



## **Vance News**

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### **Vance Center Contributes to Inter- American Convention on Protecting the Human Rights of Older Persons**

The Organization of American States this month approved the Inter-American Convention on Protecting the Human Rights of Older Persons, after lengthy deliberations to which the Vance Center contributed. The convention sets a global precedent for recognizing fundamental human rights of older people in a regional agreement. It will take effect when at least two signatories ratify it. Argentina, Brazil, Chile, Costa Rica and Uruguay immediately signed the Convention.

The convention arose from a failed United Nations effort to recognize rights of older persons, when Argentina and other Latin American countries focused on an inter-American agreement. They established a working group supported by the OAS General Secretariat. It in turn asked the Vance Center to support its efforts.

The Vance Center collaborated with Fundacion Pro Bono Chile and the Pro Bono Network of the Americas to research legal issues related to the rights of older persons in 28 of the 35 OAS member states, based on a questionnaire prepared by the OAS General Secretariat. The international law firm of Weil Gotshal & Manges supplied a team of pro bono lawyers led by Vance Center Committee member and Weil partner Eric Ordway to analyze the research.

The OAS General Secretariat stated that “[t]he report prepared by Weil, Gotshal & Manges is ... an invaluable reference for the General Secretariat in its continuing work as technical secretariat of the Working Group, and is ... a good example of the high impact the collaboration among diverse stakeholders, such as law firms, governments, international organizations, and NGOs can have in the common goal of the international community to advance the development of human rights for all.”

The convention seeks to secure older persons “full inclusion, integration, and participation in society” and recognizes that they have many rights, including: non-discrimination; life with dignity; autonomy and independence; free and informed consent on health matters; privacy and intimacy; social security; and cultural identity. By signing, states also agree to adopt measures “to prevent, punish, and eradicate practices that contravene this Convention, such as isolation, abandonment, prolonged physical restraint, overcrowding, expulsion from the community, deprivation of food, infantilization, medical treatments that are, *inter alia*, inadequate or disproportional or that constitute mistreatment or cruel, inhuman, or degrading treatment or punishment that jeopardizes the safety and integrity of older persons.

### **Vance Center Assists in Obtaining Official Protection for Chilean Nature Reserve**



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The Wildlife Conservation Society, with help from the Vance Center Environment Program and pro bono lawyers in Chile, recently obtained official designation of the Karukinka Reserve in southern Chile as a “Place of Scientific Interest.” This will protect the 735,000-acre tract in Tierra del Fuego from mining development, unless approved by the Chilean president.

WCS received the land as a donation by Goldman Sachs for conservation purposes in 2004. The largest conservation area on the island, it encompasses a range of highly bio-diverse ecosystems, including forests, wetlands, and mountains, which provide habitat for rare and endangered species like the guanaco and Andean condor. Eco-tourists and scientific researchers abound. Karukinka’s extensive peat lands sequester an estimated 290 million tons of carbon, making these fragile ecosystems a subject of potential interest to extractive industries seeking to exploit these peat resources as a source of energy.



*(Photo of Karukinka, Chile)*

Prior to the work of the Vance Center and Chilean counsel, the land had no legal designation to protect the reserve’s unique and sensitive ecosystems from mining activities. The designation as a “Place of Scientific Interest” affords official status to the reserve as a location for academic and scientific study. Although it does not foreclose the possibility of some extractive research and

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operations, it requires that such operations within Karukinka receive approval by the president of Chile.

In the Vance Center project, the Chilean law firm of Barros y Errazuriz analyzed various options for legal protections for Karukinka and then provided crucial assistance to WCS in its application for the Place of Scientific Interest status. For more on this achievement, click [here](#).

(Photo Cred: newsdesk.si.edu)

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### **Vance Center Tracks Controversy over South Africa's Failure to Detain Sudanese President**



Vance Center International Council Member Justice Richard Goldstone and Programs Director Marie-Claude Jean-Baptiste authored a June 17, 2015 Bulletin: ***The Bashir Debacle: How South Africa Betrayed Itself and the World***. The article addressed the controversy over the South African government's failure to deliver Sudanese President Omar Bashir to the International Criminal Court, despite its international obligations, instead allowing him to flee, in defiance of its own court's order. Bashir, under indictment by the ICC for international crimes committed in Darfur, had traveled to Johannesburg to attend an African Union summit, when the Southern Africa Litigation Center applied to the High Court seeking his arrest and surrender to the ICC. The Vance Center Bulletin explained South Africa's violations of the ICC Rome Statute and the Genocide Convention in allowing Bashir to leave its territory and expressed concern for the rule of law in a country where the government violates a court order directed to it. You can access the Bulletin [here](#).

Since the publication of the Bulletin, the South African government has continued to come under fire both domestically and internationally, as the case moved forward at the High Court. On June 24, the High Court held the government in violation of the law for ignoring its order to prevent Bashir's departure and urged state prosecutors to consider criminal



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proceedings. “If the state or an organ of state, or state officials don’t abide by court orders, the democratic edifice will crumble stone by stone until it collapses and chaos ensues,” Judge Dunstan Mlambo said. “A democratic state based on the rule of law cannot exist or function if the government ignores its constitutional obligations.”<sup>[1]</sup>

Under further court order, the South African government then submitted an affidavit explaining its actions. The affidavit simply stated that all South African border officials had complied with the order to take all necessary measures to halt Bashir's departure. However, at the Waterkloof Air Force Base, from which he ultimately departed, Bashir's passport was not presented to immigration officers who authorized the flight. The government seemed to claim that Bashir was smuggled onto the plane.

South African opposition parliamentarians accused the government of undermining the country's reputation as a defender of human rights and breaching its international obligations as signatory to the Rome Statute. They called on the country "for a moment, [to] think about what allowing Mr. al-Bashir to evade the law means to the 300,000 people who were murdered and the two and a half million people who were displaced in Darfur."<sup>[2]</sup> Others deplored that South Africa is “shamed before the nations of the world.”<sup>[3]</sup> Civil society organizations, in South Africa and from all over the world, have also condemned South Africa's actions.

When other nations have flouted Rome Statute obligations to enforce ICC orders in this way, the ICC has issued decisions of non-compliance and referred the cases to the United Nations Security Council, which has the power to issue sanction, but has not done so.<sup>[4]</sup> After the High Court's decision, South Africa's Minister in the Presidency Jeff Radebe announced that “South Africa had to balance its obligations to the ICC with its obligations to the African Union and its obligation to individual states, including those in Africa, in terms of the international treaties which it had concluded” and may as a last resort consider leaving the ICC.<sup>[5]</sup>

However, the South African government's troubles are not only with the ICC. As directed by the High Court, the South African National Director of Public Prosecution now may consider bringing criminal charges against South African officials responsible for letting Bashir flee, even while the South African government appeals the High Court decision.

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<sup>[1]</sup> Bloomberg, South Africa Court Says State Broke Law in Al-Bashir Escape, 24 June 2015, available at <http://www.bloomberg.com/news/articles/2015-06-24/south-africa-court-slams-government-over-al-bashir-departure>.

<sup>[2]</sup> Daily Maverick, Parliament Diary: ANC gets a bashing over Bashir, 24 June 2015, available at <http://www.dailymaverick.co.za/article/2015-06-24-parliament-diary-anc-gets-a-bashing-over-bashir/#.VYrC6RtViko>.

<sup>[3]</sup> Id. (stated by COPE leader Mosiuoa Lekota at the National Assembly, 23 June 2015).

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[4] See for example the Court's decisions on the non-compliance of the Republic of Chad and the Democratic Republic of the Congo, at *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on the Non-compliance of the Republic of Chad with the Cooperation Requests Issued by the Court Regarding the Arrest and Surrender of Omar Hassan Ahmad Al-Bashir, ICC-02/05-01/09, 26 March 2013, <http://www.icc-cpi.int/iccdocs/doc/doc1573530.pdf>, and *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on the Cooperation of the Democratic Republic of the Congo Regarding Omar Al Bashir's Arrest and Surrender to the Court, ICC-02/05-01/09, 9 April 2014, <http://www.icc-cpi.int/iccdocs/doc/doc1759849.pdf>, (last visited Jun. 30, 2015).

[5] SAnews, SA to review participation in ICC, available at <http://sanews.gov.za/south-africa/sa-review-participation-icc>.

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### **The Vance Center Applauds U.S. Supreme Court Decision Upholding Same Sex Marriage**



As amicus curiae in *Obergefell v. Hodges*, the Vance Center welcomed the Supreme Court's decision granting same sex couples a constitutional right to marry. The decision affirms fundamental rights of equality in the United States and could catalyze similar progress for marriage equality in nations across the world, an ongoing goal of the Vance Center.

"No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family" Judge Kennedy wrote in a historic majority opinion. Kennedy stated that marriage is a "keystone of the nation's social order" and that "It is demeaning to lock same-sex couples out of a central institution of the nation's society, for they too may aspire to the transcendent purposes of marriage". The Court ordered that the Constitution grants equal dignity before the law, and that same-sex couples "may exercise the fundamental right to marry in all States."

The Vance Center and Human Rights Watch, along with civil society organizations from Argentina, Canada, the Netherlands, New Zealand, and South Africa, with Weil, Gotshal & Manges LLP as counsel, submitted an amicus brief asking the Court to look at precedents in these countries that led to the legalization of same sex marriage. For the full amicus brief please click here. The Vance Center also is working with pro bono lawyers in Chile, Colombia, Mexico, and the United States through the Alliance for Marriage in the Americas, click here for





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more.

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