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## **Pushing the Boundaries of Clinical Law: Exploring How Student and Community Legal Clinics Engage with International Human Rights Practice**

GERALDINE SADOWAY\*

“It took five years. If I had known it would take so long, I would have stayed and died with my children.”<sup>1</sup>

IN THE FALL OF 2008 I undertook a project to explore new ways of bringing the stories of the actual victims of human rights abuses to the international human rights bodies that conduct periodic reviews of country compliance with international human rights instruments. I was a clinical instructor and supervising lawyer at Parkdale Community Legal Services (PCLS) in Toronto<sup>2</sup> and I had taken a four-month sabbatical<sup>3</sup> from my work to develop this project. The project strove to find innovative ways to use new internet technologies to enhance and strengthen the non-government (NGO) reports to the various UN Committees involved in monitoring Canada’s compliance with our international legal obligations. I hoped to involve our law students and community legal workers in these efforts, based on their face-to-face work with clients of PCLS who experience human rights abuses. The project also explored the possibility and practicality of seeking legal remedies in international fora.

The idea for the project stemmed from my experience in May of 2006 representing the Canadian Council for Refugees and PCLS as a member of the Canadian NGO delegation appearing before the UN Committee on Economic, Social and Cultural Rights in Geneva. At that time Canada was being examined by the Committee on our compliance with the Convention on Economic, Social and Cultural rights (CESCR).<sup>4</sup> We included some of the stories of PCLS clients in our NGO presentation to this Committee. I realized that our experience in the frontlines dealing with poverty law issues in the legal clinic was directly relevant to monitoring compliance

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<sup>1</sup> Rwandan refugee describing the process of bringing her children to Canada.

<sup>2</sup> PCLS was established in 1971 by Osgoode Hall Law School as a “storefront” community legal clinic, serving the needs of low income people living in Parkdale, an area in the west end of Toronto where there were a number of factories and tenement buildings that had become homes to many new immigrants and to people living in poverty. Parkdale was also near the location of the infamous 999 Queen Street Hospital, formerly the Provincial Lunatic Asylum, now part of the Centre for Addiction and Mental Health of Ontario (CAMH). PCLS became the site of Osgoode’s clinical law program in poverty law and its success led to the establishment of many community legal clinics throughout Ontario and in other parts of Canada, and to clinical law programs in many other universities. PCLS provides legal services in the area of housing rights, workers’ rights, immigration and refugee law, and income security. I have worked as the staff lawyer supervising the law students in the immigration and refugee law division at PCLS since 1997. See Parkdale Community Legal Services, “Overview” online: Parkdale Community Legal Services <<http://parkdalelegal.org>>.

<sup>3</sup> The sabbatical pilot project for clinical law instructors, funded by the Law Foundation of Ontario, was developed by Chantal Morton who was working as the Academic Director at PCLS.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, *Reports of States*, UNESCOR, 36th Sess, UN Docs E/C.12/CAN/5 and E/C.12/4/Add.15, (2006).

with human rights conventions. Law students in our program were meeting people suffering from human rights violations on a daily basis. Poverty law issues are human rights issues.

Community Legal Clinics in Ontario are involved in law reform work as well as direct legal assistance to the community. However, the clinics have not typically understood these poverty law issues through the lens of international human rights. I had studied international human rights practice at Cambridge University in 2003 and had recognized the increasing importance of using the international human rights conventions and the UN monitoring bodies to pursue domestic law reform issues. The challenge for me now was to work out how to bring the stories of the communities that our legal clinics serve to international human rights monitoring bodies. What would be the procedures involved and the most effective way of communicating the evidence? And would this effort to engage with international human rights bodies be useful to our work?

My first task was to identify the various human rights monitoring bodies at the international and regional levels and to understand the procedures involved in reporting to those bodies. I also wanted to know when government and NGO reports would be examined by the monitoring bodies and whether these bodies could ever deal with specific cases. I sought to identify which NGO groups were already involved in regularly attending the sessions when Canada was being examined. It was clear that Canada's NGO community is well-organized in this regard as about twenty national and provincial NGO groups from across Canada had summarized their individual reports in one NGO report and had carefully planned how different aspects of this joint report would be presented to the UN Committee.

From my experience in Geneva in 2006, I knew that community legal clinics and student legal clinics could be involved with these NGOs in developing their materials for the various UN monitoring committees. Community and student legal clinics had experience with human rights issues at the street level in the form of tenant evictions and homelessness, exploitation of workers (particularly migrant workers), and the protection of the basic human rights of vulnerable persons, such as immigrants, refugees, racialized groups and persons with disabilities. I learned that in countries such as Australia, legal centres came together in 2009 to write their own NGO report when Australia was being examined by the Human Rights Committee on compliance with the International Covenant on Civil and Political Rights.<sup>5</sup>

I didn't know very much about the regional monitoring systems, such as the Inter-American Commission for Human Rights (IACHR), so I wanted to explore that system as well. I had learned of actions by student legal clinics in the U.S. that were particularly relevant to the work we do at PCLS in the area of immigration and refugee rights. So as part of my sabbatical, I visited a legal clinic at the University of Texas (UT). The law students at UT are involved in representing families detained for immigration reasons at Don Hutto Family Detention Centre. I also visited the legal clinic at Harvard Law School, which had prepared useful evidence for a case we had worked on in Canada concerning the Safe Third Country Agreement with the U.S., which prevents refugee claimants from entering Canada via the US, and vice versa.<sup>6</sup> Finally, I visited Columbia University and met with Caroline Bettinger-Lopez, whose human rights clinic

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<sup>5</sup> National Association of Community Legal Centres, Human Rights Law Resource Centre, Kingsford Legal Centre, "Freedom Respect Equality Dignity: Action – NGO Submission to the Human Rights Committee" (September 2008) online: Human Rights Law Centre <<http://www.hrlrc.org.au>>.

<sup>6</sup> *Safe Third Country Agreement*, United States and Canada, 5 December 2002, TIAS 04/1229, Can TS 2004/2 (entered into force 29 December 2004); *Canadian Council for Refugees v R*, 2007 FC 1262, 317 FTR 246; *Canadian Council for Refugees v R*, 2008 FCA 229, [2009] FCR 136.

at Columbia had begun litigation at the IACHR in the case of *Jessica Lenahan (Gonzales) v United States of America* (“*Gonzales*”) involving state protection of US residents from domestic violence.<sup>7</sup>

Another goal of the project was to explore how various new technologies could be used in teaching and could enhance the human rights reporting work I wanted to do. I also experimented with ways of bringing the clients themselves into a presentation through audio and video clips, photographs, drawings, and personal letters.

This work came together in a slide presentation about using international human rights monitoring mechanisms to support the work we are doing and to make our efforts more effective. This 60 minute presentation entitled: “Keeping Our Promises: A Role for Community Legal Clinics in Human Rights Monitoring” includes 90 slides.<sup>8</sup>

During the 2009-2010 academic year, I was invited to share this work with Toronto community clinics at the Toronto Clinic Training Conference, with Shelley Gavigan’s seminar for students in the Parkdale Program and the Intensive Immigration Law Program at Osgoode directed by Sasha Baglay, and with lawyers and staff at Community Legal Services for Saskatoon Inner City (CLASSIC) in Saskatoon. I also gave the presentation to students and staff at PCLS and I have shared it privately with some of the contributors to my work – Sharryn Aiken, Bruce Porter, Mary Marrone, Chantal Tie and, of course, Chantal Morton and the Law Foundation.

The next stage involves developing the material as a teaching tool, planning a series of half-day or full-day workshops with various legal clinics and then actually engaging in doing some NGO shadow reports to human rights bodies. I hope that law students in clinical programs will similarly look into the possibilities of bringing a case to the IACHR.

I was greatly encouraged about the importance of this work as an aspect of community lawyering by the recent decision of the IACHR in the case of *Gonzales*. Caroline Bettinger-Lopez, the lawyer and law professor from Columbia Law School who argued the case on behalf of Jessica Lenahan (formerly “*Gonzales*”) with the support of the law students at the Columbia Human Rights Legal Clinic, believes that the IACHR decision can now be used effectively in the U.S. to strengthen protection for victims of domestic violence. She pointed out to me that Canada, as a member of the Organization of American States, is also subject to the jurisdiction of the IACHR. Accordingly, if our judicial system, including the Supreme Court of Canada, does not provide an adequate remedy in certain situations – such as the recent decision on the right of farmworkers to organize collectively,<sup>9</sup> we should consider bringing cases to the IACHR or to the UN human rights bodies.

The international venues for litigation will be even more important in the immigration and refugee law field with the dramatic changes to refugee procedures being brought in by our current federal government. Under the recently enacted *Protecting Canada’s Immigration System Act*,<sup>10</sup> all refugees over the age of 16 who arrive by “irregular” means may be detained for six months without any review and will not be permitted to apply for permanent residence in

<sup>7</sup> *Jessica Lenahan (Gonzales) v United States of America* (2011), Inter-AM Comm HR, No 80/11, Annual report of the Inter-American Commission on Human Rights: 2011, OEA/Ser.L/V/II/doc.69; For a detailed description of the *Gonzales* case at the IACHR see Carolyn Bettinger-Lopez, “Human Rights at Home: Domestic Violence as a Human Rights Violation” (2008) 40:1 Colum HRL Rev, 19.

<sup>8</sup> See [the slides](#) for reference.

<sup>9</sup> *Ontario (Attorney General) v Fraser*, 2011 SCC 20, [2011] 2 SCR 3.

<sup>10</sup> SC 2012, c 17.

Canada or to reunite with family members for five years after being granted refugee status;<sup>11</sup> refugees from certain “designated countries of origin” have a greatly abbreviated refugee determination process and no access to an appeal other than judicial review if leave is granted;<sup>12</sup> and many refugees, including children, are denied access to basic state funded medical care, unless they have a health condition that is dangerous to the public in Canada.<sup>13</sup> We need to use every possible means to fight these punitive measures against refugees.<sup>14</sup>

Even without the new punitive legislation, we were already thinking of possible immigration cases to bring to international human rights bodies, such as the Inter-American Commission or the UN Human Rights Committee, which can also receive petitions by individuals. Such cases would include:

- those relating to family reunification, especially those involving dependent children;
- DNA testing of children to determine relationship in sponsorship cases;
- separation of children from parents through deportation of one parent; and
- permanent exclusion of family members from the “family class”<sup>15</sup> (resulting in denial of the right to sponsor) due to an unwitting error in completing the immigration process.

These issues involve Canada’s obligations under a number of international human rights treaties.<sup>16</sup> Remedies through Federal Court judicial review are extremely limited.<sup>17</sup> There are many cases that have reached the end of the road in litigation in Canada. Bringing such cases to international bodies, despite their lack of enforcement power in Canada, is another way to draw attention to the issues and to support our ongoing law reform efforts. We now have an excellent precedent for doing this following the example of the Columbia Human Rights Legal Clinic. This clinic took full advantage of new technologies in the process of publicizing the case and organizing a coalition of supportive groups across the country. Throughout the process they had a website dedicated to providing extensive materials describing the case, sharing links to all the legal briefs filed, and included a video of the entire hearing before the IACHR.<sup>18</sup> I was able to link to parts of this hearing in the “Keeping Our Promises” presentation.

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<sup>11</sup> *Immigration and Refugee Protection Act*, SC 2001, c27, ss 57.1(2), 20.2(1), as amended by *Protecting Canada’s Immigration System Act*, SC 2012, c 17.

<sup>12</sup> *Ibid* ss 101.1(e), 111.1(2).

<sup>13</sup> See Citizenship and Immigration Canada, *Health care – Refugees* (14 December 2012) online: Health Care – Refugees <<http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp>>.

<sup>14</sup> For critiques see e.g. Canadian Bar Association, “Bill C-31: *Protecting Canada’s Immigration System Act*” (April 2012) Submission to Standing Committee on Citizenship and Immigration; UNHCR, “*Protecting Canada’s Immigration System Act*” (May 2012) UNHCR Submission on Bill C-31.

<sup>15</sup> *Immigration and Refugee Protection Regulations*, SOR/2002–227, s 117(9)(d).

<sup>16</sup> See e.g. *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137, art 3.11; *International Covenant on Civil and Political Rights*, 19 December 1966, Can TS No 47, art 9.3; *Convention on the Rights of the Child*, November 20, 1989, Can TS 1992 No 3, art 37(b).

<sup>17</sup> See e.g. Sean Rehaag, “Judicial Review of Refugee Determinations: The Luck of the Draw?” (2012) 38:1 *Queen’s LJ* 1.

<sup>18</sup> Human Rights Institute, “Jessica Gonzales v United States: Media & Scholarship” online: Columbia Law School <<http://web.law.columbia.edu/human-rights-institute/inter-american-human-rights-system/jessica-gonzales-v-us/media-scholarship>>.

## **CONCLUSION**

The four month sabbatical for clinical law teachers funded by the Law Foundation was a great opportunity for me to improve my clinical law teaching ability. Based on the exploratory work I did during this sabbatical, I believe that we have opportunities to push the boundaries of clinical law in Canada into engaging more actively in international human rights practice. Law students working in legal clinics in Canada could play a major role in this challenging and exciting work.