

Canadian Lawyers Abroad-Avocats canadiens à l'étranger

2009-2010 Student Chapter Theme Document



Law and Democracy

“...Each nation gives life to democracy in its own way, and in line with its own traditions. But history offers a clear verdict: Governments that respect the will of their own people, that govern by consent and not coercion, are more prosperous, they are more stable, and more successful than governments that do not.”

- Remarks by U.S. President Barack Obama
to the Parliament of Ghana
July 11, 2009

Key Dates 2009 | 2010

Date	Event
October 5, 2009	<p>Early Bird Registration for the CCIL Conference</p> <p><i>CCIL sponsors a travel grant for students to attend their conference. Funding is available on a first come first serve basis, and is limited. See http://www.ccil-ccdi.ca/index.php?option=com_content&task=view&id=241&Itemid=117 for details.</i></p> <p>Note: this date is later than what is listed on the CCIL website and is pending confirmation from the CCIL office. Please contact Monique if you have further questions.</p>
October 5, 2009	<p>Send CLA-ACE the following information:</p> <ul style="list-style-type: none"> • Your Executive Members & their contact information • Names & Emails of your general members (for input into our database) • The dates of your school's Reading Week • Your potential Calendar of Events for the year • Potential Fundraising Opportunities (e.g.: bursaries, Dean's fund, Clubs seed money, etc.)
October 14-16, 2009	<p>Canadian Council on International Law (CCIL) Conference:</p> <p style="text-align: center;"><i>Things Fall Apart; Can the Center hold? Multilateral Readiness to Address Challenges Ahead</i></p> <p>(see www.ccil-ccdi.ca for details)</p>
October 14, 2009	<p>CLA-ACE Student Chapter Executives Happy Hour (held in conjunction with the CCIL conference in Ottawa)</p> <p style="text-align: center;"><i>time & place to be determined</i></p>
December 15, 2009	<p>Summer 2010 CLA-ACE Internship Applications available at www.cla-ace.ca</p>
January, 2009	<p>Deadline for applications for Summer 2010 Internships (Date to be confirmed in December)</p>
Mid-February, 2009	<p>Summer 2010 Internships selected</p>
April, 2010	<ul style="list-style-type: none"> • Student Chapter for 2010-2011 selected • Send their contact info to CLA-ACE



CLA-ACE Annual Theme

Each year our Student Chapter Program focuses on a theme. The purpose is to allow students to gain a better understanding of pressing international issues so that they can use this knowledge to help educate others and contribute to **finding solutions**. Our motto is: **LEARN, THINK, DO!**

Student Chapters are expected to educate themselves, the wider academic community and the general public on the theme through various activities (e.g., organizing seminars and speakers, writing articles, participating in conferences). The topics that we choose each year are intentionally interdisciplinary. ***They can't be understood properly by only looking at them through the lens of the law.***



This year's topic is "Law and Democracy"

A) What is the relationship between law and democracy?

Lawyers and law students have a responsibility to critically examine the law and its relationship to an effective democratic governing system. Consider carefully what this means for the functioning of such a society and the members of its voting population. The law and democracy are inextricably linked. Think of it as ingredients of a "recipe" for true democracy.

In his remarks to the Ghanaian Parliament on July 11, 2009, President Obama emphasized,

"Development depends on good governance. That is the ingredient which has been missing in far too many places, for far too long. That's the change that can unlock Africa's potential. And that is a responsibility that can only be met by Africans."

(i) Ingredients for Democracy

Addressing the need to support strong and sustainable democratic governments, President Obama explains that democracy is about more than just holding elections, but also what happens between elections. Good governance means an end to corruption, and state repression in all of its forms. President Obama makes clear the links between good governance, anti-corruption, foreign investment, rule of law and a free, secure society:

No country is going to create wealth if its leaders exploit the economy to enrich themselves... or if police can be bought off by drug traffickers. No business wants to invest in a place where the government skims 20 percent off the top -- or the head of the Port Authority is corrupt. No person wants to live in a society where the rule of law gives way to the rule of brutality and bribery. That is not democracy, that is tyranny, even if occasionally you sprinkle an election in there. And now is the time for that style of governance to end.

A successful democracy requires capable, reliable, and transparent institutions, which means strong parliaments, honest police forces, independent judges, an independent press, a vibrant private sector, and a civil society. These are the things that give life to democracy. Other ingredients for strong and stable democratic governments include:

Responsible individuals and responsible institutions, with a focus on supporting good governance -- on parliaments, which check abuses of power and ensure that opposition voices are heard -- on the rule of law, which ensures the equal administration of justice; on civic participation, so that young people get involved; and on concrete solutions to corruption



like forensic accounting and automating services -- strengthening hotlines, protecting whistle-blowers to advance transparency and accountability.

(ii) Ingredients for Rule of Law

A part of ensuring the equal administration of justice, Thomas Carothers explains that the rule of law includes three essential components: impartial adjudication, fair and equal treatment of all persons before the law, and respect for political and civil rights.

B) What comes first - democracy or rule of law?

Posing this question is much like asking what comes first - the chicken or the egg. On one hand, adherence to the rule of law is vital for sustainable democratization to take place; yet on the other, it is nearly impossible to completely respect the rule of law without a democratic governing system.

Thomas Carothers argues that these two concepts are inextricably intertwined:

“They share crucial components such as respect for political and civil rights and the subordination of power-holders to law. Many elements of democratization bring progress toward the rule of law and vice-versa. The close association around the world of established rule of law and consolidated democracy is not a coincidence.”

So if it is not rule of law that is critical for a democratic governing system to succeed, what is the democracy deal-breaker? Thomas Carothers points out five factors which facilitate the democratization process:

- ***Level of economic development:*** In general, the wealthier a country is, the better will be its chances of consolidating a democratic transition.
- ***Concentration of sources of national wealth:*** Countries whose national wealth comes mainly from highly concentrated sources (such as oil or mineral deposits) tend to experience significant difficulties with democratization.
- ***Identity-based divisions:*** Countries where the population is divided along ethnic, religious, tribal, or clan lines often have a harder time with democratization than more homogeneous societies.
- ***Historical experience with political pluralism:*** Countries with little record of political pluralism almost always have a harder time with democratization than those having such experience.
- ***Nondemocratic neighborhoods:*** Countries in regions or sub-regions where most or all of the countries are nondemocratic usually struggle more with democratization than do countries in more democratic neighborhoods.

Carothers explains that rather than thinking of these factors as preconditions, they should be understood as facilitators, as making democratization easier or harder:



“When several or all of them lean decisively in a positive direction, a country has a much better chance of succeeding with democratization than when they lean in the other direction.”

Although there remains debate on the democratic sequencing process, Carothers puts forth a convincing argument on the need for a democratic governing system for the rule of law to flourish. However, this does not mean it is an easy process by any means; this is particularly true in failed and failing states, where it is difficult for democratization and rule of law to take root. Nonetheless, the rule of law can only truly be respected where a strong and sustainable government resides.

C) Has the emphasis on democracy and free votes by developed countries blinded them to allegations of human rights violations and corruption?

The short answer is yes. Developed democratized countries look to their own experiences and understanding that a democracy is vital to sustainable economic, political and social growth. Also upholding the sanctity of state sovereignty, these same states shift to a hands-off policy when developing states are democratizing, turning a blind eye to allegations of human rights violations and corruption.

Consider the story of Flora Igoki Terah, a Kenyan parliamentary candidate who was attacked and tortured by a gang of five men--one of whom is a senior police administrator--when walking home. This was not an isolated incident in Kenya (see case study below). The help desk at the Education Centre for Women in Democracy, a Nairobi-based NGO, handled 153 cases of electoral violence against women candidates in the run up to the December 2007 elections and received 258 complaints of harassment and torture of women via email and phone.

Ms. Terah explains that she was targeted because she was making a strong bid for the parliamentary seat, and as a result of the civic and political work she has undertaken since 2004, exposing corruption by the ruling politicians. Anti-corruption and respect for human rights is vital for a democracy to grow strong and rule of law to be upheld; yet developed nations turn their heads when the voting population of these developing countries needs them the most.

Recall the grand coalition which was formed after the peace deal was brokered as a consequence of the election violence in Kenya. In her critique of the coalition, Ms. Terah highlights the importance of rule of law and the role of opposition in a democratic system:

[T]he nature of this coalition has aggravated the crisis for the common man, the wananchi. Taxpayers are paying for a bloated cabinet which the country does not need. ... This coalition has virtually wiped out the role of opposition, which is an integral and critical part of any democracy. With no opposition, how can you keep a check on government? Who'll criticize government policies and spending if all the big boys are sharing power? This deal is a death-knell for the hopes of a multiparty democratic system in Kenya.



D) What has Canada done to promote democracy and the rule of law?

One of Canada's key foreign policy priorities is democracy support. The Canadian government is looking to identify ways in which Canada can play a more active role on the world stage in promoting democratic principles. However the difficult question remains, how does one go about promoting democracy while respecting state sovereignty and fulfilling its responsibility to protect all individuals?

The Canadian government advises that it engages in democracy support both through efforts to deepen standards of democratic governance at regional and global levels, and through helping others achieve those standards. It is the experience of Canadian practitioners that a demand-driven approach in which democracy assistance is driven by its recipients leads to a sustainable governing system.

To underscore the importance of democratization and good governance to Canada, on June 15, 2009 the Minister of State for Democratic Reform announced the establishment of an independent advisory panel to provide advice on the Government's commitment to create a new, non-partisan democracy promotion agency. The Minister explains that Canadians are already doing excellent work on behalf of foreign agencies in the field of democracy promotion, and that it will be the role of this agency to take on a more active role in supporting the development of democratic ideals around the world.

An example of the democratic process at work in Canada is provided by Foreign Affairs and International Trade Canada (DFAIT), who engaged Canadians across the country to provide their views on the topic of Democracy Promotion through an online discussion group. For further information see: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/policy-politiques/index.aspx?lang=eng>. With respect to democratic reform within Canada, the Canadian government has put forth an ambitious legislative plan to strengthen accountability in government through democratic reform, and has established the Democratic Reform Agency. The mandate of this agency is to bring about democratic reform in three ways:

1. Eliminate the influence of big money in the political process by regulating the financing of political parties.
2. Introduce legislation to modernize the Senate to make it more democratic, more accountable, and more effective.
3. Enhance Canada's electoral system to make it more responsive, fair and effective.



For More Information See:

Democratic Reform Agency

<http://www.democraticreform.gc.ca/index.asp?lang=eng&page=news-comm&doc=news-comm/20090615>

Democracy Promotion

<http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/policy-politiques/index.aspx?lang=eng>

Democracy & Rule of Law

<http://www.carnegieendowment.org/programs/global/index.cfm?fa=proj&id=101>

Additional Resources

- Remarks by U.S. President Barack Obama to Ghanaian Parliament, July 11, 2009.
<http://www.america.gov/st/texttrans-english/2009/July/20090711110050abretnuh0.1079783.html#ixzz0R1AeWDLX>
- Thomas Carothers, “How Democracies Emerge: The ‘Sequencing’ Fallacy”, Jan. 2007.
<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=18957&prog=zgp&proj=zdr1>
- Thomas Carothers et al., “The Debate on Sequencing”, July 2007.
<http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=19443>
- Interview with Flora Igoki Terah, May 2008.
<http://www.africafiles.org/article.asp?ID=18126>

Flora Terah – A Case Study

Flora Terah is a women's rights advocate and HIV/AIDS counselor and was one of approximately 200 women that ran for Parliament in the Kenyan election in 2007. Flora was one of the lead 25 women in the polls, and one of several women who were abducted, tortured, and abused because they were women who dared to run for public office in Kenya. Flora's only child was murdered in an effort to intimidate her into abandoning her political aspirations.

Flora has recently written a book about her experience, *They Never Broke My Spirit*.

This link provides some of the details about the horrendous abuse Flora survived:

<http://ipsnews.net/africa/nota.asp?idnews=44156>



This link provides additional details about Flora's experience:
<http://www.africafiles.org/article.asp?ID=18126>.

Flora has started an NGO called "Terah Against Terror" (www.xterror.org) and is committed to ending violence against women. Flora is also committed to running for Parliament again in the 2012 Kenyan elections (although it is possible that an election will be called before that time).

Discussion Questions for Flora Terah Case Study

- Based on the information provided, identify the International treaties that may have been violated as a result of Flora's experience as a Parliamentary candidate in 2007-08 in Kenya. If there are facts missing from the information provided that need to be confirmed before a full assessment of the potential violations can be made, identify those facts.
- Identify the specific provisions of the treaties referred to above, and identify the different elements of Flora's experience that constitute violations of the provisions of these treaties.
- Identify the advocacy strategies that you would recommend to achieve justice with respect to Flora's case in particular (i.e. initiate a complaint under the Optional Protocol of CEDAW; initiate a claim for civil remedies against the perpetrators of the violence, etc). Identify and analyze the different steps involved in the different strategies, and the strengths and weaknesses associated with the different strategies.
- Identify the advocacy strategies that you would recommend to achieve increased security and equality for women with respect to political participation in Kenya, for example, the introduction of quota systems to achieve gender equality in Parliament, public education campaigns, etc. Identify and analyze the different steps involved in the different strategies, and the strengths and weaknesses associated with the different strategies.
- Develop a critical analysis of the value of the introduction of gender quotas relating to political participation in the context of Rwanda. Assess the degree to which this strategy has contributed to the promotion of women's human rights as an essential element of democracy in Rwanda. Would you recommend the adoption of a similar strategy in Kenya? Why/why not?



Suggested Events

CLA-ACE Chapters are expected to explore the theme throughout the year through formal and/or informal events. Some suggestions:

- Have a discussion about law and democracy and how it is intertwined. Start off the discussion with one of these webcasts:

DEMOCRACY AS AN IDEAL

By Peter Leuprecht

Director of the Montreal Institute of International Studies
Professor, Département des sciences juridiques (UQAM)

Part 1 – “Democracy as an ideal” (2:47)

- English: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/leuprecht.aspx?lang=eng>
- Français: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/leuprecht.aspx?lang=fra>

RIGHTS & DEMOCRACY

By Jean-Louis Roy

Former President of Rights & Democracy

Part 1 - “Rights & Democracy” (3:37)

Part 2 - “What is democracy and how does it work” (4:14)

Part 3 - “Universal and/or Canadian Democratic values” (2:28)

Part 4 - “Where is the public funding going?” (4:11)

Part 5 - “What happens when there is no democracy?” (4:26)

- English: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/roy.aspx?lang=eng>
- Français: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/roy.aspx?lang=fra>

DEMOCRACY

By Lord Paddy Ashdown

High Representative for Bosnia & Herzegovina until January 2006

Part 1 - “Elections” (2:01)

Part 2 - “Rule of Law” (1:47)

Part 3 - “Each country has its own democratic system” (1:52)

- English: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/ashdown.aspx?lang=eng> <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/ashdown.aspx?lang=eng>



DEVELOPMENT & DEMOCRACY

By Samantha Powers

Part 1 – “Development and democracy” (5:54)

- English: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/power.aspx?lang=eng>
 - French translation: <http://www.international.gc.ca/cip-pic/discussions/democracy-democratie/video/power.aspx?lang=fra#three>
- Contact CLA-ACE (mmoreau@cla-ace.ca) to obtain your free copy of Flora Terah’s book, *They Never Killed My Spirit* and have a discussion on whether/why rule of law is a necessary precondition for democracy. Use this webcast as a jumping-off point:
- <http://static.rnw.nl/migratie/www.radionetherlands.nl/thestatewerein/otherstates/081122-tswi-violence-women-redirection>
- Obtain a copy of Paul Collier’s book, *War, Guns and Votes: Democracy in Dangerous Places* (New York: Harper Collins, 2009) and have a discussion on how to achieve democracy in volatile places.
- Invite a professor or other knowledgeable speaker to discuss the linkages between Law and Democracy.
- Choose a country as a case study (e.g., Afghanistan) and explore issues related to law and democracy. Invite someone to speak who is from that country or who has firsthand knowledge of it.
- Invite a past CLA-ACE interns (or other students who have interned with international NGOs) to speak about his or her experience, and in particular, the disconnect between the law and reality on the ground.
- Every year the CCIL hosts a Conference on a topic relating to international law. In the past, CLA-ACE has hosted participated in the Student Job Fair and Forum which provides information about work and internship opportunities in international law. CLA-ACE also hosts a leadership session during the conference weekend for members of CLA-ACE Student Chapter Executives. Students may be eligible for travel assistance. To find out more, go to www.ccil-ccdi.ca.
- Submit articles on Law and Democracy and the law to your student newspaper and to CLA-ACE. We often publish articles of interest to our members in our newsletter and on our website.

