

advocate

C E N T E R F O R C I V I L A N D H U M A N R I G H T S



\$750,000 Ford Foundation Grant for Accountability Project

The Ford Foundation has awarded the CCHR a three-year grant for \$750,000 to conduct academic, research and advocacy activities on a topic for which the center has long been known in the human rights movement: accountability for gross human-rights abuses. This general theme encompasses issues of truth and justice in transitions to democracy; universal jurisdiction; international criminal justice (including campaigning for an International Criminal Court); as well as the ethical and political dimensions of achieving truth, justice and reconciliation under complex circumstances.

With these funds the center will be able to increase the University of Notre Dame's library materials on this topic and turn the University into an important resource center on accountability for serious human rights violations. The center will also be able to invite practitioners with rich experiences on these matters to come as Visiting Fellows and to reflect on the lessons they can share with many others. Under the project, the center will be able to place attorneys and other professionals in internships with international tribunals, truth commissions and NGOs active on issues of truth and justice. The center hopes also to organize conferences and to publish the results of scientific research, and even to attract to its LL.M. and J.S.D. programs lawyers from around the world who demonstrate a strong commitment to a serious study of all aspects of accountability.

The Ford Foundation has decided to initiate a very strong investment over the next few years on the topic of "Transitional Justice," and the center is among the first institutions chosen by Ford to launch this new strategic area. This fact will allow the center to cooperate extensively with a new International Center for Transitional Justice that will be the centerpiece of Ford's initiative. Already, in the center's first experience of advisory services to governments and civil society, director of the center Professor Juan Méndez recently traveled with three other international experts to Lima, Peru, where the post-Fujimori government has announced plans for a truth commission. The new grant will allow the center to complement the International Center's operations with strong academic, research and documentation back-up.

It is particularly significant that the Ford Foundation, whose generous contribution got the center started in 1973 at Fr. Hesburgh's request, continues to show a high degree of confidence in the center and in its ability to work at the new horizons of human rights protection.

Perspectives	2
Overview	4
Events at the Center	7
Internships	12
Faculty and Staff News	13
Alumni News	16
Student Profile	19
Briefly	20

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P E R S P E C T I V E S

New Rules of Procedure for the Inter-American Commission on Human Rights

by Professor Dinah Shelton

The evolution of regional human rights protection will make another advance with the entry into force on May 1, 2001, of new Rules of Procedure for the Inter-American Commission on Human Rights. The Commission's revisions of its former Regulations not only correct prior discrepancies between the English and Spanish versions and organize the Rules in a more logical progression, but also add provisions that provide clearer guidance to parties involved in Commission proceedings. The new Rules appear likely to improve the flow of cases along with the procedural fairness and transparency of the system. As such, the Rules are likely to answer many of the criticisms that previously had been directed toward the Commission.

Functioning of the Commission

The Commission's work should be facilitated by removing the former eight-week time limit for the annual sessions. The new Rules provide that the Commission shall hold at least two regular sessions per year, without specifying a maximum period of time for the meetings, and may hold as many special sessions as it deems necessary.

Article 15 of the new Rules ratifies the recent practice of the Commission in appointing rapporteurs and working groups. The former Rules had referred only to the latter. The new Rule provides that the Commission shall determine the mandate of any rapporteur and may designate as rapporteur one of the Commission members or someone from outside. In either case, the rapporteur must periodically present his or her work to the plenary Commission.

Among the minor changes, the officers of the Commission will now be known as the president and vice presidents, rather than chairman and vice chairman, and nearly all former references to the government of a State have been replaced by referring directly to the State. In addition, the Rules have been made gender-neutral, by consistently referring to he or she, him and her, or his and hers.

Petition Procedures

The most significant changes in the Rules concern petition procedures. First, Article 23 makes clear the extensive subject matter mandate of the Commission. Where the former Regulations referred only to the American Convention on Human Rights and the Inter-American Declaration on the Rights and Duties of Man, the current version adds the two



Protocols to the Convention (economic, social and cultural rights, and abolition of the death penalty), the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. Regardless of the normative instrument invoked, a single set of Rules now applies to the processing of petitions up to the point at which the Court's jurisdiction may be invoked. The broad standing to file petitions remains, allowing any person or group of persons or non-governmental entity legally recognized in one or more of the member states of the OAS to submit petitions. In addition, the Commission may also begin processing a matter on its own motion.

Precautionary measures are regulated by Article 25, and the Commission has corrected one of the least comprehensible of the earlier Regulations. The new Article 25 provides that the Commission, either at the request of a party or on its own initiative, may request that the State take precautionary measures to prevent irreparable harm to persons "in serious and urgent cases and whenever necessary according to the information available." A new paragraph provides for follow-up, specifying that the Commission may request information from the interested parties on any matter related to the adoption and observance of the precautionary measures. (Art. 25(3)).

The new Rules clearly specify the different stages of the processing of petitions. At the initial stage, the Executive Secretariat will conduct an initial review to see if the formalities for filing have been fulfilled. The petition is not registered unless and until this is done; in case of doubt, the

Commission must be consulted. The formalities listed in Article 28 are somewhat different than those found in the former Regulation. If all of the Article 28 information is not provided in the petition, the Secretariat is to contact the petitioner to request that the petition be completed; if all the data are provided, the petition is deemed received and registered. With written notification to the petitioners, distinct claims involving different facts or different persons may be divided and processed separately; similar petitions may be combined and processed together.

Rules 30 - 37 address a new and formalized admissibility stage, although several of the Rules restate long-standing admissibility requirements such as exhaustion of local remedies and presentation within six months of final judgment. No new admissibility requirements have been added, despite some pressure to initiate a "political question" doctrine in the system. In terms of procedure, the Secretariat first forwards the relevant parts of the petition to the State in question, withholding the petitioner's identity unless the petitioner has given express authorization to disclose it. The Rules expressly note that the request for information does not constitute a prejudgment regarding admissibility. The State has two months to respond, a shorter time than in the former Regulations, which had no separate admissibility phase. An extension of up to one additional month may be granted if "duly founded." Alternatively, the State may be asked to respond in a short time ("the promptest reply") in serious or urgent cases or when it is believed that the life or personal integrity of a person is in real or imminent danger.

Article 30 (5) provides that, prior to deciding upon admissibility, the Commission may invite written submissions from the parties or may hold a hearing on the issue. Once all observations have been received or the time periods have elapsed, the Commission "shall verify whether the grounds for the petition exist or subsist." If neither does, the case is archived. In all other cases, the Commission "shall make a decision on the admissibility of the matter." (Art. 37). This new requirement demands that the Commission make a public report on admissibility and inadmissibility of all registered matters. Once the report is adopted, the petition is then registered "as a case" and the merits phase of the proceeding is considered opened. In exceptional cases, with notice to both parties, the Commission may consider admissibility and the merits together.

For the merits phase, the petitioner has two months to prepare written observations, and the

State has two months to respond after the petitioner's observations are sent. The Commission may request further briefing if it wishes, and also must set a time period for either side to initiate or request friendly settlement negotiations. If a friendly settlement is reached, the Commission prepares a report that shall be published. If there is no settlement, the case proceeds to a decision on the merits.

Hearings on the merits are not automatic, but may be held if the Commission "deems it necessary in order to advance its consideration of the case." In coming to its decision on the merits, the Commission must examine the arguments, the evidence presented by the parties, any information obtained during hearings and on-site information. Article 42 adds that "the Commission may take into account other information that is a matter of public knowledge." There is no express reference here, or anywhere else in the Rules, to submissions by *amicus curiae* (*amicus commissionae?*), but the provisions on hearings clearly foresee the possibility of participation by independent experts.

The provisions on hearings are considerably more detailed than were the prior Regulations.

Once a decision finding a violation has been reached, the Commission prepares a preliminary report. (Note that where no violation is found, there is only a final report transmitted to the parties and published in the Commission's Annual Report.) The preliminary report is transmitted to the State in question, along with proposals and recommendations and a deadline for compliance with them. In an addition to the new Rules, the Commission now must also notify the petitioner of the adoption of the report and its transmittal to the State. If the State in question is a party to the Convention and has accepted the jurisdiction of the Court, the petitioner is to be given one month to indicate whether or not the case should be submitted to the Court. The Rules, Article 43(3), clearly spell out what information the petitioner should submit: (a) the position of the victim or the victim's family members, if different from that of the petitioner; (b) the personal data relative to the victim and the victim's family members; (c) the reasons he or she considers that the case should be referred to the Court; (d) the documentary, testimonial and expert evidence available; and (e) the claims concerning the reparations and costs.

Relations Between the Commission and the Court

In addition to foreseeing a greater role for the victims and their relatives, the new Rules establish a presumption that cases should go to the Court when the State in question has accepted the Court's jurisdiction. According to new Article 44, when the Commission decides that the State has not complied with the recommendations in the Commission's report, "it shall refer the case to the Court, unless

there is a reasoned decision by an absolute majority of the members of the Commission to the contrary." In deliberating on the latter, the Commission is required to give fundamental consideration "to obtaining justice in the particular case" based upon specified factors: the position of the petitioner; the nature and seriousness of the violation; the need to develop or clarify the case-law of the system; the future effect of the decision within the legal systems of the member States; and the quality of the evidence available. This is the first time that the Commission has articulated standards for deciding whether or not a case should be transmitted to the Court, and these standards should help bring some clarity to the system.

Relations with the Court are more detailed in the new Rules and again emphasize the role of the petitioner. If the petitioner requests to be a delegate in the case taken to the Court, the Commission shall include that individual. Article 72 is the longest of the new Rules; it details the information that must be included in the application to bring a case to the Court. The application must specify the claims on

conclusions and recommendations. Within a time period specified by the Commission, the State must present information on compliance with the recommendations. The Commission is to evaluate the State's compliance and then decide on the publication of the final report. New Article 46, aimed at strengthening the system, foresees a follow-up procedure and provides that the Commission "may adopt any follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance." It also may publish reports on compliance monitoring "as it deems appropriate." Indeed, the general authority of the Commission to issue reports and publicize human rights matters is reinforced. The new Article 56 refers to the Annual Report of the Commission to the OAS General Assembly, but adds that the Commission shall prepare the studies and reports it deems advisable for the performance of its functions, and shall publish them as it sees fit. Further, Article 57 lists matters that must be in the Annual Report, which now includes "an analysis of the human rights situation in the hemisphere, along

"The new Rules appear likely to improve the flow of cases along with the procedural fairness and transparency of the systems ... overall, the new Rules of Procedure enhance the procedural standing of the petitioner ..."

the merits and reparations; the names of the parties; a statement of the facts; information about the processing and admissibility of the case; a list of witnesses and experts and the purpose of their statements; available information on the original complainant, family members and representatives; names of the delegates; and the Commission's final report.

The Court's own amendment to its rules, which will go into effect on June 1, 2001, includes two changes. First, the amended rules provide *locus standi* for petitioners and victims. The Commission must inform the Court of their addresses, after which the Court notifies them of the complaint and simultaneously provides notice to the State. From that stage on, petitioners and victims can present pleadings, proffer evidence and present arguments directly to the Court. Second, the amended rules eliminate the reparations stage, making it possible for reparations and merits to be argued together, thereby shortening the proceedings.

For those cases not sent to the Court, the Rules foresee the issuance of a final report that contains the Commission's earlier opinion and final

with recommendations to the states and organs of the OAS as to the measures necessary to strengthen respect for human rights." It also includes "follow-up reports" on compliance with human rights recommendations.

Conclusions

In conclusion, two omissions can be identified. First, the former articles allowing requests for reconsideration of Commission decisions have been removed; it now appears that the Commission's final report is precisely that. Second, the article on economic, social and cultural rights is no longer in the Rules, perhaps because of the entry into force of the Protocol of San Salvador on economic, social and cultural rights, but this is not clear. Overall, the new Rules of Procedure enhance the procedural standing of the petitioner in matters brought to the Commission. Also, transparency and procedural regularity have received a boost, with guidelines and criteria for Commission action adopted to limit previously unregulated discretion.



Notre Dame Monitors Compliance with Anti-Sweatshop Code

William P. Hoye, associate vice president and counsel, concurrent associate professor of law and an LL.M. candidate in International Human Rights Law in the Center for Civil and Human Rights, discussed some of the issues in an interview with Ada Verloren.

In 1997, Notre Dame became the first U.S. college or university to adopt a code of conduct for its licensees. On March 1,

concurrent associate professor of law and an LL.M. candidate in International Human Rights Law here in the Center for Civil and Human Rights, who is slated to graduate in May, 2001.

Q. Please summarize some of the core provisions of Notre Dame's Code of Conduct. How would you assess its strengths and weaknesses?

A. The University's Code of Conduct for Licensees sets forth the minimum acceptable labor conditions

for the manufacture of Notre Dame licensed products, which are products bearing Notre Dame's name or its other registered trademarks. It is a very comprehensive document, which sets forth the University's expectations in terms of wages, hours and working conditions for the individuals who manufacture Notre Dame licensed products, as well as worker health, safety, environmental compliance, women's rights and other issues. Its greatest strength is probably the fact

that it communicates in a single statement Notre Dame's commitment to the dignity of every person and the importance of respecting those laborers around the world who are involved in manufacturing products from which the University profits. Its greatest weakness is that, like all codes of conduct, it is merely words on paper. Standing alone, a code of conduct cannot compel anyone to do anything. A system of independent monitoring of compliance with the code is required. To date, I believe Notre Dame remains one of the only colleges or universities in the United States currently monitoring compliance with its code of conduct; and, although the Fair Labor Association and the Worker Rights Consortium intend to engage independent monitors, they have not yet actually begun monitoring.



William P. Hoye

overview

1999, the University of Notre Dame issued a press release stating that it would also be the first to hire an accounting firm to undertake monitoring of licensee manufacturing sites around the world to ensure compliance with anti-sweatshop provisions of its code of conduct. On the same date, University President Rev. Edward A. Malloy, C.S.C., announced the appointment of a campus task force to study sweatshop issues. Chairing this group has been William P. Hoye, the University's associate vice president and counsel,

Q. Two of the most prominent associations opposing inhumane workplace conditions are the Fair Labor Association (FLA), created by the White House-appointed Apparel Industry Partnership (AIP), and the Worker Rights Consortium (WRC). Could you explain some of the major differences between these two bodies and the main reasons for Notre Dame's affiliation with the FLA rather than the WRC?

A. Let me address the second part of your question first. Although Notre Dame was a founding member of the FLA, the University is still considering whether to join the WRC. In fact, we are scheduled to meet with representatives of the WRC in February to explore with them one-on-one the possibility of Notre Dame joining that organization. The two organizations are not mutually exclusive, so a single university can affiliate with both the FLA and the WRC. In terms of differences between the FLA and the WRC, the FLA was formed as a result of an initiative at the White House known as the Apparel Industry Partnership, which brought together representatives of industry, labor and NGOs to negotiate and draft a code of conduct acceptable to all three constituencies. After the FLA was formed, it added a University component. In fact, Carol Kaesebier, the University's Vice President and General Counsel, is co-chair of the University Advisory Council of the FLA and is a member of its Board. The WRC is still very much in the process of being defined. It is comprised of NGOs, union representatives, and colleges and universities. It does not include any corporate or industry representation. Both groups intend to use monitors to monitor factories, but their monitoring methods and protocols differ somewhat. The WRC's monitoring, as I understand it, was initially conceived to focus more on monitoring in response to reports of problems from workers and public disclosure of factory conditions, while the FLA's emphasis is more on randomly monitoring member's factories using independent monitors, with some self-policing. In addition, the WRC initially expressed interest in publishing all monitoring reports — although the WRC Board has not formally committed to that — while the FLA's predominant focus is on identifying and remediating instances of non-compliance and working with the factories toward continuing improvement.

Q. What conclusions, if any, has the task force reached with regard to issues such as the living wage, women's rights, mandating that countries allow workers to organize, and public disclosure of the location of all manufacturing sites?

A. The Task Force appointed by Fr. Malloy last year is comprised of students, faculty members and administrators from across campus, as well as non-voting ex-officio representatives of Adidas, Champion and Follett. Earlier this year, the Task Force recommended to Fr. Malloy that Notre Dame licensed products be manufactured only in countries with a right to organize or to freely associate on the books. The recommendation was approved. As a result, effective June 30, 2001, Notre Dame products cannot be made in China or in 10 other countries around the world that have failed either to pass domestic laws protecting these rights or to adopt I.L.O. resolutions 87 or 98. The Task Force based its recommendation largely on Catholic social teaching. The Task Force also called upon all Notre Dame licensees to disclose publicly the locations where they manufacture Notre Dame products and augmented the Code of Conduct on the issue of women's rights specifically to prohibit forced birth control, pregnancy termination and pregnancy testing in factories where Notre Dame products are made. Finally, in May, the Task Force recommended that Notre Dame address the living wage issue in three ways: (1) by commissioning the Center for Reflection Education and Action to undertake a wage study in Mexico, which we recently received; (2) by agreeing to host a formational meeting for a Living Wage Association of colleges and universities here on campus in early February; and (3) by sponsoring an academic symposium on the living wage here on campus during the spring semester. The symposium, like the one sponsored by the Task Force last year, will be open to undergraduate and graduate students here at Notre Dame for credit. In addition, it will be open to members of the public.

Q. Given that a single licensee may have dozens of manufacturing sites operated by subcontractors, how confident is the University that it will receive information regarding the location of most of these sites? Also, taking into account that work continuously shifts from one subcontractor to another, is it possible for the University

to establish consistent contracts with factories?

A. In our license agreement with every Notre Dame licensee, there is a provision requiring that they provide us with a completed Factory Profile form for every factory that they or their subcontractors use to manufacture Notre Dame licensed products. We have collected that information and have built a computer database, which we use to decide which factories to monitor on a risk-assessment basis. All licensees are required to update their information with us annually and whenever they change factories with respect to Notre Dame licensed products. If our monitors appear at a factory for a monitoring visit and it turns out that the factory no longer makes Notre Dame products, we have the contractual right to make the licensee pay us for the cost of the wasted visit. We do have to rely, though, to an extent upon the honesty and integrity of our business partners to supply us with complete and accurate information. In fact, I am not aware of a way to independently verify that we are receiving all of their information. If, of course, we were to learn that a particular licensee was intentionally withholding factory information from us, we would terminate that business relationship.

Q. Notre Dame hired the accounting firm PriceWaterhouse Coopers as an independent monitoring agency for on-site inspections and unannounced visits to facilities producing products bearing its name or other trademarks. PWC has been criticized by, among others, MIT professor Dara O'Rourke (THE NEW YORK TIMES, September 28, 2000), for displaying an extreme corporate bias when monitoring. How would you respond to such criticism? Does the University envisage any additional regional monitoring by, for example, local non-governmental organizations or religious groups?

Earlier this year, the Task Force recommended, and Fr. Malloy approved, augmenting Notre Dame's existing monitoring program with representatives of NGOs, human-rights advocates, church officials and others. We have done so by creating a regional monitoring pilot program for Mexico and Central America. Taking advantage of the University's excellent contacts in the region, Fr. Malloy recently invited approximately 10 individuals from the region to serve on an oversight

committee for Notre Dame's monitoring efforts, including Professor Juan Méndez, who graciously accepted the invitation earlier this month. We also have been busy identifying local NGOs interested in serving as monitors from throughout the region, not exclusive of PWC's accountants but alongside them. After all, PWC does an excellent job of monitoring payroll records and is strong on health and safety issues. We think the NGO representatives will augment those strengths and create a more comprehensive, credible and independent team approach to monitoring.

Q. Does the public have access to reports by the monitoring agency?

A. No. The regional oversight committee will have access to monitoring reports, along with the University, but our system is based upon identifying and remediating instances of non-compliance with our Code of Conduct, not going public with them. In fact, we would go public only as a last resort, if we deemed our leverage with the factory owner or licensee insufficient to effect the change needed to improve conditions for workers. To date, we have been largely pleased with the successes we have had in this regard.

Q. Improved working conditions for workers and higher wages will obviously increase the costs of manufacturing. Who preferably should absorb these costs: the company, the university or consumers?

I think improving wages will increase the cost of manufacturing, especially if the industry moves toward a living wage. I am not convinced, though, that improving working conditions is all that expensive. In fact, many health and safety measures are quite affordable, and many will ultimately reduce a factory owner's costs. For example, good environmental practices will reduce employee sick days and contribute to increased productivity. To the extent that costs are increased, however, I think they must be shared by factory owners, licensees, consumers and — in our case — the Universities. We cannot realistically expect licensees and factory owners to altruistically absorb all of these costs simply because we ask them to do so — especially since the industry is so competitive. A number of the top-10 licensees have filed for bankruptcy in recent years. There is enormous pressure on factories,

wholesalers and others in the supply chain today to produce high quality goods at rock bottom prices for stores like WalMart. This, in turn, creates an incentive for factory owners and others along the line to cut corners on labor conditions to save money. It is an unfortunate reality, but consumers are going to have to be willing to pay more, and companies and universities are going to have to be willing to make less in profits and royalties, if they really want to have reasonable assurance that the products they buy (or that bear their name) were not made under unacceptable or "sweatshop" conditions. The burden cannot and should not be placed solely on any one person or entity.

Q. How does the University of Notre Dame intend to deal with violations of local laws and violations of its code of conduct in individual countries? Has the University refused to do business with any company as a result of the exploitation of workers in a factory?

A. Our Code of Conduct requires compliance with local law and, in those instances where monitoring visits have revealed areas of non-compliance with local law, we have mandated that the factory owner and licensee bring their behavior into legal compliance. With respect to your final question, since the University announced its ban on the manufacture of Notre Dame licensed products in countries lacking a right to organize (e.g., China), a number of licensees have told us that they no longer intend to do business with us. Typically, they have done so because they do not believe they can compete in their industry if they cannot manufacture in China. I can only assume that is because of China's abysmally low wages. If I am correct, then it may be further evidence that Notre Dame is doing the right thing with respect to China.

On the other side of that same coin — the University terminating a business relationship — while we have not done so to date, we currently are in internal discussions about asking our licensees not do business with a particular factory in Mexico due to its non-compliance with our Code of Conduct and its failure to remediate various problems identified in a monitoring visit.

UPCOMING EVENTS

March 26-27

Conference on "Democracy, Human Rights, and Peace in Colombia" co-sponsored by the Helen Kellogg Institute for International Studies, the Joan B. Kroc Institute for International Peace Studies, the Colombian Commission of Jurists, and the Center for Civil and Human Rights

March 27

Human Rights Roundtable with Michael Green, Assistant Professor, Department of Philosophy, University of Chicago

April 9-11

Seminar on the 10th Anniversary of the Rettig Report (report of the Chilean Commission on Truth and Reconciliation) in Santiago, Chile, co-organized by the Center for Civil and Human Rights and the Chilean Foundation for Justice and Democracy (*Organización Corporación Justicia y Democracia*). Featured speakers include former presidents Patricio Aylwin (Chile), Raúl Alfonsín (Argentina), Nelson Mandela (South Africa) and Bill Clinton (United States of America)

April 12

Talk by Malika Oufkir, author of *LA PRISONNIERE* (Doubleday, 2000), co-sponsored by the Department of Romance Languages and the Center for Civil and Human Rights

April 27

Human Rights Roundtable with Abdullahi An-Na'im, Charles Howard Candler Professor of Law, Emory University

April 27-28

Conference on "Accountability in the Treatment of Prisoners" at the University of Notre Dame, sponsored by the Center for Civil and Human Rights in cooperation with the Midwest Coalition for Human Rights, the Northwest Indiana Coalition to Abolish Control Unit Prisons and the ACLU Student Chapter, Notre Dame Law School

June 29

European Union Charter of Fundamental Rights Conference at the University of Notre Dame London Law Centre, co-sponsored by the Human Rights Centre, University of Essex, the Notre Dame London Law Centre, and the Center for Civil and Human Rights

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events at the center

HUMAN RIGHTS ROUNDTABLE SERIES

On October 5, 2000, Professor Karen Engle of the University of Utah College of Law discussed "From Skepticism to Embrace: Human Rights and the American Anthropological Association (AAA) from 1947-1999." Professor Engle traced the debate among anthropologists over the limits of tolerance from 1947, when the AAA submitted its Statement on Human Rights to the



United Nations, to 1999, when the members of the Association adopted a Declaration of Anthropology and Human Rights. Comparing the Statement and the Declaration, professor Engle pointed out that both argue for the protection of culture. But while the AAA of 1947 was skeptical of the ability

of human rights law and rhetoric to protect culture, the AAA of the turn of the millennium has embraced human rights rhetoric. At the same time, current anthropological attempts at embracing human rights continue to struggle with the controversies of the 1940s, particularly the strain between relativistic and universalistic impulses in human rights discourses.

Professor Engle joined the faculty at the University of Utah in 1992 after



serving as a clerk to Judge Jerre S. Williams on the U.S. Court of Appeals for the Fifth Circuit and as a Ford

Fellow in Public International Law at Harvard Law School. She is the co-editor of an anthology titled *AFTER IDENTITY: A READER IN LAW AND CULTURE* (Routledge 1995), and has written extensively on topics such as culture, women's rights, employment discrimination and international law.

Guillermo O'Donnell, Helen Kellogg Professor of Government and International Studies at the University of Notre Dame and a Fellow of the Helen Kellogg Institute for International Studies, led the November 7 Roundtable in a discussion of "Democracy, Law and Comparative Politics." Noting that the



term "democracy" has, for centuries, been grounded in a view of citizens as agents, Professor O'Donnell proposes a realistic and restricted, but not minimalist, definition of a democratic regime that recognizes fair and institutionalized elections surrounded by some political freedoms. An important aspect of such a regime is the democratic legal system that enacts and backs the rights attached to the regime, according to the presumption that every individual is an agent who is autonomous, responsible and reasonable.

DISTINGUISHED SPEAKERS

On September 8, Jean-Robert Cadet, author of *RESTAVEC: FROM HAITIAN SLAVE CHILD TO MIDDLE-CLASS AMERICAN* (University of Texas Press 1998) gave a moving account of his childhood as a *restavec* in Haiti. The Creole word *restavec* is

derived from the French *rester avec*, meaning "to stay with." According to Mr. Cadet, "*restavecs* are slave children who belong to well-to-do families."¹ They serve as domestic servants, usually without pay or the opportunity to receive even a basic education. When he was 4 years old, his father sent young Jean-Robert Cadet to a former mistress to become a *restavec*. During his childhood, he slept under a kitchen table and endured regular beatings. As a teenager, Mr. Cadet moved with the family he had lived with to Spring Valley, New York, where he managed to escape from servitude and complete high school. After serving in the U.S. Army and becoming a U.S. citizen, he attended university and obtained a master's degree in French literature. Mr. Cadet lives with his wife and two children in Cincinnati.



Although many Haitians acknowledge that the *restavec* system gives rise to abuse, the system continues without much opposition because of the presumption that it often helps poor children who would otherwise be worse off. Mr. Cadet's goal is to rid Haiti of the practice by making the term *restavec* a social taboo. He considers *restavec* slavery to be a "crime against nature . . . because the child's very rights to life — to belong, to grow, to smile, to love, to feel, to learn, and to be a child — are denied, by those whose ancestors were slaves themselves."

On October 27, the Center for Civil and Human Rights and the Department of Government and International Studies hosted a talk by Ambassador J.D. Bindenagel, Special Envoy for

Holocaust Issues, U.S. Department of State, on "Negotiating the Recent Agreement on Slave and Forced Labor in Germany." Ambassador Bindenagel recounted the arduous negotiation process, which ended after almost two years, on July 17, 2000, when the German



¹JEAN-ROBERT CADET, *RESTAVEC: FROM HAITIAN SLAVE CHILD TO MIDDLE-CLASS AMERICAN* 4 (1998).

government and industry leaders formally signed a \$5 billion agreement to compensate forced laborers. Under the agreement, the German government and German companies will contribute equally to a \$5 billion fund to pay reparations to some one million laborers who were forced to work in concentration camps or German factories during the Nazi era. Former slave workers in concentration camps are entitled to payments of about \$7,500, while laborers who were forced to work in factories can claim about \$2,500. The historic agreement, more than 50 years after the end of World War II, will compensate surviving Nazi-era victims in more than 20 countries, ranging from Central Europe to the Americas and Israel. The settlement is a belated and symbolic recognition of the millions of victims who were forcibly removed from their countries of origin and compelled to aid the German war effort through their labor. In addition to compensating victims, the contributions will be used to establish a Future Fund for the benefit of heirs as well as for education projects and other programs that will promote tolerance and human rights.



On November 9, Northern Ireland was the focus of a well-attended meeting in the Law School addressing the challenging question “A Farewell to Arms?” Professor John Darby, a leading authority on ethnic conflict, engaged the audience in a discussion of “Northern Ireland: A Contemporary Peace Process.” Comparing a peace process to an arduous and sometimes hazardous journey through several mountain ranges with alternating peaks and gullies, Professor Darby portrayed the cautious peace process that commenced with the declaration of the Irish Republican Army (IRA) cease-fire in August 1994. Notwithstanding the end of the IRA cease-fire, the momentum of the process brought about the Good Friday Agreement in 1998. The special significance of this agreement stems from the fact that

most of Northern Ireland’s political parties either negotiated or endorsed it. Unlike previous agreements, paramilitary organizations also participated in the negotiations. Moreover, referenda in Northern Ireland and the Republic of Ireland revealed widespread popular support for the agreement. Not surprisingly, the peace process has yielded some dividends, such as increased tourism and investment. Yet, emotional and sensitive hurdles still remain, including the reform of policing and the treatment of victims in a deeply divided society. Careful and constant management will be required for lasting peace.

Professor Darby is visiting fellow at the Joan B. Kroc Institute for International Peace Studies and the Keough Institute for Irish Studies, Notre Dame, and former director and a senior research fellow at the Initiative on Conflict Resolution and Ethnicity (INCORE), Northern Ireland. He recently co-edited (with Roger Mac Ginty) *THE MANAGEMENT OF PEACE PROCESSES* (MacMillan/St. Martin’s 2000).

Following professor Darby’s talk, Sean O’Brien, J.D. Candidate and Summer Associate, Madden & Finucane Solicitors, Belfast, probed “Dealing with the Past: The Bloody Sunday Tribunal.” The Center for Civil and Human Rights provided support to Sean for his work at a law firm in Belfast, Northern Ireland, specializing in the defense of political prisoners and denunciations of human rights violations.

MEETING OF THE ASIL “SOFT LAW PROJECT”

Following the publication of a book on *COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM* (Oxford University Press 2000), edited by Professor Dinah Shelton, a final workshop of a three-year study project organized by the American Society of International Law with the support of the National Science Foundation and the Ford Foundation took place at the University of Notre Dame on November 3-4, 2000. The “soft law project” analyzed and elucidated issues raised by state compliance with non-binding norms. By looking at individual subject areas, this exemplary study addressed general questions concerning the appearance and nature of “soft law,” its use and its contribution to the

international legal order. Despite the non-binding nature of “soft law” the study demonstrated convincingly the effectiveness and indispensability of such norms in the dynamic system of international law.

The contributions to the book provide a particularly useful collection of experiences covering a wide range of different subject areas such as the environment, trade and finance, human rights and multilateral arms control. Several of the contributors to the study attended the meeting to reflect on their conclusions and characterize areas that will require more research.

The participants included the following:

Professor Richard B. Bilder, Foley & Lardner Professor Emeritus of Law at the University of Wisconsin-Madison; **Jan Martin Witte**, a graduate student at the Johns Hopkins University School of Advanced International Studies, Washington, D.C., and a research associate with the U.N. Vision Project on Global Public Policy Networks; **Christopher C. Joyner**, professor of international law in the Government Department at Georgetown University; **Alexandre Kiss**, Director of Research Emeritus at the French National Center for Scientific Research and President of the European Council on Environmental Law; **Douglass Cassel**, Director of the Center for International Human Rights of Northwestern University School of Law in Chicago; Notre Dame Law School Professor **Dinah Shelton**; **Richard L. Williamson Jr.**, Associate Dean and Professor of Law at the University of Miami.

Outside commentators who reviewed various aspects of the study during the November 3-4 workshop included Professor **George Lopez**, Professor of Government at the University of Notre Dame and Fellow of both the Joan B. Kroc Institute for International Peace Studies and the Helen Kellogg Institute for International Studies, Professor **Raimo Vayrynen**, Professor of Government at the University of Notre Dame and Fellow of the Joan B. Kroc Institute for International Peace Studies, Professor **Douglas M. Johnston**, Professor Emeritus of Law at the University of Victoria, British Columbia, Professor **Paul Szasz**, New York University School of Law, and Notre Dame Law School Professor **Juan Méndez**.

ADVISORY COUNCIL

The Center for Civil and Human Rights held the first meeting of its newly reconstituted advisory council on December 1, 2000. Members for the 2000-2001 academic year include:

- **Abdullahi An-Naim**, Charles Howard Candler Professor of Law, Emory University School of Law;
- **Scott Appleby**, Professor and Director of the Joan B. Kroc Institute for International Peace Studies, University of Notre Dame;
- **Tricia Bellia**, Assistant Professor of Law, Notre Dame Law School;
- **Cynthia Brown**, Consultant, New York, New York;
- **Douglass Cassel**, Director of the Center for International Human Rights, Northwestern University School of Law;
- **Barbara Fick**, Associate Professor of Law, Notre Dame Law School;
- **Jimmy Gurulé**, Professor of Law, Notre Dame Law School;
- **Paul Hoffman**, Schonbrun DeSimone Seplow Harris & Hoffman, L.L.P., Venice, California;
- **Scott Mainwaring**, Professor, Eugene Conley II Chair and Director of the Helen Kellogg Institute for International Peace Studies, University of Notre Dame;
- **Carol Mooney** '77 J.D., Vice President, Associate Provost and Professor of Law, University of Notre Dame;
- **Carolyn Nordstrom**, Associate Professor of Anthropology, University of Notre Dame;
- **Naomi Roht-Arriaza**, Professor of Law, University of California Hastings College of Law;
- **Reverend Timothy Scully**, C.S.C., Executive Vice President, University of Notre Dame;
- **Beth Stephens**, Associate Professor of Law, Rutgers University School of Law — Camden; and
- **Eric Stover**, Director of the Human Rights Center, University of California — Berkeley.



FIRST INTERNS FUNDED AT THE RWANDA TRIBUNAL

The first group of interns sponsored by the CCHR has started working at the International Criminal Tribunal for Rwanda. As reported in the previous issue of the NOTRE DAME HUMAN RIGHTS ADVOCATE, this project to support African lawyers working at the ICTR is being funded through a grant provided by the Open Society Institute.

Four lawyers, including three women from Uganda, Tanzania and South Africa, and a man from Kenya, have been selected to receive the funding needed to work as interns at the ICTR for up to six months. In doing so, they will help to bring to justice some of the leaders responsible for the 1994 genocide in Rwanda. Though their contributions might only be small, the experience that they will gain will be invaluable, and will empower them to be more effective advocates for international accountability.

BUILDING AN ENDOWMENT FOR THE CENTER FOR CIVIL AND HUMAN RIGHTS

The start of the new millennium was auspicious for the CCHR. During the first full-year of Juan Méndez's leadership, the University of Notre Dame development office announced the receipt of two generous endowment gifts totaling \$500,000. As so often in the past, the CCHR's good fortune was due, in large part, to the goodwill that Fr. Hesburgh enjoys among the University's alumni.

The CCHR was listed as one of the Law School's endowment priorities in the University's recently completed generations campaign. Ultimately, the center hopes to achieve its goal of \$5,000,000 toward establishing a permanent source of funding to support the CCHR's two prestigious human rights degree programs, experiential-learning internships and research activities. University officials have recently hinted that more good news may soon be heard.



NDLS Welcomes New and Returning LL.M. and J.S.D. Students

by Cathy Pieronek '84, '95 J.D.

At a reception in August at the Morris Inn, the Center for Civil & Human Rights welcomed new and returning scholars who are working toward J.S.D. and LL.M.

degrees in international human rights.

Since the May 2000 graduation of **George Mugwanya**, who received the fourth Doctor of Juridical Science ever conferred by the University, the center has added three new J.S.D. candidates, for a total of 10 students currently pursuing this advanced degree, which will help strengthen the ability of these lawyers to teach human rights law at the university level.

New J.S.D. candidates, at Notre Dame for at least two semesters to satisfy their residency requirements, include the following:

Adila Hassim, of Johannesburg, South Africa, earned her LL.B. at the University of Natal and her LL.M. at St. Louis University School of Law, where she completed a thesis on "Affirmative Action in South Africa and the United States: A Comparative Perspective." Her work earned highest distinction and will be published soon. She has worked as a researcher at the Constitutional Court for three years. Her work there has enabled her to explore in detail the nature and purpose of human rights, as well as to analyze the implementation of those rights in comparative jurisdictions.

Lawrence Juma '00 M.A., of Nairobi, Kenya, earned his LL.B. at the University of Nairobi in 1985, his LL.M. at the University of Pennsylvania in 1991, his Diploma in Legal Studies at the Kenya School of Law, and his M.A. in Peace Studies through the University of Notre Dame's Joan B. Kroc Institute for International Peace Studies in May 2000. He has worked as head of the Legal Resources Department of the Public Law Institute of Nairobi, where he was responsible for the design and implementation of

civic-education programs in Kenya and areas affected by civil war in Ethiopia. He also served as a lecturer on the Faculty of Law at the University of Nairobi, teaching courses in Family Law and in the Law of Succession.

Kolawole Olaniyan '98 LL.M. of Lagos, Nigeria, earned his LL.B. with honors from Lagos State University in 1989, was certified as a Barrister-at-Law by the Nigerian Law School in 1990, and earned his LL.M., *summa cum laude*, from NDLS in 1998. He has had extensive work experience in the area of human rights, including: as a legal assistant to the United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY) at The Hague, where he assisted the prosecutor in conducting research on legal issues involving international criminal law and international humanitarian law, including especially the concept of command responsibility of civilian leaders; as a research partner with the Danish Center for Human Rights, where he conducted research on the African Regional Human Rights System and worked on implementing international human rights for pre-trial detainees in Nigeria; as head of the legal services unit of the Constitutional Rights Project, a leading human-rights non-governmental organization in Nigeria, where he filed and defended petitions on human rights violations before the African Commission. Currently, he is the director of the Rule of Law Project, sponsored by the Centre for Free Speech, where he coordinates the center's litigation and legal services unit. His proposed doctoral dissertation considers the domestic implementation of economic and social rights in Africa through the United Nations and the African Regional Human Rights System.

These three new scholars join returning scholars **Pedro Cavallero** of Buenos Aires, Argentina, who is working on a dissertation on "Human Rights in Emergency Situations: A Comparison of Experiences in Columbia and Mexico"; **Margaret Munalulu** of Lusaka, Zambia, a Fulbright Scholar whose dissertation involves "The Legitimacy of Sovereign Debt: A Case Study in Zambia"; **Tatsuo Muto** of Tokyo, Japan, who is currently serving as a visiting scholar at Columbia University in New York; **Mary Margaret Penrose '99 LL.M.**, assistant professor of law at Oklahoma

University, whose dissertation considers the issue of punishment as a human-rights concern; **Ali Qazilbash '97 LL.M.** of Lahore, Pakistan, who is working on a dissertation titled "Human Rights, Environment and Development: Reinvigorating Efforts Toward a More Integrated Approach"; and **Pablo Alessandri Saavedra '96 LL.M.** of Santiago, Chile, currently serving as legal counsel to the Inter-American Commission on issues relating to migrant workers in the western hemisphere, which complements his dissertation topic, "Human Rights Environment and Developments in Latin America."

This year, 10 students representing five continents have been admitted to the LL.M. program for 2000-01. They join returning LL.M. candidates **William P. Hoye**, associate vice president and counsel and concurrent associate professor of law at Notre Dame, and **Selina Catharine Maria Kossen** of Utrecht, The Netherlands.

Students from North America include **Suad Elias Atala** and **Salvador Tinajero-Esquivel**, both of Mexico City, Mexico.

Ms. Elias earned her law degree from the Universidad Iberoamericana in Mexico City. After graduation, she worked at the Center for Justice and International Law and as a research assistant at the Legal Research Center of Diego Portales University, in Santiago, Chile. In Mexico City, she worked with the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos assisting with a project related to reforms of the Inter-American System for the Protection and Promotion of Human Rights, and with the Ministry of Justice on human-rights training and promotion.

Mr. Tinajero-Esquivel completed his law degree at the University of Mexico in 1997 and has been involved in significant human-rights work throughout Latin America. Most significantly, he worked at the Mexican Commission of Defense and Promotion of Human Rights, and has participated in different observation missions in places where armed conflicts have occurred, including Chiapas and Guerrero, and has represented the commission before a variety of governmental agencies including the Inter-American Commission of Human Rights, the UN Human Rights Committee, the UN Human Rights

Commission, and the preparatory commissions for the Rome Conference on the establishment of an international criminal court.

Mariasol Blanchard earned her law degree at the Universidad Diego Portales in Chile. She served as vice president of the student council. Her legal experience includes advocacy at both Catholic legal centers serving poor neighborhoods in Santiago and in a legal office in the north of Chile providing free legal aid in poor rural areas and education for prisoners. She is an editor at Editorial Cuarto Propio, a Chilean publishing house that deals with social science issues. She is currently also a consultant to the Special Rapporteur for Freedom of Expression at the Inter-American Commission on Human Rights.

Tahlia Gordon of Sydney, Australia, recently completed an internship at the Australian Permanent Mission to the UN, where she worked as an advisor. She earned her law degree from the University of New South Wales Law School in Sydney in 1995. After graduating, she worked as a prosecutor for the Department of Prosecutions and as a clerk to an Australian Supreme Court Judge. She has also volunteered at a number of human-rights organizations including the Australian Section of the International Commission of Jurists, the New South Wales Women's Lawyers Association and the New South Wales Young Lawyers Human Rights Committee.

LL.M. students representing the European continent include **Entela Josifi** of Tirana, Albania, **Ninoslav Mladenovic** of Skopje, Macedonia, **Eka Tkeshelashvili** of Tbilisi, Georgia, and **Steve Macpherson Watt** of Strathpeffer, Scotland.

Ms. Josifi earned her law degree in 1994 from the Faculty of Law of the University of Tirana, Albania. In Tirana, she worked as a legal assistant to the Albanian Supreme Court and to the American Senior Legal Advisor for the Ministry of Public Order and the Ministry of Justice for the Republic of Albania at the American Department of Justice, and as an associate attorney for the Human Rights Alert Program of the Legal Counselor's Office of the Organization for Security and Cooperation in Europe Presence. She has also been a member of the Albanian Lawyers Group of Human Rights, and an intern at the Advice on

Individual Rights in Europe Center in London, England.

Mr. Mladenovic specialized in criminal law at Ss. Cyril & Methodius University and has come to NDLS as a Ron Brown/Fulbright Fellow. As a lawyer with Markovska & Andreovski in Macedonia, he served as a representative for proceedings before the European Court of Human Rights and also assisted in a joint-venture business-law project with Altheimer & Gray. He has also been involved in research activities performed by EUROBALKAN Institute for Gender Studies concerning marginalized groups throughout the region. He is a senior member of the Macedonian National Association for Fighting Against AIDS and a cofounder of the Association for the Protection of Animals and the Environment.

Ms. Tkeshelashvili graduated from Tbilisi State University, Faculty of International Law and International Relations with a major in international law in 1999. She has participated in a joint program in human rights sponsored by Oxford University and George Washington University and has worked as chief specialist of international law at the Foreign Policy Research and Analysis Center of the Georgian Ministry of Foreign Affairs. Most recently, she has served as consultant and field officer for the International Committee of the Red Cross.

Mr. Watt graduated with honors from the University of Aberdeen, Scotland, in 1989, and completed his legal studies at the University of Edinburgh in 1991. He qualified as a solicitor in 1993, and then worked as a tax lawyer for two years in Glasgow. In 1995, he accepted a voluntary assignment with Concern Worldwide, an Irish relief and development non-governmental organization. In that

capacity, he managed a refugee camp on the Tanzania/Burundi border for 10 months, and then managed a long-term social development program in southern Uganda aimed at addressing the social and economic consequences of HIV/AIDS. In 1997, he accepted another voluntary position under the auspices of Voluntary Service Overseas, a British non-governmental organization. Sent to the Solomon Islands, he provided legal advice, assistance and representation to the area's citizens, including representing indigenous land owners in their dealings with multinational logging and mining operations, and was appointed legal advisor to the government's Forestry Division, where he assisted in drafting and implementing new forestry legislation.

And from Africa, **Dennis Mutuma Mabura** of Nairobi, Kenya, and **Anna Masibo** of Kampala, Uganda, complete the class.

Mr. Mabura graduated with honors from the University of Nairobi Faculty of Law in 1998 and attended the Kenya School of Law. He specializes in criminal law, human-rights litigation and *pro bono* assistance for various non-governmental organizations including Release Political Prisoners, and International Commission of Jurists - Kenya Section. He has taught at the Kenya School of Professional Studies and was admitted as an advocate of the High Court and Court of Appeal of Kenya in May.

Ms. Masibo graduated from the law school at Makerere University in Uganda in 1996, and was admitted to the Ugandan bar in 1997. In 1997-98, she volunteered as a legal officer at the International Federation of Women Lawyers, and in 1998 joined the Uganda Human Rights Commission.



Internships

Each year, the center supports graduates of the LL.M. program in an internship or law clerkship with an appropriate human rights organization or one of the two international criminal tribunals. Under the terms stipulated by our benefactors, some of these internships must also be awarded to lawyers who are not University of Notre Dame graduates. These internships provide valuable exposure to the human rights procedures of inter-governmental and non-governmental organizations while also furthering actual human-rights protections. During 1998 and 1999, graduates and others supported by the center's internship program worked at the World Bank's Inspection Panel, the Organization of American States, the Center for Justice in International Law (CEJIL), the MacArthur Justice Center in Chicago, the International Human Rights Law Group, the Institute for Human Rights and Development in The Gambia, the African Commission on Human and Peoples' Rights, the South African Human Rights Commission and the International Committee of the Red Cross in Geneva. The following excerpts from recent internship reports testify to the value of the experience:

FOR THE DURATION of my internship at the Inter-American Institute of Human Rights (IIHR), an independent international academic institution created in 1980 under an agreement between the Inter-American Court of Human Rights and the Republic of Costa Rica, the Executive Director of the IIHR decided to send me to Guatemala, where the IIHR has had a permanent office since 1998. The first person who was in charge of this office was Mrs. Maria Muñoz Toia '93 LL.M.

I was in charge of this permanent office for 6 months, from July to December 2000. My responsibilities as the program officer in charge included the following:

- To represent the Executive Director whenever the IIHR received an invitation to participate in activities and projects of international organizations or national institutions regarding human rights issues.
- To support all the different departments of the IIHR in the execution of activities in Guatemala such as conferences, workshops, seminars and expert meetings.
- To find other sources of financial support for the different projects in Guatemala. In December we sent a proposal to AID/Guatemala, regarding a project for the next 4 years.
- To follow-up on different projects and agreements in Guatemala including, for example, the distribution of teaching materials.

As part of my internship, I represented the IIHR in the Expert Meeting that was held in Geneva, Switzerland, August 7-9, 2000. This meeting was organized by the Office of the High Commissioner for Human Rights as

part of the mid-term evaluation of the Human Rights Education Decade. The OHCHR issued a final report regarding this mid-term evaluation.

As a staff member of the IIHR, I also went to Lima, Peru, for two reasons. First, the IIHR was invited by UNICEF to be part of a forum related to human rights education and children's rights in Peru. Second, I started a new project of the Institute that aims to promote research regarding human rights indicators and to publish a comprehensive report of the development of human rights situations in six different countries (Peru, Guatemala, Mexico, Nicaragua, Paraguay and Venezuela). I was also in charge of this project in Guatemala.

At the conclusion of my internship, I was appointed program officer at the IIHR headquarters in San Jose, Costa Rica.

— Margarita Jenkins Coronas '00 LL.M.
Intern, Inter-American Institute of Human Rights
Guatemala, July-December 2000

THIS PAST SUMMER I spent two incredible months as a summer associate at the Belfast firm of Madden & Finucane Solicitors, working on the Bloody Sunday Inquiry.

In January of 1998, Prime Minister Tony Blair declared in front of the House of Commons:

"... that a Tribunal be established for inquiring into a definite matter of urgent public importance, namely the events on Sunday, 30 January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day."

With these rather cold and euphemistic words, Tony Blair established what international human rights organizations, the United Nations, the Irish government, the European Parliament, the United States President and Congress and, more importantly, what the people of Derry Northern Ireland had been demanding for over a quarter of a century: an inquiry into the massacre of 13 Catholic civil rights marchers in Derry on that crisp and clear January afternoon that will always be known as Bloody Sunday.

For nearly 30 years now, the people of Derry and the families of the dead and wounded from Bloody Sunday have been asking, "Why?" Why did this happen? Why were the fiercest fighting units of the entire British Army — the Paras — called into Derry that afternoon? Why did a peaceful anti-internment march end in the killing of 13 unarmed Catholic civilians? If the Paras were there to simply arrest marchers, why did a running gun battle erupt in which British soldiers chased and killed 13 unarmed Catholic civilians? Why?

The current Bloody Sunday Inquiry, set up through the peace process, perhaps as a gesture towards Catholics in the North, is not the first investigation into the events of that day. But it is the first reputable investigation. Two days after the massacre in 1972, then-Prime Minister Edward Heath summoned Lord Widgery to Downing Street, asking Widgery to chair a tribunal of inquiry into the events of Bloody Sunday. A letter describing their meeting has recently been released by the Public Record Office in London, after being kept secret for 30 years, in which the Prime Minister reminded Lord Widgery that "it had to be remembered that we were in Northern Ireland fighting not only a military war but a propaganda war." These menacing words confirm what most who have read the report of that Widgery Tribunal have known for years: that the Tribunal was severely flawed in its conception, in its procedure that ignored the statements of 700 witnesses to the massacre, and in its result, finding that the British Army was not responsible for the shootings.

At this point I could go into the history of Bloody Sunday — theories of what actually happened and why — but I am more qualified to share directly from my own experiences. In my two months at Madden & Finucane, I was assigned to the Bloody Sunday team, representing the majority

of the families of the dead and wounded before the new inquiry.

I worked on a discrete area of the case — the issue of venue, or from where the soldiers will testify. The present inquiry — called the Saville Inquiry, after Lord Saville who serves as the chair — sits in Derry, where the events in question occurred. The soldiers, however, do not wish to give their testimony in Derry, but rather in London, possibly even through a video hook-up. They claim that they are afraid for their safety if they have to return to Derry. Most of what I did involved reading transcripts of their depositions and their various public statements over the years to determine if the soldiers previously had expressed any kind of fear. As you may guess, the overwhelming majority of them had not.

I was also able to visit the Saville inquiry and witness several days of the Opening Statement made by Queens Counsel Christopher Clarke. I also served as an observer in a delegation of international human rights monitors at the Drumcree Orange marches in Portadown in July.

But of all the things I did, the most lasting experience for me was the chance to actually meet the families of the dead and wounded. It happened at a client meeting in Derry one day after the Inquiry let out. Peter Madden introduced me to the clients, but then surprised me by asking me to share my thoughts with them. I shared with them that I hoped on the good days they were able to feel the support of people around the world who are following the case and who, for nearly 30 years, have been wishing them well. The next week, as I entered the Inquiry with the legal team, a few of the family members gave me little waves and a thumbs up as I assumed my seat. Even in doing this kind of work, legal work, what one receives so outweighs what one is able to give.

That little sign of support made a big difference in my life in Belfast. Belfast is still a very intense place to live. We worked under rather tight security in downtown Belfast, at the base of the Falls Road in a majority Catholic area. However, I lived at Queens University on the other side of Belfast, in an integrated part of town that tended towards a Protestant majority. I couldn't talk to any of the other students in the dorm about the work I was doing, and I cer-

tainly didn't share my work with my cab drivers or anyone I met on the street. Many areas of Belfast were "off limits" to me; even today, a person named "Sean O'Brien" cannot expect to have safe access to all of Belfast. Only the British Army helicopters that hover above the city day and night have full access to all of Belfast with their surveillance cameras and listening devices.

The client contact, their witness over the past 30 years and their courage in attending each day of the Inquiry made the experience overwhelmingly positive for me. But I think it also speaks volumes about the future. The Saville Inquiry, as any Truth Commission, is about reconciliation. And as Garth Meintjes '91 LL.M. has said, reconciliation is really an agreement to institutionalize the conflict. I witnessed several examples of this reconciliation. The Bloody Sunday office at Madden & Finucane is staffed nearly entirely by young people, many of whom are pursuing their law degrees. Many grew up in West Belfast where their lives and the lives of their families were severely affected by the

violence of "the Troubles" that marked their neighborhoods over the past three decades. Instead of taking their pain and anger to the streets, they channel their energy into working for accountability. Furthermore, a couple of the young lawyers at the firm actually began their legal studies "on the inside," while serving sentences as political prisoners. Knowing firsthand what it is to live without basic legal protections, they now work to create a culture that respects human rights.

Witnessing the involvement of the young and of former participants in "the Troubles," I feel a tremendous hope for the possibility of reconciliation in the North. The success of the Bloody Sunday Inquiry depends upon their involvement. And perhaps more important, the possibility of further investigations into the human rights abuses of the past thirty years depends upon the success of the current Inquiry.

— Sean B. O'Brien '95, J.D. Candidate '01
Summer Associate, Madden & Finucane Solicitors
Belfast, Northern Ireland, June-August 2000

Faculty and Staff News

JUAN MÉNDEZ, professor of law and director of the Center for Civil and Human Rights, appeared before the Inter-American Court of Human Rights as chief delegate for the Inter-American Commission on Human Rights at an August hearing on the commissions'



motion requesting an injunction against the Dominican Republic on the matter of collective deportation of Haitians. He was accompanied by representatives of the petitioners in the case, who included lawyers for the human-rights programs at Columbia Law School and the University of California-Berkeley, as well as lawyers from the Center for Justice and International Law. The commission had some success on its petition, since the court ordered the Dominican Republic not to deport some named individuals who had

been wrongfully deported, to assist in the reunification of those families, and to abstain from retaliation against the commission's witnesses. The commission did not succeed, however, in obtaining a more general measure enjoining the government from deporting certain categories of people. Nevertheless, Professor Méndez feels that the measure is an important precedent because, for the first time, the court has gone beyond protecting only the rights to life and physical integrity, to protecting all other rights under the convention through injunctive relief.

Among other work with the commission, Professor Méndez reports partial success on a "precautionary measure" he drafted to request that the government of El Salvador provide AZT treatment to some 30 named petitioners, all patients of the national health service suffering from advanced stages of AIDS who claimed that only AZT treatment would help them manage the fatal disease. Although the Salvadoran government announced

that it would comply with the commission's measure, the petitioners claim that the promise is still unfulfilled.

Professor Méndez provided commentary on a video about the moral and ethical implications of the death penalty in a civilized society that was shown at Catholic Masses throughout the state of Indiana one weekend in July. This video was created by the Indiana Catholic Conference to educate Catholic citizens about the Church's opposition to the death penalty. In September, he traveled to San Francisco for a meeting of Amnesty International-USA Lawyers Network at the University of California-Hastings School of Law. He delivered the keynote address for the meeting, which was dedicated to accountability and international truth-and-justice efforts. In October, Professor Méndez appeared before the Committee on Legal and Political Affairs of the Permanent Council of the Organization of American States in Washington, D.C., speaking on "The Rights of Migrant Workers and Their Families," a topic for which he is the commission's special *rapporteur*.

On Sunday, October 8, 2000, PBS presented an event held at the Kennedy Center in September honoring a new book, *SPEAK TRUTH TO POWER*, by Kerry Kennedy Cuomo, with photographs by Eddie Adams. The book features the personal stories of 51 human-rights activists from around the world, including CCHR director Juan Méndez. The PBS presentations included a dramatization based on the book written by Chilean playwright Ariel Dorfman. Artists reading from the script included Alec Baldwin, Kevin Kline, John Malkovich, Hector Elizondo, Giancarlo Esposito, Sigourney Weaver, Alfred Woodard, Rita Moreno and Julia Louis Dreyfuss. Jackson Brown and Hugh Masekela supplemented the drama with individual live performances. President Clinton also addressed the audience at the beginning of the program.

On November 9, 2000, professor Méndez attended a Board meeting of the John Merck Fund, a foundation to which he is providing advisory services on its strategies to promote human rights and democracy in Latin America.

Between November 10 and 12, he participated in a conference organized by the Aspen Institute at its conference center in Wye, Maryland. With participants from several countries and institutions, the conference considered

"The Legacy of Abuse — Justice and Reconciliation in a New Landscape," and dealt with prosecutions, truth commissions and efforts at reconciliation in countries overcoming a recent past of massive violations. The seminar was coordinated by Alex Boraine, former vice-chair of South Africa's Truth and Reconciliation Commission.

On November 13, he spoke at a panel organized by the Carr Center for Human Rights Policy, Kennedy School of Government, Harvard University, on the topic "Human Rights and Human Wrongs: How Far Have We Really Come?" The event was also the occasion for launching the book *REALIZING HUMAN RIGHTS*, edited by Samantha Power and Graham Allison (St. Martin's Press, New York 2000), which includes an article by Professor Méndez on *The Inter-American System of Protection: Its Contributions to the International Law of Human Rights*.

On December 6, in Washington, D.C., at a conference at the Organization of American States on the reform of the system of human rights protection, Professor Méndez presented amendments to the regulations of the Inter-American Commission on Human Rights. As part of a larger package of reforms, both the Inter-American Court and the Commission have recently amended their Rules of the Court and Regulations respectively. As one of the Commissioners, Professor Méndez was asked to present the highlights of the commission's amended regulations to an audience of diplomats and practitioners.

In December, he traveled to Spain to be part of a tribunal to hear the defense of a dissertation at the Universidad de Navarra, a Catholic university in Pamplona, on "The Rights of Migrant Workers to Family Life under European Community Law." Professor Jose A. Pastor Ridruejo, the Spanish judge in the European Tribunal on Human Rights, presided over the tribunal. During that trip, Professor Méndez also lectured at the Universidad de La Coruña on "The Inter-American System of Human Rights Protection."

On January 8-13, at the invitation of the Pontifical Catholic University of Ecuador and its Program on Human Rights, and under the auspices of the U.S. Department of State and the office of the U.S. Cultural Attaché in Ecuador, Professor Méndez visited Ecuador. He lectured at both the

Universidad Central in Quito and at the Universidad Espíritu Santo in Guayaquil. In addition to two lectures on "Human Rights and Democracy in Latin America: Balance and Perspectives" and one on "The Future of the Inter-American System of Protection," he delivered three four-hour-long workshops.

On January 23, 2001, Professor Méndez spoke at an event organized by the Human Rights Program of Columbia Law School on the ongoing reforms to the Inter-American System of Protection. While he spoke from the perspective of the Inter-American Commission on Human Rights, Monica Pinto, Assistant Dean of the University of Buenos Aires Law School, presented a governmental point of view.

On February 1-3, he visited Lima, Peru, to attend a conference on "Truth, Justice and Reconciliation" organized by several local NGOs to assist the efforts of a Task Force recently formed by the new government to set up a Truth Commission to deal with the legacy of human rights abuse of the Fujimori and previous governments. The Ministry of Justice of the caretaker Paniagua administration (there will be new elections in April) has asked him to serve as one of five international consultants to this Task Force.

Professor Méndez's recent contributions to collective works include:

- *The Consolidation of Democracy and Human Rights in Latin America*, co-written with Javier Mariezcurrena, in *HUMAN RIGHTS: NEW PERSPECTIVES, NEW REALITIES* (Lynne Rienner Publishers 2000), edited by Adamantia Pollis and Peter Schwab;
- A paper he gave at a conference at Dartmouth University in August 1998 about Latin American experiences and comparative analysis in *THE POLITICS OF MEMORY: TRUTH, HEALING AND SOCIAL JUSTICE* (Zed Publishers 2000), edited by Ifi Amadiume and Abdullahi A. An-Na'im;
- *International Human Rights Law, International Humanitarian Law and International Criminal Law and Procedure: New Relationships in INTERNATIONAL CRIMES, PEACE AND HUMAN RIGHTS: THE ROLE OF THE INTERNATIONAL CRIMINAL COURT* (Transnational Publishers 2000), edited by Dinah Shelton. The book resulted from a conference organized by CCHR and the Joan B. Kroc Institute for International Peace Studies in March 1999.

- Comments on *From Minors to Citizens* in *THE CHILD IN LATIN AMERICA: HEALTH, DEVELOPMENT AND RIGHTS* (University of Notre Dame Press 2001), edited by Ernest J. Bartell and Alejandro O'Donnell. This article comments on a paper concerning the U.N. Convention on the Rights of the Child by Emilio García Méndez, a prominent Latin American expert on children's rights.
- *Solutions: Human Rights Verification and Accountability* (with Francisco J. Cox) in *HUMAN RIGHTS AND FORCED DISPLACEMENT*, edited by Anne F. Bayefsky and Joan Fitzpatrick (Martinus Nijhoff 2000).

In addition, Professor Méndez co-wrote with Gaston Chillier '00 LL.M. an article on cultural relativism titled *No relativizar los derechos humanos* in the fall 2000 issue of *HECHOS Y DERECHOS*, the review of the Argentine Ministry of Justice and Human Rights.

DINAH SHELTON, professor of law, spoke on "Conceptual Development of International Environmental Law" to the Commission on Environmental Law of the World Conservation Union at its Second World Conservation Congress in Amman, Jordan, in October 2000. With Alexandre Kiss, she drafted a resolution, which the congress unanimously adopted, recommending that nation-states use an international minimum standard for environmental protection in the absence of precise legal rules on a particular issue. The resolution is modeled on the "Marten's Clause" in the laws of war, which provides that, until a complete code of conduct is adopted, nation-states and individuals must act according to the



▲ Miguel Angel Rodriguez, president of Costa Rica; an aide; Elizabeth Odio Benito, vice president of Costa Rica; Professor Dinah Shelton (Notre Dame Law School); the Honorable Judge Thomas Buergenthal (International Court of Justice) at the 20th anniversary of the Inter-American Institute of Human Rights in San Jose, Costa Rica.

"laws of humanity and the dictates of the public conscience."

Later in October she delivered an address titled "The Impact of Technology on Human Rights" at a conference on "Technology and International Law" sponsored by the national International Law Students Association at Santa Clara University. On October 16, she also delivered a lecture on the United Nations Human Rights Commission at the Boalt Hall School of Law in Berkeley. She served on the planning committee and spoke at the AALS "Workshop on Human Rights: Teaching and Scholarship, New Issues, New Approaches" on October 26-28.

At the end of October, Professor Shelton participated in a tribute to Thomas Buergenthal, judge of the International Court of Justice, held as part of the celebration of the 20th anniversary of the Inter-American Institute of Human Rights in San Jose, Costa Rica. She spoke at the ceremony, along with dignitaries including Pedro Nikken, former judge of the Inter-American Court of Human Rights; Roberto Cuellar, Executive Director of the Inter-American Institute; and the current president of Costa Rica.

Professor Shelton was among 227 passengers on a United Airlines flight from San Francisco to Osaka, Japan, on Wednesday, November 15th, which made an emergency landing at Seattle's Sea-Tac Airport after the pilots reported smoke in the cabin. After mechanics checked the aircraft the flight continued, uneventfully, to Japan. On November 17, she delivered a paper titled "Compliance with Environmental Soft Law" at a symposium sponsored by the International Center for Environmental Compliance Assessment, Kagawa University, Japan.

On November 23-24, she participated in the Lisbon Forum 2000 on "Regional and International Systems of Human Rights Protection: Their Contribution to the Universality and Indivisibility of Human Rights."

Professor Shelton continues to work with UNITAR on training and professional development in implementing international environmental obligations (including environmental rights) in the Asia-Pacific region. In January 2001 in Bangkok, Thailand, she was one of the professors at a "Workshop on Implementation of International Environmental Law," a training program for government officials and professors from Laos,

Cambodia and Vietnam sponsored by the United Nations Training and Research Institute, Bangkok. A further UNITAR workshop will be held in Kushiro, Japan, in March. From January 31-February 4, she participated in the Americas' Conference on Secession in International Law, delivering a paper on "The Jurisprudence of International Human Rights Tribunals on Secession and Self-Determination" and participating in an effort to draft the conclusions of the conference.

Professor Shelton's book, *REMEDIES IN HUMAN RIGHTS LAW* (Oxford University Press 1999), was used extensively in developing the Report on Damages under the Human Rights Act



▲ Mario Soares, former president of Portugal and professor Dinah Shelton (Notre Dame Law School) at the Lisbon meeting of regional systems for the protection of human rights in November 2000.

1998, prepared by the British Law Commission, chaired by Honorable Mr. Justice Carnwath. The report analyzes the potential for courts in the United Kingdom to award damages under the new law, and provide useful guidance for all users of the new Act.

Professor Shelton has also edited a new book on *COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM* (Oxford University Press 2000). The results of a three-year study of the American Society of International Law, this book looks at the use and impact of "soft law" in international legal regulation of human rights, environment, trade and finance, and multilateral arms control. It has been nominated for the ASIL book prize for 2000.

Another new book edited by Professor Shelton, *INTERNATIONAL CRIMES, PEACE AND HUMAN RIGHTS* (Transnational Press 2000), contains the proceedings of the Notre Dame Conference on the International Criminal Court, held in March 1999. The essays in the book assess the prospects for the Court's future and its

potential impact on humanitarian law and international human rights law.

She contributed *Droits et justice pour chaque citoyen de la planète?* to *MONDIALISATION ET SOCIÉTÉS MULTICULTURELLES: L'INCERTAIN DU FUTUR* (M. Ricciardelli, S. Urban and K. Nanopoulos, eds., PUF 2000).

GARTH MEINTJES '91 LL.M., J.S.D. candidate, and associate director of the Center for Civil and Human Rights, in October 2000, participated in a panel discussion on "Towards Achieving Justice: Truth Commissions, Trials and Amnesties," at a conference in New York sponsored by the American branch of the International Law Association. There he presented some of the results of his ongoing research on the South African truth and reconciliation process, which he now is revising as an article for publication. In addition, with Juan Méndez, Mr. Meintjes wrote a short reply to a critique of their earlier article on "Reconciling Amnesty with Universal Jurisdiction,"



which was published in the INTERNATIONAL LAW FORUM OF THE INTERNATIONAL LAW ASSOCIATION. The reply will be published in the journal's next issue.

Mr. Meintjes' efforts to secure a grant from the MacArthur Foundation in support of a project involving the realization of economic and social rights in Mexico met with success when the foundation recently awarded a grant of \$200,000 to the university for this purpose (see the separate announcement). His most recent fundraising effort is directed at the Open Society Institute for a grant to fund an independent study on the mental-health impact of Indiana's supermax prisons. Permission to undertake the study was obtained earlier this year from the Correctional Matters Evaluation Committee of the Indiana legislature.

In November 2000, Mr. Meintjes was contacted by Amnesty International's secretariat in London and asked to join a three-person fact-finding mission to Israel and the Occupied Territories. The focus of his mandate was to evaluate the fairness of the mass trials of those arrested for stone-throwing during the recent

uprising. The mission also involved meetings with Knesset members and high ranking government officials to discuss the concerns and recommendations raised by Amnesty's two earlier missions during the previous few months. On his return, he participated in a press conference in London to report on the current situation.

On December 5, the Law School Courtroom turned temporarily into a federal courthouse for the 7th Cir. Court of Appeals when Hon. Kenneth F. Ripple conferred citizenship on Mr. Meintjes. Before Mr. Meintjes took the oath of allegiance to the United States, Judge Ripple gave a moving explanation of the significance of citizenship in this nation of immigrants. At a reception at the center after the ceremony, faculty and staff of the law school celebrated with Mr. Meintjes his naturalization.

On February 6, Mr. Meintjes testified before the Indiana Senate committee on corrections regarding the role and importance of an effective ombudsman for corrections. A similar bill was introduced before the House committee. This legislative initiative is the result of five years of discussions between a coalition of religious groups, including the center, and the Commissioner of Corrections. Also on this topic, he is organizing an upcoming conference on "Accountability in the Treatment of Prisoners." Some of the participants that already have agreed to come include Sir David Ramsbotham, HM Inspector of Prisons, United Kingdom, and Baroness Vivien Stern, Secretary

General, Penal Reform International. The conference is scheduled for April 27, 2001.

He recently taught a three-hour seminar at the offices of Baker & McKenzie to a group of 30 lawyers from the Chicago Bar Association on the use of human-rights standards to monitor detention facilities. This group of lawyers volunteered to conduct a study of conditions in INS detention facilities on behalf of the Midwest Immigrant and Human Rights Center. The final report will be submitted to the president of the ABA in August.

PAOLO CAROZZA, associate professor of law, has been continuing his research and writing on the relationship between comparative law, European legal traditions and supranational human rights norms and institutions in Europe. In November, he delivered a talk to the Notre Dame Law School faculty on the new European Union Charter of Fundamental Rights.



ADA VERLOREN '90 LL.M., as a volunteer attorney with the Chicago Midwest Immigrant and Human Rights Center *pro bono* program, is representing a Sudanese refugee seeking political asylum in the United States. She is also participating in a study of conditions in INS detention facilities on behalf of the Midwest



Immigrant and Human Rights Center. The final report will be submitted to the president of the ABA in August.

Alumni News

J.S.D. Graduates and Candidates

Thomas Sillaste J.S.D. '95, who works at the European Court of Human Rights in Strasbourg, France, spent the winter holiday in South Bend to visit his parents-in-law.

Faustina Pereira J.S.D. '98 J.S.D., LL.M. '96, basically wears three hats now, (a) as a practicing lawyer before the Supreme Court of Bangladesh, handling mainly *habeas corpus* writs and public-interest litigation; (b) as an

associate in the law chambers of Dr. Kamal Hossain and Associates; and (c) as Advocacy Coordinator of Ain-o-Salish Kendro (ASK- a Legal Aid and Mediation Centre) where she handles all kinds of cases of human rights violations, from domestic violence to illegal evictions of slum dwellers to cross-border trafficking of women and children. While wearing these hats she has managed to continue her pet-project, which is conducting and participating in training (nationally and internationally) on feminist legal theories. Last year, she also participated in the

ICC (International Criminal Court) Prep-Com at the United Nations as part of the Women's Caucus for Gender Justice. She is currently also working on transforming her J.S.D. thesis into a book for gender and human rights courses.

George Mugwanya '00 J.S.D. attended a training session for UN Human Rights Field Officers from October 25 to November 10 in Geneva, Switzerland. This semester, he is teaching International Law and International Human Rights at the Faculty of Law, Makerere University, Kampala, Uganda.

Laurence Juma, J.S.D. candidate, published *Regional Initiatives for Peace: Lessons from IGAD and ECOWAS/ECONOG* in 40 AFRICA QUARTERLY (Number 3) 85-108 (Indian Council for Cultural Relations 2000).

Kolawole Tajudeen Olaniyani '98 LL.M., J.S.D. candidate, has been selected, after a tough competitive search, to be the permanent Legal Advisor for Africa at Amnesty International's International Secretariat in London. His primary tasks will include providing strategic advice and other support to one or more regional programs to maintain agreed-upon standards and, as appropriate, taking the lead on development of Amnesty International's policies and actions in the areas of international human rights law and other relevant aspects of public international law.

Mary Margaret Penrose '99 LL.M., J.S.D. candidate, assistant professor at Oklahoma University School of Law, returned to Notre Dame in September 2000 to present "Practical Considerations for Jury Selection in Federal Court Practice" as part of a continuing legal education program. In October 2000, she served on the program committee and participated in a panel discussion on "Smart Sanctions and Effective Remedies: Addressing Gross Violations of Human Rights" at a conference on "International Law in the 21st Century: The United Nations and Other International Entities," sponsored by the American branch of the International Law Association in New York, New York.

She has just completed her first semester teaching civil procedure. This spring she will teach courses in civil procedure, negotiation and mediation, and human rights. She is working on an essay on "War Crimes" for ENCYCLOPEDIA BRITANNICA.

In addition to teaching law, she also manages to practice law, having recently completed a Title IX lawsuit in Texas in which she successfully represented a young woman who wanted to try out for a high school football team.

LL.M. Class of 1990

Andrew Brooking complains that life in Johannesburg is busy and more eventful than it should be. In 1999, with other lawyers and accountants, he joined a small start-up investment bank, in which he runs a corporate finance division.

LL.M. Class of 1992

Martin Loesch '87, '91 J.D., '94 M.A. works as an attorney at the Swinomish Indian Tribal Community, where he is involved in United States/Canadian native rights border negotiations and the development of an Indigenous Rights Legal Center.

Tomas Vial is still studying for his Ph.D. at University College, London, writing a thesis on the subject of the right to information as a moral right and as a

constitutional right. He expects to stay in London until September 2001, after which he will return to Chile.

LL.M. Class of 1993

Sim Tshabalala has been appointed director, structured finance, of Standard Corporate and Merchant Bank in Marshalltown, South Africa. He and his wife Lebohlang are the proud parents of a baby girl, Nompumelelo Thabo Tshabalala, born on October 10, 2000.

LL.M. Class of 1996

Alexander Bolkvadze left Georgian Consulting Group (GCG) to join Business & Legal Counsel, LLC, (B-LEG) as a partner.

Vincent Orlu Nmehielle completed his doctoral studies at George Washington University Law School, Washington, D.C., which he had started in the spring of 1997. On May 30, 2000, he defended his dissertation titled *THE AFRICAN HUMAN RIGHTS MECHANISM AND EFFECTIVE HUMAN RIGHTS DISPUTES RESOLUTION IN AFRICA*, and received the degree of Doctor of Juridical Science (S.J.D.) in International and Comparative Law in the summer of 2000. The members of his dissertation committee were Professors Louis B. Sohn, Thomas Buergenthal and Ralph G. Steinhardt. Professor Buergenthal has since been elected to the International Court of Justice (ICJ) in The Hague.

During the course of the program, he and his wife Nkechi C. Obisie-Nmehielle had two additions to their family: Shalom Chimenum Obisie-Orlu, born July 4, 1998 and Immanuela Chinaza Obisie-Orlu, born March 15, 2000. They have two other children, Vincent Obisie-Orlu Jr. and Sharon N. Obisie-Orlu.

Martin Ölz has started to work with the International Labor Organization in Geneva in the International Labor Standards Department, Discrimination and Equality Branch (EGALITE).

LL.M. Class of 1997

Gina Bekker is a visiting research fellow in the Forced Migration and Refugee Studies Program at the American University in Cairo, Egypt. Her work focuses on providing legal assistance to asylum seekers and refugees, mostly from Sudan, Somalia and Ethiopia.

Gabriela Salgado Gomez has been appointed an Associate Legal Officer at the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in The Hague, Netherlands.

Kate Savage announced with joy the birth of little Tariq on September 24 in Johannesburg, South Africa.

LL.M. Class of 1998

Shanti Kaphle has started a 2-year position as United Nations Volunteer Human Rights Specialist with UNDP in Yemen.

Shanti is located in the UNDP country office in Sana'a and works under the overall supervision of the UNDP Resident Representative to implement human rights activities in general and, more particularly, to assist in carrying out the activities related to Yemen's HURIST sub-program.

After her first week in Yemen, Shanti reported that promoting human rights is going to be a really challenging job. Yemen is a party to most of the international human

rights conventions, but has done very little to realize them in practice. The positive side is that the government is showing its willingness to promote human rights, as exemplified by its willingness to participate in a workshop for government ministries, departments and local government councils in collaboration with the HURIST program during March.

Chan Un Park became the first lecturer to teach international human rights law at the Judicial Institute of the Supreme Court in Korea to 21 trainees who had passed the bar exam but were not yet lawyers. In addition, he participated in a workshop in Tokyo, Japan, which was designed to facilitate communications between NGOs of the two countries dealing with refugees. As a member of the Korean delegation, he gave a presentation on The Process of Refugee Recognition with Specific Reference to Korea.

Chan was elected Director for International Affairs for the Seoul Bar Association, the biggest bar association in Korea. He also became a member of the six-member Standing Board of Directors for a term from January 2001 to January 2003.

LL.M. Class of 1999

Abiola Akiyode-Afolabi is executive director of the Women Advocates Research and Documentation Center in Lagos, Nigeria, responsible for litigation, legal research and advocacy. She is coordinator of a project titled "Women and Constitutionalism," which is supported by a grant from the Ford Foundation, to formulate strategies to include women in the 1999 Nigerian constitution. She acted as a consultant to the International League for Human Rights, New York, on another project sponsored by the Ford Foundation: "Women Living under Sharia Laws in Nigeria – Constitutional Challenges." She has also been a consultant to the International Press Center on Media and the Constitution, and to the International League for Human Rights Africa Program on a project to facilitate a network between West African Human Rights Attorneys (WARHANET). Ms. Akiyode-Afolabi was interviewed by Minaj Broadcasting International for a television program on sexual abuse.

In recognition of her work, she received the International League for Human Rights' 1999 Defenders' International Award.

Patricia Galvão Ferreira and her husband **Claudio Lins de Vasconcelos** spent New Year's Eve with **Fabíán Victora** in Brazil.

Patricia works for the Center for Justice and International Law (CEJIL) at the office in Rio de Janeiro, Brazil.

Claudio Lins de Vasconcelos has been appointed planning manager of the Office of Community Relations at Globo Organization in Rio de Janeiro, a major media and communications group in Latin America.

Malose Mahloko, a senior researcher at the South African Human Rights Commission, contributed to the Annual Report on Economic and Social Rights Monitoring 1998-1999, which was launched in September 2000 at the head office in Houghton, South Africa.

Jennifer Miano joined an environmental organization in Nairobi, Kenya, as a Senior Program Officer.

Justin Wylie joined the Mariannhill Monastery in Durban, South Africa. During 2001 he will undergo his novitiate at the monastery.

LL.M. Class of 2000

Sharelle Aitchison is manager for the Norwegian Refugee Council Legal Aid Project Office in Prizren, Kosovo. The office has seven local staff, providing free legal aid to minorities, internally displaced persons, returnees and refugees on civil rights issues, especially discrimination in areas such as employment, education and property. They represent clients in the courts, human rights institutions, before the recently appointed ombudsperson and within the civil administration. In addition, they help minorities with limited freedom of movement to obtain birth certificates and working booklets. To further regional cooperation with the Balkan countries, Sharelle travels to Kralevio in Serbia every Wednesday to attend co-op meetings.

Babafemi Akinrinade is a lecturer and head of the department of public law at Obafemi Awolowo University in Ile-Ife, Nigeria. He has been preparing a human rights manual for use in elementary schools in Nigeria. On July 24, 2000, Babafemi and his wife had a baby boy, Ayomikun Olutimilehin.

Xiaosheng Huang has joined the law offices of Jon Eric Garde & Associates in Las Vegas, Nevada. The firm specializes in immigration and naturalization matters, including deportation, consular law and visa applications.

Sergey Mukhaev works as a staff attorney for ABA/CEELI (American Bar Association Central and East European Law Initiative) in the Minsk office. The major focus of the organization is advancing the rule of law through citizens' legal education, development of the legal profession, work with law students, assistance to local NGOs that provide free legal advice to public, and support to local human rights activists. He focuses on planning and coordinating all programs and projects in Belarus through the office. ABA/CEELI does not simply give the money and resources to the local partners, but actively participates in the projects. He is therefore fully aware of the situation within legal and human rights communities and can direct them with regard to their activities. According to Sergey, it won't be an overstatement to say that he is as much involved in human rights work as it is possible in Belarus. Next year is a crucial one for the government – presidential elections are approaching – and staff members are experiencing attempts to break into their offices, tapping of phones and “unofficial” questioning by state security personnel. Despite the extra pressure, all this only adds to Sergey's belief that he is “doing the right stuff now, that his work is indeed needed.”

In addition, he lectures (*pro bono*) on regional human rights mechanisms in his university (second year law and social sciences students) and also teaches a general human rights seminar to a group of high school students. Whenever ABA/CEELI supports a training seminar (either for general public, or for lawyers) on human rights issues, he participates as one of the trainers.

Other Center Personnel News

Kelly D. Askin, formerly a visiting scholar at the center, served as chair of the program committee and participated in a panel discussion on “Smart Sanctions and Effective Remedies: Addressing Gross Violations of Human Rights,” at a conference on “International Law in the 21st Century: The United Nations and Other International Entities,” sponsored by the American branch of the International Law Association in New York, New York, October 26-28, 2000.

Peoples, Yes!

by **Ronalth Ivan Ochaeta '93 LL.M.**¹

Santiago, Chile, recently hosted the “Preparatory Conference of the Americas Against Racism, Racial Discrimination, Xenophobia and Other Forms of Intolerance,” attended by governmental delegates of the 35 countries that constitute the Americas. The focus of the conference was to prepare for the United Nations World Summit on the same topic, which will be held in South Africa in August 2001.

The final document issued at the conference includes some innovations such as the right to compensation, reparations, restitution and indemnification for the original American peoples regarding acts against them by colonizing powers. It urges state members to continue a dialogue at the World Summit to consider the following measures:

- creating a special development fund;
- improving access to international markets for products from countries affected by slavery, servitude and colonization;
- creating a program to restore to the countries of origin art objects, historical artifacts and documents;
- creating an educational fund;
- reforming multilateral organizations.

Although these points are obviously very contentious, a discussion at the World Summit could be valuable for the development of international peoples' rights.

Insisting on the recognition of peoples' rights, indigenous representatives met days before the Preparatory Conference at a so-called “Citizens Conference” and demonstrated when Chilean President Ricardo Lagos was about to address the audience in the presence of United Nations High Commissioner of Human Rights Mary Robinson. Two indigenous women managed to get close to the podium and took hold of the microphone to expose what they considered an act of discrimination and racism to identify indigenous peoples as “populations” instead of “peoples.” They alluded to an on-going debate about the use of these terms in a draft Declaration on Indigenous Rights under discussion at the Organization of American States. At the same time, they handed a letter to President Lagos in which they

demanded the incorporation of the concept of indigenous “peoples” in the text of the preparatory document for the conference.

As a result of this attitude of the indigenous representatives and the position of some government representatives, consensus was reached after long and intensive deliberations to incorporate the term “peoples.” This is the first time that a hemispheric document agreed to by several governments includes the term “peoples” to identify the original inhabitants of the American countries. Yet, many obstacles still remain, especially in the United States, for recognizing the rights of indigenous peoples and bringing about necessary statutory reform. Despite this one positive step in the right direction, states still need officially to recognize the identity and collective rights of indigenous peoples and adopt the administrative, legislative and judicial measures necessary to promote, protect and guarantee their rights and fundamental liberties. These rights include the right of indigenous peoples to be called by the term of their choice; to contribute equally and freely to the political, economic and cultural development of their respective countries, without prejudicing their right to development as peoples; to maintain their own organizations as well as their own way of life, culture and traditions; to preserve and speak their own languages; to develop economic infrastructures in their territories; and to participate in the development of educational programs and the preservation of natural resources.



▲ Ronalth Ivan Ochaeta '93 LL.M.

S T U D E N T P R O F I L E

Luc Reydam's Earns J.S.D. Degree

Luc Reydam's received the J.S.D. degree in January 2001 after successfully defending his dissertation titled "Universal Jurisdiction: A Theoretical and Empirical Study."

In the past decade, a number of countries have investigated and sometimes convicted non-nationals for crimes committed abroad against non-nationals. One of these cases has triggered a lawsuit brought before the International Court of Justice by the State of nationality of a suspect against the country claiming jurisdiction. The complaint in this suit alleges that the exercise of so-called universal jurisdiction violates international law. Mr. Reydam's study addresses the issue of international legality, as well as the basis under national law for one State's decision to exercise criminal jurisdiction over an offense committed outside its territory by a foreigner against another foreigner.

The inquiry into the international legal limits on what one State can do in its own territory in respect of criminal conduct in another State starts with an overview of the major scholarly writings — from the foundation period of modern international law until the present — on jurisdiction over crime. The study then compares theory on universal jurisdiction with State practice at the national, as well as international level, the latter of which focuses on treaties. From a historical and comparative perspective, Mr. Reydam's examines in detail the jurisdictional clauses of 10 international conventions regarding the prevention and/or punishment of certain crimes. The survey of State practice at the national level consists mainly of 10 in-depth country studies (statutes and cases), again conducted from a

comparative perspective. The goal of the country studies is to understand better a part of national law, namely, how municipal systems of jurisdiction vary and actually work.

The study concludes that the conditions and criteria for the lawful exercise of universal jurisdiction under international law are far from clear. However, it dismisses conclusively the "positivist" assertion that universal jurisdiction over international offenses is a construct of moralists and naturalist jurists without



any basis in State practice.

Transnational Publishers has offered Mr. Reydam's an advance contract for the publication of a book based on his dissertation titled *UNIVERSAL JURISDICTION IN THEORY AND PRACTICE*.

¹Guatemalan Ambassador to the OAS and President of the Indigenous Populations working group. As ambassador to the OAS, Mr. Ochaeta represented his country at the Santiago "Prep Com" for the "World Conference against Racism, Xenophobia, Racial Discrimination and other forms of Intolerance." Previously, Mr. Ochaeta was Director of the Human Rights Office of the Archbishop of Guatemala. In April 1998, the Notre Dame Law School awarded Mr. Ochaeta the Reverend William M. Lewers, C.S.C., Graduate Award for Distinguished Service in Civil and Human Rights.

Bradlow Scholarship Renamed

The advisory council of the Center for Civil and Human Rights approved the renaming of the Bradlow scholarship to the Rev. William M. Lewers, C.S.C., Human Rights Scholarship in honor of Father Lewers, who served as the center's third director. The reason for the change was that the existing name had no significance other than being a functional reference to one of the parties that originally participated in the selection of the fellowship recipients. That function is now performed by a selection committee at the University of the Witwatersrand in South Africa. The designated aim of the scholarship will remain the same: to provide support for a South African lawyer to study international human rights law at the center.

South African students were the first to study towards the LL.M. in civil and human rights at the University of Notre Dame when the program started in 1986. Funding for their study was provided in terms of an agreement between Reverend Theodore M. Hesburgh, C.S.C., and Judge Richard C. Goldstone, then a member of the South African Supreme Court and chair of the Bradlow Foundation. With the growth of the program over the years, the center has attracted international students from five continents and a multitude of countries including Albania, Armenia, Australia, Austria, Bangladesh, Belarus, Belgium, Brazil, Chile, China, Colombia, Congo, Costa Rica, Egypt, El Salvador, Georgia, Guatemala, Haiti, India, Japan, Kenya, Korea, Malawi, Mexico, the Netherlands, New Zealand, Nigeria, Pakistan, Peru, Republic of Macedonia, Romania, Uganda, United Kingdom, the United States, Uruguay and Zambia. Yet, because of the historical connection with South Africa, one South African lawyer is usually present among the group of students who earn the LL.M. degree every year.

In Memoriam

Nazar S. Kovalenko '98 LL.M., Lviv, Ukraine, died in the Spring of 2000 after a fall in Egypt. Please remember this deceased alumnus of the center and his family in your prayers.

briefly

CCHR Receives MacArthur Foundation Grant

The John D. and Catherine T. MacArthur Foundation has approved a grant of \$200,000 over three years to the Center for Civil and Human Rights (CCHR) and the Center for Justice and International Law (CEJIL) in support of a joint project to explore and expand the defense of economic, social and cultural rights (ESCR) before the inter-American human rights system. The main objective of the project is to capitalize on a newly emerging avenue for the protection of ESCR. Following the recent adoption of regional declarations of support for ESCR in conformity with international law, the inter-American system, long proven to be a useful tool for defending civil and political rights in the Americas and the Caribbean, has also started to address ESCR. At this stage, however, only a handful of cases addressing these rights are under consideration before the Inter-American Commission, and just one case involving ESCR has reached the Inter-American Court. This situation is most likely the result of a long-standing judicial tradition that prioritizes civil and political rights over economic, social and cultural rights. However, there is now a growing recognition that, like civil and political rights, ESCR are *human rights*, to be respected and defended with equal vigor.

CEJIL and CCHR have selected Mexico to be the geographic focal point of the project for a variety of reasons. First and foremost, Mexico has a strong and active agenda in the protection of civil and political rights, but often neglects to protect the ESCR of its citizens. Second, Mexico offers an excellent opportunity to use the inter-American human rights system to bolster the defense of ESCR, because it has accepted all of the system's major instruments, including the Protocol of San Salvador. Finally, Mexico represents the best location to carry out the project because of its large and well-organized human rights community that, until now has mainly worked on civil and political rights, but that also has potential for the defense of ESCR.

To initiate the project, the CCHR in collaboration with CEJIL, will work with Mexican NGOs to host a conference through which precedent setting cases can be identified. CEJIL will then work with selected domestic partners to seek redress for two or three cases through negotiation, or litigation where necessary.

The idea behind his project is not only to demonstrate the justiciability of ESCR cases, but also to use the process as training exercise for promising new lawyers. There will be several ways, including fellowships and internships, in which interested lawyers can become involved in the project. In addition, at the conclusion of the project, its results will be evaluated and shared through a second conference involving a much wider array of participants.

This project, which marks the first formal collaboration between the CCHR and CEJIL, will be implemented over a three-year period, beginning this May. For more information about the project or to become involved, please contact the CCHR's associate director, Garth Meintjes, at CCHR@ND.EDU.

CLASS E-MAIL LISTSERV

An e-mail listserv has been developed for alumni from the Center for Civil and Human Rights. Alumni who wish to join this new listserv but have not yet received notification that they have been added, should contact Cathy Pieronek at the Law School Relations Office by e-mail (catherine.f.pieronek.1@nd.edu or lawalum@nd.edu) and provide a current e-mail address.

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