

**UCL  
HUMAN RIGHTS  
REVIEW**

**THIRD EDITION**

**2010**

ISBN: 978-0-9560806-2-2

UCL Human Rights Review  
UCL Student Human Rights Programme  
Faculty of Laws  
University College London  
Bentham House  
Endsleigh Gardens  
LONDON WC1H 0EG

**© UCL Student Human Rights Programme**

Published in the United Kingdom  
By the Institute for Human Rights  
University College London, Faculty of Laws  
Bentham House, Endsleigh Gardens, London WC1H 0EG  
On behalf of the UCL Student Human Rights Programme  
<http://www.uclshrp.com/review>

Copyright © UCL Student Human Rights Programme.

All rights reserved.

No part of this publication may be reproduced, transmitted, in any form or by any means, electronic, mechanical, recording or otherwise, or stored in any retrieval system of any nature, without the prior written permission of the UCL Student Human Rights Programme, University College London, Faculty of Laws.

Within the UK, exceptions are allowed in respect of any fair dealing for the purpose of research of private study, or criticism or review, as permitted under the Copyrights, Designs and Patents Act, 1988.

Enquiries concerning reproducing outside these terms and in other countries should be sent to the UCL Student Human Rights Programme, University College London, Faculty of Laws at the address above.

Printed at Librix, a Subsidiary of Tribun EU, Ltd., Brno, Czech Republic.

ISBN: 978-0-9560806-2-2

# UCL HUMAN RIGHTS REVIEW

---

Volume 3

October 2010

## *Patron*

THE RT. HON. THE BARONESS HALE OF RICHMOND

## **EDITORIAL BOARD**

### *Editor-in-Chief*

KAI ZHANG, *of Germany*

### *Deputy Editor-in-Chief*

JOSEPH ELLIOTT ROESCHKE, *of the United States*

### *Production Editors*

ANDREW WATSON, *of England*

ISABELA CASTRO, *of Brazil*

### *Managing Editor of Outside Articles*

BRYAN FOK, *of Hong Kong*

### *Managing Editor of Student Works*

ALEXANDRA PATSALIDES, *of Cyprus*

### *Publications Editor*

JUDY POON, *of Australia*

### *Symposium Editor*

AMY REES, *of Wales*

### *Business and Special Projects Editor*

HAYA AFTAB, *of Pakistan*

### *Literature Review Editors*

TINUOLA ALATISE, *of Nigeria*

CHELSEA MARTIN, *of England*

NAPOLEON XANTHOULIS, *of Greece*

### *Sponsorship Officers*

IAN CLARKE, *of England*

ROSINA DYKE, *of England*

SHENAL AMIN, *of England*

### *Associate Editors*

SEIF FAWZY, *of Egypt*

REBECCA FRANCIS, *of England*

STUART NEELY, *of Zimbabwe*

SAIF PARACHA, *of England*

CERISE STEVENS, *of England*

NICHOLAS WOOD, *of England*

### *Faculty Advisory Board*

STEPHEN GUEST

GEORGE LETSAS

COLM O'CONNOR

DAWN OLIVER

PHILLIPE SANDS QC

## **UCL HUMAN RIGHTS REVIEW**

The *UCL Human Rights Review* is an international legal publication committed to the scholarly review of human rights related topics. The *Human Rights Review* is published annually by a staff of student editors who spearhead the academic facet of our culture of human rights. The student editors are selected to join the *Human Rights Review* based upon their scholarship and interest in the subject matter. The *Human Rights Review* also benefits from the guidance of a distinguished faculty advisory board. The *Human Rights Review's* entirely student-led editorial team remains loyal to the philosophy that we are all students of Humanity by housing in each edition the thoughts of eminent human rights scholars alongside the first-class writing of students. Through these efforts the *Human Rights Review* aims to invigorate human rights academia, while also pioneering student discourse.

## **UCL STUDENT HUMAN RIGHTS PROGRAMME**

A few scribbled posters advertising a 'Human Rights Project' brought a group of students to University College London's Bentham House in mid-September 2007. It is here that, following a lively discussion, the foundations were laid for the *UCL Student Human Rights Programme*. Within a year, the *UCL SHRP* had blossomed into lecture events, panel discussions, research projects, a bulletin, a *Human Rights Review*, a moot competition and a website. Above all, the *UCL SHRP* is proof that not all students are apathetic in the face of Jeremy Bentham's charge that natural rights are 'nonsense upon stilts'!

The *UCL SHRP* is currently based at UCL and is predominantly composed of UCL students and staff. However, we seek to engage the wider community by establishing a network of Student Human Rights Programmes throughout the United Kingdom and hopefully beyond. We are a non-profit organisation that acts as a focal point for debate, information, networking and support to those dealing with issues of a human rights nature. We bring together those who share the passion and ambition to establish a culture of human rights.

Whether you have abundant experience, or are a complete beginner to the field of human rights, whether or not you have a legal background, you will find in *UCL SHRP* an open-minded and thriving community, with many opportunities for learning and participation.

## CONTACT INFORMATION

The *UCL SHRP* is led by students and advised by human rights academics and professionals. However, we warmly welcome members from all walks of life. Our members have the opportunity to run various branches of the *UCL SHRP* and are always encouraged to create new initiatives. If you wish to get involved with either the *Human Rights Review* or the *UCL SHRP* or wish to contribute to our cause please do not hesitate to contact us.

### Write to us:

UCL Human Rights Review  
UCL Faculty of Laws  
Bentham House  
Endsleigh Gardens  
London WC1H 0EG

UCL Student Human Rights Programme  
UCL Faculty of Laws  
Bentham House  
Endsleigh Gardens  
London WC1H 0EG

### Email us:

[hrreview@uclshrp.com](mailto:hrreview@uclshrp.com)  
*Human Rights Review enquiries*

[membership@uclshrp.com](mailto:membership@uclshrp.com)  
*UCL SHRP Membership*

[sponsorship@uclshrp.com](mailto:sponsorship@uclshrp.com)  
*Sponsorship*

[contact@uclshrp.com](mailto:contact@uclshrp.com)  
*General enquiries*

### Visit our website:

[www.uclshrp.com](http://www.uclshrp.com)  
*UCL SHRP*

[www.uclshrp.com/review](http://www.uclshrp.com/review)  
*Human Rights Review*

## PREFACE

A small photo, a student index card, and a modest statue in Tavistock Square, are the only physical reminders on UCL's campus of Mohandas K. Gandhi's time spent as a law student at UCL. It is here at UCL in London that Gandhi studied law, became a barrister, and acquired skills that he would later use to change the course of human rights forever. Although his time as a student at UCL has long passed (1888-89) we like to think that the *UCL Human Rights Review* serves as one additional reminder of Gandhi's work.

Importantly, however, the *Review* also serves as a voice. It is a voice that speaks to both the seasoned human rights practitioner, as well as the law student in training. Most importantly, however, it speaks to *you*. Regardless of your level of expertise, the *Review* provides a venue for academics, practitioners and students to communicate their experience, research, vision and convictions to the legal community as a whole. It is a voice that allows some of the most pertinent human rights advocates of our time to propose policy arguments and practical solutions to various human rights issues. Yet, the *Review* also provides a venue for exceptional students of the human rights community to present fresh innovative ideas that often inspire academic debate.

In September 2007, a group of UCL students met at Bentham House to set the foundations of what would eventually become the UCL Student Human Rights Programme and the *UCL Human Rights Review* – the first student run review of its kind in the UK. Since its establishment the *Review* has expanded gradually. The first edition of the *Review* (2008) published articles written exclusively by UCL academics and students. The second edition (2009) expanded beyond the scope of UCL, yet, still restricted itself to articles written by practitioners, academics and students *within* the UK. UCL proclaims itself to be 'London's Global University.' We are proud to say that the third edition of the *Review* reflects this bold assertion.

In the past year, the UCL Human Rights Review has experienced steep growth in its size as well as its scope. The Editorial Team has nearly tripled in size from eight to twenty-one student editors. Our editors have created an international environment representing thirteen different countries and six continents. Additionally, the content of the *Review* has expanded to include submissions from authors across the globe reflecting human rights concerns in South Africa, Pakistan, South East Asia, Australia, Sub-Saharan Africa, the United Arab Emirates, Continental Europe and the UK.

Just as the *Review* has grown significantly in size and scope, so has its voice. As it is no longer sustainable or realistic to take a wholly insular view upon human rights, the *Review* should and does capture human rights ideas and issues from a variety of cultures and backgrounds to mirror the universality of its subject matter. Human rights are a global concern, not simply a UK concern. As a result, the third edition of the *Review* has become international and

pluralistic. The *Review* now provides a voice for victims of human rights violations in the global community: repressed women in Northern Pakistan, disabled migrants in Australia, and many more as you will find in this edition of the *Review*.

The rapid development and international reach of the *Review* is particularly welcomed in the UK where student-run law journals are still in their infancy compared to their peers in the US and Canada. It is hopeful that student-run UK law journals will continue to participate in cross-jurisdictional legal dialogue with foreign law journals in order to form international connections with our peers at the other end of the world. We are proud that the *UCL Human Rights Review* will be among the few in the UK to lead the way in the continued development of student-run law journals. Such a position, however, may seem to be destined for a university that is ranked 4<sup>th</sup> in the QS World University Rankings for 2010, has produced twenty-one Nobel Prize winners and consistently continues to produce cutting-edge research.

It goes without saying that producing a law review is a daunting task and as a result we owe our gratitude to many. We would like to take this opportunity to thank the people without whom this edition would not have been completed. We wish to thank our editorial team of considerable acumen who stood at our side with their creativity and diligence to ensure the quality of the review. With a review staff of nineteen editors it may not be economical to express our gratitude to every individual, however, we feel that each editor deserves a special thanks.

Our special thanks go to Andrew and Isabela, who organised the editing process throughout the summer and provided invaluable time and effort during the publication process; our editors of academic and student articles—Alexandra, Bryan, Rebecca and Seif—whose dedication and hard work helped us to select from a pool of outstanding articles; Judy who was able to meet the tight budget we set for her while securing a top-quality printer for the *Review*; and Amy and her symposium team—Stuart, Cerise and Saif—who plan events with such detail and provide assistance beyond their scope of responsibilities whenever needed. We also wish to thank Haya and our book review team as well as our sponsorship officers, who all played a vital role in the growth process of the *Review*.

We also wish to express our gratitude to the unwavering support of our Faculty Advisers and the UCL Faculty of Laws. Dr. George Letsas has been attentive to the entire range of issues and concerns that we faced throughout the year. It was his enthusiasm and common sense that helped us produce the review. Colm O'Conneide has always found time to answer our questions whenever we needed. Colm's suggestions and recommendations were priceless. Professor Dawn Oliver reminded us of the importance of the interaction between the authors and the Editorial Board, which, indeed, proved to be crucial during the editing process and beyond. Philippe Sands QC was always

readily available for publication advice despite his busy schedule. We also wish to thank Kimberley Moran and Lisa Penfold who have always been on hand to help us with the organisation of *Review* events.

Our patron Baroness Hale of Richmond has always been responsive to our queries, offering us her continuous support. We are truly fortunate to have someone of her calibre supporting the continued growth of the *Review*. We have the honour of including a foreword written by her for this edition. We hope that you will read it with pleasure and interest.

Our appreciation also goes to Chris Appleby and Tony Daly whose experience with running the editing process and designing the graphic outlook of the review were accessible to us any time we called for help. Our association with the UCL Student Human Rights Programme suggests that we owe a thank you to the committee of the Programme which assisted us along the way whenever and in whatever way they could.

Last, but certainly not least, we wish to thank the authors whose articles embody our voice. Their messages are powerful, thought provoking and profound. It is their tone and style that shapes the third edition of the *Review*. We do not think that it is necessary to provide you with a summary of each piece. You should read them for yourself and form your own opinions. We have only published submissions of the highest quality in the third edition of the *Review*, and we hope that you thoroughly enjoy reading each article. We trust that you will consider each piece carefully, listen to the voices of the people in need, and hopefully draw inspiration that will help inspire you to take action.

***Kai Zhang***  
***Editor-in-Chief***

***Joseph Elliott Roeschke***  
***Deputy Editor-in-Chief***

## PATRON'S FOREWORD

It is a real pleasure – but not a surprise – to be able to welcome the third edition of the *UCL Human Rights Review*. This edition firmly establishes the *Review* as a student-edited journal of high quality and great variety, reaching way beyond the staff and students of UCL and the immediate pre-occupations of UK human rights students, lawyers and judges into the wider world.

This year's volume is testimony to the universality and diversity of the human rights conversation. Its contributors are themselves very diverse – three students, two senior practitioners and four academics from around the world. Their subject-matter also covers much of the globe – South East Asia, Pakistan, Australia, Sub-Saharan Africa and Europe. Their formats are different again – some distilled from degree dissertations, some from larger academic texts, and some from personal experience. Refreshingly, there is not a single piece which dwells upon our narrow domestic concerns but all of them have something interesting and important to say.

There are many fascinating nuggets of information lurking within: Paul Harris tells us that the model of specifically qualified rights in the European Convention stems from the Constitution of Panama; that the specific right to demonstrate in the Basic Law of Hong Kong can be found in the Chinese Constitution, itself drawing on Stalin's model; that there is principled opposition to such a right in Germany and Austria, because of their association with Nazi rallies and marches.

There are anecdotes which are meant to amuse as well as to instruct: Geoffrey Robertson relates the shocking but undoubtedly entertaining stories of Hastings Banda and the Mbumba in Malawi and of Witness L and his father in the ICTY.

The message, as it seems to me, is that some of the most difficult jurisprudential questions in human rights law can arise in any place and any context: Ben Saul discusses the proper approach to proportionality in the context of migrants' rights to social security benefits in Australia; Hannah Klein illuminates the limits to judicialisation of socio-economic rights through the aftermath of the *Grootboom case* in South Africa; above all, perhaps, Jocelyn Richard demonstrates that it is not enough just to have rights – it all depends upon who is writing those rights. Congratulations to all concerned on another splendid achievement!

***Brenda Hale of Richmond  
Justice of the Supreme Court of the United Kingdom***

## **DISCLAIMER**

The *UCL Human Rights Review* aims to publish material that represents pertinent viewpoints on various human rights issues that are of interest to the legal community. Contributions to the *UCL Human Rights Review* express the views of their authors and not necessarily the views of the Board of Editors, UCL Student Human Rights Programme or University College London.

## **SUBSCRIPTIONS**

All subscription inquiries and requests for back issues of the *Human Rights Review* should be emailed to: [hrreview@uclshrp.com](mailto:hrreview@uclshrp.com)