

THE VANCE CENTER FOR INTERNATIONAL JUSTICE: GLOBAL CLEARINGHOUSE

The Global Clearinghouse matches community-based organizations, not-for-profit institutions, and groups of attorneys working on a voluntary basis on behalf of the poor and marginalized with attorneys who provide free legal assistance. The Clearinghouse is a mechanism to refer internationally public interest legal projects to volunteer lawyers. The Clearinghouse refers projects within four categories: Amicus Network, Analytical Legal Research, Public Interest Litigation and Technical Assistance.

To receive notifications about Clearinghouse projects send an email with your contact information to vance@nycbar.org with “Subscribe to Clearinghouse” in the title bar of the email.

Amicus Network

In the area of substantive legal reform, Vance Center coordinates the development of amicus brief curiae to support access to justice, and the protection and advancement of human rights at national, regional and international levels.

Matters

D.H. and Others v. the Czech Republic (Current)

Project: Intention to file Amicus Curiae Brief at the Grand Chamber of the European Court on Human Rights in November 2006

Focus: The brief will focus on the experience of the United States in using intent as a standard in reviewing claims to racial discrimination.

Petitioner: European Roma Rights Center; Open Society Justice Initiative

Collaborators: Simpson Thacher & Bartlett LLP / New York

Amici: New York City Bar Association; others forthcoming

Overview: This case is the first challenge at the European level to the practice of educational discrimination – widespread throughout Central and South East Europe – in which Roma children are routinely placed in schools for the mentally disabled regardless of their actual intellectual abilities. The case was first brought before the Strasbourg Court in 2000. In February 2006, the Court's Second Section ruled that although the Roma children suffered from a pattern of adverse treatment, they had not proved the Czech government's intent to discriminate. The Grand Chamber's agreement to review the case will allow it to address several major issues concerning the prohibition against discrimination in Article 14 of the European Convention of Human Rights. In their request for Grand Chamber referral, the applicants argued that the Second Section's restrictive reading of the concept of discrimination is inconsistent with the European Court's previous jurisprudence and the dominant trends in other leading courts in Europe and beyond. If allowed to stand, it would render the protection given by Article 14 theoretical and illusory. The case of *D.H. and Others v. the Czech Republic* presents a particularly compelling illustration of this crabbed interpretation of the non-discrimination guarantee, since it involved overwhelming evidence that Roma have been

treated less favorably than similarly situated non-Roma for no objective and justifiable reason. The evidence included (i) actual admissions by the Czech government that disproportionate numbers of Roma were sent to special schools - on the basis of tests conceived for non-Roma - even though they were average or above-average in development; (ii) corroborating detailed and comprehensive statistical evidence that Roma in the city of Ostrava are routinely subjected to educational segregation and discrimination; and (iii) consistent findings by numerous inter-governmental bodies concerning discriminatory patterns in schools throughout the Czech Republic as a whole.

Marcela Valdes Diaz v. State of Chile

Project: Amicus Curiae Brief filed at the Inter American Commission on Human Rights in March 2006

Focus: The amicus brief contends that Ms. Valdes's termination from employment violates international law prohibiting discrimination based on sex, as well as emerging international standards directing States to direct and support, rather than penalize, victims of domestic violence.

Petitioner: Marcela Valdes Diaz – Chile

Collaborator: Mayer Brown Rowe & Maw LLP – Chicago

Amici: Legal Momentum

Overview: The petitioner, a member of the Carabineros de Chile (police force), filed a claim of domestic violence against her husband. Rather than investigating the allegations made by the claimant, the police took action against her and ultimately sanctioned her in the case. In addition, she was also sanctioned for filing a judicial protection brief before the final decision by the police force was granted. As a consequence of such sanctions, she was discharged from the police force. The petitioner alleges that the judicial appeals filed were rejected without a review on the merits of her claims. She alleges that the Republic of Chile violated her right to be treated equally by the court, and also defaulted on its obligation to prevent, sanction and eradicate violence towards women.

Karen Atala Riffo v. State of Chile

Project: Amicus Curiae Brief filed at the Inter American Commission on Human Rights in January 2006

Focus: Amici curiae presented psychological studies and decisions from U.S. and foreign jurisdictions to show that sexual orientation has no bearing on a person's ability to be a good parent, and that depriving Ms. Atala of custody of her children constitutes discrimination on the basis of sexual orientation.

Petitioners: Universidad Diego Portales; Universidad de Chile; Libertades Públicas – Chile

Collaborator: Morrison & Foerster LLP – New York / San Francisco

Amici: New York City Bar Association (lead); Human Rights Watch; International Gay and Lesbian Human Rights Commission; International Women's Human Rights Law Clinic at the City University of New York; Lawyers for Children, Inc.; Legal Aid Society of New York; Legal Momentum; National Center for Lesbian Rights

Overview:

On October 29, 2003 the Court of First Instance of the City of Villarrica rejected the lawsuit filed by Mr. Ricardo Jaimie López Allendes against his former wife Ms. Jacqueline Karen Atala Riffo over custody of their three daughters. The daughters have been under Ms. Atala Riffo custody since she and Mr. López Allende separated, and continued to be under her custody after she began to openly live as lesbian and brought her female partner to the house where she lives with her children. Mr. López Allende claimed that under the Political Constitution of Chile and the United Nations Convention on Children Rights, the best interest of the children is to be furthered and protected, and that in order to achieve such goals the three girls should be under his custody. The court rejected such arguments, stating that nothing prevented Ms. Atala Riffo from accomplishing such goals. The Appellate Court seating in the City of Temuco upheld the lower court decision, and Mr. López Allende appealed before the Supreme Court of Chile. On May 31, 2004, the Supreme Court overturned (in a split decision) the Appellate Court Decision, granting custody of the girls to Mr. López Allende. The Supreme Court stated that the girls are surrounded by social, familial and educational distress, and could be the subject of discrimination because of the homosexual relationship of their mother. It also stated that by freely and publicly assuming her lesbianism (to what she is entitled), she had given preference to her interest before those of her daughters, especially when she decided to live together with her partner. During the course of these proceedings, Ms. Atala, a judge in Chile, was disbarred.

Miguel I. González and Ms. Andrea Tuzec Fries v. State of Chile

Project: Amicus Curiae Brief filed at the Inter American Commission on Human Rights in April 2006

Focus: This case involves a claim of violation of the right to access to information involving genetically modified foods. The brief presents precedents in the U.S. in support of the following: that the documents containing "information on transgenic cultivation" are made accessible to the public; that the State of Chile release existing policy (not public) on genetically modified foods; and that the State develop stricter policies on the use and consumption of genetically modified foods as they relate to protecting conventional organisms.

Petitioner: Centro Austral de Derecho Ambiental (CEADA); Diego Portales University School of Law Public Interest and Human Rights Law Program; Organización de Consumidores y Usuarios de Chile – Chile

Collaborator: Dechert LLP – New Jersey

Amici: Article 19 – Global Campaign for Free Expression; Instituto Prensa Y Sociedad de Mexico; Libertad de Información Mexico; Open Society Justice Initiative

Overview: The case concerns several Chilean court decisions in which the public was denied access to information on government policies about transgenic food genetically modified. Currently, the Chilean Government allows the transference, manipulation, cultivation and commercialization of genetically modified organisms, without having implemented and published policies and measures related to the control and safeguard of bio-security. The absence of such policies has created a notable controversy between the Government and civil society organizations, concerning the inability of the CSOs to gain access to relevant information.

Colombia Diversa v. State of Colombia (D-6362)

Project: Amicus Curiae Brief filed at Constitutional Court in Colombia in August 2006

Focus: This case is being brought on the grounds of equal protection for lesbian, gay, bisexual, and transgender persons. The brief will focus on: the constitutional fairness of legal arrangements granting economic benefits to same-sex couples; the fact that allowing such arrangements does not jeopardize a traditional heterosexual notion of the family; the legal developments on this issue in other jurisdictions (i.e., Massachusetts, Vermont, Canada, etc.); and developments on this issue in international human rights law.

Petitioners: Colombia Diversa – Colombia

Collaborator: Weil, Gotshal & Manges LLP – New York

Amici: New York City Bar Association (lead); National Center for Lesbian Rights International Gay & Lesbian Human Rights Commission; Professor Nan D. Hunter, Director, Center for Health, Science and Public Policy at Brooklyn Law School; Professor Katherine Franke, Co-Director of the Center for the Study of Law & Culture at Columbia Law School; The Allard K. Lowenstein International Human Rights Clinic at Yale Law School; Human Rights Watch

Overview: The case is a facial challenge against a national statute from 1990 that extended the economic benefits of marriage to unwed heterosexual couples living together for more than two years. The petitioner is challenging the exclusion of same-sex couples from the statute.

Carlos Baraona Bray v. State of Chile

Project: Amicus Curiae Brief to be filed at the Inter American Commission on Human Rights in August 2006

Focus: This case involves a claim of violation of freedom of expression. The brief addresses issues concerning criminal defamation and the procedural and substantive safeguards that should be adopted to ensure free and open debate on issues of public concern.

Petitioner: Diego Portales University School of Law Public Interest and Human Rights Law Program – Chile

Collaborator: Torys LLP – New York

Amici: Ad Idem/Canadian Media Lawyers Association; Canadian Journalists for Free Expression; Media Law Resource Center, Inc.

Overview: Chilean courts, including the country's Supreme Court, have upheld charges of libel and slander against Carlos Baraona Bray, effectively denying Mr. Baraona the lawful right to freedom of expression. Mr. Baraona accused Senator Sergio Paez of corruption in connection with the alleged granting of "political" favors to people who had illegally cut down Alerce trees (classified as endangered, declared a National Monument in Chile in 1976). Although Mr. Baraona argued that he was publicly questioning the role of the Senator in these matters, the courts found that the damage to the Senator's honor was actionable because Mr. Baraona had not proven the truth of his charges against the

Senator. In issuing this ruling, the courts failed to address the issues of Mr. Baraona Bray's right to freedom of expression in political matters.

Eduardo Perales Martinez v. State of Chile (Current)

Project: Amicus Curiae Brief to be filed at the Inter American Commission on Human Rights in September 2006

Focus: This case involves a claim of violation of the petitioner's right to due process of law and freedom of speech.

Petitioner: Colombara Y Olmedo Abogados – Chile

Collaborator: Orrick, Herrington & Sutcliffe LLP – New York

Amici: Forthcoming

Overview: In 1998, the Government of Chile appropriated fourteen thousand million Chilean pesos (approximately US\$30,000,000) toward an increase in salaries for the members of Carabineros de Chile. The distribution was to be 60% for officers and the remaining 40% to the rest of the police force. In April of that same year, the petitioner, a member of the Carabineros de Chile (Chilean police force), in the context of an informal conversation at the officers' cafeteria in the city of Puerto Montt, Chile, repeated a joke he heard to six of his peer officers. The joke related to the distribution of the wages' increase, a topic that had been creating conflicts. The petitioner's fellow officers all laughed at the joke and afterward the topic of the conversation changed. Immediately after telling the joke, the petitioner was compelled by his superior to give an explanation of his joke since it could be considered sedition. Two days later, he was asked by the General in charge of his geographic area to voluntarily resign. The petitioner did not agree to quit unless the corresponding legal procedure was followed and dismissal was determined. The case was sent to the General in charge of human resources in Santiago who in turn sent it to the General Director of Carabineros, the maximum authority within the police force. The General Director of Carabineros requested the President of the Republic to issue a Supreme Decree to remove the petitioner from the police force. The President issued the Supreme Decree in June and the petitioner was effectively removed of his job. The petitioner appealed the Supreme Decree. In August, the Appeals Court overturned the President's Supreme Decree and ordered the petitioner's job restored. In October, the Supreme Court of Chile in turn overturned the Appeals Court's decision arguing that the power to issue Supreme Decrees is the prerogative of the President and he does not need to explain the motives of his decision.

Analytical Legal Research

Crimes Against Humanity Committed by Non-State Actors

Requested by: Centro de Estudios Legales y Sociales (CELS) – Argentina

Collaborators: Time Warner Inc.; Simpson Thacher & Bartlett LLP; New York Times Co. – New York

Overview: In 2005 the Argentine Supreme Court ruled that no statute of limitations applies for crimes against humanity. Argentine legislation and jurisprudence previously limited the commission of crimes against humanity to the state's armed forces. In June 2006, lawyers at Time Warner, Simpson Thacher & Bartlett and New York Times

prepared for CELS research on the range of non-state actors that can have responsibility for these crimes, and a survey of the developments on this matter in various countries.

Mexican Codes of Ethics and Professional Responsibility of the Legal Profession

Requested by: The Vance Center – New York

Collaborator: Milbank, Tweed, Hadley & McCloy LLP – New York / Mijares, Angoitia, Cortes y Fuentes, S.C. – Mexico City

Overview: In March 2006 Milbank, Tweed, Hadley & McCloy collaborated with Mijares, Angoitia, Cortes y Fuentes to prepare an analysis of the ethical codes governing the legal profession in Mexico and rules that relate to the obligation of lawyers to provide free legal services to the poor and marginalized. The document is for use by the Vance Center in meetings held in Mexico in 2006 on legal professional responsibility and access to justice.

Research on the Use of Amicus Briefs in Foreign Courts to Advance Public Interest

Requested by: The Vance Center – New York

Collaborator: Madeleine Schachter, Esq. – New York

Overview: In date 2005 Madeleine Schachter prepared an analysis of the utility of pro bono representation of American-based *amicus-curiae* in foreign and multi-national courts as a means of advancing the public interest.

Research on U.S. Incorporation of Non-Profit Working in Afghanistan

Requested by: FEMAID – Afghanistan

Collaborator: Cleary, Gottlieb, Steen & Hamilton LLP – New York

Overview: In December 2004, Cleary, Gottlieb, Steen & Hamilton assisted FEMAID, an international organization working in Afghanistan on issues of gender rights and democracy, to obtain information on incorporating in the U.S. as a 501(c)3.

Research on Tax-Exemptions for Non-Profits in South Africa

Requested by: Legal Resources Centre's (LRC) Non Profit Organizations Legal Support Project (NPO) – South Africa

Collaborator: Shearman & Sterling LLP – New York

Overview: In November 2004, Shearman & Sterling prepared an analytical memorandum for LRC's NPO Project, which seeks to promote good governance and accountability in not-for-profit organizations through the provision legal assistance and advice. The memorandum takes into account existing non-profit tax legislation in South Africa and its limitations on the income-generating activities of not-for-profit organizations. It describes relevant U.S. legislation regulating tax-exemptions for not-for-profit organizations that engage in income-generating activities related to their missions.

Chile's Charitable Donations Tax System

Requested by: Fundación Pro Bono – Chile

Collaborators: Philippi, Yrarrazaval, Pulido Y Bruner – Chile; Simpson Thacher & Bartlett LLP – New York

Overview: In June 2004, Simpson Thacher & Bartlett led collaboration between law firms in Argentina, Brazil, Germany, Mexico and Spain, to prepare an analytical memorandum on the charitable donations tax system in the U.S. and other jurisdictions for use by Philippi, Yrarrazaval, Pulido Y Bruner and Fundación Pro Bono. Philippi, Yrarrazaval, Pulido Y Bruner is leading a group attorneys from 5 law firms in Chile providing pro bono assistance to organizations working to reform the tax exemption laws in Chile governing charitable donations.

U.S. Incorporation Options for a Chilean Foundation

Requested by: Vial Y Palma; Palma Chilena – Chile

Collaborator: Torys LLP – New York

Overview: In March 2004, Torys prepared a memorandum of various U.S. not-for-profit structure options to assist Vial Y Palma with the incorporation in the U.S. of Palma Chilena, a Chilean foundation that protects the endangered Chilean Palm.

Ethics and Conduct Codes Governing U.S. Judges and Lawyers

Requested by: Poder Ciudadano – Argentina

Collaborators: New York City Bar Association's City Bar Justice Center – New York

Overview: In March 2004, City Bar Justice Center compiled for Poder Ciudadano, a not-for-profit organization working in Argentina on issues of citizenship, civic information, collective action and democracy, research on U.S. codes of conduct and ethics governing the professional responsibility of judges and lawyers.

Public Interest Litigation

Indigenous Rights in Nicaragua

Project: Co-Counsel Before the Inter-American Court on Human Rights

Client: The Mayagna (Sumo) Awas Tingni Community – Nicaragua

Collaborator: Simpson Thacher & Bartlett LLP – New York

Overview: Simpson Thacher & Bartlett is acting as co-counsel with a team headed by Professor James Anaya of the University of Arizona School of Law for the Awas Tingni Community in Nicaragua in its proceedings before the Inter-American Court on Human Rights. This case has achieved broad attention due to the Court's decision issued in 2002 ordering the Nicaraguan Government to grant proprietary title to the Community over its ancestral lands. Simpson Thacher & Bartlett is currently assisting in efforts to enforce this decision and implement land demarcation and titling for the Awas Tingni Community.

Transactional Assistance

Obtaining a Service Mark in the U.S. (Current)

Requested by: Un Techo Para Mi Pais (UTPMP) – Latin America/Chile

Collaborators: Morgan & Finnegan LLP – New York

Overview: Established in 1997, UTPMP is a Chilean-based regional youth-led organization that constructs emergency housing for the poor and provides life-enhancing services. UTPMP's work benefits the socially disadvantaged, and is carried out by volunteers in a multi-phase process. During the first phase, UTPMP constructs housing in economically depressed communities. In later phases, the organization offers residents micro-loans and basic skill training to help them transition into permanent residences. In carrying out its work, UTPMP engages clients, volunteers, private sector companies, and the media to improve the quality of life of Latin America's most impoverished citizens.

U.S. Incorporation of Non-Profit Working in Chile (Current)

Requested by: Un Techo Para Mi Pais (UTPMP) – Latin America/Chile

Collaborator: Shearman & Sterling LLP – New York

Overview: Established in 1997, UTPMP is a Chilean-based regional youth-led organization that constructs emergency housing for the poor and provides life-enhancing services. UTPMP's work benefits the socially disadvantaged, and is carried out by volunteers in a multi-phase process. During the first phase, UTPMP constructs housing in economically depressed communities. In later phases, the organization offers residents micro-loans and basic skill training to help them transition into permanent residences. In carrying out its work, UTPMP engages clients, volunteers, private sector companies, and the media to improve the quality of life of Latin America's most impoverished citizens.

Obtaining a Service Mark in the U.S. (Current)

Requested by: Vance Center for International Justice Initiatives – New York

Collaborators: Morgan & Finnegan LLP – New York

Overview: The Cyrus R. Vance Center for International Justice Initiatives supports a global movement to engage lawyers to promote democratic values and address public needs. To accomplish this mission the Vance Center works with a world-wide network of lawyers and advocates, facilitating relationships between private and public interest lawyers; fostering collaboration and the sharing of experience across borders; and forging linkages between bar associations, law schools, law firms, non-governmental organizations and justice advocates. The Vance Center advocates for access to justice; professional responsibility; a culture of democracy; institutional fairness and transparency; law reform; equality of opportunity; and a legal profession that reflects diverse ideas and perspectives.

Establishing Legal Services Programs for Survivors of Domestic Violence: The U.S. Experience (Current)

Requested by: Non-governmental organizations – Latin America

Collaborators: City Bar Justice Center, New York City Bar; Safe Horizons; Sanctuaries for Families / New York

Overview: The Vance Center for International Justice Initiatives has been working with its partner organizations in Latin America to identify how the U.S. experience in providing legal services to poor and marginalized populations can be leveraged to support ongoing access to justice initiatives in the region. This technical assistance paper examines the history, challenges, and successes of three organizations in New York City that deliver legal services to survivors of domestic violence using pro bono legal assistance.

U.S. Incorporation of Non-Profit Working in Chile (Current)

Requested by: Gabriela Mistral Foundation, Inc. – New York

Collaborator: Lovells – New York / London

Overview: Gabriela Mistral Foundation, Inc. is a not-for-profit organization that will operate as a grant-making foundation. The foundation is named after Gabriela Mistral, a Chilean Nobel Laureate in literature. Its mission honors her legacy through the delivery of assistance to poor children in Montegrande, a town in northern Chile, where she spent most of her life teaching in public schools. The foundation will raise money in New York, principally among individuals in the Latino community, and fund projects that support educational and community centers. Through its programs, the foundation seeks to improve the standard of local education, which will enable children to remain in their communities rather than be forced to migrate to urban areas in search of a better education.

Obtaining a Service Mark in the U.S.

Requested by: Centro de Conservación Cetácea (CCC) – Chile

Collaborators: Silva Y Cía. Abogados – Chile; Morgan & Finnegan LLP – New York

Overview: In November 2005, Morgan & Finnegan and Silva Y Cía collaborated to assist CCC, an international organization dedicated to protecting the marine animal Cetácea, obtain a service mark in the United States.

U.S. Incorporation of Argentine Non-Profit

Requested by: Poder Ciudadano – Argentina

Collaborator: Shearman & Sterling LLP – New York / Washington, D.C.

Overview: In November 2004, Shearman & Sterling assisted Poder Ciudadano, a not-for-profit organization working in Argentina on issues of citizenship, civic information, collective action and democracy, to incorporate in the U.S. as a 501(c)3.

Uruguayan Incorporation of Regional Non-Profit Organization

Requested by: Un Techo Para Uruguay – Chile

Collaborator: Guyer Y Regules – Uruguay

Overview: In March 2004, Guyer Y Regules assisted Un Techo Para Mi País, a non-profit organization that works to alleviate poverty housing and homelessness in South and Central America, to incorporate as a not-for-profit entity in Uruguay.