Foreword

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FOREWORD

Patricia Sandison  
Co-Editor-in-Chief

The Buffalo Human Rights Law Review is proud to feature an impressive line of distinguished authors in Volume 13. Among the most notable contributors include Professor Elizabeth Bartholet of Harvard Law School, Professor Balakrishnan Rajagopal of the Massachusetts Institute of Technology Program on Human Rights and Justice, Professor in Jurisprudence Torben Spaak of Uppsala University in Sweden, and our very own Professor Makau Mutua of the University at Buffalo School of Law.

As a South African immigrant, my life has been marked by my own heightened awareness of human rights and the inevitable and persistent association between myself and the formerly oppressive apartheid South Africa into which I was born. It is no more my passion than my duty to contribute to the awareness and proliferation of a human rights discourse. The Buffalo Human Rights Law Review exists for precisely that purpose, and I am honored to have served as Co-Editor-in-Chief along with Azra Zaidi.

It is with the adage of Mahatma Ghandi that I offer you the true essence of the human rights agenda: “All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all the others. I cannot detach myself from the wickedest soul.” No culture is devoid of human rights, and all nations have human rights as an inherent component of their creation. Human rights belong to all people and therefore they are the responsibility of all people.

As Editors-in-Chief, Azra Zaidi and I strove to provide a variety of human rights perspectives and viewpoints on a diverse international scale. The Buffalo Human Rights Law Review celebrates human rights from a philosophical perception with a view into moral relativism and human rights, provided by Professor Torben Spaak. The BHRLR extends the analysis of particular human rights approaches to include and put forth both commentaries of current situations as well as proactive and practicable solutions to those situations. The BHRLR also endeavors to promote awareness and accountability in the human rights arena. To this end, Damira Kamchibekova contributes an analysis of State responsibility for human rights violations, where she questions the applicability of human rights treaties to the violations committed by state agents on foreign soil. In an essay by Balakrishnan Rajagopal, the inquiry “Lipstick on a Caterpillar?” is raised in the historical assessment of the new U.N. Human Rights Council.
In keeping with the publication of cutting-edge issues, this essay is one of the first commentaries on the replacement of the U.N. Commission on Human Rights. Rajagopal assesses the ‘success’ of the former Commission in terms of a ‘Western versus Third World’ conception, and attributes the credibility and legitimacy of the former Commission as resting, and predicts that of the new Council to rest “on the extent to which it continues to be a weapon of the weak;” the Third World.

Colonialism is the definitive ‘West versus Third World’ construct. In his article, originally a keynote speech given at Makerere University in Kampala, Uganda, Professor Makau Mutua speaks of the “rape” of Africa by imperial European powers as “the original sin—the illegitimate conception—that has been the bane of the African state.” But, in using biblical language, he not only comments on an Africa that has fallen into despair and worse; he urges Africa towards growth and repair through the implementation of a National Ugandan Truth and Reconciliation Process by saying, “[w]e must plant and nurture the seeds of that renaissance that our people so desperately need and deserve.” It is his naked insistence that reminds me of the booming cry found in Milton’s Paradise Lost: “Awake arise, or be for ever fallen,” as Mutua wonders how much further Africa must fall before it rises up again. As gracefully as ever, Mutua does not stop at despair, but puts forth structure to this process of reconciliation by proclaiming that the identification of Uganda’s demons must be “national, inclusive, transformational, and cathartic.”

The colonial oppressor and colonized oppressed, along with the U.N. and the sovereign States are a few monolithic and unforgiving categories that tend to overbear and disallow for the consideration of gender difference. The BHRLR confronts the issue of marginalized groups in human rights, focusing specifically on the rights of women and children. Tiffany M. McKinney Gardner and Kerry E. Yun make an important contribution by amplifying the long-suffering and often unheard female voice behind human rights. Gardner imparts a resounding call for the commodification of women’s work in Africa. She identifies African women as “the backbone of many African economies,” and urges full economic liberation of these women through commodification of their work so that their contribution to the economy is “properly recognized and compensated.” Additionally, Yun asserts that Japanese laws have “historically rung hollow” for women and minorities, prompting the author to call for fulfillment of Japan’s global legal obligations to combat the high incidence of sex trafficking in Japan.

1 John Milton, Paradise Lost, Book I, line 330.
Both authors point the spotlight to disadvantaged women and call for radical change through both local and international law as well as a change in the perspective with which we approach such issues. For example, by approaching the commodification of women’s work through an economic lens, rather than (or perhaps in conjunction with) a cultural one, new and refreshing solutions and conceptions can be formed to address these issues.

Harvard Professor of Law Elizabeth Bartholet offers insight into a topic that has pervaded the media in recent months, namely the large swell in adoption of children from developing countries, a trend spurred particularly as of late by international adoption by high-profile celebrities. International Adoption is thought by some to be one of the most grievous violations and exploitations of a country’s most precious resource: its progeny. Bartholet, however, challenges what she calls the “relatively singular voice – a voice that is generally critical of international adoption,” by framing international adoption from the perspective of the child as well as the biological parent. Bartholet stresses international adoption as a mechanism that serves “the most fundamental human rights of the most helpless of humans – the right of children to the kind of family love and care that will enable them to grow up with a decent chance of living a healthy and fulfilling life.”

After a year of tireless work, it is our great pleasure to see Volume 13 of the Buffalo Human Rights Law Review come to fruition.

The Review extends great thanks to Dean R. Nils Olsen, Jr., for his continuing and generous support of the BHRLR and the human rights program in its entirety. The University at Buffalo School of Law’s dedication to human rights is reflected in its extensive international and human rights law curriculum and its impressive assembly of renowned human rights scholars like Professor Makau Mutua. Volume 13 simply would not have been possible without the unyielding support and valuable contribution offered by Professor Mutua, who is truly an inspiration to both his students and his colleagues. The unflattering leadership of Professor Mutua as Faculty Advisor for the BHRLR has fostered a strong and dedicated editorial board, which has proven indispensable in the collaboration and production of this review. The hard work and dedication of this year’s editorial board was steadfast and truly impressive. It is my hope that the BHRLR will continue to address current topics in human rights law well into the future to challenge and advance not only existing thought and discourse of human rights, but ultimately to promote and support a comprehensive and novel conception of human rights around the world.