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SURFACING RHONDA¹

Pam Spees†

One of the things I always regretted that we did not take the time to do when I was at the City University of New York (“CUNY”) School of Law—and then later working with Rhonda with the Women’s Caucus for Gender Justice—is bring home a sense to the CUNY Law community of just how big and far-flung that community really is as a result of the work of the International Women’s Human Rights Clinic (“IWHR” or “the Clinic”). This Symposium can begin to give you a sense of how far-reaching the influence of the Clinic has been in many different fora. It is and has been such a vital resource in many arenas.

So then where to start when talking about Rhonda’s vision and how it continues to impact work and our ideas for ways forward? CUNY Law was the only law school to which I applied. I would not have gone anywhere else. And it was Rhonda’s work with the Clinic that called to me, that brought me to it. I had the privilege of learning from and working with her for many years. Her vision is always there challenging me to reach further, to think beyond where we might see the immediate strategy, looking for meaningful ways to get at the heart of the problem, rather than chipping around at the edges—although that is important too. From my current vantage point at the Center for Constitutional Rights (“CCR”), I can describe three areas where Rhonda’s vision and approach continue to have an impact.

WORKING IN SOLIDARITY

We are currently engaged in a number of efforts related to the June 2009 *coup d’état* in Honduras. We brought a case under the Alien Tort Statute (“ATS”) on behalf of the parents of Isis Murillo, a young protestor killed by the *coup* regime.² At the same time as helping our clients try to achieve some form of accountability for the murder of their son where no other possibility exists, we are also working to make more visible the struggle of allies and the

¹ An allusion to one of Rhonda’s pivotal articles. See Rhonda Copelon, *Surfacing Gender: Re-engraving Crimes Against Women in Humanitarian Law*, 5 HASTINGS WOMEN’S L.J. 243 (1994).

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² See Complaint, *Murillo v. Micheletti Bain*, No. 4:11-CV-02373 (S.D.T.X. June 23, 2011), available at <http://ccrjustice.org/honduras-coup>.

resistance movement and to address the role of the United States government in legitimating the *coup* and providing financial support and assistance to a military and police force that continue to commit gross human rights abuses.

Rhonda's presence is very much felt in the sense that we are using a type of case she helped give life to, but also through this idea of working in solidarity. This is key to CCR's international human rights work. The resort to international law and mechanisms was guided in large part by CCR's work in solidarity with allies and groups in Central America and in Haiti, particularly in the 1980s and early 1990s, where U.S. policies were having such disastrous effects. We must bring the same spirit and ethos to our work in terms of responding to the needs and furthering the goals of a movement in the same ways that CCR, at its inception, approached its work in the civil rights movement domestically. It is about working as partners with allies and colleagues and helping to bring visibility to the work, perspectives, and experiences of communities.

CONTINUING TO UNDERScore THE GRAVITY OF RAPE AND SEXUAL VIOLENCE AS TORTURE

Another case building on Rhonda's collaborative work is a case we brought against Joseph Ratzinger, now known as Pope Benedict XVI, on behalf of survivors of sexual violence by priests and others associated with the church. In September 2011, we lodged a complaint with the International Criminal Court ("ICC") seeking to have Ratzinger and three other high-level Vatican officials investigated for the widespread and systemic rape and sexual violence committed within the Church.³ The power of the Vatican, the profound effects and use of religion, the scale and pervasiveness of the offenses as well as the seeming hopelessness around any accountability have combined to create a kind of collective cognitive dissonance around these crimes that has tragically trivialized and minimized the very deep and long-lasting harm of the sexual violence in this context.

There are three dimensions we saw as critically important in this case. First has been the work in partnership with those most

³ See File No. OTP-CR-159/11, Victims' Communication Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of High-Level Vatican Officials for Rape and Other Forms of Sexual Violence as Crimes Against Humanity, (Int'l Crim. Ct. Sept. 13, 2011), available at <http://www.ccrjustice.org/ICCVaticanProsecution>.

affected. We are representing the Survivors Network of Those Abused by Priests (“SNAP”), which began over twenty years ago as a support group and now has over 10,000 members in the U.S. alone. That this effort be survivor-led and survivor-centered and aimed at reaching other survivors is a crucial part of this process for healing, empowerment, and reclaiming a sense of autonomy. Second, naming is crucial and that entails calling the “abuse” what it really is—rape, sexual violence, and torture.

Finally, in many respects we were building on the work that Rhonda and many others had done through the Women’s Caucus for Gender Justice to codify and fully reflect the seriousness of rape and sexual violence in the ICC and in other international criminal tribunals. We are drawing on those successes in trying to address what is a global problem as these crimes—the sexual violence as well as the systemic cover-ups and further enabling of the offenses—are happening virtually everywhere the Church has a presence, which is global.

SEXUAL ORIENTATION AND GENDER IDENTITY

Finally, on March 14, 2012, we filed a case on behalf of Sexual Minorities Uganda (“SMUG”) against Scott Lively, an attorney, evangelical minister, and anti-gay extremist based in Springfield, Massachusetts, who has played a critical role in the persecution of the lesbian, gay, bisexual, and/or transgender (“LGBT”) community in Uganda, as well as elsewhere around the world.⁴ Our clients are in a very difficult situation that is made even worse by the continuing influence of the likes of Scott Lively who export anti-gay extremist agendas developed in the U.S.

Again, it is important in this case to call it what it is—persecution. We tend to be atomized and look at these developments as unrelated, but when you step back and look at the larger whole, you can see that what is at issue in this case is part of a larger plan of persecution, and that Lively’s overall agenda is clearly aimed at stripping away basic fundamental rights from people who are LGBTI wherever he can get away with it—whether in Uganda, Moldova, or Springfield, Missouri.

In bringing this case under the ATS for persecution on the basis of sexual orientation and gender identity, we are drawing on efforts undertaken many years ago. One of the successes in the

⁴ See *Sexual Minorities Uganda v. Lively*, No. 3:12-cv-30051-MAP (D. Mass. July 13, 2012); see also *LGBT Uganda Fights Back: The Case Against Scott Lively*, CTR. FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/LGBTUganda/> (last visited Aug. 11, 2012).

work around the ICC was protecting the space for sexual orientation and gender identity to be regarded as a prohibited basis of persecution, to allow the court to take into account the evolving standards in international law. The recent *Atala* case in the Inter-American Court, recognizing that sexual orientation and gender identity is a prohibited basis of discrimination in international law, is an example of the evolution that Rhonda both foresaw and helped bring about.⁵

LOOKING AHEAD

In terms of looking forward to challenges and opportunities on the horizon, there is the real danger that the Supreme Court will limit the ATS through a case it is reviewing involving serious allegations of crimes against humanity arising out of Shell's presence in Nigeria.⁶ At issue is whether corporations can be held accountable under the ATS and whether or to what extent the statute would apply extraterritorially. That these two issues are even in question is alarming when you consider that the ATS has been a primary means of seeking to hold corporations accountable for serious human rights abuses. Whatever happens in this case, we know that we must continue to think and act creatively and very strategically in looking for ways to address these harms in the future.

In terms of opportunities, one of the things that drew me to law school, and to CUNY Law and the Clinic in particular, was the promise of the human rights framework as a way of addressing more holistically the issues we deal with in our communities, which often involve more complexities and intersections in terms of root causes than our legal system will accommodate. The indivisibility principle in human rights law challenges us to develop and internalize a consciousness around economic and social rights and to have a clear understanding of the interplay and interdependence of economic, social, and cultural rights on the one hand, with civil and political rights on the other.

Growing efforts to incorporate and use human rights domestically in the U.S. are so important and promising—both in terms of cutting into U.S. exceptionalism and holding the U.S. accountable to these norms, and also for mobilizing and shifting our own consciousness. What would an understanding of health and education

⁵ *Karen Atala and Daughters v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 239 (Feb. 24, 2012).*

⁶ *Kiobel v. Royal Dutch Petroleum Co., 132 S. Ct. 1738 (Mar. 5, 2012)* (ordering reargument on the issue of the extraterritorial application of the ATS).

as basic *rights* do to the way we approach these issues as they play out domestically? While the human rights framework may not be perfect and we are still collectively trying to achieve or fully actuate the promise of its indivisibility, Rhonda saw that it presents us with more opportunities and space to envision and create more socially just communities, or as Adrienne Rich succinctly put it in 1984 and as noted in her obituary in the New York *Times*, “the creation of a society without domination.”⁷

⁷ Margalit Fox, Obituary, *Adrienne Rich, Influential Feminist Poet, Dies at 82*, N.Y. TIMES, Mar. 28, 2012, <http://www.nytimes.com/2012/03/29/books/adrienne-rich-feminist-poet-and-author-dies-at-82.html>.

