cohn appearing on our behalf in NYC, and supported by the broad nature of our work – both on civil and political rights and economic, social and cultural rights - we were able to succeed in overcoming this challenge. The rest has been history with HRA building up a solid reputation for its work and advocacy at UN meetings in New York, Geneva, Durban, and Beijing and in other UN meeting venues, and here in the United States. From that time onward, we were known as the "Berkeley Crew."

The UN Committee On The Elimination Of Racial Discrimination And The Question Of Religion

By Jose Lindgren Alves

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted by the United Nations' General Assembly in 1965, was not only the first legal instrument in the area of human rights that came to light after the Universal Declaration of 1948, but also the first juridical document that provided for the creation of a "treaty body" to monitor implementation of its norms: the Committee on the Elimination of Racial Discrimination (CERD).

As established in Article 8 of ICERD, CERD is composed of eighteen experts, elected by the States-parties from a list of candidates presented by their respective governments, to act in their personal capacities. CERD's original mandate foresaw two kinds of activities, 1) examination of the periodic reports States-parties undertake to submit on measures they adopt to give effect to the provisions of ICERD (article 9) and 2) consideration of communications by individuals or groups claiming to be victims of violations of the rights protected by ICERD, if the State-party in question has issued a formal declaration of acceptance of such procedure (article 14).

Besides these original functions, performed by its plenary, CERD, in accordance with its rules of procedure, has established among its members follow-up as well as early warning and urgent procedure mechanisms. Furthermore, the Committee holds general debates on relevant questions of discrimination, and adopts General Recommendations to clarify and update some of the Convention's provisions.

An offspring of the struggles for civil rights, equality and decolonization, typical of the times in which it was elaborated, the text of ICERD does not expressly refer to "religion" among the causes of racial discrimination. Article 1 defines such discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin" (which, of course, does not include the special measures usually referred to as "affirmative action"). However, to the extent that in many cases racism and racial discrimination have been related to religion (anti-Semitism is just one of these cases), CERD has always addressed some aspects of discrimination based on religion. In order to do so, it uses ICERD's reference to "ethnic origin", taking into consideration the fact that religion is often one of the main elements of "ethnicity". While quite rare until the late 1990s, concerns with situations in which religion and race either appear together, or tend to be misinterpreted as equal, have lately become very common.

CERD was one of the first international bodies to express concern with the collateral damages of security measures adopted by many States in the aftermath of the terrorist attacks of September 11, 2001, in New York and Washington. In its first session after the attacks, in March 2002, the Committee adopted by consensus a Statement on Racial Discrimination and Measures to Combat Terrorism. The Statement contained, among other points: a) an unequivocal condemnation of the terrorist attacks on the United States; b) an affirmation that terrorism goes against human rights; c) a warning that measures against terrorism are only legitimate if they respect international human rights standards; d) a reaffirmation that the international prohibition if racial discrimination does not permit derogation; and e) the

announcement that the Committee intended to monitor the potentially discriminatory effects of legislation and practice in the fight against terrorism.

Having issued this statement as a guideline for States-parties and for its own work, CERD regularly refers to it, explicitly or implicitly, when examining periodic reports and making recommendations thereon. It does so without any bias in favor or against any country, religion or civilization, regardless of the power and prestige of each one. Not acting like this would disregard the aim of promoting non-discrimination and universal human rights, in a world where race and religion — or religious origin — have become increasingly intertwined both as a source of self-identity and as a cause of prejudice, discrimination and aggression.

Jose Lindgren Alves is a Brazilian Ambassador, National Coordinator for the Alliance of Civilizations, expert of the UN Committee on the Elimination of all Forms of Racial Discrimination, and recently- appointed member of HRA's International Advisory Board.

Affirmative Action Requirements of the International Convention on the Elimination of all Forms of Racial Discrimination

By Connie de la Vega

I recently completed an article regarding the need for more guidance regarding the special measures mandate of the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"). Affirmative action is an example of the special measures that would be covered by the mandate.

The article addresses the continuing racial inequality and the experiences and results from affirmative action in the United States and South Africa, arguing that these experiences point to the need for more guidance from the Committee on the Elimination of Racial Discrimination regarding the special measures mandate of ICERD, and in particular on affirmative action.

The article first reviews the Convention's mandate of special measures, arguing that special measures are distinct from measures aimed at remedying past discrimination — that they are a separate obligation of states parties tied to the states parties' duty to develop and protect racial groups and individuals, and that they are necessary to guarantee equality in the enjoyment of rights and fundamental freedoms and to address the effects of economic structural inequality. The article asserts that special measures need not always benefit those who suffered specific discrimination or who are the most disadvantaged in the affected groups, so long as the they are designed to "ensure the adequate development and protection" of those groups.

The article then focuses on the experience of the U.S. and South Africa — each a party to the Convention — in addressing affirmative action programs or special measures. It argues that the experiences of both countries with structural racial inequality and the ongoing existence of bias provide the greatest justification for the continued need for race-based special measures, despite the call for moving affirmative action programs to those based on class. Drawing from the experiences of both countries with efforts to address bias and inequality, the article proposes language for more comprehensive definitions and standards that might be enacted by the Committee on the Elimination of Racial Discrimination in order to provide more guidance for all countries trying to implement their obligations under the Convention.

The article proposes a new General Recommendation from the Committee that would address the following points: that the special measures obligation under article 2(2) of the Convention is mandatory; that special measures are not considered discriminatory if they are within the scope of fulfilling the obligations of the treaty; that special measures should have the goal of guaranteeing to all groups the full enjoyment of their civil, political, economic, social and cultural rights; that special measures should be taken to eliminate structural inequalities within a country; that special measures should not abrogate the rights of any group after the purposes for which they were adopted have been achieved; that special measures should benefit all groups that have not attained equal enjoyment of human rights and fundamental freedoms; and that special measures should be undertaken to address both *de facto* as well as *de jure* discrimination.

A new recommendation by the Committee should also acknowledge that: while there may be other means for addressing inequality such as those based on social status or wealth, so long as racial disparities exist in education and other rights, race-based measures should continue to used; bias needs to be addressed, both as a reason for using race based measures as well something that needs to be the focus of special measures; the use of diversity as a goal might be helpful as a means for

achieving equality, but it should not replace the goal of attaining equality in the enjoyment of human rights and fundamental freedoms; it is important that the special measures enacted be carefully tailored to the specific goals being sought; and measures such as affirmative action are only one means for addressing discrimination.

(Thanks to Lee Ryan of the USF School of Law Library for her assistance with preparing this summary of the article which was the basis for my talk at the HRA Fall Education event.)

Incitement To Racial And Religious Hatred Vs. Freedom Of Expression

By Sandy Coliver

Central to this debate is the vexing question of where to draw the line between incitement to racial or religious hatred on the one hand, which the leading human rights treaties require States to prohibit, and speech that falls short of that standard, including insult to religious sensitivities, which is protected by international standards of freedom of expression.

The issue has become more urgent and complicated since the 9/11 attacks, especially in Europe. On the one hand, discrimination, hatred and violence directed against Muslims increased in many countries, often reinforced by racial profiling, "preventative" detention based on perceived Arab or Muslim characteristics, and other ill-founded government actions. This led Arab and Muslim communities to feel at heightened risk of violence and discrimination and in turn more favorably disposed to speech by extremists who could tap their fears and resentments

In response, governments rushed to prohibit new categories of speech. Laws criminalizing "glorification of terrorism," "incitement" and other vaguely defined terms were passed by several countries.

Islamic groups viewed these speech laws as targeting Islamic communities. In response, they called for laws to protect Islam — or all religions — from insult. Advocates argued that such laws were needed to protect the dignity and the right of Muslims to equal treatment. Moreover, they noted the unfairness that blasphemy laws protecting Christian ideology remained on the books in several countries and that their legitimacy has been upheld by the European Court of Human Rights. [1]

It was in this context that publication in September 2005 of cartoons of the prophet Mohammed by a rightwing paper in Denmark led to such an outcry.

In this fraught atmosphere, the Islamic Council was able to press successfully for new language to be added to the mandate of the UN Rapporteur on Freedom of Opinion and Expression. In March 2008, prior to adopting a resolution extending the mandate for another three years, the Human Rights Council adopted a separate resolution that requested the Special Rapporteur to report on "instances in which the abuse of the right of freedom of expression constituted an act of racial or religious discrimination" and an oral amendment noting "the importance for all forms of media to repeat and to deliver information in a fair and impartial manner". Free expression campaigners and virtually all western and Latin American governments on the Human Rights Council opposed the amendments on the ground that the new language focused attention on abuses committed by the media and other non-governmental entities and thereby had the potential to chill legitimate speech.

There are several reasons as to why criminalizing speech that insults a religious belief in order to protect dignity and prevent discrimination is misguided.

First, such laws, and the debates that surround them, distract attention from the underlying conditions that need to be addressed: discrimination in housing, education, employment and in a vast range of other areas, including mistreatment by the police. For instance Asma Jahinger, the UN Special Rapporteur on Freedom of Religion or Belief noted in her report to the General Assembly in October 2008 the pernicious effects of including religion on ID cards. Changing that practice she suggested would likely have far greater impact in reducing discrimination against Muslims than criminalizing insulting speech.

Second, any law that can be used to protect religious beliefs from attack can also be used to protect political ideology, or the government in power, and can be used to suppress speech that is critical of the government in the name of stopping incitement to hatred. Hate speech and anti-extremism laws are regularly so employed, especially in countries where the government is keen to suppress dissent and/or speech of minority groups. Russia and several African countries are particularly egregious abusers.

The danger of overbroad terms being used to suppress legitimate speech is illustrated by misuse of the Security Council's resolution 1624 passed in 2005, which calls on all UN States to prohibit "incitement to commit a terrorist act or acts," but does not define those terms. The reports of the UN Counter Terrorism Execu-

tive Directorate show that several countries have interpreted that prohibition in an overly broad way, e.g., to encompass "subversive words" and even "possessing printed materials or images considered to be incitement". [2]

For instance, a cartoonist was convicted in France of glorification of terrorism because he published a cartoon shortly after the attack on the World Trade Towers with the caption "We all dreamed it, Hamas did it." The cartoonist noted that he had drawn the cartoon on September 11 when he was not aware of the extent of the loss of life; his intent had been to convey anti-American sentiment that the U.S. finally tasted a bit of its own medicine. Certainly, he did not intend to, and there is no evidence that he did, encourage people to embrace terrorism. Not only was he convicted of glorification of terrorism, but the European Court of Human Rights upheld the conviction in the case of Leroy v. France. [3]

Professor Robert Post, previously at Boalt and at Yale for the past several years, makes a third argument as to why speech that insults a religion – short of incitement to hatred of members of a particular group – must be tolerated in a liberal democracy. He argues that, for a government to have "democratic legitimacy" when it makes unpopular decisions, such as requiring that Muslims and other minorities be treated without discrimination, the government must allow opposing sectors to voice their displeasure, and to do so in ways they so choose, so long as they do not intend, and are not likely, to incite hatred or violence. In other words, in a liberal democracy, groups must tolerate insulting language as the price of ensuring that all residents feel that their voices are heard even if not followed.

In closing, I noted the huge impact of Frank and Frannie Newman on my life and approach to human rights challenges. Together they inspired me to read primary texts carefully, look for creative ways to extend protections while remaining faithful to the texts, and write clearly and succinctly. I hope that I have done credit to their legacies!

Sandra Coliver is Senior Legal Officer at the Open Society Justice Initiative, former Executive Director of the Center for Justice and Accountability and dedicated member of HRA's National Advisory Board.

1. Wingrove v United Kingdom (1996) 24 EHRR 1.
2. See, e.g., Second Report of Counter-Terrorism Committee to Security Council on implementation of res. 1624(2005), UN Doc S/2008/29, paras. 4 et seq.
3. Leroy v. France, Application No. 36109/03, issued Oct. 2, 2008.

Human Rights Advocates Victory at the 9th Session: Expansion of the Toxic Wastes Mandate

By Elena Gil

While in India on a trip following the California Bar exam, I was surprised to receive an email from one of the contacts made while working as a Frank C. Newman Intern in Geneva during the 7th Session of the Human Rights Council. Recalling our long conversations about the need for expanding the scope of the toxic wastes mandate, a member of the Mission of Côte d'Ivoire in Geneva wrote to me requesting HRA's input on the draft resolution on the mandate, which was up for renewal at the 9th Session.

HRA's advocacy efforts and persistence resulted in the Human Right Council passing, by *consensus*, a stronger toxic wastes mandate that is no longer limited to only analyzing the adverse effects of *illicit* movement and dumping of toxic and dangerous products, but also to those impacts that result from *legal* toxic transfers that have a detrimental impact on the enjoyment of human rights.

The Commission on Human Rights adopted its first resolution on "the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights" on March 8, 1995. Resolution 1995/81 affirmed that the illicit traffic and the dumping of toxic and dangerous products and wastes constituted a serious threat to fundamental human rights and established the mandate of the Special Rapporteur to analyze the adverse effects on human rights of such phenomena. The Commission extended the mandate of the Special Rapporteur with resolution 2004/17 of 16 April 2004 and followed up with resolution 2005/15 of 14 April 2005.

Up until now, situations in which legal toxic wastes dumping adversely impacted human rights were considered to be beyond the scope of the mandate and were ignored or dismissed if there was an attempt to bring these situations to the attention of the Human Rights Council. Similarly, toxic wastes transfers that did not cross borders were also considered to be irrelevant because the language of the mandate specified looking at "transboundary" toxic transfers. This gap left many precarious situations in which toxic wastes negatively impacted human rights unaddressed. HRA felt it imperative to bring these situations under the watchful

eye of the Human Rights Council because only then will there be any pressure to stop or remedy the practices that lead to such conditions.

During the 7th Session, HRA submitted a written statement, scheduled an oral intervention, and wrote an extended report used to lobby several delegates for their support and highlight the importance of broadening the toxic wastes mandate. HRA continued asserting the pressure during the pivotal 9th Session during which it submitted another written statement while working feverishly with the Mission of Côte d'Ivoire, who on behalf of the African Group, headed the drafting of the renewed resolution on the toxic wastes mandate.

(See HRA's written statements submitted to the 7th and 9th Sessions calling for expansion of the toxic wastes mandate: *Human Rights Advocates, The Human Rights Impact of the Illicit Movement and Dumping of Toxic Wastes*, A/HRC/7/NGO/25, Feb. 22, 2008 & A/HRC/9/NGO/07, Aug. 28, 2008. *See also* Human Rights Advocates, Oral Intervention, Mar. 10, 2008, *available at* http://www.un.org/webcast/unhrc/archive.asp?go=080310 [scroll down to "Human Rights Advocates, Ms. Elena Gil"]. *See also* Human Rights Advocates, The Human Rights Impact Of The Illicit Transfer And Dumping Of Toxic Wastes And Dangerous Substances: E-Waste, Sham Recycling, And The Need For Effective Regulation (March 2008), *available at* http://www.humanrightsadvocates.org/images/Gil%20Long%20Report.doc).

Special Rapporteur Okechukwu Ibeanu was very receptive to HRA's oral intervention and began including a call to expand the toxic wastes mandate at every opportunity he had, starting from his response to HRA's oral intervention at the 7th Session to his report leading up to the 9th Session. "The Special Rapporteur notes that resolution 2005/15 calls for him to investigate cases and phenomena related to the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

In practice, however, a greater part of the information he receives concerns movements and transportation of toxic and dangerous products and wastes that appear to be officially legal, particularly in the form of trade and development assistance. Yet, some of such movements could be considered "illicit" based on human rights norms and they carry far-reaching adverse consequences for the enjoyment of most internationally guaranteed human rights. "The Special Rapporteur would like to request the Council to consider enhancing the mandate [by broadening it] to include [the impact of] all forms of movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights." (Report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Okechukwu Ibeanu, A/HRC/9/22, Aug. 13, 2008, at 8–9, para. 36 & 41, *available at* http://daccessdds.un.org/doc/UNDOC/GEN/G08/150/56/PDF/G0815056.pdf?OpenElement).

The 9th Session proved to be exciting. Reports from Geneva described the long weekend sessions and the tireless re-drafting of the resolution. Finally on Sept. 24, 2008, HRA received news that the Human Rights Council agreed to adopt resolution 9/1 on the toxic wastes mandate. More incredulously, for the first time since its creation in 1995, the mandate was adopted without a vote. The great achievement of this renewal of the mandate was that references to "illicit" toxic transfers were abandoned. Furthermore, rather than just focusing on transboundary movements, there is language in the preamble of the resolution that includes focusing on "national" toxic transfers.

These seemingly minor changes in language greatly expand the scope of the mandate, making it more human rights oriented and providing the Special Rapporteur with additional opportunities to address previously neglected situations in which toxic wastes adversely impact human rights.

One unfortunate aspect of the new resolution, and probably a side effect of achieving the consensus, is that some potentially powerful language of the previous toxic wastes resolution concerning the right to clean water and the standards for transnational corporations ("TNC") was lost. Apparently this was done in an attempt to standardize the language in line with the other resolutions adopted at the 9th Session. Nevertheless, the new resolution 9/1 still includes language stressing the "human rights responsibilities of transnational corporations and other business enterprises" and adds the rights to "access to information" and "public participation" to the list of human rights enumerated in the document.

HRA will remain vigilant to see if omitting the right to clean water and standards for TNC will negatively impact the Special Rapporteur's work. HRA remains convinced, however, that the positive changes greatly outweigh these omissions and will result in a re-invigorated focus on the human rights impact of

toxic wastes. This is especially important given the complexity of new issues in which toxic wastes impact human rights, namely the toxic aspects of the emerging green technology sector, like the manufacturing of solar photovoltaic panels, which contain many toxic chemicals.

Not addressing these new issues will lead to a repeat of the current e-waste problem, in which developed countries dump their worn-out technology on developing countries that do not have the financial or technical capacity to safely process the material. The stronger language of the renewed mandate will ensure that the Special Rapporteur can address these cutting-edge issues even if the situation does not involve illicit or transboundary toxic dumping.

HRA's role in achieving this victory should not be understated. An email from the Mission of Côte d'Ivoire sent after the 9th Session acts as a reminder of the impact HRA's efforts have on the international human rights movement. Below follows the relevant translated portions of the email:

> *The Permanent Mission of Côte d'Ivoire welcomed the significant contribution of Human Rights Advocates when Côte d'Ivoire decided to have a participatory approach in the process of drafting the* ***resolution on the renewal of the mandate of the special rapporteur on "the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights"*** *last year.*
>
> *This resolution was of crucial importance for the African Group and Côte d'Ivoire, considered the important role that this mandate should play in resolving issues that resulted from the dumping of toxic waste in Abidjan in August 2006. The importance of the issue called for the involvement of all stakeholders, resolutely committed to the efficient and universal human rights protection. We welcome again the determinant contribution of HRA the contribution to this process that lead to a consensus.*

HRA also acknowledges the efforts of EarthJustice that has also been involved in this issue since 1995.

Elena Gil is a Legal Fellow at the Greenlining Institute in Berkeley, California and former Frank C. Newman intern.

Bringing Justice to Cambodia: The Khmer Rouge Trials

By Sun Kim

The Khmer Rouge trials, as it is commonly known, refers to the Extraordinary Chambers in the Courts of Cambodia (ECCC) which was created in 2003 by an Agreement between the Royal Government of Cambodia and the United Nations, after lengthy negotiations, with the mandate to bring to justice those responsible for the genocide that occurred during the Khmer Rouge period.

The ECCC became fully operational in 2007 and is a hybrid court composed of both international and national members at all levels. The ECCC is a court of limited jurisdiction, only focusing on the period of the Democratic Kampuchea rule from 1975 to 1979 and prosecuting those "senior leaders" and "those most responsible" for crimes specified under the Agreement. Almost thirty years after the Khmer Rouge period, the ECCC is slated to have its first trial start in March 2009. The first of five suspects to go to trial is Kaeng Guek Eav ("Duch"), who was allegedly responsible for running the notorious Tuol Sleng prison, known as S-21.

The United Nations Assistant to the Khmer Rouge Trials (UNAKRT) provides the international component to the ECCC. Since the ECCC is based on the Cambodian national system, which itself is based on the French civil law system, the tribunal is a mixture of Cambodian law, French civil law and international law. As a lawyer from the common law tradition, I found it particularly interesting to learn the criminal procedure of the civil law system, which is very different from the common law system.

In the Pre-Trial Chambers (PTC), I work on substantive legal issues that arise under the PTC's jurisdiction, such as disagreements between Co-Investigating Judges or disagreements between Co-Prosecutors. My position as a legal intern, which is the equivalent of a judicial clerkship, but on the international level consists of doing mainly legal research on the case law that comes out of the other criminal tribunals such as the International Criminal Tribunals for the Former Yugoslavia, International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone. In addition, the International Criminal Court also provides some legal guidance for our research. Cambodian case law is not published and not publicly available.

The ECCC has recently been the subject of

controversy from allegations of corruption on the national side to criticisms that the slow-moving pace of the court is hindering public perception that the tribunal will accomplish its goal of bringing to justice those most responsible for genocide. In its defense, the hybrid nature of the ECCC presents a unique situation and working in conjunction with the national and international sides often takes time.

The expectations of the ECCC are extremely high as the nation waits for the Court to bring justice, whatever varying definitions of justice there may be, but justice nonetheless for the crimes committed during the Khmer Rouge period. The next few months presents an interesting and exciting period for the Court as the trials move forward and perhaps justice will finally be brought to the people of Cambodia.

For more information on the tribunal and the UN component, visit www.unakrt.org and www.eccc.gov.kh.

Sun Kim serves as an intern at the Pre-Trial Chambers of the Extraordinary Chambers in the Courts of Cambodia for the Khmer Rouge Tribunal and is a former Frank C. Newman intern.

HRA NEWSMAKERS

Human Rights Advocates Welcomes Laurel E. Fletcher to its National Advisory Board

Laurel Fletcher is Clinical Professor of Law and Director of the International Human Rights Law Clinic at the University of California, Berkeley, School of Law. Before joining the Boalt Hall faculty in 1998, Laurel Fletcher practiced complex civil litigation, including representing plaintiffs in employment discrimination class actions.

Fletcher is active in the areas of transitional justice and humanitarian law, as well as globalization and migration. As director of the International Human Rights Law Clinic, she utilizes an interdisciplinary, problem-based approach to human rights research, advocacy, and policy.

She has conducted empirical studies of the human rights impacts of Hurricane Katrina and the 2004 tsunami, forced labor in the United States, forced migration from the Dominican Republic, and the relationship between justice, accountability, and reconciliation in Bosnia. The Fulbright Commission invited Fletcher to lecture in Sri Lanka regarding her work on the provision of HIV treatment as a human rights obligation.

In November 2008, Fletcher and co-author Eric Stover released "Guantanamo and Its Aftermath: U.S. Detention and Interrogation Practices and Their Impact on Former Detainees." The report presents the findings of a path-breaking, two-year study that used cutting *edge methodology to illuminate the experiences and perspectives for former detainees themselves, including the long-term impact of their treatment by the United States. *

Fletcher's other publications include "Latino Workers and Human Rights in the Aftermath of Hurricane Katrina," in the Berkeley Journal of Employment and Labor Law (2007) (co-author); "From Indifference to Engagement: Bystanders and International Criminal Justice," in the Michigan Journal of International Law (2005); "After the Tsunami: Human Rights Vulnerabilities of Vulnerable Populations" (2005) (co-author); and "A World Unto Itself? The Application of International Justice in the Former Yugoslavia," in My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity (co-author) (Eric Stover & Harvey Weinstein eds., Cambridge Univ. Press) (2004).

Human Rights Advocates is accepting nominations for the Board of Directors. The Board will be elected at the Spring Annual Meeting on April 14th, 2009 at the University of San Francisco, School of Law. Board meetings are held once a month in San Francisco or Oakland.

If you would like to apply, please contact Nicole Phillips at nicole@humanrightsadvocates.org by February 23, 2009.

The following is a list of the members of HRA's National and Advisory Boards:

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UPCOMING FILM FESTIVAL

HRA proudly co-sponsors the **7th Annual Human Rights Film Festival** on Tuesday 24th, Wednesday 25th, and Thursday 26th February, 2009 (from 2 p.m. to 9 p.m.) at Presentation Theatre, the University of San Francisco, School of Law. Admission is free and the Festival is open to the general public.

Please contact Susana Kaiser, Media and Latin American Studies, kaisers@usfca.edu or Mary Zweifel, International & Area Studies, Festival Administrator, mezweifel@usfca.edu for further information. Films to be shown:

Taxi To The Dark Side, 2007, 106' USA Dir. Alex Gibney (Bush Administration)
Dos Americas: The Reconstruction Of New Orleans, 2008, 47' USA Dir. David Zlutnick (Post Hurricane Katrina Reconstruction)
4 De Julio. La Masacre De San Patricio (July 4th – St. Patrick's Massacre), 2007, 98' Argentina Dir. Juan Pablo Young, Pablo Zubizarreta (Massacre of three priests on July 4th, 1976)
Nuevo Dragon City, 2008, 12' USA Dir. Sergio De La Torre (Chinese living in Tijuana, Mexico in 1927)
Promise To The Dead, 2006, 92' Canada Dir. Peter Raymont (1973 Assassination of Salvador Allende)
The Greatest Silence: Rape In The Congo, 2007, 76' USA Dir. Lisa Jackson (The war zones of the Democratic Republic of Congo)
Freeheld, 2007, 38' USA Dir. Cynthia Wade (Lesbian police detective's struggle with equality)
Burning The Future: Coal In America, 2008, 89' USA Dir. David Novack (Conflict between the coal industry and residents of West Virginia)
Trouble The Water, 2008, 93' USA Dir. Carl Deal, Tia Lessin (Hurricane Katrina)
Sleep Dealer, 2008, 90' USA/MEX Dir. Alex Rivera (Near-future militarized world with closed borders)

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