

## LOOKING FORWARD: AN INTRODUCTION TO THE SYMPOSIUM ISSUE

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Professor Rhonda Copelon was a trailblazing human rights lawyer and activist, one of the world's foremost legal scholars of the rights of women, and founder of the International Women's Human Rights ("IWHR") Clinic at City University of New York ("CUNY") School of Law. Her extensive work on women's human rights has had a formative influence in shaping the discourse on human rights under international and domestic law. Professor Copelon's accomplishments in the human rights field are too numerous to list; however, it can be said that she is most remembered for opening United States federal courts to international human rights violations and demanding that international tribunals address gender-based violence.<sup>1</sup> Rhonda Copelon passed away on May 6, 2010. Her groundbreaking work continues to inspire human rights activists and lawyers in all parts of the world.

The *City University of New York Law Review* dedicated its 2012 Symposium to Professor Copelon's legacy and how her work has been a foundation for the ongoing protection of human rights.<sup>2</sup> The Symposium, titled *Looking Forward: Rhonda Copelon's Legacy in Action and the Future of International Women's Human Rights Law*, was held on March 30, 2012, at the CUNY Graduate Center in Midtown Manhattan in collaboration with the IWHR Clinic of CUNY School

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† Editor-in-Chief, *City University of New York Law Review* (2011–2012); J.D., City University of New York School of Law, 2012. I would like to thank Rebecca Pendleton and Krystal Rodriguez, 2011–2012 *CUNY Law Review* Special Events Editors, for their commitment to the Symposium. I would also like to thank Jane Gish, 2011–2012 *CUNY Law Review* Managing Editor, and Cynthia Liang, 2011–2012 *CUNY Law Review* Managing Articles Editor, for their dedication to the journal. In addition, I thank the *CUNY Law Review* advisors, Professor Lisa Davis and Professor Andrea McArdle, for their mentorship and support. Thank you to the 2012–2013 *CUNY Law Review* Board for their dedication to publishing this volume of the journal.

<sup>1</sup> See Symposium, *The Making of Filártiga v. Peña, the Alien Tort Claims Act After Twenty-Five Years: Symposium Transcript*, 9 N.Y. CITY L. REV. 249 (2006); see also Rhonda Copelon, *Surfacing Gender: Re-Engraving Crimes Against Women in Humanitarian Law*, 5 HASTINGS WOMEN'S L.J. 243 (1994).

<sup>2</sup> The *City University of New York Law Review* (formerly *New York City Law Review*) is a unique public interest legal journal that aims to inform the legal community of recent developments in public interest law, including international law. This issue's subject—the future of international women's human rights—represents the Law Review's commitment to and tradition of publishing symposia on crucial and timely legal issues.

of Law. This was the first symposium specifically focused on Professor Copelon's accomplishments and her influence, and the event brought together leading international and United States experts to discuss current implementations of her work. Specifically, the event focused on sexual rights, reproductive rights, rape as a form of torture, and domestic implementation of international human rights law.

Yifat Susskind, Executive Director of the women's human rights organization MADRE, opened the day with remarks about Professor Copelon's impact on the struggle for women's rights. She noted that many women activists who worked with Rhonda Copelon compared her work to being "as crucial as bread." Ms. Susskind remarked that while advocates often work with complicated issues, Professor Copelon never lost sight of the fact that justice is simple.

The first panel, Sexual Rights Developments Under International Law, explored cutting-edge developments in international law for upholding sexual rights based on sexual orientation and gender identity, as well as ongoing challenges and obstacles to securing rights in these areas. Panelists shared how Professor Copelon advocated for LGBT rights to be taken into account during reviews of the United States' compliance with international treaty bodies, and how her work influenced current victories on the local and international stage. Jessica Stern, Director of Programs for the International Gay and Lesbian Human Rights Commission ("IGLHRC"), shared a recent international victory for LGBT rights, the case of *Karen Atala v. Chile*. Karen Atala is a Chilean judge who was discriminated against when Chilean courts denied her the custody of her two children because she is a lesbian.<sup>3</sup> The Inter-American Court ruled in favor of Atala, and the precedent-setting decision established sexual orientation and gender identity as protected categories under the American Convention of Human Rights.<sup>4</sup> Scott Long, Visiting Fellow at the Human Rights Program at Harvard Law School, discussed the importance of LGBT movements connecting with social movements, and how human rights issues must be connected to broader efforts for social change. Andrea Ritchie, Director of Streetwise and Safe and co-author of *Queer (In)Justice*, spoke about community activists in Louisiana challenging Louisiana's Crimes Against Nature law, which

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<sup>3</sup> See *Atala Riffo and Daughters v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012).

<sup>4</sup> *Id.*

criminalized sexual acts traditionally associated with homosexuality. Those convicted under the law were forced to register as sex offenders for a period of fifteen years, and the law disproportionately affected poor women of color, transgender women, and gay men of color.<sup>5</sup> On the eve of the Symposium, a federal court judge granted summary judgment in favor of plaintiffs in *Doe v. Jindal*, represented by Ritchie, the Center for Constitutional Rights (“CCR”), and Loyola University Civil Justice Clinic, ruling that the law’s sex offender registration requirement violated the Equal Protection Clause of the United States Constitution.<sup>6</sup>

Panel two participants discussed current legal challenges and successes for reproductive rights domestically and internationally. CUNY Law Professor Cindy Soohoo shared how Professor Copelon began her career focusing on major women’s issues such as the right to have children, the right to abortion, issues of forced sterilization, and discrimination against unwed mothers.<sup>7</sup> Professor Copelon recognized the disparity between rights that women officially hold and the reality of how difficult it is for women, especially low-income women and women of color, to exercise these rights. Her work has influenced the ongoing struggle to ensure women’s access to abortion and reproductive health services, and panelists discussed how Professor Copelon brought reproductive rights violations to the attention of international fora. Nancy Northup, President of the Center for Reproductive Rights (“CRR”), provided an overview of recent legal victories for reproductive rights, focusing on CRR’s recent cases before international bodies. For example, in *K.L. v. Peru*, a young woman was pregnant with an anencephalic fetus, and doctors refused to perform an abortion, even though abortion is legal in Peru in limited circumstances to protect a woman’s life or health.<sup>8</sup> The woman was forced to give birth to a deformed baby, who died four days after birth, leaving the mother in severe depression.<sup>9</sup> The Human Rights Committee held that Peru was responsible for ensuring access to abortion, which marked the

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<sup>5</sup> See *Doe v. Jindal*, 851 F. Supp. 2d 995 (E.D. La. 2012).

<sup>6</sup> *Id.*

<sup>7</sup> While at CCR, Professor Copelon was lead counsel in the 1980 Supreme Court case, *Harris v. McRae*, 448 U.S. 297 (1980), in which she argued for low-income women’s rights to abortion access. The Supreme Court ruled in favor of the government, and upheld the Hyde Amendment, which bans funding for abortions even if necessary to protect women’s health.

<sup>8</sup> See Human Rights Comm., *Karen Noelia Llatoy v. Perú*, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), available at: <http://www.umn.edu/humanrts/undocs/1153-2003.html>.

<sup>9</sup> *Id.*

first time that an international human rights body held a government responsible for failure to ensure access to abortion where the practice is legal.<sup>10</sup> Mónica Roa, Director of Programs at Women's Link Worldwide, shared details about a 2006 landmark victory in the Colombian Constitutional Court. The decision established a woman's right to an abortion in certain circumstances, including when the mother's life is at risk. Ms. Roa discussed current challenges to implementing this right in Colombia.<sup>11</sup> Marianne Møllman, Senior Policy Advisor at Amnesty International, discussed the need to de-isolate reproductive rights. She stressed that the conversation around reproductive rights must not only focus on controlling fertility, but also must include issues that strongly influence whether women decide to have children or not: access to childcare, access to health care, lack of paid parental leave, and how parents wish to parent their children. Ms. Møllman also stated that it is not enough to have laws that protect reproductive rights; we also have to change the way we feel about sexuality and sex itself.

The third panel explored innovative achievements in expanding the notion of rape as a form of torture under international law, including the state's obligation to address sexual violence committed by private actors. Sir Nigel Rodley, Member of the United Nations Human Rights Committee and Former Special Rapporteur on Torture, provided an overview of the development of international human rights jurisprudence recognizing rape as a form of torture. Felice Gaer, Vice Chair of the United Nations Committee Against Torture ("CAT" or "the Committee"), addressed how Professor Copelon successfully argued that domestic violence and rape cannot be thought of as a private matter and therefore isolated from the international human rights framework. Blaine Bookey, Staff Attorney from the Center for Gender and Refugee Studies, spoke about her work in Haiti, in partnership with the IWHR Clinic, and the recent decision from the Inter-American Commission on Human Rights holding the State of Haiti responsible for punishing acts of sexual violence perpetrated by non-state actors.<sup>12</sup> Patricia Viseur Sellers, Former Legal Advisor for Gender-Related Crimes with the Office of the Prosecutor for the Interna-

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<sup>10</sup> *Id.*

<sup>11</sup> See Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2006, Sentencia C-355/06 (Colom.).

<sup>12</sup> See Precautionary Measures, Inter-Am. Comm'n H.R., Report No. MC-340-10 ("Women and girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti").

tional Criminal Tribunals for Rwanda and the Former Yugoslavia, discussed the ongoing *Bemba* case before the International Criminal Court (“ICC”).<sup>13</sup> Jean-Pierre Bemba, a national of the Democratic Republic of Congo, is the leader and Commander-in-Chief of the Mouvement de Libération du Congo, which is accused of using sexual violence to terrorize towns and villages in the Central African Republic.<sup>14</sup> Ms. Viseur Sellers discussed how the Pre-Trial Chamber of the ICC, when determining charges to be brought against Bemba, dropped charges of torture, deciding that it would be unfair to prosecute him under charges of both rape and torture. Ms. Viseur Sellers reminded us that we are indeed back at a critical point in international criminal law, and that we must “surface torture” when analyzing rape.

The final panel examined innovative litigation regarding the implementation of an international human rights framework in a domestic context. Topics included the use of international human rights law to create change from the local level to the federal courts and innovative tactics to advance economic and social rights. One of Professor Copelon’s most notable achievements is her work on the CCR case *Filartiga v. Peña-Irala*,<sup>15</sup> credited with resurfacing the Alien Tort Statute (“ATS”), which allows victims of international human rights violations to seek justice in federal courts. Pam Spees, Senior Staff Attorney at CCR, remarked on current CCR cases that use the ATS as a method for achieving justice, including *Sexual Minorities Uganda v. Lively*.<sup>16</sup> Scott Lively is an attorney, evangelical, and anti-LGBT activist in Massachusetts who is involved in violent anti-gay movements in Uganda.<sup>17</sup> The *Lively* case alleges that Lively’s involvement in anti-gay movements in Uganda is equal to persecution, and is the first ATS case that seeks to hold a perpetrator accountable for persecution on the basis of sexual orientation and gender identity. CUNY School of Law alum Joey Mogul, Partner with the People’s Law Office and Director of the Civil Rights Clinic at DePaul University College of Law, spoke passionately about how international law helped achieve a victory against torture in Chicago. Disappointed by the lack of prosecution

<sup>13</sup> See *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No. ICC-01/05-01/08 (discussing the situation in the Central African Republic).

<sup>14</sup> *Id.*

<sup>15</sup> 630 F.2d 876 (2d Cir. 1980).

<sup>16</sup> *Sexual Minorities Uganda v. Lively*, No. 3:12-cv-30051-MAP (D. Mass. July 13, 2012).

<sup>17</sup> For more information, see *LGBT Uganda Fights Back: The Case Against Scott Lively*, CTR. FOR CONSTITUTIONAL RIGHTS, <http://www.ccrjustice.org/lgbt-uganda-fights-back-case-against-scott-lively> (last visited Oct. 27, 2012).

against Chicago Police Commander Jon Burge for his role in over 110 torture cases committed against the city's African-American population, attorneys and activists brought what is known as the Chicago Torture Cases before the United Nations CAT.<sup>18</sup> The Committee issued a scathing report on the United States' lack of compliance with the United Nations Convention Against Torture, and called on the United States to immediately investigate the situation and bring the perpetrators to justice. Activists used the CAT's findings to lobby for justice, and the United States Attorney's Office in Chicago indicted Burge for perjury and obstruction of justice.<sup>19</sup> Caroline Bettinger-Lopez, Associate Professor of Clinical Legal Education and Director of the Human Rights Clinic at University of Miami School of Law, talked about the case of *Jessica Lenahan v. United States of America*.<sup>20</sup> The United States Supreme Court ruled that Lenahan had no constitutional right for the police to enforce a restraining order against her estranged husband, who murdered her three children, denying due process rights involving private acts of violence.<sup>21</sup> Frustrated by the lack of justice, Lenahan brought her case to the Inter-American Commission on Human Rights ("the Commission"). The Commission found the United States responsible for human rights violations suffered by Lenahan and issued recommendations regarding domestic violence law and policy in the United States.<sup>22</sup> Finally, Catherine Albisa, Executive Director of the National Economic & Social Rights Initiative ("NESRI"), discussed NESRI's work in solidarity with social movements, including their current campaign in support of the Coalition of Immokalee Workers.<sup>23</sup> Ms. Albisa reminded us that Professor Copelon, who was a founding member of NESRI, always stressed the importance of economic and social rights because these are the rights that shape women's lives on a daily basis.

During his afternoon remarks, Vince Warren, Executive Director of CCR, stressed how deeply Rhonda Copelon cared about partnering with community groups, and how she embodied community lawyering. He told us about how Professor Copelon urged

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<sup>18</sup> See Joey Mogul, *The Chicago Police Torture Cases: 1972 to 2011*, available at: <http://torturememorial.wordpress.com/background-on-chicago-torture/>.

<sup>19</sup> *Id.*

<sup>20</sup> *Jessica Lenahan (Gonzales) v. United States*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (July 21, 2011).

<sup>21</sup> *Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

<sup>22</sup> *Gonzales*, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (July 21, 2011).

<sup>23</sup> For more information, see *Coalition of Immokalee Workers*, NESRI, <http://www.nesri.org/blog-tags/coalition-of-immokalee-workers> (last visited Oct. 27, 2012).

CCR to surface gender, and how she rejected the idea of having a docket at CCR dedicated solely to women's issues, for fear that a gender docket would allow other dockets to ignore the intersectionality of gender and other justice issues. Vince Warren ended his remarks with Rhonda's advice to be bold, but careful:

Finally, Rhonda told us to act boldly and be careful. Initially, that puzzled me. How does one act boldly and be careful at the same time? Rhonda has helped me learn a sacred truth about social justice work, which I want to share with you. This truth is that living in the tension between what is possible and what is actual, is what we do. If that stresses you out, you need to find another way to deal with that, because that is the place that we will always be. We will fight and we will love and we will dance and we will sing. But we will fight together and we will struggle together through this tension. So please, be bold, do not let the carefulness with which your colleagues outside this room want to tread diminish your boldness. At the same time do not let the boldness that other people want to push through on an issue diminish your desire to be careful to make sure that the work you are doing is actually supporting communities actually advancing movements, because that is the role of a lawyer. No lawyer in the history of the world has ever made social change by herself. Our job is to remove obstacles; our job is to make the path easier and to clear the path. You have to do that by being bold, and you have to be very careful.

Celina Romany, Director of the Center for Human Rights at the Inter-American University of Puerto Rico School of Law, closed the event with an extensive reflection on the history of the IWHR Clinic. Ms. Romany co-founded the IWHR Clinic with Professor Copelon, and discussed the Clinic's influence on international women's human rights today.

This issue of the journal includes articles and remarks from many of the panelists who discussed critical issues at the Symposium, including reflection pieces about Professor Copelon and remarks about current implementations of her work. Also included in this special edition of the journal are pieces that are thematically linked to the Symposium, including an article about the criminalization of victims of sex trafficking, as part of *CUNY Law Review's* unique Public Interest Practitioner Section ("PIPS").

The *CUNY Law Review* is deeply grateful to our Law Review faculty advisors, Professor Lisa Davis of the IWHR Clinic and Professor and Legal Writing Director Andrea McArdle, for their tireless dedication to the symposium, and to the journal. Professor Davis brought the concept for this event to the Law Review. With-

out their guidance and counsel, this event would not have been possible. We would like to thank *CUNY Law Review* Special Events Editors Rebecca Pendleton and Krystal Rodriguez for their extensive work on the event. We also thank CUNY School of Law Dean Michelle Anderson for supporting the Symposium and this publication, Professor Franklin Siegel and IWHR Clinic Fellow Bradley Parker for volunteering their time and expertise, and the hardworking staff in the Technology Department at CUNY School of Law for recording this event.<sup>24</sup> The *CUNY Law Review* extends our gratitude to MADRE and CCR for their co-sponsorship of the event. Our sincerest gratitude goes to our speakers, many of whom traveled great distances to discuss these vital issues. It is our hope that scholarship regarding Professor Rhonda Copelon's work continues to inspire further developments of gender justice in international human rights law.

### Symposium Program

#### 9:00 am Welcome

Lauren Dasse, Editor-in-Chief, *City University of New York Law Review*

Lisa Davis, Clinical Professor of Law, International Women's Human Rights (IWHR) Clinic, CUNY School of Law

#### 9:15 am Opening Remarks

Yifat Susskind, Executive Director, MADRE

#### 9:30 am Panel 1: Sexual Rights Developments Under International Law

Scott Long, Visiting Fellow, Human Rights Program, Harvard Law School

Rosa Celorio, Legal Advisor, Special Rapporteurship on the Rights of Women, Inter-American Commission on Human Rights (invited)

Jessica Stern, Director of Programs, International Gay and Lesbian Human Rights Commission (IGLHRC)

Andrea Ritchie, Director, Streetwise and Safe, Co-Author of *Queer (In)Justice*

Ruthann Robson, Moderator, University Distinguished Professor of Law, CUNY School of Law

#### 11:00 am Panel 2: Reproductive Rights at Home and Abroad

Nancy Northup, President, Center for Reproductive Rights

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<sup>24</sup> Video footage from the symposium may be accessed at <http://www.youtube.com/playlist?list=PL35BCE717D4E37FC3>, and podcasts may be downloaded at <http://itunes.apple.com/us/itunes-u/looking-forward-rhonda-copelons/id525143368>.



Mónica Roa, Director of Programs, Women's Link Worldwide

Cindy Soohoo, Professor of Law and Director, International Women's Human Rights (IWHR) Clinic, CUNY School of Law

Marianne Møllman, Senior Policy Advisor, Amnesty International

Caitlin Borgmann, Moderator, Professor of Law, CUNY School of Law

**12:30 pm Lunch**

**1:15 pm Dean's Welcome**

Michelle J. Anderson, Dean, CUNY School of Law

**1:20 pm Afternoon Remarks**

Vincent Warren, Executive Director, Center for Constitutional Rights

**1:30 pm Panel 3: Rape as a Form of Torture**

Sir Nigel Rodley, Member, UN Human Rights Committee and Former UN Special Rapporteur on Torture

Felice Gaer, Vice Chair, UN Committee Against Torture

Blaine Bookey, Staff Attorney, Center for Gender and Refugee Studies

Patricia Viseur Sellers, Former Legal Advisor for Gender-Related Crimes, Office of the Prosecutor for the International Criminal Tribunals for Rwanda and the Former Yugoslavia

Penelope Andrews, Moderator, Associate Dean and Professor of Law, CUNY School of Law

**3:00 pm Coffee Break**

**3:14 pm Panel 4: Domestic Implementation of International Human Rights Law**

Pam Spees, Senior Staff Attorney, Center for Constitutional Rights

Caroline Bettinger-Lopez, Professor of Law and Director, Human Rights Clinic, University of Miami School of Law

Catherine Albisa, Executive Director, National Economic & Social Rights Initiative

Joey Mogul, Partner, People's Law Office and Director, Civil Rights Clinic, DePaul University College of Law

Julie Goldscheid, Moderator, Professor of Law, CUNY School of Law

**4:45 pm Closing Remarks**

Celina Romany, Director, Center for Human Rights, Inter-American University of Puerto Rico School of Law