

LEGACY IN ACTION: HONORING THE LIFE WORK OF RHONDA COPELON

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On March 29, 2012, the *City University of New York Law Review* hosted the Symposium titled, “Looking Forward: Rhonda Copelon’s Legacy in Action and the Future of International Women’s Human Rights Law” honoring the work and legacy of Professor Rhonda Copelon.

Rhonda was a founding faculty member of the City University of New York (“CUNY”) School of Law, a co-founder of CUNY School of Law’s International Women’s Human Rights Clinic (“IWHR”), a human rights attorney, and a vice-president of the Center for Constitutional Rights (“CCR”). She built on early pioneering work in the reproductive rights movement and broke new ground opening United States federal courts to international human rights violations claims and international tribunals to gender-based violence cases. She helped lay the conceptual foundation for some of today’s most influential case law in the field of women’s international human rights. Rhonda passed away in 2010 at age sixty-five, leaving an astounding body of work.

Over the course of her life, her scholarship was one of her sharpest advocacy tools, catalyzing major change in legal paradigms such as the notion that domestic violence should be recognized as a form of torture—a principle that the United Nations Committee Against Torture codified as law under the Convention Against Torture¹ in its General Comment No. 2 in 2007.² Rhonda

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¹ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, *available at* <http://www2.ohchr.org/english/law/cat.htm>.

² Comm. Against Torture, General Comment 2, Implementation of Article 2 by States Parties, ¶ 18, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).

spent several years contributing to drafts of General Comment No. 2 with several generations of interns at CUNY School of Law's IWHR Clinic.

She worked for more than a decade at CCR, where she litigated civil rights cases with a focus on women's rights and international human rights. While at CCR, Rhonda was co-counsel on the landmark case *Filártiga v. Peña-Irala*,³ which established that victims of gross human rights abuses committed abroad had recourse in United States courts.

Rhonda co-founded the Women's Caucus for Gender Justice, which was started by a small group of women human rights activists at the 1997 Preparatory Committee for the Establishment of an International Criminal Court ("ICC"). They realized that without an organized caucus, women's concerns would not be adequately defended and promoted. Through her role as Secretariat of the Women's Caucus and as the Director of CUNY School of Law's IWHR Clinic, she mobilized lawyers and activists internationally to ensure that the Rome Statute would take gender into account with regard to the procedure, evidence, and definition of crimes before the ICC, as well as in regard to the gender composition of the court itself. Though in the language of the Rome Statute, "gender" was ultimately narrowly defined in terms of "sex," the ICC subsequently codified sexual and gender crimes as within its jurisdiction.⁴

Rhonda laid the groundwork for lawyers and activists in the movement for gender justice today. For example, the current efforts by local advocates and international attorneys to end sexual violence in Haiti are guided by Rhonda's legacy. In 1994, after Haiti experienced a surge in politically motivated sexual violence, Rhonda pulled together a team to file a brief with the Organization of American States arguing that the rape of Haitian women by state actors that was underway amounted to torture under international law.⁵ Nearly fifteen years later, when Haiti suffered another surge in sexual violence, this time due to the devastating earthquake in 2010, the same organizations that Rhonda had rallied in the 1990s, along with new allies, came together. The IWHR Clinic filed a petition with the Inter-American Commission on Human Rights ("the

³ 630 F.2d 876 (2d Cir. 1980).

⁴ Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 2187 U.N.T.S. 90, ¶¶ 1, 3, available at http://untreaty.un.org/cod/icc/STATUTE/99_corr/cstatute.htm.

⁵ Country Conditions Communication by Int'l Women's H.R. Clinic at CUNY School of Law et al. (Inter-Am. Comm'n H.R. Oct. 16, 1996).

Commission”).⁶ This time, the Commission expanded on Rhonda’s work to call attention to the State’s due diligence obligation to end sexual violence committed by private actors.⁷

Despite persistent intolerance, the idea that discrimination on the basis of sexual orientation is a violation of human rights related to, yet distinct from, discrimination on the basis of sex and gender, has found acceptance in recent decades, making enormous strides in the jurisprudence and legislative decisions of many countries and international bodies. The case of Karen Atala Riffo, one Rhonda was deeply concerned with, highlights these intersections. Atala is a judge and lesbian mother who was stripped of custody of her three daughters when the Supreme Court of Chile ruled that she was an unfit mother on the basis of her sexual orientation.⁸ Judge Atala sought redress through the Inter-American system, and in 2006, her petition to the Commission was supported by a number of amicus curiae briefs. An amicus brief jointly submitted by the IWHR Clinic, the International Gay and Lesbian Human Rights Commission (“IGLHRC”), the law firm Morrison & Foerster, and others, argued that the Supreme Court of Chile improperly denied custody based on unsubstantiated and negative assumptions about lesbian and gay parents that were contrary to the weight of international authority and decades of psychological and social science research.⁹

In a historic decision in 2006, the Commission found for Judge Atala, and the case made its way to the Inter-American Court of Human Rights.¹⁰ It was the first time the court had ever heard a case specifically regarding sexual orientation or gender identity. Again, the IWHR Clinic and IGLHRC, joined by others, submitted an amicus brief renewing Rhonda’s argument and additionally calling on the court to find that sexual orientation and gender identity are protected classes.¹¹ In February 2011, the court issued a

⁶ Request by Int’l Women’s H.R. Clinic at CUNY School of Law et al. for Precautionary Measures Under Article 25 of the Commission’s Rules of Procedure at 5 (Inter-Am. Comm’n H.R. Oct. 19, 2010) (citation omitted).

⁷ Letter from Santiago A. Canton, Exec. Sec’y, Inter-Am. Comm’n H.R., to Lisa Davis, Esq., Int’l Women’s H.R. Clinic at CUNY School of Law, H.R. Advocacy Dir., MADRE, et al. (Dec. 22, 2010).

⁸ *Karen Atala and Daughters v. Chile*, Application, Case 12.502, Inter-Am. Comm’n H.R. (Sept. 17, 2010) [hereinafter *Atala*, Application].

⁹ Brief for Int’l Women’s H.R. Clinic at CUNY School of Law et al. as Amici Curiae Supporting Petitioner at 16-25, *Karen Atala and Daughters v. Chile*, Case No. P-1271-04, Inter-Am. Comm’n H.R. (Jan. 19, 2006), available at www.nycbar.org/pdf/report/Atala.pdf.

¹⁰ *Atala*, Application, *supra* note 8.

¹¹ Brief for Int’l Women’s H.R. Clinic at CUNY School of Law et al. as Amici Cu-

landmark decision finding that Chile not only violated Atala's right to equality and non-discrimination, but also affirming for the first time in its history that sexual orientation and gender identity are protected categories under the American Convention of Human Rights and that discrimination on such bases violates international law.¹²

This victory also belongs to Rhonda whose' tireless advocacy on behalf of women everywhere will never be forgotten. In the words of Anita Nayar, "She lit our path with a brilliant intellect and consuming passion that informed and transformed so many challenging political struggles."¹³ Rhonda Copelon's strategic legal brilliance, unwavering political courage, and deep commitment to a women's human rights vision will forever inspire and guide our work.

riae Supporting Petitioner, *Karen Atala and Daughters v. Chile*, Case 12.502, Inter-Am. Ct. H.R., CDH-S/2092 (2011), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/563-1.pdf>.

¹² *Karen Atala and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012).

¹³ Anita Nayar, *Remarks at Rhonda's Life Celebration*, REMEMBERING RHONDA COPELON (May 25, 2012), <http://rhondacopelon.blogspot.com/2010/09/from-anita-nayar.html>.