Our largest ever cohort of Global Interns takes off

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The Human Rights in Closed Environments project, as reported on in our May 2009 newsletter, is well underway. The research team of Dr Bronwyn Naylor, Professor Arie Freiberg, Dr Inez Dusseyer, Dr Stuart Thomas and Castan Centre Deputy Director Dr Julie Debeljak have explored the implementation of human rights in ‘closed environments’, being defined for the purposes of the project as places where people are deprived of their liberty by lawful means such as prisons, immigration detention centres, psychiatric facilities and closed disability settings. This work has been supported by an Australian Research Council Linkage Grant entitled ‘Applying Human Rights Legislation in Closed Environments: A Strategic Framework for Managing Compliance.’

As part of furthering the research and communicating the research results so far, the team is hosting a roundtable in November focussing on the monitoring and oversight of human rights in closed environments. The aims of the roundtable are to reflect on the current practice of overseeing and monitoring human rights in such environments, and to exchange perspectives on the issue in order to strengthen protection mechanisms in the future.

The roundtable will begin by considering the different monitoring bodies currently in existence, their effectiveness, and the nature of such bodies. Issues to be explored in the first session will include the importance or otherwise of independence in monitoring bodies, and the relationships and information sharing protocols between the monitoring bodies. The second session of the roundtable will examine volunteer and advocacy groups, and their role in monitoring human rights in closed environments, as representatives of civil society.

The third session is titled ‘The Human Rights Lens’ and will focus on the effectiveness or otherwise of the explicit adoption of human rights frameworks in monitoring practices in closed environments. In particular, the session will explore whether domestic human rights legislation and international human rights obligations have any impact on protecting human rights in closed environments, and how human rights are promoted in the absence of such documents. The final session, ‘Seizing the Day’, will synthesise the discussions throughout the day by considering future directions with monitoring agencies, particularly focusing on model oversight agencies that are designated as national preventative mechanisms under the Optional Protocol to the Convention Against Torture. Utilising lessons learned from comparative jurisdictions, it is anticipated that possible solutions will be posed to better monitor and uphold human rights in closed environments.

Another major outcome of the project will be a conference of international significance to be held in late 2011 entitled ‘Implementing Human rights in Closed Environments – international perspectives and practices’. The conference will bring together eminent international experts and will focus on how human rights are implemented and monitored, successes to date in different jurisdictions, and ongoing challenges in practice including how best to balance respecting individual rights while maintaining security and safety in different closed environments. Issues at the conference will be analysed from international, regional and comparative domestic perspectives. The conference will consist of plenary sessions featuring key international speakers, together with concurrent sessions on specialist themes. Plenary sessions will cover topics such as the obstacles to the recognition of the benefits of human rights approaches in closed environments, the effectiveness of monitoring and inspection of human rights practice in closed environments, and whether formalised charters of human rights make a difference in the practice of closed facilities. Work on the conference is well underway and more information will be available in the near future.

Congratulations to Castan Centre Deputy Director Dr Paula Gerber and Centre Associates Dr Patrick Emerton and Associate Professor Gideon Boas, who have been awarded Monash Researchers Accelerator Program (MRA) grants. The MRA grants recognise, reward and accelerate the career development of up to 120 of Monash’s highest performing early to mid-career researchers. The grants will enable these academics to devote their full time to their research pursuits. Dr Gerber intends to focus her research on same-sex marriage, the human right to water, human rights education, and Indigenous birth registration. The subject matter of Associate Professor Boas’ project concerns the presence of war criminals within Australia (individuals who have committed war crimes, crimes against humanity, genocide or other profound human rights abuses) and how to deal with this problem. Dr Emerton will work on developing a new framework for understanding national self determination, and what it means for members of a community to collectively exercise their political agency, which takes account of the continuing, or even increased, significance of non-liberal and non-democratic cultures both in Australia and internationally.

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WikiLeaks’ Julian Assange takes centre stage

It is a sign of the meteoric rise of Julian Assange and WikiLeaks that many people still did not know who he was when Assange appeared at a joint Castan Centre/Liberty Victoria event in May this year. To allow him to talk freely, the lecture was an off-the-record event, but it is safe to say that it left all of those in attendance in no doubt about Assange’s commitment to freedom of expression and information.

At the time, WikiLeaks had recently released the ‘Collateral Murder’ video showing a US gunship killing a number of unarmed people in Baghdad. Since then, WikiLeaks has released tens of thousands of classified documents about the wars in Iraq and Afghanistan, including allegations of civilian deaths and torture. As a result, Assange has been accused of placing Afghan civilians’ lives at risk and some commentators have even called for him to be labelled an ‘enemy combatant’ and hunted down by US forces. Assange has also been accused of sexual assault in Sweden, which he says is a set up, and is currently considering applying for asylum in Switzerland.

Whatever the future holds for Assange and his ground-breaking operation, we can rest assured that we haven’t seen the last explosive documents released on WikiLeaks.

Introducing the Human Rights Online Project

In recent years, as computers, mobile phones, tablet PCs (such as iPads) and other devices have proliferated, people have spent ever more time on the Internet. With this development has come a thirst for information on human rights issues from the online community. To help satisfy this demand, the Castan Centre has been expanding its online presence, particularly in the burgeoning world of “social media”, and has now consolidated its operations into the Human Rights Online Project.

In addition to its Facebook page, which allows those interested in the Centre’s work to keep up to date with our latest events, submissions and news, the Centre has expanded into Twitter after a pilot experiment during our 2009 conference. Twitter allows users to post messages of no more than 140 characters, and has become a great way for people to post links to interesting articles, videos, blogs and other online resources. Because people “follow” each other’s tweets, Twitter encourages communities of like-minded people and organisations to form, with everyone exchanging links to interesting information and encouraging action on important human rights issues. The Centre follows, and is followed by, journalists, human rights organisations, academics, politicians and members of the public.

In recent months, the Centre has added two more social media platforms to round out its Human Rights Online Project. The first is a YouTube channel, which has videos of recent public lectures, interviews with the returned 2010 Castan Centre Global Interns and footage from this year’s human rights careers week, hosted by the Castan Centre at Clayton. Next year, the Centre hopes to start filming short interviews with academics, activists and others, especially those who give public lectures for the Centre.

Finally, a new Castan Centre blog site is up and running. The site features commentary pieces from Castan Centre academics and staff on important, topical human rights issues. The purpose of the blog is to post opinion style pieces online to help influence debate and discussion. We also have a companion blog for our Global Interns to use while on assignment overseas.

The Human Rights Online Project brings all of these strands together. The Facebook page keeps Centre followers aware of upcoming Castan Centre events, the YouTube channel helps with public education by providing an archive of high-quality public events, Twitter provides the public with real-time links to important human rights news and views, and the blog enables the Castan Centre to provide comment on topical human rights issues quickly. The Castan Centre website is the repository for in-depth Castan Centre information, including submissions made to parliamentary inquiries, papers presented at public events and careers information for students. What’s more, the five platforms work in tandem with each other. YouTube videos are advertised on the Facebook page, news of the latest blog post is advertised via the Twitter feed and the Facebook page, and the website contains links to all four of the social media platforms.

The Centre has decided to invest time in these resources because it believes that people are using the internet to learn about human rights, and use that information to help create a stronger culture of human rights, both in Australia and around the world.

For links to all of the Castan Centre’s social media projects, go to the Centre’s website: www.law.monash.edu.au/castancentre

Centre Deputy Directors receive teaching awards

Castan Centre Deputy Directors Dr Paula Gerber and Dr Adam McBeth both won Law Faculty teaching awards this past year. Paula received the Faculty Teaching Award while Adam received the Early Career Teacher Award.

In addition to the Faculty Teaching Award, Paula received a special commendation for the Monash University’s Vice-Chancellor’s Awards for Teaching Excellence. She also received a ‘Highly Commended’ at the 2010 annual LexisNexis – Australasian Law Teachers Association award for excellence and innovation in the teaching of law. Paula received her highly commended award from the ALTA at its annual conference held in Auckland this past July. Congratulations to both Paula and Adam on their achievements.
The 2011 Global Internship Program has expanded to ten placements, with exciting new opportunities offered this year in Ghana, Egypt, Israel and India. The outstanding cohort of Global Interns were preparing to head off on their assignments as we went to press, having undertaken our annual cross-cultural training course.

The placement with the Human Rights Advocacy Centre in Ghana was awarded to Hester Kelly, who has spent time working on conservation projects in Costa Rica and currently volunteers for Social Rights Victoria. Hester’s work at HRAC will include areas such as habeas corpus applications for remand prisoners.

Melody Stanford, whose interest in human rights began when she campaigned for the rights of asylum seekers while at school, will take up the position at The Africa and Middle East Refugee Assistance in Cairo, Egypt. Since starting university, Melody has volunteered with Amnesty, the Sudanese Australian Integrated Learning Program (SAIL) and the Southern Ethnic Advisory and Advocacy Council’s Homework Support Program. In Cairo, she will assist those seeking asylum in Egypt.

Our other two Africa placements are at the dynamic South African organisation, Lawyers for Human Rights, where the interns will assist desperate refugees with asylum applications and other legal issues. Because of the huge number of Zimbabwean asylum seekers in South Africa, LHR provides a very valuable, and very much needed, service. The internship is supported as part of the Monash-Oxfam agreement. Cara Bredebusch and Vanessa Lamborn will intern at LHR. Cara has volunteered at Monash Oakleigh Legal Service, and at a nursing home. She currently donates her spare time to Embrace Education and Bentleigh Community Legal Centre. Vanessa has been involved with the United Nations Youth Association, taught English in Laos and participated in the Prison Legal Education and Assistance program at the Dame Phyllis Frost Centre in Melbourne.

Cara and Vanessa were able to pick the brains of their fellow Global Intern, Alyse Richmond, who will be interning at the United Nations Global Compact. At the beginning of this year, Alyse travelled to South Africa on her own initiative, where she volunteered at LHR in their refugee rights program. She has also volunteered as a tutor for Sudanese refugees at the SAIL program, as a legal volunteer at the Asylum Seeker Resource Centre and as a paralegal at the Family Violence Legal Program of the Loddon Campaspe Community Legal Centre. The Global Compact focuses on business and human rights.

Alyse will be joined in New York City by Sayomi Ariyawansa, who has volunteered with Embrace Education, tutoring a newly arrived refugee, and researched the issue of Koorie children in the child protection system for the Department of Justice. Sayomi currently volunteers for the Asylum Seeker Resource Centre and will intern at Human Rights First.

Our first Global Intern to head to Israel is Yardena Lankri, who will volunteer with the Israel Democracy Institute in Jerusalem. Yardena is involved in managing the Derech Eretz program, where university students run day camps for school-aged children at the Indigenous communities of Toomelah and Boggabilla on the border of NSW and Queensland. Yardena has also volunteered with the Victorian Parliament’s Law Reform Committee and the Springvale Monash Legal Service. In Jerusalem, she will work on IDI’s National Security and Democracy Project.

Alexandra Lachal will head to the heaving city of Mumbai to take up her assignment with The United Nations Special Rapporteur on the Right to Health. The current rapporteur is the widely respected Anand Grover, who was appointed in 2008. Alexandra has volunteered with the SAIL for the past two years, which involves tutoring Sudanese students in English. Her interest in human rights has been nurtured by her studies, where she has researched women and genocide and participated in a study tour to South Africa and Rwanda.

Anne Poulos will intern with the International Commission of Jurists in Geneva, and fellow intern Sarah-Mae Thomas will catch up with her there in January. Sarah-Mae, who will intern with the International Women’s Rights Action Watch – Asia Pacific (IWRAW) in Kuala Lumpur, will join IWRAW’s delegation to the Committee on the Elimination of All forms of Discrimination Against Women’s session in Geneva.

Sarah-Mae has volunteered as an ambassador for the End Child Slavery Campaign and worked with a human rights organisation in Ghana. She currently volunteers at the Family Law Assistance Program at Monash Oakleigh Legal Service (MOLS). Anne has also volunteered at MOLS and recently completed a Victorian Parliamentary Internship, where she researched support services for those suffering from drug addiction.

You can follow the interns on their journeys overseas and their work with these unique organisations on the 2011 Global Intern blog at http://castanglobalinterns.wordpress.com. Interns will be updating the blog periodically with stories, photos and video.

The Global Internship Program is made possible by the support of Daniel and Danielle Besen, Sylvia & Michael Kantor, the Dara Foundation, the Nordia Foundation, the Monash Law Faculty’s Student Mobility Fund, the Monash University Office of the Deputy Vice Chancellor (Education) and Myriad Consultants, which runs the cross-cultural training course. Information about the 2011 interns can be found at www.law.monash.edu.au/castancentre/internships/global-intern-program-11.html. Check out the intern blog at: http://castanglobalinterns.wordpress.com.
The WikiLeaks Iraq War documents: Investigate wrongdoing, or shoot the messenger?

Opinion by Centre Associate, Associate Professor Gideon Boas

Publication on the WikiLeaks website of 391,832 secret US military documents paint a grim picture of the mission in Iraq. The Iraq war and occupation is one which Australia enthusiastically joined, despite the lack of a credible intelligence base justifying the attack and despite the lack of a United Nations Security Council resolution that may have served to legitimise what is clearly an illegal use of force and contrary to international law. John Howard’s autobiography, released recently, merely serves to further entrench how arrogant, foolish and ill-informed was his apparently unilateral decision to support George W Bush’s war in Iraq.

The voluminous WikiLeaks documentation constitutes an extraordinary archive of military reports from US soldiers, each document being a “SIGACT” (Significant Action in the Iraq war), diarising aspects of America’s daily operation in Iraq for almost the entire period between January 2004 and December 2010. Clear and credible evidence of torture, killings and a variety of other actions potentially amounting to war crimes, are documented in the reports. In all, some 66,081 civilian deaths are documented over the eight years covered – or, as highlighted by WikiLeaks, an average of 31 civilian deaths per day. This is 15,000 more than officially reported and is probably at any rate a serious underrepresentation of civilian deaths.

WikiLeaks was clever to engage the assistance of some major newspapers in the review of these documents – Le Monde, The Guardian, The New York Times and Der Spiegel, as well as the Bureau of Investigative Journalism – guaranteeing journalistic verification and dissemination of the reports. The reporting has been predictably mixed; Le Monde openly critical of the US, The Times conservative and conspicuously uncritical and The Guardian somewhere in the middle.

The revelations contained in the documents have of course been played down by the White House, as largely containing no new or unknown information. Indeed, much of the reports themselves do not reveal anything very surprising. But it is precisely this banality that these deaths represent which is most depressing. The Guardian newspaper has created data maps of the civilian (and other) deaths that emerge from the reports (www.guardian.co.uk/news/datablog/2010/oct/23/wikileaks-iraq-data-journalism), revealing some interesting patterns. Apart from temporal fluctuations and geographic particularities in civilian deaths, circumstances in which those deaths have occurred provide some insights. The most striking figure is that almost half of the civilian deaths (32,563) are reported as being caused by murder. But beyond the statistics are the stories themselves. Among the documents are reports of excessive force, civilian deaths, torture, and an extraordinary use of mercenary forces to undertake combat operations that would normally be undertaken by American troops, raising serious moral and legal questions about the US campaign in Iraq.

The other aspect of the US response to the WikiLeaks revelation is a tried and true formula: the best form of defence is attack. Far from acknowledging any potential wrongdoing or need to investigate and potentially prosecute war crimes, the US response has been to attack WikiLeaks, accuse it of encouraging American service personnel to break the law and protest that the release of these documents may put American and allied lives at risk. No doubt the revelation of sensitive security information has the potential to compromise operational security. However, WikiLeaks has heavily redacted the documents and the US has reportedly itself had a team of 120 working on the documents and no specific concerns have been expressed. One can imagine that reports such as these will raise anger in Iraq and the Middle East generally, and reports from news sources within the region certainly suggest this is the case. But this hardly seems a reasonable basis to suppress release of this information.

The fact is that this war was flawed from the start, both in its motivation and execution. The WikiLeaks reports simply serve to reinforce and evidence a significant aspect of what is wrong with the war. The real question that hangs over the release of these documents is what response it will draw from the US, its allies and more broadly the international community. Have we become desensitised to the intentional and reckless civilian mistreatment and killings by years of Abu Ghraib, Guantanamo Bay and the persistent stories of abuse and disproportionate force that have emerged from Iraq and Afghanistan? Will the US simply reject any wrongdoing evidenced by these reports? Will the international community meekly accept this? The answer to these questions will tell us much about whether the posturing of the US and its allies about war crimes prosecutions in jurisdictions other than their own has any resonance when the finger is pointed at them – in this case, by their own service men and women.

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The Australian Football League – an effective mechanism for grass roots human rights promotion and practice

By Neda Monshat

When it comes to crossing socio-economic, racial and religious divides, Australian Rules Football is ‘the great leveller’, according to AFL Chief Executive Officer Andrew Demetriou, who presented this year’s Castan Centre Annual Lecture at the State Library of Victoria.

733,000 people currently participate in Australian rules football so there is no doubt that the AFL has far-reaching links to countless communities across the country. Mr Demetriou spoke of human rights as a priority for the AFL, and the ways in which the AFL was realising its immense potential in human rights promotion and practice at the grass roots level. The audience heard of the numerous programs and initiatives implemented by the AFL aimed at community cohesion and equality. For example, the growing ‘Ladder’ joint initiative between the AFL Players Association and AFL Foundation tackles youth homelessness through a mentoring program. In addition, the AFL Multicultural Program, which has twelve full time multicultural officers working across all states, assists migrant and refugee communities to access Australian Rules Football. The Program has been implemented in over 100 schools and has led to 21,000 people visiting an AFL game.

Mr Demetriou went on to tell of the many struggles and ‘painful experiences’ that the AFL has encountered in its 113 year history, and the role that it has played in gradually transforming it into a more tolerant and inclusive competition. Recounting the refusal of Nicky Winmar and Michael Long to accept racial taunts, Mr Demetriou claimed that the development of the Racial and Religious Tolerance Policy, a first for Australian sport, has meant that players from all backgrounds can no longer be discriminated against by reason of race. In answering a question from the audience as to the effectiveness of such policies, Mr Demetriou stated that although ‘football attitude’ could be extremely tough to change, that is no reason to give up. Pointing specifically to the Policy, Mr Demetriou contended that not only had attitudes within the game changed, but it had also become culturally unacceptable for fans sitting on the other side of the boundary to make racist remarks against players. Furthermore, the 11% participation rate of Indigenous Australians in the AFL and the development of young African players have been great achievements for the League.

Policies have now been extended against discrimination on the basis of gender, sexuality and disability. Mr Demetriou stated that one of the most important recent initiatives of the League has been the formulation of the Respect and Responsibility program. The program aims to create safe and inclusive environments for women at all levels of the game. With 48% of those attending games being women, two female commissioners, a woman on the executive and other women in commentating and umpiring roles, Mr Demetriou acknowledged the need for the AFL, with its strong emphasis on community and social responsibility, to promote respectful relationships between all individuals.

Mr Demetriou also pointed to the AFL’s potential to reach a worldwide audience. The breast cancer awareness raising Field of Women event this year saw 14,000 people ‘transform the MCG into a sea of pink’, with images of the spectacular scenes being published all around the world. In addition the AFL Peace Team, which consisted of a joint Palestinian and Israeli group of players, competed in the Australian Football International Cup in 2008, peacefully bringing together two traditionally conflicting groups through the sport.

Throughout his lecture, Mr Demetriou revealed the many great strides forward that the AFL has made in pursuit of its commitment to human rights. Deeply proud of these achievements, he also acknowledged that there was still much to be done by the League in order to continue moving forward. Mr Demetriou identified that the challenge now was for the AFL to work together with communities ‘toward real lasting change’ – ensuring greater opportunities at all levels of the game for women, Indigenous Australians, migrants and refugees. As a leading organisation in Australian sport, there is a real opportunity for the AFL to embrace diversity and inclusion, and understand the value of differences in every person. With its aims, as enunciated by Mr Demetriou, to be accountable, progressive and respectful, this opportunity can certainly be realised.

The 2010 Annual Lecture was sponsored by Mallesons Stephen Jaques
Keeping the spotlight on targeted killings

By Crystal Triggs

When it was reported in November 2010 that the US was using unmanned aerial vehicles (drones) to kill suspected terrorists in Yemen, it caused barely a ripple in the international press. When the US first used a drone to conduct an assassination in the arid Gulf nation in 2002, the Guardian newspaper reflected popular opinion when it stated that ‘Stateless, gangster terrorism is a fearsome scourge. But state-sponsored terrorism is a greater evil, for it is waged by those who should know better, who are duty-bound to address causes not mere symptoms.’

Welcome to the often-desensitised world of state-sponsored assassination, which the renowned international law scholar Professor Philip Alston spends much of his time monitoring. Professor Alston, an Australian national was, until recently, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. He is also the John Norton Pomeroy Professor of Law at New York University School of Law, co-chair of the law school’s Centre for Human Rights and Global Justice and a Special Advisor to the UN High Commissioner for Human Rights on the Millennium Development Goals. He has previously held a number of other senior appointments with the UN and is also a long-time member of the Castan Centre Advisory Board.

Professor Alston’s role as Special Rapporteur involved investigating many different types of state-sponsored killings. He was required to regularly report to the UN Human Rights Council and the General Assembly. There are two types of reports that Professor Alston submitted: the first was to investigate specific countries where authorities, such as the police or soldiers, unlawfully kill their own citizens; and the second was to report on significant issues. Professor Alston recently wrote an issues report focussing on the use of drones by the United States in conflicts in Afghanistan, Iraq and the border regions of Pakistan.

Professor Alston focused much of his discussion at the Castan Centre public lecture, co-sponsored with the Human Rights Law Resource Centre, in May 2010 on the use of these drones, however he opened his address by describing his investigations of unlawful killings in Kenya and Columbia. In Kenya, police have killed thousands of insurgents, petty criminals and political activists with impunity. In Columbia, the military creates ‘false positives’ whereby young men are abducted and executed by military personnel who then dress the victims in camouflage gear and claim that they were Guerrillas. The military officers involved are then rewarded either monetarily or through promotion. In both instances, Professor Alston’s subsequent reports were effective. The press and the diplomatic community in Kenya supported the report and eventually the Kenyan police official in charge of the ‘death squads’ was moved on to the Kenya Post Office where Professor Alston noted ‘I think he’s probably executing a few stamps now.’ In Columbia, Professor Alston presented the President with a dossier of the information he had gathered. The magnitude and detail laid out in the killings came as a shock to the President. Professor Alston noted that while the killings have not been stopped, there has been significant action taken by the higher echelons to eradicate this phenomenon.

On the use of drones by the United States in Afghanistan, Iraq and Pakistan, Professor Alston stated that the CIA is often in charge of the drone missions. Professor Alston claimed that the CIA ‘by definition is not accountable’, whereas the military is trained to respect the laws of war and is the more obvious agency to control the use of the planes.

Professor Alston was also dismayed by comments such as those by the US legal advisor, Harold Koh, who said that the administration’s policy is to use drones as a self defence mechanism, which is an exception to the prohibition on the use of force under the United Nations Charter. Professor Alston noted that this comment is characteristic of US policy post September 11, claiming that ‘this is a distortion of the exception.’ Professor Alston stated that, under international law, nations can only target armed forces or individuals in combat situations. For these reasons, Professor Alston called for rules, in compliance with human rights law, governing the use of drones, and setting out criterion that will establish accountability.

Professor Alston was ultimately optimistic that his report to the United Nations on drones would have a positive impact. He contended that this issue will play out in the court of public opinion, saying ‘the United States is under pressure to justify its policy in this area and to open itself up to a greater degree of accountability.’
A sell-out crowd again attended this year’s Castan Centre Annual Conference as a top-line list of speakers addressed some of 2010’s hottest issues.

The conference was opened by Glenda McNaught, who gave a stirring tribute to Ron Castan AM QC and his profound effect on human rights law in this country. Glenda, a barristers’ clerk who was the conference’s major sponsor, had a long professional collaboration with Ron.

The Victorian Equal Opportunity and Human Rights Commissioner, Dr Helen Szoke, was the day’s first speaker, and she opened with a spirited defence of the new religious exemptions under the Equal Opportunity Act. Dr Szoke acknowledged that the right of religious groups to discriminate was reduced by the revised Act, but stated that freedom of religion was still well-protected. Indeed, Dr Szoke pointed out that religious groups still have more exemptions under the Act than any other group.

Accompanying Dr Szoke in the first session was the Human Rights Law Resource Centre’s Director, Phil Lynch, who discussed recent developments in Australian human rights law, including the importance of transparency in the proposed federal parliamentary scrutiny of legislation, and the need to consolidate federal discrimination laws. Mr Lynch also reviewed the encouraging Supreme Court case of Kimberley Castles, which found that a prisoner had the right to continue her IVF treatment while in jail.

Associate Professor Peter van Onselen, a contributing editor to The Australian newspaper, opened the second session with a critique of politicians’ failure to lead on the issue of asylum-seekers, allegedly because of electoral hostility. Dr van Onselen said that it was unclear whether a compassionate asylum policy would cost votes, because no one had tried it recently.

Dr Adiva Sifris, of Monash University, began her presentation on same-sex marriage by noting that marriage is evolving: legal equality, the prohibition on marital rape and the age of consent have all changed in recent decades. Inevitably, she said, same-sex marriage will be next.

The afternoon began with an enlightening session featuring Google’s head of policy for Asia-Pacific, Ian Flynn, and The Age’s China correspondent John Garnaut. Mr Garnaut spoke of China’s biggest human rights problems, including the treatment of Tibetans and Uighurs as well as religious groups and those trying to complain against party officials. Mr Garnaut was able to point to some bright spots in China, such as the improvement of labour conditions in recent years.

Mr Flynn addressed the issue of internet freedom, and spoke frankly about the Commonwealth Government’s proposed internet filter, which he said would breach freedom of expression and provide encouragement for censorship-happy governments elsewhere. In the question and answer session, Mr Garnaut said that Google’s threat to pull out of China in February 2010 had resulted in an easing of the recent crackdown there.

The final session paired the Chair of the UN Committee on the Rights of Persons with Disabilities, Professor Ron McCallum, with the University of New South Wales’ Dr Jane McAdam. Professor McCallum welcomed the advent of the disability convention, but he highlighted the difficulty in bringing the Convention’s rights to fruition when he spoke about how the UN High Commissioner for Refugees was failing to incorporate those rights into its practices.

Dr McAdam began her speech with a provocative statement – the best way to ensure that there is no action on climate change is to insist on a consensus-based treaty. Dr McAdam then noted that climate change potentially pits rights-holders against each other, for example those displaced by climate change and those living in communities which receive climate refugees, especially in developing countries.

As the day unfolded, many people logged in via Twitter to follow the comments posted by the Castan Centre and by many of those in attendance. The Centre posted audio recordings of each session within hours so that those unable to attend could listen to the outstanding presentations. Of course, nothing beats being there, and for those who came along it was another stimulating conference, and a chance to mingle with members of the human rights community from all over Australia.
Whither human rights in Victoria?

By Joe Charles

The recent Victorian state election, which took place as we went to print, was dominated in the lead-up by law and order issues and the potential for a new government with very different ideas on how to protect human rights. This made human rights a critical campaign issue, even if it was often relegated to the background.

Before the commencement of the formal election campaign, the Castan Centre’s State Election Forum provided a great opportunity to see how the protection and importance of human rights continues to divide politicians in Victoria, and how the outcome of this election may fundamentally change human rights protection in this state.

It should be of no surprise that the Forum provided two very different perspectives on the current state of human rights in Victoria. On one side of moderator Damien Carrick was Brian Walters SC, former President of Liberty Victoria, prominent civil liberties and defamation lawyer and the Greens candidate for the State seat of Melbourne. On the other was Robert Clark MP, the Shadow Victorian Attorney-General and a vocal opponent of the Victorian Charter of Human Rights and Responsibilities Act (the ‘Charter’) – a piece of legislation he once described as ‘hypocritical and dangerous’.

The forum was opened by Mr Carrick, presenter of The Law Report on ABC Radio National, who began by questioning Mr Clark on whether he still stands by that description of the Charter. Mr Clark was happy to say that he does, and he added that the current Labor Government has failed to comply with the spirit of the Charter by often attempting to operate outside of its parameters. For Mr Clark, the Charter remains a dangerous piece of legislation that gives Victorians a ‘false sense that it [the Victorian Labor Government] is doing something to uphold rights.’

Given this opposition, Mr Clark indicated that the Charter would not continue in its current form if the Coalition was to win the election. Although Mr Clark maintained that the Coalition has not announced a formal policy of repealing the Charter, he suggested that a Liberal/National government would either simply repeal the Charter, or repeal it and replace it with a model somewhat similar to the Federal Government’s Human Rights Framework.

In response, Mr Walters made his commitment to the Charter, describing it as the ‘first step forward’ in human rights protection in Victoria. Mr Walters stated that he favours an expansion of the Charter protection to economic, social and cultural rights.

From here the discussion ranged across many issues from disagreement over the reforms to the Equal Opportunity legislation and the Coalition’s support of a ‘small business’ exemption, to debate over the future of the Neighbourhood Justice Centre in Collingwood and to the Greens’ support for a right to euthanasia. One point of clear agreement, though, concerned funding of Legal Aid, with both Mr Walters and Mr Clark agreeing that increased support was necessary.

Despite his absence, Attorney General Rob Hulls MP, who was invited to attend the forum but withdrew without a replacement, was nonetheless a constant presence in the discussion. Mr Walters condemned Mr Hulls and the Labor Government for the introduction of random weapon searches in response to a public perception of an increase in knife crime. Describing them as an affront to the rule of law, Mr Walters argued that the laws should be repealed, given the likelihood of police misuse and abuse.

In response, Mr Clark defended the laws as a necessary cost of public participation, and given that the powers could not be exercised solely by an individual, Mr Clark asserted that unless the powers were used vindictively, they were an appropriate solution to the problem of escalating violence.

Regardless of Mr Hulls’ absence, and given the potential for a significantly different Parliament following the election, the State Election Forum and the discussion between Mr Walters and Mr Clark was a fascinating insight into the future of human rights protection in Victoria.
The Castan Centre celebrates its 10th anniversary in style

For the Centre’s broad constituency, the night was both a chance to celebrate the Centre’s achievements and to catch up with friends and colleagues. Members of the legal profession, academia, the corporate world and the community sector were all well-represented in the audience to listen to guest speakers, the Centre’s Director Professor Sarah Joseph, the Hon. Michael Kirby AC CMG and Professor Patrick McGorry AO.

Professor Joseph opened the evening with a brief review of the Centre’s beginnings and the current state of human rights in Australia. She noted that, although the advent of human rights acts in Victoria and the ACT were encouraging, many sections of Australian society still felt the sting of discrimination and deprivation. Professor Joseph then introduced Mr Kirby, who retired from the High Court in February 2009, to speak about the life of Ron Castan AO QC, after whom the Centre is named. Ron is best known for his leading role in the landmark Mabo native title case, but he also appeared in many other native title and human rights cases, revitalised Liberty Victoria and played a role in founding the Victorian Aboriginal Legal Service. Mr Kirby referred to many of these achievements while painting a picture of the warm, passionate man that Ron was. He also spoke glowingly about the positive effect that the Castan Centre has had in creating a culture of human rights in Australia.

Professor McGorry, the 2010 Australian of the year, captured the room’s imagination with his vision of a world class mental health system where those with mental health issues are not treated like second class citizens. He related the moving story of a woman diagnosed with cancer who received outstanding care before being...
The Castan Centre celebrates its 10th anniversary in style

turned away from the emergency department when she returned soon afterwards with severe depression. Professor McGorry repeated his call for governments to take the issue more seriously.

The other formal part of the evening was the presentation of Future Leaders’ 2010 Future Justice awards by Justice Susan Kenny of the Federal Court. The major award was won by The Copenhagen Diagnosis, led by Professor Matthew England at the University of New South Wales.

The night wasn’t all serious presentations on human rights. Young comedian Hannah Gadsby was master of ceremonies (“MC Hannah”), and she kept the audience chuckling between the formalities with anecdotes about growing up gay in Tasmania and her love of artificial lakes, which explained her time in Canberra and her fondness for that night’s venue, on Albert Park Lake. All of that was before Rob Lehrer and Steven Castan threw the switch to vaudeville for a very successful and amusing charity auction to wind up the evening.

With the 10th anniversary celebrations completed, the Centre’s staff were happy that they could resume working on their ambitious plan to build a stronger culture of human rights in Australia. To that end, the funds raised by the dinner will be used for some of its most important projects, including the Accountability Project, which aims to hold governments responsible for their human rights obligations, and its Global Internship Project, which sends outstanding young law students to the world’s leading human rights organisations.

For more on the centre’s work, you can visit the website at www.law.monash.edu.au/castancentre.
Mooting Competition looks at mandatory minimum sentences

By Erica Contini

After reading the story of an 18 year old learner driver being caught drunk driving at twice the speed limit just days before the release of the 2010 Charter of Rights Moot Problem, we were assured our moot problem wasn’t a far-fetched scenario. In the problem, a 17 year old girl gets caught driving while disqualified a second time and is automatically sentenced to one month’s detention in a youth justice centre. The reason for her driving a second time unlicensed? An attempt to save her dying grandmother who had suffered a severe stroke. One might ask how a juvenile offender could be subjected to a mandatory sentence of imprisonment without taking into account the circumstances surrounding the offence, given the existence of the Victorian Charter of Human Rights and Responsibilities Act 2006. The answer to this lies in section 30 of the Road Safety Act 1986 which specifies a mandatory minimum sentence of imprisonment for a second offence of driving while disqualified. The moot problem asked whether this section is compatible with the Victorian Charter.

Ten teams from Victorian law schools competed in the 4th annual Charter of Human Rights and Responsibilities Moot Competition, which has been generously sponsored by Clayton Utz. During the preliminary rounds each team had the opportunity to represent the appellant and the respondent before Clayton Utz solicitors who served as the judges. Tough questioning ensued from the group of seasoned solicitors. After one of the closest preliminary rounds in the history of the competition, the semi finalists were two teams from La Trobe University, and one each from Monash University and Melbourne University.

The semi final saw mooters addressing some of the more technical aspects of the Charter as they refined their arguments. Students grappled with the recent Court of Appeal decision in the Momcilovic case (see story on page 16) with some questioning the soundness of that decision. The students were challenged by questions from the bench consisting of Melbourne barristers Simon McGregor, Chris Young, Anna Forsyth and Richard Wilson, all of whom are well versed in the Charter. Three of the four barristers had judged moots in previous years of the competition and commented on how students’ grasp of the Charter had improved. In the end, Team 9 won the all-La Trobe semi final, and Melbourne University beat Monash in the other match-up.

During the Grand Final, Isobelle Jones, Catherine Eglezos and Leigh Howard from La Trobe University represented the appellant while Brendan Fitzgerald, David Foster and Timothy Lau from Melbourne University represented the Respondent. Held again at the Court of Appeal, the moot was presided over by his honour, Justice Maxwell, President of the Court of Appeal, the Honourable Judge Felicity Hampel of the County Court and Professor Spencer Zifcak, Allan Myers Chair of Law at the Australian Catholic University. Newcomers to the competition, Judge Hampel and Professor Zifcak hesitated for barely seconds before interjecting with questions for the mooters. With what at times felt like non-stop questioning from the bench, the Grand Final was a sight to see. In the end, the judges declared Melbourne University victorious and they took home the grand prize of $3000 while the La Trobe team received $1000 for finishing second. Brendan Fitzgerald, from Melbourne University, was awarded best speaker. The moot competition could not be such a success without the help of the coordinators from each university, and the support of Clayton Utz staff and the Court of Appeal.
Human Rights Careers Series – revamped

By Monique Hurley

The Castan Centre’s human rights careers series expanded this year as it was transformed into a Human Rights Careers Week. Consisting of three seminars featuring eight speakers in all, the week provided insight into the multitude of careers available to law (and non-law) students interested in working in the human rights field.

The first of the seminars focused on domestic human rights careers. Kerin Leonard, the Manager of the Legal Unit at the Victorian Equal Opportunity and Human Rights Commission, completed, but did not always enjoy, an Arts/Law degree at University. She reassured students that even though torts law might sometimes be uninspiring, there is light at the end of the tunnel. For Kerin, this light was a job that combined her passion for criminal justice with human rights law at the Commission, where she conducts policy, contract and advice work on the Victorian Charter of Human Rights and Responsibilities Act and other legislation.

The Charter is also the focus of Elizabeth Wall’s work in the Human Rights Unit of the Victoria Department of Justice. Having originally completed an Arts degree in Criminology, Elizabeth later undertook a law degree before doing the State Government Graduate Program, which is how she found her way into the unit. Elizabeth’s role involves citizens applying for permission to address human rights issues in a practical manner.

The second seminar centred on international human rights careers. Louise Searle, a Senior Advisor in the Humanitarian Protection department at World Vision, offered a fascinating perspective into working for a major international humanitarian organisation. Initially a registered nurse, Louise’s love of travel prompted her to apply to work at World Vision, where she focuses on providing training and technical support on international humanitarian law. Louise told the audience that World Vision looks for potential employees with fluency in a 2nd language, postgraduate study, experience doing volunteer work and travel overseas.

Andrew Beswick, Campaigns Manager for Amnesty International Australia suggested that prospective applicants need to know not just about the law, but also about social change. Andrew elaborated that experience speaking out on an important human rights issue would further be beneficial to prospective applicants. Andrew also offered insight into his role at Amnesty, which involves analysing the best ways to address human rights issues in a practical manner.

The final seminar was held in conjunction with the Australian Red Cross for students interested in international humanitarian law and international criminal law. Elli Lewis spoke of her experience working for the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY). After University, Elli secured an unpaid internship at the ICTY while studying in Holland. She found working with victims distressing and rewarding, mentioning that she worked on a case which involved the torching of a village in Macedonia which killed five Albanians. Elli also said that obtaining paid work with the UN is extremely difficult and that unpaid internships are the easiest way for people to initially get involved.

Arts/Law graduate Devon Whittle then spoke of his internship with the International Criminal Tribunal for Rwanda (ICTR). Devon was assigned to a Chamber of three judges working on a contempt of court case where he spent time in Court, performed research and evaluated evidence. Devon emphasised the importance of drafting a good application when applying for positions with the UN and recommended that students try and get some of their academic work published or do some work for a defence counsel.

The final seminar was held in conjunction with the Australian Red Cross for students interested in international humanitarian law and international criminal law. Elli Lewis spoke of her experience working for the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY). After University, Elli secured an unpaid internship at the ICTY while studying in Holland. She found working with victims distressing and rewarding, mentioning that she worked on a case which involved the torching of a village in Macedonia which killed five Albanians. Elli also said that obtaining paid work with the UN is extremely difficult and that unpaid internships are the easiest way for people to initially get involved.

Extraordinary Chambers in the Courts of Cambodia (ECCC) intern John Molloy then spoke of his 6 month internship in Cambodia. John worked in the pre-trial Chamber which investigate the actions of the Khmer Rouge, which held power between 1975 and 1979. John found this experience interesting, given the French influence on local Cambodian law, and found his role extremely challenging given the advanced age of most of the defendants in cases that he worked on.

The guest speakers offered a unique insight into human rights careers, and the many attendees found their stories an inspiring alternative to the traditional pathways to careers in commercial law. The week was a great success, and the Centre hopes to repeat it in 2011.

Videos from each seminar can be found on the Castan Centre’s YouTube Channel www.youtube.com/user/CastanCentre
Young students have all sorts of views on prisoners’ rights

It’s official. Just like their adult counterparts, Victorian year 10-12 students hold widely varying opinions on whether ‘criminals don’t deserve the same human rights as everyone else’, the topic of this year’s Writing for Human Rights Essay Competition. One may be deceived into believing that young people cannot appreciate the ‘complexities’ of such a topic, however it was clear that the 250 young students who submitted essays to the competition had a strong understanding of the conflicting issues surrounding prisoners’ rights, and could concisely and clearly set out their opinions in writing.

On one side of the debate, some students argued, for example, that the purpose of incarceration was to protect society, and that rights should only be limited where they help to achieve that goal. A common theme of many entries was the concept of rehabilitation, and particularly the idea of educating prisoners to ensure that they could function in society after their release. Some students also stated that criminals were still human and thus deserved that all their rights be upheld.

At the other extreme were those students who argued that criminals such as paedophiles deserve to have their rights taken away because of the heinous nature of their crimes, or that anyone who commits a crime against society has taken for granted their rights as a member of that society and should therefore forfeit them. Some students even took the opportunity to advocate for the reintroduction of the death penalty in Australia.

While there were many outstanding submissions, the winner of the 2010 competition and $1200 prize was Anna Gruen from Melbourne Girls Grammar School. Anna argued that a criminal’s rights should only be restricted in so far as to punish him or her and protect society. Otherwise, their rights should be the same as everyone else. Her essay is reproduced following this article.

Second and $800 went to Tim Gibson from Woodleigh School, recipient of a certificate of commendation in last year’s competition. In his essay, Tim used a hypothetical narrative to add a human dimension to the essay topic. His critique of the criminal justice system and the impact of the removal of criminals’ rights led him to the conclusion that criminals are human and entitled to the same human rights as everyone else. Emily Rutherford from Buckley Park College received third prize and $400. Emily argued that the severity of a crime should dictate the consequences, and in some cases the restriction of human rights will be necessary.

Due to the high quality of the submissions received, six Certificates of Commendations were awarded. The recipients were Yini Chong of Melbourne Girls Grammar School, Virginia Holdenson also of Melbourne Girls Grammar School, Naomi Ipsen of GippsTAFE, Mikaela Bott of Kyabram P-12 College, Tom Posa of Melbourne High School and Jessica Hart of Mount Lilydale Mercy College.

Melbourne Girls Grammar School also received the Schools Prize for the overall quality of its submissions and $2000. Lilydale High School placed second in the Schools Prize and received a certificate of commendation.

The winners were presented with their awards at a ceremony following the annual Great Law Week Debate, hosted by the Monash Law Faculty. The students and their families had the opportunity to hear a great line up of speakers, including David Galbally QC and former Port Phillip mayor Dick Gross, debate the same topic that they had written on.

The 2010 Essay Competition was supported with a General Grant from the Victoria Law Foundation – www.victorialawfoundation.org.au
As stated in Article 10 of the International Covenant on Civil and Political Rights, ‘All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.’ Not only is prison currently a violent environment, detrimental to a criminal's own wellbeing and, in some cases, a violation of their human rights; it also does not aid in the rehabilitation process with many prisoners released who, according to the article, published 24 December 2009, ‘Tough Law and Order Policies Aren’t Working’ from the Sydney Morning Herald, ‘benefit little if anything from the experience and are far more likely to leave more damaged and more of a danger to the community than they ever were before.’ Those rights which are not absolutely necessary to be removed, must remain in place and be maintained for a criminal in order to defend the values of the society.

The criminal justice system is designed to prevent the breaking of the law. Central to this is its goal to decrease the rate of recidivism, or reoffending. This lies in the rehabilitation of criminals after they have committed a crime both in relation to those imprisoned and those sentenced to community orders or financial punishments. Criminals deserve the right to an education to allow them to rebuild their lives. Andrew Fraser, former lawyer and prisoner himself, argues doggedly for the reform of the prison system. ‘It is totally dysfunctional’ he states, ‘the whole thing is a complete and utter joke and needs a total overhaul.’ According to ‘The Australian’ in an article published on January 30, 2009, ‘40 per cent of released prisoners are back in jail within two years.’ This rate can only be decreased if prisoners are assisted and if those with mental illnesses are given appropriate treatment. Fraser, himself, when enquiring about educational facilities in prison, was told that he would have to wait a year at minimum to discuss the possibility of further education. All criminals deserve the right to the same educational facilities as ordinary citizens which is particularly poignant in prisons where resources may be lacking in some cases.

The defence of basic human rights is pivotal in a society which protects the basic value that all men are created equal. Therefore, the process of taking them away as a punishment or for the good of the community must be considered at great lengths. Criminals, though they have committed an offence, do deserve equal treatment before the law and the same opportunities to better their lives as an ordinary person. It is important that, even within prisons, all those rights which are not essential to be taken away are maintained so that criminals have the best opportunity to be rehabilitated and to re-emerge, at the completion of their jail sentence, as better citizens. All people must be defended in the face of justice for as Martin Luther King, Jr stated in a letter from Birmingham Jail, Alabama on April 16, 1963, ‘injustice anywhere is a threat to justice everywhere.’
A pyrrhic victory for individual human rights in Australia?

As judges grapple with the tension between interpreting legislation and legislating themselves, individuals lose out on their human rights.

By Neda Monshat

The importance of the 2010 decision by the Victorian Court of Appeal in *R v Momcilovic* was highlighted by the full house of more than 200 people who turned out to hear Ms Momcilovic’s barrister speak for the Castan Centre recently. Members of the legal profession were well-represented as Michael Croucher reviewed what he characterised as a disappointing decision in one of the most important cases so far on the Victorian Charter of Human Rights and Responsibilities Act 2006 Charter.

The case turned on the large quantity of methyl amphetamine found in Ms. Momcilovic’s house in 2006. Though there was no evidence connecting her to the drugs, the Crown relied on s 5 of the Drugs, Poisons and Controlled Substances Act 1981 (‘the Drugs Act’) which deemed Ms Momcilovic to be in possession of the methyl amphetamine. During the trial, evidence was offered to explain that it was in fact Ms. Momcilovic’s partner who owned and dealt with the drugs.

Section 5 contains what is known as a ‘reverse onus’ provision, where the defendant – rather than the prosecution – has to ‘satisfy the court’ that something is true, in this case that the drugs were not in Ms Momcilovic’s possession. The Court of Appeal found that this provision infringed Ms Momcilovic’s right to be presumed innocent. That was the easy part. The court then had to decide whether to ‘interpret’ s 5 of the Drugs Act (using the power given to it under s 32 of the Charter) to make it rights-compatible, or to ‘declare’ the section incompatible with human rights (using the power in s 36 of the Charter). The effect of the court’s choice would be stark – a reinterpreted s 5 would allow the defendant’s conviction to be quashed, while a declaration under s 36 would have no legal effect on the case at hand – the parliament would be alerted to the inconsistency, but the section would remain valid law and the conviction would stand.

The Court chose to use s 36 and make Victoria’s first ever declaration of inconsistent interpretation, meaning that Ms Momcilovic remains a convicted criminal despite the finding of the State’s highest court that her right to be presumed innocent had been infringed.

In his speech, Mr Croucher explained that the Court of Appeal found that s 32 was not a new, ‘special’ rule of interpretation, but rather a restatement of existing common law principles. Because the Court found s 32 to be such a narrow power, it could not be used to reinterpret the offending provision because that would be tantamount to rewriting the legislation (Ms Momcilovic had requested the court to reinterpret s 5 so that she only had to point to some evidence to support her assertion, rather than proving it on the balance of probabilities). This approach would have placed Victoria in line with the UK where a similar situation arose in relation to the Human Rights Act 1998 (UK) in *R v Lambert* [2001] UKHL 37. Ms Momcilovic’s application was supported by the Attorney-General and the Victorian Equal Opportunity and Human Rights Commission, who intervened in the case, and the Human Rights Law Resource Centre, which presented an amicus curiae (‘friend of the court’) brief.

Because of the amount of drugs found in Ms Momcilovic’s home, she was ultimately found guilty of the more serious charge of ‘trafficking’ due to another provision of the Drugs Act which deems a person in possession of a ‘trafficable quantity’ of drugs to be guilty of trafficking. As a result of the conviction, Ms. Momcilovic, who prior to the charges was practicing as a patent attorney, lost her practicing certificate and was given an 18 month suspended sentence, two months of which was served in custody prior to the appeal.

Mr Croucher stated that the case of Ms. Momcilovic has made it clear that the operation of s 32 of the Victorian Charter is now much narrower than many had thought. The s 36 declaration of inconsistent interpretation ultimately issued by the Court only requires the Minister to respond to the declaration within 6 months, and have the declaration with its response laid before each House of Parliament and published in the Government Gazette.

As Mr Croucher pointed out, the Victorian Court of Appeal, by not using s 32 of the Charter to reinterpret s 5 of the Drugs Act, has ensured the continuation of a situation where people will be charged with crimes on the basis of a provision which infringes human rights. While the Court has acknowledged that s 5 of the Drugs Act infringes the right to be presumed innocent, the detriment to Ms. Momcilovic has made it a costly victory indeed. The case has been appealed to the High Court and will be heard in 2011.
Global Internship has a profound influence on Monash Law student

By Amy Burton

I arrived in South Africa on the cusp of the FIFA World Cup, an event which ironically provided much fodder for discussion about the country’s human rights issues. Conversations – with anyone from my internship supervisors, to clients, cleaners, and even the local barista – frequently commenced with the question “What do you think of Durban’s new Moses Mabhida Stadium?”. I didn’t encounter a South African who wasn’t disheartened that $US450 million had been invested in the construction of a new football stadium, rather than being used towards the improvement of access to housing or healthcare.

After an intensive HIV/AIDS training program at Monash South Africa, I commenced a five-week internship at the University of KwaZulu-Natal Campus Law Clinic in Durban. The Clinic provides free legal services to “the poorest of the poor”, focusing mainly on HIV/AIDS issues, family law, and employment disputes. As one of the Clinic’s first international interns, I was exposed to an almost dizzying range of work. On the first morning, my supervisor asked my opinion on a case concerning the intentional infection of an individual with HIV/AIDS. By the end of the first week I was attending court hearings; actively participating in case management meetings; and independently conducting client interviews, often in a mixture of English and very limited Zulu.

My main project during the internship was to develop and implement strategies to improve access to justice. ‘Access to justice’, however, takes on an entirely different meaning in South Africa. The Clinic had a waiting list of almost three months, with each lawyer juggling approximately 50 clients. Every potential client had to satisfy a detailed means test. Sometimes individuals surviving on the equivalent of $50 per month had to be rejected; they still didn’t fit below the required financial threshold. In addition, each day dozens of people would arrive at the clinic – sometimes lining up for an hour before we opened – pleading for a lawyer to attend to their urgent matter. One of my hardest roles was having to sit down with people who had legitimately urgent claims, and explain that we simply didn’t have the resources to help them straight away.

Attending the Clinic’s Outreach Centre at the Umlazi township was a truly confronting experience. Each time we drove to the centre – serviced three times a week by one lawyer – I came face to face with the deep-rooted socio-economic issues facing South Africa. Within 10 minutes of leaving the affluent University campus, we passed rows of decaying shipping containers serving as supermarkets and hair salons; women balancing huge buckets of water on their heads; and hoards of workers crammed into the back of utes. Once at the outreach centre, we were usually greeted by a room full of young mothers – some as young as 13 years old, and many who were HIV positive – seeking legal advice which mainly concerned domestic violence, or maintenance disputes.

On one occasion I was asked to accompany the outreach lawyer to the Umlazi township court. Every person stared at me, the only white foreigner present, as I joined the end of the queue of almost 100 litigants waiting to be seen by the Magistrate. It was the most humbling and yet frustrating experience of my life to stand among the almost entirely legally unrepresented crowd, and learn after three hours of waiting, that the Magistrate was actually sick that day and wouldn’t be hearing any matters. Many people continued to sit and wait, unsure of what alternative they had.

No textbook could have adequately prepared me for these experiences, and the many others I encountered in South Africa. It is a country layered with complexity. It has an advanced legal system, with an extensive Bill of Rights, incorporating rights to shelter, and to food. The people are some of the most welcoming, open and patriotic I have ever met. And the cultural diversity, and natural environment is immensely rich and unique. Yet, at the same time the level of poverty, crime, violence, disunity and division, is significant and saddening. Laws which should protect the vulnerable often seem to do the very opposite.

Without question, the Castan Centre Global Internship has confirmed my commitment to human rights law. My experience in South Africa has had a more profound effect on my future aspirations as a lawyer than I could have anticipated. I’ve never felt more challenged, confused and yet deeply inspired, than I did during my two months there. I truly believe that South Africa is a country with much potential. There are many grassroots organisations committed to furthering human rights throughout the country, and I hope to spend more time working with such organisations in the future. I cannot thank the Castan Centre enough for providing me with this invaluable and unforgettable opportunity.
Ten questions for: Janice Hugo

**Why did you decide to apply for the position of Castan Centre Administrator?**

I liked the variety of tasks, which was very appealing as I’m the type that likes to keep busy. I also thought the Centre’s goals were very much in line with my own values.

**How are you finding the job thus far?**

It’s been challenging and interesting. Everyone at the Centre and the Law Faculty has been very welcoming too which has made it enjoyable.

**What things have surprised you about your role with the Centre?**

The calibre of the speakers at the Centre and the level of interaction I get to have with those speakers.

**What has been your favourite project to work on?**

Our recent 10th Anniversary Dinner. It was a lot of work, but it was very satisfying to see the night succeed and receive such positive feedback. It was also great to see how well respected the Centre is by the legal and human rights community.

**What did you do before working for the Centre?**

I worked at the Monash University Campus Centre for about a year, before that I worked for environmental consultants for seven years in an administration and accounts management role.

**Has working at the centre changed your view on human rights issues?**

It has definitely broadened my view. I never really understood the challenges we face locally in Australia. I very much took the idea of human rights here for granted.

**What do you like to do when not slaving away in front of a computer, answering queries and registering new members?**

I love to file! No just kidding, in my spare time I like to do yoga and attempt to meditate.

**The Centre is full of football fanatics; do you follow football and if so which team?**

I do follow the footy during finals. I’m a long time Dogs supporter, then secondly the Saints.

**Have you had any notable experiences thus far while working at the Centre?**

I very much enjoyed meeting some of the speakers at our events, such as Dr Jane McAdam, I found it very interesting to hear her personal account of her trip to Bangladesh and India.

**What is your favourite tv show?**

Simpsons and the Goodies, any of that far out and completely inappropriate humour is good.

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Publications and other activities by centre faculty members

**Melissa Castan**

**Articles**


**Papers**

“The Human Rights Impact of the Victorian Charter for Indigenous People in Record Keeping and Archiving”, Archives and Indigenous Rights Workshop, Melbourne, 12 October 2010

‘Developments in Indigenous Rights and International Law’, Monash Centre for Indigenous Studies, 14 September

**Julie Debeljak**

**Chapters**


**Papers**


**Submissions**

Submission to the Senate Legal and Constitutional Affairs Committee, inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010, 9 July 2010

Evidence given before the Senate Legal and Constitutional Affairs Committee, inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010, 6 November 2010

**Roundtable**

‘Monitoring and Oversight of Human Rights in Closed Environment Roundtable’, Monash University Law Chambers, Melbourne on 29 November 2010, with Dr Branwyn Naylor, Dr Stuart Thomas, and Dr Inez Dusseyer (60 invite-only participants, from a range of stakeholders, including international technical experts, federal and state government representatives, service providers, non-governmental organisations, community organisations, and academics).

**Patrick Emerton**

**Articles**


**Papers**

“Cosmopolitanism, Self-Determination and National Self-Defence”, paper (jointly authored with T. Handfield) presented at the Oxford...
Institute for Ethics, Law and Armed Conflict workshop Why We Fight: The Purposes of Military Force in the 21st Century, Oxford University, 8 October 2010.


Paula Gerber

Chapters


Paper


Stephen Gray

Paper


Book Review


Sarah Joseph

Chapters


Media


Susan Kneebone

Chapter


Articles


‘The trafficking-refugee nexus: when return and reintegration become refoulement’ (July 2010) 33 Alliance News 24.


Papers

‘Trafficking in Children in South and South East Asia: More Degrees of Separation Needed’ presentation at NUS, ARI INTER-ASIA ROUNDTABLE on Transnational Migration and Children in Asian Contexts, Singapore, 2-3 August 2010.


Joanna Kyriakakis

Articles


Papers


Adam McBeth

Submission

Castan Centre submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Human Rights (Parliamentary Scrutiny) Bill, 9 July 2010, A. McBeth, S Joseph and E. Contini.

Evidence given before the Senate Legal and Constitutional Affairs Committee, Inquiry into the Human Rights (Parliamentary Scrutiny) Bill, 6 November 2010.

Bernadette McSherry

Book


Article


Bronwyn Naylor

Article


Maria O’Sullivan

Chapter


Tania Penovic

Paper

‘International human rights law as a vehicle for activism opposed to reproductive choice’ delivered at Public Interest Law-Opportunities and Obstacles, University of Melbourne, 28 September 2010.

Submissions

Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Civil Dispute Resolution Bill 2010, 1 November 2010, with L. O’Dwyer and K. Northwood.

Evidence given before Senate Legal and Constitutional Affairs Committee at Inquiry into the Civil Dispute Resolution Bill 2010, 4 November 2010.
Save the Date: Human Rights 2011

The Annual Castan Centre for Human Rights Law Conference
Friday 22 July, 2011 – Melbourne

Contribute to the Castan Centre

By donating to the Castan Centre, you can help ensure the continued growth of the Asia-Pacific’s leading human rights law organisation. The Centre is a non-partisan organization with a strong commitment to community engagement, student development, education and training and academic research.

The organisation hosts many of the world’s pre-eminent human rights figures each year and creates pressure for the legal protection of human rights through its engagement with the Australian parliament and international human rights bodies.

Its commitment to nurturing the next generation of human rights scholars has resulted in a strong and growing human rights internship program which sends outstanding law students to some of the world’s leading human rights institutions.

To make a tax-deductible donation, go to www.law.monash.edu.au/castancentre and click on “donate to the Castan Centre”, or contact Janice Hugo on 9905 3327.