FOREWORD

Allison T.C. Milne

The Buffalo Human Rights Law Review (BHRLR) is pleased to present Volume 12 as published by students of the State University of New York at Buffalo Law School. We hope you enjoy the four articles and two notes as described below.

Human trafficking is a longstanding problem, encompassing numerous countries and involving hundreds of thousands of victims and perpetrators every year. In her article, “Integrating a Human Rights Perspective into the European Approach to Combating the Trafficking of Women for Sexual Exploitation,” Alexandra Amiel begins by establishing some of the root causes of such activity and the many hazards and violations experienced by its victims. Amiel evaluates the regional and international “criminal approach” to the trafficking problem, which has stressed domestic prosecution and punishment of perpetrators. The author, however, advocates a more holistic, multi-disciplinary, enforceable, and human rights-based approach to counter the trafficking of humans, with particular attention paid to the protection and rehabilitation of the victims. The author carefully reviews the history of trafficking laws, including soft law initiatives, in Europe and the international community, taking note of their achievements as well as their shortcomings and drawing comparisons between the various applicable provisions. The Council of Europe Convention on Action against Trafficking in Human Beings is of special interest to Amiel in that it aims to correct the overemphasis on the criminal approach by providing greater victim assistance, protection and legal support.

Takele Soboka Bulto, in “Beyond the Promises: Resuscitating the State Reporting Procedure under the African Charter on Human and Peoples’ Rights,” assesses the problems of the state reporting mechanism under the African Charter. These include, inter alia, the failure to report in a timely manner or to submit any report whatsoever, the insufficient quality of the reports submitted, the inadequacy or even complete absence of those called upon to present state reports, superficial exchanges of questions and responses, and the lack of inter-sessional reports, concluding observations and follow-up as have been required by other international treaty bodies. Throughout, Bulto recognizes and calls for specific answers to the challenges faced (for example, presenting clearer guidelines for state reporting) and concludes with some key insights into the potential solutions to the

problems plaguing the state reporting mechanism under the African Charter.

In “Human Rights Realization in an Era of Globalization: The Indian Experience,” Surya Deva’s perspective on globalization focuses on its implications for the realization of human rights, using the Indian context as an illustrative example. The author’s view is that globalization is neutral in respects to human rights, i.e. it is neither pro- nor anti-human rights. The more important issues to unravel, he asserts, are the impacts of the globalization process upon human rights. Generally, states, multi-national corporations, foreign direct investors, the media, and non-governmental organizations, as well as the use of technology, treaties, and the free market all play a role in human rights jurisprudence and the protection or degradation of human rights within a society. Globalization is changing the landscape and the terminology of human rights; for instance, who is the bearer of human rights and who are the perpetrators of human rights violations? In Part III of his article, Deva takes on the Indian experience, including the responsibilities and constitutional obligations of the three branches of government, and pays particular attention to several specific rights such as the right to information, education, health, and access to water. To ensure the protection of human rights in the process of globalization, Deva calls for reforms and reformers in the vein of activists, investors, the media and public-minded citizens. The author also lists three strategies and four guiding principles for working toward the realization of human rights in the way of globalization.

Anna Maria Gabrielidis’ article, “Human Rights Begin at Home: A Policy Analysis of Litigating International Human Rights in U.S. State Courts” proposes that in the United States, domestic state court litigation is uniquely able to effectively enforce international human rights law. After reviewing current international institutions which lack jurisdiction or an enforcement mechanism, the author analyses the applicability of human rights instruments in the United States. In litigating international human rights law in state courts, there have been several interpretations including viewing such law as binding, as an interpretive aid, or as part of a defense. Gabrielidis notes the significant cases where litigators have successfully, and unsuccessfully, employed international human rights law in state court cases. She highlights examples of where state court judges have accepted international human rights law in tort cases, cases regarding the right to education, and others. In addition, while recognizing the criticisms attached to the article’s proposal, Gabrielidis offers many practical ways in which litigators can plan for the effective use of international human rights law and customary international law arguments in state courts.
FOREWORD

Both of this year’s notes address human rights within the arena of post-1996 immigration law. In “Limiting the Application of Jus Soli: The Resulting Status of Undocumented Children in the United States,” Brooke Kirkland notes the rise in anti-immigrant legislation and, specifically, the movement to deny birthright citizenship to the children of undocumented aliens. A law to prevent children of undocumented aliens from gaining jus soli citizenship would place such children in a perilous legal situation, possibly leaving them stateless. Kirkland’s writing takes the reader through a brief history of jus soli citizenship – from its roots in English common law through the various congressional proposals to limit jus soli citizenship rights. Two case studies – that of multigenerational Turkish citizens in pre-2000 Germany, and Korean citizens in Japan granted permanent resident status only – help to highlight the possible inequities that would result from such abolishment. Kirkland also underscores the means available to the international human rights corpus through major human rights instruments to address and protect the rights of migrants.

In her note, “Assessing the Collateral International Consequences of the U.S.’ Removal Policy,” Tara Pinkham notes the various factors that have increased the removal of criminal aliens from the United States. She also recognizes the associated problems stemming from the United States’ policy, particularly the problems that arise in the countries that must receive the deported aliens. The United States does not require consent, or even knowledge, on the part of receiving countries to accept criminal aliens. Pinkham investigates the responses of Haiti and Central American nations to the United States’ removal policy. When deportees are confined indefinitely in deplorable conditions, when they fail to assimilate into their countries of origin, when access to benefits are denied them and when gang culture is fostered, the United States’ policy has the effect of frustrating the promotion of human rights and democracy. Lastly, Pinkham offers some options available to the United States to counteract the above stated challenges.

On behalf of the BHRLR Editorial Board, I would like to extend our thanks to several key individuals who have helped make this volume possible. Prof. Makau Mutua has provided invaluable guidance as the journal’s Faculty Advisor, along with the members of the Editorial Advisory Board. Many thanks are also due Dean R. Nils Olsen, Jr. for his continued support of the journal. Lastly, my personal thanks to the 2005-2006 Editorial Board for all of your commitment and hard work.