Zimbabwe Opposition Minister Visits Melbourne

His visit was kept secret until the last minute, yet Zimbabwe's Shadow Minister for Justice, David Coltart, drew hundreds to hear him speak at two Castan Centre functions in July. After hearing Coltart's story, it is not hard to understand why. Coltart, a member of the opposition Movement for Democratic Change, was elected to parliament in June 2000 with more than 84% of the vote in his mostly poor, black electorate. Ever since he combined his studies in South Africa with his role as director of a Legal Aid Clinic in the early 1980s, Coltart has been a strong human rights advocate. In 1987, he founded the Bulawayo Legal Projects Centre in Zimbabwe, which now runs 10 legal advice clinics for the underprivileged.

During his visit, which was arranged by his old friend, the Dean of Law at Bond University, Duncan Bentley, Coltart spoke of the long history of human rights abuses by Robert Mugabe's regime. Mugabe came to power in 1980 as a hero: he had overthrown the white minority government and yet he pursued reconciliation with the white population. During this time, however, his troops conducted a campaign of torture and murder against the Ndebele people which resulted in almost 20,000 deaths — what, in the words of Coltart, “can only be described as an act of genocide”.

The latest wave of repression started in early 2000, when Mugabe was enraged at the defeat of a referendum to increase his power. Since then, independent judges have been hounded out of office and youth brigades terrorise the populace, all as the country continues its economic tailspin. Torture and killing are routine and the most recent outrage has seen about 700,000 people deprived of their homes or market stalls in the government's “cleaning out the filth” campaign, which has demolished squatter towns.

It is against this background that Coltart visited Australia in July, speaking at universities in three states, meeting with senior politicians and giving numerous media interviews. His trip was taken at great personal risk: six of Coltart's fellow parliamentarians have been murdered in the last four years. In order to ensure his safe passage from the country, all details of his trip were kept secret until he was in South Africa and he has now returned to an uncertain future although, at the time of writing, he is safe.

As for the purpose of his visit, Coltart ended his speech at the Monash University Law Chambers with a plea. “I implore you, ladies and gentlemen, to play your part in bringing pressure to bear on the Australian government to act, and to act with urgency, so that the plight of these hundreds of thousands of Zimbabweans can be addressed”.

An edited transcript of David's 2005 Gerard Brennan Speech to Bond University starts at page 8. The transcript of his Monash speech will be added to our website shortly.
Patrick Dodson Joins Castan Centre Advisory Board

Patrick Dodson, a life-long proponent of the rights of indigenous people, has agreed to join the Castan Centre’s Advisory Board, which includes pre-eminent human rights scholars, advocates and jurists from Australia and around the world. A full list of the Advisory Board is at page 13.

Pat is currently chairman of the Lindgari Policy Centre, a non-government organization committed to developing independent and informed thinking to improve the lives of indigenous Australians. He was a commissioner of the Royal Commission into Aboriginal Deaths in Custody in 1980, having previously been a Catholic priest (he was the first Aboriginal priest). He was appointed Chairman of the Council for Aboriginal Reconciliation in 1991 until he resigned in 1997, stating that “I fear for the spirit of this country”.

When asked about the centre, Mr Dodson said “The Castan Centre bears the name of a great Australian who truly understood the need to protect and defend the Human Rights of all the world’s people. I commend and support the work of the Castan Centre for Human Rights Law and look forward to being able to assist in its work particularly at a time in this country where Human Rights are seen in many quarters as peripheral to our national values.”


The Castan Centre has recently released the second in its annual Year In Review series. The book, Human Rights 2004: The Year in Review, is a collection of papers presented to the centre’s annual conference of the same name, held in Melbourne in December 2004.

The conference honoured the twin anniversaries of the Commonwealth Sex Discrimination Act (20 years) and the United Nations Convention on the Elimination of all forms of Discrimination Against Women (25 years) and featured some of Australia’s most important feminist academics and jurists who reflected on the huge hurdles still standing between women and equality.

The current Sex Discrimination Commissioner, Pru Goward, and Professor Margaret Thornton both critique the Sex Discrimination Act and conclude that, although it has had certain successes, it has also failed to provide the bridge to equality between the sexes. Although the Human Rights and Equal Opportunities Commission has made a large contribution towards equality, the right to maternity leave remains ill-defined, childcare costs are prohibitively expensive, women earn substantially less than men and have about half of the accumulated superannuation of men.

Heisoo Shin, Vice Chairperson of the Committee for the Elimination of All Forms of Discrimination Against Women, writes about the international law system as it relates to gender, while Elizabeth Evatt of the International Commission of Jurists compares international law with the Australian system and both women likewise see success and failure. Ms Evatt focuses on those parts of CEDAW which were not included in domestic law, while Ms Shin documents the many obstacles standing in the way of the Committee.

A particularly pernicious activity affecting women is people trafficking and Anne Gallagher discusses the practice and documents the fact that Australia is now a destination country for traffickers.

This collection also contains two papers on other “hot button” topics of 2004. Debbie Mortimer SC reviews the various Australian vilification laws and asks whether they have caused as many problems as they have solved. To conclude the volume, Richard Bourke takes a unique look at the serious issue of the treatment of detainees at Guantanamo Bay, Cuba, concluding that “like a spider web, it is simple enough to step around [the] Geneva Conventions or gently pluck one’s way through. However, like a crazed child, the Bush administration has set about attacking the spider web and now finds itself covered in sticky strands that advertise to all the world its crime.”

Human Rights 2004: The Year in Review is a lively and informative collection of papers covering many of the most important human rights topics of 2004.

To purchase the book, visit our website at www.law.monash.edu.au/castancentre and follow the links, or phone Kay Magnani on 9905 3327.
Arjun Sengupta Heads Impressive Line-Up for Conference

The line-up of speakers has been finalised for the Castan Centre’s annual conference, Human Rights 2005: The Year in Review. The conference, which will hold a spotlight to many of the year’s most important human rights issues, will again be held at the Malthouse, at Southbank, on 2 December 2005.

World-renowned economic and policy expert, Professor Arjun Sengupta, is the headline speaker. Professor Sengupta is the UN’s Independent Expert on Human Rights and Extreme Poverty. He is also Chairman of the Centre for Development and Human Rights, New Delhi, and Adjunct Professor of Development and Human Rights at the FXB Center of Harvard’s School of Public Health. He is also a Member of Parliament in India. Dr Sengupta will examine international cooperation for eliminating extreme poverty in the context of the global push for a “new deal” for the world’s poorest nations. As the Independent Expert, Professor Sengupta has been instrumental in developing and popularising this concept. Professor Sengupta has previously been an Executive Director of the International Monetary Fund and has written and edited a number of books, including Reflections on the Right to Development and Reforms, equity and the IMF: An economist’s world.

During his time in Australia, he will join the Castan Centre as a Holding Redlich Distinguished Visiting Fellow. Other international issues on the agenda are human rights in the context of tsunami relief; the likely implications of the UN reform process; and the lessons to be learned from Canada for the proposed Victorian Bill of Rights. In particular, David Wiseman, of the University of Windsor, Canada, will consider what effect the exclusion of economic, social and cultural rights might have on the Bill of Rights.

The ongoing inquiry into a Bill of Rights has been perhaps the biggest human rights topic of 2005 in Victoria and Dr Helen Watchirs, the ACT Human Rights and Discrimination Commissioner, will take up the issue from a local perspective. In particular, she will present the lessons learned from the enactment of the ACT Bill of Rights in 2004.

Bernadette McSherry of Monash University will consider human rights and mental health in light of the immigration detention and Cornelia Rau controversies. Martin Flynn, of UWA, will consider whether low government spending on Aboriginal health, housing and education constitutes discrimination and Colin Fenwick, of the Centre for Employment & Labour Relations Law at the University of Melbourne, will consider the human rights effects of the Government’s proposed industrial relations laws.

Now in its fourth year, the conference is a vital occasion for the wider human rights community. For further details about the conference, including prices and registration details, please see our website at www.law.monash.edu.au/castancentre

New World Human Rights News Page

The Castan Centre has recently relaunched its website and it now includes a new feature to help you keep abreast of human rights developments. The World Human Rights News page features articles on important human rights issues from around the world. The page is updated three times each week with reports from human rights organisations, features from magazines and newspapers and important news stories.

In the last few months, the page has focused on many hot issues, including the situation in Iraq and Guantanamo Bay, the deterioration of Zimbabwe; and the many developments in human rights law coming from Canada.

Reports have focussed also on the uplifting – companies in South Africa providing free AIDS treatment to all HIV+ employees; the depressing – the execution of two gay teenagers in Iran; and the offbeat – the leader of Liberia warned all political candidates not to perform human sacrifices to improve their chances of winning. From racism in Melbourne’s junior football leagues to a company in Alabama allegedly posting a “whites only” sign on the bathroom in 2005, the World Human Rights News Page will keep you up to date.

Every other section of the website has been improved and is constantly updated. Papers or transcripts from each Castan Centre event are posted on the site and many of the papers from the centre’s research projects are also available.

Monash Centre News

Monash announces first human rights LLM degree in Australia

Monash Law School has announced that it will introduce the first masters degree in Australia dedicated to the study of human rights law in 2006. The Master of Laws (Human Rights) will bring Monash Law's postgraduate program in line with leading human rights universities in Europe and North America.

The announcement is the culmination of a large amount of work by the Castan Centre and Monash Law School staff to develop the program and extends the already strong presence of human rights subjects in both the undergraduate and postgraduate curricula at Monash.

Professor Arie Freiberg, Dean of Monash Law School, said that the program was a logical development of the Centre's extensive research activities and will provide the opportunity for a wider range of students to gain access to the work of the Castan Centre and its staff.

Subjects to be taught during the first year of the course will be available on the Castan Centre website in October 2005.

The introduction of a specialised LLM at Monash has long been a goal of the Castan Centre. A dedicated human rights course is vital for producing academics and professionals capable of advancing human rights scholarship, awareness and advocacy in Australia and throughout the world.

The LLM (Human Rights) will be launched, together with the LLM (Regulatory Studies), at an information session on 26 October 2005 at 5.30 pm. The launch will be at Monash University Law Chambers, 472 Bourke St. For more information, please email graduate@law.monash.edu.au or phone (03) 9641 6206.

New Internship Program Introduced for Monash Law Students

After many years of supporting outstanding students to work overseas on an ad hoc basis, the Castan Centre has announced the establishment of its Global Internship Program.

The Program will assist four of the finest Monash Law School students to work with some of the world's leading human rights institutions in Europe, Asia and North America during 2005-06. Each intern will receive a grant from the Law Faculty Student Travel Fund to help cover their costs.

Two students will be placed with Human Rights First, in New York City, for 12 weeks. Until 2003, HRF was known as the Lawyers' Committee for Human rights. It was established in 1978 and has long been an advocate of human rights issues, and especially of the rights of refugees and asylum-seekers. The organization has broadened its areas of focus over the decades and is now a forceful advocate for a wide range of human rights issues. It has operated a robust internship program for many years and provides interns with excellent research, advocacy and case work opportunities.

A third intern will work for six months with the Asian Commission for Human Rights, based in Hong Kong. The Commission has an ambitious goal to improve human rights in the Asian region. Not only does it undertake research and advocacy, but it also investigates individual complaints of abuse and lobbies for international law reform. Its current focuses include child rights, torture, disappearances, the right to food and religious tolerance.

The final intern will serve with the Australian delegation to the annual UN Human Rights Commission in Geneva, as Monash law students have done since 2002. The Commission has primary responsibility in the UN for matters concerning human rights. Australia is currently a member of the Commission, meaning that interns are directly involved in the intricate negotiations and consultations which take place. Should the current UN reform process result in the replacement of the Commission, the centre will support an internship at the new body.

An important part of the Castan Centre’s mandate is to improve the level of human rights discourse in Australia. By giving interns the opportunity to undertake practical human rights work overseas, the centre hopes to equip Australia’s next generation of human rights leaders with the skills to contribute to this process.

Monash intern, Simone Cusack, at the UN Human Rights Commission with Australian Amabassador Mike Smith
Advancing Indigenous Rights

Melissa Castan, an Associate Director of the Castan Centre, was invited to participate in a forum on Indigenous Australian Human Rights at the Aboriginal Advancement League in August. The forum was convened in response to the Victorian State Government’s Discussion Paper Have your say about human rights in Victoria, which has created considerable interest in the indigenous community. The paper is part of a broader inquiry into the possibility of enacting a Bill of Rights in Victoria similar to that enacted last year in the ACT, and the Government has convened the Independent Human Rights Consultation Committee (IHRCC) to lead the process.

The forum was the first opportunity for many representatives of indigenous organisations in Melbourne to meet and discuss the issue and its likely impact on indigenous people. Melissa discussed the role of self-determination and the prohibition on racial discrimination in both international and Australian law. Melissa explored the point made by the Castan Centre Associate Director, Julie Debeljak, in her submission to the IHRCC – that any bill of rights in Victoria must include the right to self-determination, as well as all the civil and political rights captured in the ICCPR, and the full suite of economic, social and cultural rights. A similar recommendation on self-determination was rejected by the ACT Government, however many advocates of indigenous rights contend that the protection of these rights is key to improving the lives of indigenous Australians. There was a vigorous discussion about the issue at the forum, with several participants voicing the opinion that self-determination was an essential human right the government had to deal with, whether enshrined in a bill of rights or not.

Professor George Williams, Chairperson of the IHRCC was in attendance at the forum. Joining Melissa to make formal presentations were Frank Guivarra of the Victorian Aboriginal Legal Service Co-operative Ltd, Muriel Bamblett of the Victorian Aboriginal Child Care Agency, former Chief Justice of the Children’s Court, Alistair Nicholson QC, and Larissa Behrendt. Larissa was a member of the ACT Bill of Rights Consultative Committee and is Professor of Law and Indigenous Studies and Director of the Jumbunna Indigenous House of Learning at the University of Technology, Sydney.

To view the Castan Centre’s submissions to the IHRCC, click on “submissions and reports” at www.law.monash.edu.au/castancentre.

Vietnamese Delegation visits Castan Centre

The gradual opening up of Vietnam’s centrally planned economy to the outside world has been accompanied by a growing interest within Vietnam in international human rights. In recent years, Vietnam has signed a number of international human rights instruments, however study of the discipline is a relatively new academic field in Vietnam: courses in human rights law are few and the teaching capacity is limited. Indeed, none of Vietnam’s universities incorporate human rights subjects in their international law courses.

In a bid to change the landscape and improve human rights education in Vietnam, representatives of the Vietnam Research Centre for Human Rights (VRCHR) recently visited Australia and Malaysia on a study tour. The purpose of the tour was to improve participants’ substantive knowledge of human rights and how they are taught; and to improve understanding of the organisational methods used by human rights institutions.

As part of the tour, the representatives met with the Director of the Castan Centre, Sarah Joseph, at Monash University. The Castan Centre has considerable expertise in building human rights capacity in the Asia-Pacific, having conducted comprehensive human rights courses for officials in the region, including Indonesia, Myanmar and Australia. Sarah said that the meeting was fruitful, focusing mainly on the role the Castan Centre plays in improving the human rights discourse in Australia, and on its organisational setup.

The VRCHR was founded in 1994 to conduct research and provide training on human rights issues. It is charged with increasing awareness of human rights law among law enforcement officials and policy makers and assists the government to translate international treaties into domestic legislation and to implement these new laws.

In response to requests from our members, the Castan Centre has now set up an online donation facility, making it quick and convenient to support the centre’s work.

The centre is consolidating its existing programs and planning to introduce new ones over the course of 2005-06. The recently-introduced Global Internship Program and the LLM (Human Rights) are the first new projects to commence. The centre also hopes to increase its commitment to public education by offering scholarships, introducing human rights education programs at primary and secondary schools and increasing its commitment to bringing out high-profile speakers. In the past, such speakers have included Jose Ramos Horta, David Weissbrot and Cherie Booth.

If you would like more information about the Castan Centre’s programs, or would like to receive a brochure, please contact Kay Magnani on 9905 3327 or castan.centre@law.monash.edu.au.

To donate, or to sign up for free as a Castan Centre member, please visit www.law.monash.edu.au/castancentre and follow the links.
Defamation Defender Speaks Out

Brian Walters, SC, President of Liberty Victoria and a prominent civil liberties and defamation lawyer, spoke at a Castan Centre public lecture at the Monash University Law Chambers on the 9th of August. His talk, *Suing into Submission: Using Litigation to Quell Dissent*, was a lively dissection of the way that corporations have used the courts in Australia to stifle protest and public discussion.

This type of litigation – commonly known as SLAPP Suits (Strategic Lawsuits Against Public Participation) – has a long history overseas, the most famous case being the “Mc Libel” litigation in the UK. In that case, McDonalds sued two activists for defamation and became embroiled in a litigation that lasted for 314 sitting days and cost it more than 10 million pounds in legal costs. McDonalds won judgment of 35,000 pounds but lost the publicity war by a large margin.

Mr Walters focused, however, on the fact that most SLAPP suits have much greater success and they have been used in Australia more widely than one might think. The litigation often takes the form of defamation proceedings but may also involve claims related to trespass to land (in the case of demonstrations) and allegations of breaches of the *Trade Practices Act*.

Mr Walters commenced by talking of the problems encountered by community groups in attempting to stop the recent dredging trial in Port Phillip Bay: their request for an interlocutory injunction was torpedoed when they were required to provide an undertaking to pay costs if they were unsuccessful. Costs were expected to be $32 million. As a result, the injunction was not granted and the allegation that the activity is unlawful was not tested by a court. This case is similar to the Mount Etna Bat Caves case in 1989, where a mining company was able to destroy a rare bat cave because the Central Queensland Speleological Association withdrew its challenge to the legality of the action when asked to deposit a significant amount of money with the court to cover possible legal costs.

More recently, Barwon Water successfully used defamation proceedings to quell the public outcry over its plans to obliterate a woodland and replace it with a sewerage treatment facility, despite the fact that the land was protected under four separate listings in the *Victoria Flora and Fauna Guarantee Act*. Protesters came up with a bumper sticker which read “Barwon Water, Frankly Foul”, a reference to Barwon Water’s chairman, Frank de Stefano. Mr de Stefano sued a group of the protesters for defamation and his litigation was funded entirely at Barwon Water’s – and therefore taxpayers’ – expense. Facing crippling legal bills and a massive time commitment, the group apologized and paid $10,000 in compensation. Community dissent crumbled and, as Mr Walters pointed out, by the time Mr de Stefano was convicted and jailed for theft of $8.3 million from clients of his accountancy practice some years later, the wood was long gone and so was the $10,000.

According to Mr Walters, writs are often timed to cause the most damage. In the Barwon water case, the defendants were served on Christmas Eve, ensuring that they could not get legal advice and would spend the Christmas break fearing the consequences.

There are, however, tactics which protesters can use in return. Mr Walters’ favourite tactic is to involve the media as soon as a threat is made. In the case of his friend, Alan Gray, a logging industry association threatened to sue him for breaches of the *Trade Practices Act* for assertions made in his book, *Forest Friendly Building Timbers*. Mr Walters alerted the media of the threat and the association backed down. The book went on to top the non fiction best-seller list for several months.

The same course of action worked when Yarra Trams threatened the Public Transport Users’ Association, however such tactics are risky and hardly reliable. When they fail, litigation is stacked in favour of corporations which get tax deductions for legal fees and almost always have far deeper pockets. The clear message of Mr Walter’s speech was that the playing field has to be leveled. In most US states, SLAPP suits are now prohibited by legislation and New South Wales has recently amended the law to prohibit all but the smallest companies from suing for defamation. Mr Walters concluded by saying that this is a matter of free speech, which is recognized in the Universal Declaration of Human Rights and is a cornerstone of western civilization. “It is essential that citizens have the freedom, in any medium, to engage in public debate” said Mr Walters. “Freedom of expression permits knowledge to flourish and prejudices to be challenged, and diminishes the alienation of those who are not heard”.


Brian Walters addresses the audience at Monash University Law Chambers
Celebrating Marriage: Same Sex Marriage Forum

In 2004, the Australian Government took the extraordinary step of restricting the rights of certain members of our community when it passed a law to limit marriage to heterosexual couples. In order to flesh the issue out, the Castan Centre held a forum on same sex marriage in May of this year, inviting its speakers to address the philosophical and legal underpinnings of the issue. Grevis Beard provided an overview of legal developments in Australia, Associate Professor Kristen Walker did the same for overseas jurisdictions and Professor Raimond Gaita spoke from a philosophical perspective.

Mr Beard commenced his talk by noting that the Marriage Amendment Bill, passed by the Federal Government in 2004, directly contravenes the International Covenant on Civil and Political Rights, which requires nations to ensure that all persons are equal before the law. The bill amended the Marriage Act to define marriage as “the union of a man and a woman to the exclusion of all others, voluntarily entered into for life”. The bill also prevented same sex marriages from other countries from being recognised in Australia.

As Kristen Walker noted in her talk, the number of those marriages is growing. Same sex marriage is legal in Holland, Belgium, Canada and Spain while the South African Supreme Court has ruled that the constitution protects the right. More than a dozen countries recognize same sex civil unions.

On the other hand, Ms Walker noted that the situation in the United States is more mixed. The courts in New York and California have ruled that legislation banning same sex marriage is unconstitutional, while Nebraska has gone to the next step and passed a constitutional amendment prohibiting it. Massachusetts will consider a similar measure in 2006. Ms Walker noted that President Bush, like many other American politicians, has supported the idea of a similar federal Constitutional amendment.

The position of conservative politicians was a theme taken up by Mr Beard in his talk. He quoted Attorney-General, Philip Ruddock, who stated that heterosexual marriage “provides the best environment for the raising of children”. This view was, according to Mr Beard, a re-hashing of the myth that homosexual couples cannot or should not bring up children and a denial of the reality of same sex unions in today’s society. There are almost 19,000 same sex couples registered in Australia. Mr Beard also quoted the Prime Minister, who said that the amendment was “reeffirming a bedrock understanding of our society” and was not directed at gay and lesbian people. How can a law which denies gay people rights not be directed at them, he wondered. More disturbingly, Mr Beard sees a connection between the attitude of the Government and the upswing of violence and intimidation directed against gays and lesbians. It starts at school, where 74% of homosexual youth are subjected to physical or verbal abuse, and continues right through life.

It seems, however, that the Australia states are providing a glimmer of hope. The Constitution prohibits the states from making laws governing certain areas if the Federal Government makes a law which “covers the field”. By expressly limiting the Marriage Act to heterosexual marriage, the Federal Government may have inadvertently opened the way for states to make laws relating to homosexual marriage. In both Tasmania and New South Wales, same sex marriage bills have been prepared and South Australia and the ACT have both introduced bills to establish civil union registries. If the legislative field is perhaps moving slowly in favour of same-sex marriage, Raimond Gaita sees the ongoing volatility over the issue as an indication of the deep philosophical rift within our society. Professor Gaita recounted discussing the Archbishop of Canterbury, Rowan Williamson, and his support for same sex marriage in front of a gay friend. “We agreed…that it was understandable that in order to prevent a split in the Church, Williamson would at least play down his support for gay clergy. Nick said not a word, but I caught his eyes. In their pained expression I read these questions: Is it really so obvious that one shouldn’t be prepared to split the church over this matter? Wouldn’t it be different if racism were the issue?”

Professor Gaita sees some parallels between the current debate over same sex marriage and the history of racism in Australia. For him, both issues are less about rights than they are about humanity and dignity. For example, the belief that aborigines could not have a deep relationship with the land, or with their children, sprung from the failure to see that aborigines were “like us”. Such views, according to Professor Gaita, can only be challenged by “coming, through living with a people, to see dignity in faces that had all looked alike to us, to see the full range of human expressiveness in them, to hear suffering that lacerates the soul.” Similarly, much of the opposition to same sex marriage is driven by homophobia, which Professor Gaita considers to be a way of “denigrating the entire lives of gays and lesbians”. This is why the call for the right to marry is not simply a demand for fairness. It is, according to Professor Gaita, “the demand for justice conceived as equality of respect”.

On the other hand, Professor Gaita suggested that much opposition to gay marriage comes not from homophobia but rather from a belief that same sex unions are simply not compatible with married love; that the legalisation of gay marriage would “sow confusion and degrade the concept of marriage”. Professor Gaita concluded by dissecting this argument, and in particular the notion that gay love cannot deepen because it does not incorporate the possibility of conceiving new life. He asked “why should that be a reason for doubting that gay and lesbian love can worthy rise to, be vitally responsive to, a full and deep understanding of what it means to be married, of what it means for love to be transformed by the marriage vow, for love worthy to become married love? Only ignorance, confusion or residual homophobia, I suspect, could make one think that there is a compelling reason.”

The papers of Mr Beard and Professor Gaita, and the powerpoint presentation of Ms Walker are available at http://www.law.monash.edu.au/castancentre/public-edu/ssmforum.html
Good Evening. Last week a UN special Envoy, Mrs Anna Tibaijuka, issued a report on the recent mass evictions by the Zimbabwe Government of poor people who have been, in the course of the last two months, evicted from their homes and many of whom have been deprived of their source of income. This action, which the Zimbabwe Government has termed Operation Murambatsvina, which is a Shona term for “clean out the trash”, commenced on 19 May and Mrs Tibaijuka’s report finds that 700,000 of the poorest of the poor have in the last two months been either evicted from their homes or deprived of their source of livelihood or both. In the same report, she finds that 2.4 million Zimbabweans have been indirectly affected by this action.

Let me stress that this is the first United Nations report on Zimbabwe since it became independent in 1980. For some in the international community the actions of the Zimbabwe government in the last two months are an aberration. Tragically, what has happened in the last two months is the direct result of a culture of impunity. It is also the result of the failure of the international community to respond to human rights abuses which took place 20 years ago in Zimbabwe, and it is also a failure of international law.

To understand why what I have just said is correct, one needs to appreciate the historical context in which Operation Murambatsvina has taken place. In that regard, I need to trace the human rights history of Zimbabwe since Zimbabwe obtained independence in 1980. I would divide it into four chapters.

The first I would entitle The Honeymoon. This period deals with the time from the signing of the Lancaster House Constitution in late 1979 and the subsequent elections which brought about black Zimbabwean rule in 1980, to the end of 1982. The world’s superficial view of that period was that it was a time of reconciliation. Robert Mugabe established his credentials as a statesman through enunciating his policy of reconciliation which was directed at the white minority and which was designed to bring this dreadful civil war which raged during the latter half of the 1970’s to an end. Mugabe during that period was correctly praised for that policy of reconciliation. But sadly the international community focused on that policy. Unbeknown to the international community, unbeknown to many within Zimbabwe, at the very time that the Mugabe regime was promoting a policy of reconciliation with the white community, it was plotting the demise of the most powerful opposition figures headed by Joshua Nkomo who ranked with Robert Mugabe as one of Zimbabwe’s leading black nationalist leaders. He was the leader of a party called ZAPU.

As early as 1980, Robert Mugabe travelled to North Korea where he met with Kim il Sung and, during that meeting the two of them agreed that North Korea would provide military expertise so that a new brigade could be trained under the auspices of the Zimbabwe National Army - a 5th brigade trained by the North Koreans with the specific objective of quelling internal dissent. But that was kept under wraps.

At the passing out of the 5th Brigade in November 1982, Robert Mugabe made the chilling statement that their purpose was “to go to the people to plough and reconstruct”. The significance of those words will become apparent. That passing out parade marked the ending of our first chapter.

The second chapter started in January 1983, I would term it Gukurahundi. This is another Shona word that describes the spring rain that falls and clears out the chaff that has accumulated over the dryer winter months. However, Gukurahundi had a far more sinister objective and meaning.

During the period January 1983 through to mid 1984, the heartland of the Ndebele people and the heartland of Joshua Nkomo and his ZAPU party. These North Korean-trained soldiers went systematically village by village. If they came across males aged between 16 and 40 and people who spoke Ndebele and especially people who were on the list supplied to the 5th Brigade detailing prominent leaders in ZAPU, they were summarily executed or hauled away to concentration camps. In the course of that period it is estimated that 20,000 Zimbabweans were massacred - that can only be described as genocide.

Sad to say the world at the time looked the other way, it was preoccupied with cold war concerns. It was also justifiably concerned about apartheid. Apartheid was unresolved at the time and the western world needed a good precedent on South Africa’s doorstep to encourage white South Africans in particular that there could be life after apartheid.

The second chapter Gukurahundi came to an end in December 1987 when Robert Mugabe achieved his objective of creating a de facto one party state. Joshua Nkomo and his ZAPU party were in effect swallowed up by Robert Mugabe’s ZANU PF party.
A unity agreement was signed on December 22, 1987 and that ushered in our third chapter of our history, a chapter I would entitle 'The Gathering Storm', a chapter which deals with the period 1988 – 2000. This was a period of relative peace and calm in Zimbabwe. It already enjoyed acceptance by the west, so much so that the British Government, knowing full well what had happened in Matabeleland between 1983 and 1987, conferred an honorary Knighthood on Robert Mugabe. The IMF and World Bank had offered Balance of Payment support and encouraged the Mugabe regime to embrace its Structural Adjustment Programs.

Many of us in the human rights community were alarmed. I argued in the State Department in Washington in August 1992, pleading that conditions be attached. For Zimbabwe to liberalise its media; that conditions be imposed regarding the level of defence spending and the like. I was dismissed as many of my colleagues were, in like manner.

This rooted the culture of impunity and it flourished. The Zimbabwe Constitution was amended in 1988, it further entrenched executive power. At the time we recorded Lord Atkin’s statement, ‘power tends to corrupt, absolute power corrupts absolutely’. But the human rights community was ignored.

Almost inevitably with that consolidation of executive power came corruption and by the late 1990’s, corruption was flourishing and consequently the economy started to plummet. That in turn led to dissatisfaction amongst workers and that in turn lead in September 1999 to the establishment of the Movement for Democratic Change, the party which I represent which was, and is, a broad church incorporating the Trade Union movement, churches, civil society groups and the human rights community.

It was the formation of the MDC in September 1999 and a constitutional reform debate promoted by the MDC and its allies in civil society that ushered in the fourth and final chapter of this potted history which I will term the 3rd Chimurenga, which deals with the period 2000 to current time. Chimurenga is another Shona term, it denotes a war of liberation. The first Chimurenga was fought against the British colonel settlers in the 1890’s and lost. The second Chimurenga was the liberation struggle during the 1970’s which brought to an end white minority rule. The third Chimurenga was the name given by the Mugabe regime to describe its policy of acquiring white farms which has drawn so much attention internationally.

Unfortunately, it has been the acquisition of farms that has acted as a very effective foil for the regime, because our view is that the acquisition of farms, whilst a legitimate objective – no one in their right mind would argue that there was not a need for fundamental changes to our land holdings – was not the political objective of the regime. Their political objective was in fact the consolidation of power. And so we have seen in the last five years under the foil of acquiring white commercial farms a further attempt to obliterate a lawful political opposition.

The press has well documented what has happened in the last five years. Three hundred MDC members have been murdered. Of the 57 colleagues elected with me in June 2000, six died during that term of office, all as the direct or indirect result of torture perpetrated by state agents. All of this has now culminated in Operation Murambatsvina, which in turn was reported on by the UN special envoy last week.

I wish now to address another more insidious assault on Zimbabwe’s laws and legal system. What has gone largely unreported in the last five years is the systematic subversion of our legal institutions which are there, or should be there, to uphold the rule of law, to protect human rights, but which have now been subverted to such an extent that these institutions are used as the principle weapons to oppress and to deny Zimbabweans their constitutionally enshrined rights. And during the last five years virtually every single institution in our legal system has been so totally subverted that they are now virtually unrecognisable as law enforcement bodies. The police force in the last five years has been politicised. Individuals who are independent and professional police officers have systematically been forced out. Senior officials have been corrupted, they have been allocated farms, so much so that the Commissioner of Police in the course of the last few weeks described the poor people who have been ejected from their homes as maggots.

But it hasn’t just been subverted at the level of the hierarchy, the rank and file have also been subverted. In the last three years, Zimbabwe has seen the emergence of something equivalent to the Hitler Youth. Youth brigades have been trained: we have 80% unemployment and young people have very little hope. They have been attracted into youth brigades, they are taken through a course of indoctrination and they have now been channelled back into the police. They are recognisable by their youth and their shaven heads and they have been the vanguard of those destroying homes and ejecting vendors from their vending sites in the course of the last two months. The police have even gone to the extent of processing the goods of informal traders on a massive scale.

The Attorney General’s Office has also been affected. I have spoken about 300 murders perpetrated and let me stress that many of these were in broad daylight. Many of the perpetrators are well known. My own polling agent, Patrick Nabanyama, was abducted at four o’clock in the afternoon in
the presence of his wife and children. We know the names of his eight abductees, they have been reported to the police, I have spoken about them in parliament persistently for five years. They walk the streets of Bulawayo today.

That is but one of many cases [where] judges have – in civil cases brought by the MDC – stated that these people clearly appear to be guilty of murders. Requests have been made to the Attorney General's Office for further investigations to be done and prosecutions initiated. Nothing has happened and yet in contrast, we have seen during the same period the vigorous prosecution of political opponents. The most high-profile of these was the treason trial of Morgan Tsvangirai the MDC leader.

In a report produced by a South African Civil Society organisation – The Solidarity Peace Trust – in March last year, it was documented that over 50% of all MPs have been subjected to some spurious prosecution, including myself. It continues.

The judiciary has not been immune. Let me stress that Zimbabwe had a fine judiciary, the Supreme Court in particular deservedly built a great reputation in the first twenty years since Zimbabwe’s independence. It was often favourably reported on by other commonwealth jurisdictions. Sadly that judiciary itself has been almost completely subverted. This process started in 2001. The Chief Justice Mr Antone Gabe was personally threatened by the Minister of Justice who stated in mafia style that the government could not guarantee the Chief Justice's safety, and he then resigned.

The Supreme Court is a mere shadow of its former self. Of the six Supreme Court Judges, only one is viewed as independent by the legal profession. The Chief Justice, a Senior Judge, the Judge President, the head of our second tier of courts, the High Court, have been allocated farms. Judges have been threatened and driven out. This in turn has led to absolutely farcical judgements.

The Law itself has been subverted. We have seen the passage of what can only be described as draconian, unconstitutional and fascist laws.

Let me give you two examples. The first is the so-called Access to Information and Protection of Privacy Act. It is no such thing. It has been used in the course of just the last ten days to prevent a licence being given to an independent daily newspaper with the largest circulation in Zimbabwe. Another law is the so-called Public Order and Security Act. In terms of that act, if any politician wishing to have a political meeting – and that is defined as a meeting in a public place involving more than one person – you have to notify the police and the police are given virtually absolute powers to approve of that meeting or to disallow it. If the police disallow the meeting, you have a right of appeal not to the courts but to the Minister of Home Affairs, and our meetings are routinely banned.

From this you will see that there has been a systematic campaign, an all embracing complex program to undermine institutions that should uphold the rule of law. And that brings me full circle back to the current situation, to Operation Murambatsvina, the so called clean out the trash operation.

One can only understand Operation Murambatsvina fully if one understands this historical perspective that I have set out for you this evening. In the run-up to the March election this year, Robert Mugabe and ZANU PF declared that their intention was to “bury the opposition” in the same way that the 5th Brigade was used in the 1980’s to crush ZAPU, Joshua Nkomo’s party.

Despite all that I have told you, despite the human rights violations, despite the murders, the rapes, the acts of arson, despite the subversion of all these institutions, despite a flawed General Election, the MDC was not buried in March, in fact it won every single urban seat bar one. It did not win rural seats because we were unable to counter the vile and wide-spread acts of intimidation and fraud. But the point is that the political objective of burying the opposition was not achieved and it is our belief that, as a result of that, Operation Murambatsvina commenced.

In Bulawayo, the city I represent, the city council is controlled by the opposition. When Mrs. Tibaijuka visited a few weeks ago, she was handed a report which documented that 74,165 people in Bulawayo alone had been evicted from their homes between 19 May and 6 July this year. In doing this the government has violated its own laws. These laws have reasonable provisions, all of them say that even if there are illegal structures, the owners of those structures are entitled to personal service of a notice telling them that those structures are illegal. And after service of those notices, they are entitled to a period of grace, one month in which to rectify the illegality. In the vast majority of cases, people were given no notice, in some cases a few hours. The maximum notice that I am aware of is a couple of days.

In terms of the UN Report tabled last week, they estimate that 700,000 Zimbabweans have either been evicted from their homes or deprived from the source of their income since 19 May this year. A further 2.4 million Zimbabweans have been directly affected by what has gone on. But let me make this point: operation Murambatsvina came on the back of a humanitarian crisis that was already grave. James Morris the Executive Director of the World Food Program, said that “the greatest humanitarian crisis we face today is not in Darfur, Afghanistan or North Korean but is in fact in Southern Africa and the epicentre of this humanitarian crisis is Zimbabwe where the world food program estimates four million Zimbabweans are desperately in need of food aid”.

In the same address Mr Morris said life expectancy in much of Southern Africa is barely more than it was in Europe during the middle ages. Life expectancy in Zimbabwe has in fact declined now to 54 years. 4,000 Zimbabweans die a week
through the dreadful culmination of AIDS and malnutrition and it is this catastrophic mix of AIDS and starvation which is now combined with homelessness, in mid winter when temperatures go overnight to below freezing.

Mrs Tibaijuka has produced what is in UN terms an excellent report. I want to touch on two aspects of her report. The first deals with her reference to the international responsibility to protect doctrine [which is defined as follows]:

“Where a population is suffering serious harm as a result of, inter alia, repression or state failure and the state in question is unwilling or unable to act, or halt, or revert it. The principle of non-intervention, because of the sovereignty of the country, yields to the international responsibility to protect”.

This document goes on to establish further principles. It speaks about the responsibility of the international community to react urgently and quickly when a population is at great harm. Mrs Tibaijuka made the following finding: “The issue remaining for the United Nations however, is whether the government of Zimbabwe is able to offer effective assistance to its people in practical terms. It is the view of the special envoy that the scale of the problem is too large and exceeds the present ability of the government to address the basic needs by those affected by Operation Restore Order.”

And she concludes “The international community has a responsibility to protect those affected. The impact will not be easy to address and requires immediate large scale and unconditional humanitarian assistance to protect those in need”. So far, so good.

The problem however, is that the Zimbabwean Government has responded by rejecting this report. Robert Mugabe just this week has said in China that Mrs Tibaijuka has been put under pressure and the destruction continues in Zimbabwe even this week. Let me stress that Robert Mugabe in April last year said to James Morris [World Food Program] that despite the obvious need for food relief, the Zimbabwean government would handle it itself. It did this with the General Election in March this year in mind, it knew that if food was brought into the county by the World Food Program and distributed through NGOs, churches and the like, food would not be able to be used as a political weapon. No agreement has yet been reached for food supplies to resume. The Mugabe regime persists in its stance that it is only prepared to allow food in if it controls its distribution.

The point that I am making is that whilst we commend Mrs. Tibaijuka’s comments, whilst we are delighted that the responsibility to protect doctrine has been invoked, in practical terms, unless the international community acts vigorously, her recommendations in this regard are simply going to be ignored and this humanitarian crisis will not be averted.

But it goes further than that. Many of us including myself in my representations to Mrs. Tibaijuka made the point that in terms of Article 7 of the Treaty of Rome, the deportation or forcible transfer of a population constitutes a crime against humanity and our contention is that this allegation needs to be investigated. The Special envoy responded to those conditions as follows:

“It is the view of the Special Envoy that an international debate on whether the statute of Rome could be successfully invoked is bound to be acrimonious and protracted. It would serve only to distract the attention of the international community from focusing on the humanitarian crisis facing the displaced who need immediate assistance,” and she concludes “nevertheless, it remains the strong recommendation of the special envoy that the culprits who have caused this man made disaster are best handled and brought to book under Zimbabwean national laws”.

The following two issues are raised by these comments. Firstly the report itself documents the rule of law in Zimbabwe, and to that extent the suggestion that the culprits of these crimes should be brought to book under Zimbabwean National laws is simply farcical. How that can even be put forward as a possibility is beyond our belief.

Secondly, this culture of impunity which was sewn in the early 1980’s is demonstrated this week by the rejection of this report. The tragic irony is that perhaps the only way of addressing the special envoy’s principle concerns is through the threat of international law, but therein lies the problem. Professor Hersch-Lauterbach once said, “International law is not much good. It creates laws which the wicked do not obey and the righteous do not need”.

I have another quote for you in closing from Martin Luther King. He once said “Human progress is neither automatic nor inevitable. Every step towards the goal of justice requires sacrifice, suffering and struggle, the tireless exertions and passionate concern of individuals. This is no time for apathy or complacency. This is a time for vigorous and positive action”.

Sir Gerard Brennan showed tireless exertion during his professional career in upholding the human rights of Australians. We all would be well advised to display similar vigorous and positive action in addressing the present crisis in Zimbabwe.

Thank you.
Restoring Justice in a Fragile Democracy

By Marika McAdam

In February 2005, Edwina Howell and I began our three month legal internship in Timor at Advocats Sans Frontières (ASF) - Lawyers without Borders in English. The mission of ASF is to contribute to the development of the justice sector, no small task given that, like everything else in the world’s newest nation, the legal system is a work in progress. The formal justice system in these very early days is a mix of rules and codes which the powers that be are picking and drafting as they go. In addition to the deficiency of available resources is the challenge of incorporating, preserving and adapting traditional justice into the matrix. Adat, as traditional justice is known, is dispensed by village leaders (Chefe de Suco). Sometimes issues are mediated to enormously good effect, but sometimes a rapist will be punished by having to present the victim’s husband with a pig or goat as ‘compensation’ for the damage done to his ‘property’. As a serious crime, rape must now be dealt with by the formal justice sector, but one must wonder whether that system can yet be offered as an alternative to Adat given the often inconsistent findings and inordinate delays. There is a long way to go before the cultural and linguistic obstacles are overcome, but challenges are being identified and addressed.

East Timor’s psyche was born of revolution, and now the frustrations of revolutionaries turned office staff, resonate throughout the dilapidated capital city of Dili, where a public protest can teeter for weeks on the verge of a riot. And throughout the dilapidated capital city of Dili, where a public protest can teeter for weeks on the verge of a riot. And in some ways it is. The number of UN soldiers and foreign police is progressively diminishing, but there is still an eclectic collection of people from all over the world. Expats sit in bars to share beers and stories that weave their way through continents and eras. Every now and then a truck drives by, overflowing with people and fists and flags and slogans – quite reminiscent of the newspaper photos that first stirred my interest in this country years ago.

If Dili (and Canberra for that matter) is anything to go by, then it’s fair to say you can’t judge a country by its capital city. The ‘real East Timor’ starts the minute the dust stops. It’s divine. It’s surreal. It’s everything you would imagine on a tourist brochure, without so much as a hint of a tourist. One wonders why that is, given the rolling green terrain, the palm trees overhanging untouched beaches, the islands that float off-shore and the sunsets that illuminate carpets of rice fields and perfectly choreographed village scenes. I swear it – this is a beautiful country. But even the most far-flung place in the country reveals clues to the trauma it has endured.

High on my list of things to do in Timor Leste was visit Balibo – the scene of the notorious murder of the ‘Balibo five’, whose deaths caused a domino effect of consternation over Australia’s knowledge and complicity with Indonesia’s actions. The site is now something of a place of pilgrimage for Aussies who have ventured over to their island neighbour to play their various cameos on the stage of its history. Adding my name to the guest book evoked simultaneous and incongruous feelings of both pride and shame in my country’s relationship with this nation.

It takes years and years of human activity to replace sad stories with new memories, but East Timor has only had six. During our first month in the country, we experienced an earthquake. While I trusted in the misguided sense of invincibility that comes from a life of luck, locals ran into the streets to bang on tins to ward away evil spirits. They were genuinely terrified that they could die, because their history dictates that impossibly bad things are in fact possible. And indeed, a block down the road a two storey building came crashing down and remained scattered across the road for some time, as evidence of the fragility of order. But before leaving Dili, I was heartened to see that like every other broken thing in this proud nation, the remnants of this tragedy were gradually being cleared away to make room for something new to be built in its place.

Marika McAdam is a Castan Centre member. She was a legal intern with Advocats sans Frontières from February to May 2005.
A Partner in Need

Reprieve Australia, which has a close working relationship with the Castan Centre, is calling for donations to help the Justice Centre in New Orleans to recover from the devastation of Hurricane Katrina.

The Justice Centre houses a number of organizations assisting people charged with capital crimes. While the full extent of the damage is not yet known it seems that the centre has been ruined. Many employees of the organisations have lost their homes and belongings and are working from an associated office in Texas, trying to locate clients and their clients’ families. Starting up a new office under such circumstances will be costly. Much-needed donations can be sent to:

Reprieve New Orleans Relief Fund
GPO Box 4296
Melbourne Vic 3001

Alternatively visit:
http://www.thejusticecenter.org/lcac/donations.html or
http://www.reprieve.org.au

Castan Centre in the Media

Castan Centre staff continued to comment in the media on important human rights issues in the first half of 2005.

In April, the centre Director, Professor Sarah Joseph, appeared on Insight on SBS as a special guest. The program was called Whatever it Takes, and focused on the burgeoning debate surrounding the use of torture in the “war on terror”. That debate further intensified in Australia when two Deakin University academics published a paper advocating the use of torture to combat terrorism. In response, Sarah and the centre’s Project Manager, Marius Smith, wrote an opinion Piece for The Age on May 18 entitled “Torture is Inhuman, Illegal and Futile”. The centre has also continued to actively address indigenous matters in the media. Associate Director Melissa Castan was quoted in the National Indigenous Times in June and August discussing the centre’s collaboration with law firm Arnold Bloch Liebler in assisting the Wadaye community in the Northern Territory to improve its dire economic situation. The issue was also picked up by The Age on June 17, where Melissa was again quoted, together with Castan Centre member, David Yarrow. David was interviewed on ABC radio station Triple J about the same matter.

Finally, the visit by Zimbabwe’s Shadow Minister for Justice, David Coltart, received widespread media coverage in Melbourne and around the country.

For more information, click on “media” at www.law.monash.edu.au/castancentre.

Castan Centre Welcomes its Newest Member

All of the staff at the Castan Centre and Monash Law School were delighted to welcome the centre’s newest member on May 11, 2005 when Associate Director Julie Debeljak gave birth to a healthy baby boy, McGregor (Mac) Debeljak.

Julie, Mac and Mac’s dad, Simon McGregor, are all doing well, except for some sleep deprivation!

Julie also recently completed her PhD thesis, entitled “Human Rights and Institutional Dialogue: Lessons for Australia from Canada and the United Kingdom,” and participated in an Academic Roundtable with the Victorian Human Rights Consultative Committee relating to the protection of human rights in Victoria. Julie is currently on well-earned maternity leave. She will be back at Clayton for second semester 2006.

Opposite: Julie and Mac

Castan Centre Advisory Board

Professor Philip Alston
New York University School of Law.

Professor Virginia Dandan
Chair, UN Committee on Economic, Social and Cultural Rights.

Mr Patrick Dodson
Lingiari Foundation

The Hon Elizabeth Evatt AC
International Commission of Jurists.

Professor Claudio Grossman
Dean, Washington College of Law, The American University.

The Hon Judge Felicity Hampel
County Court of Victoria

Professor Christof Heyns
Professor of Human Rights Law, Univ. of Pretoria, South Africa.

The Hon Justice Michael Kirby AC CMG
High Court of Australia.

Professor Ivan Shearer
UN Human Rights Committee.

His Excellency, Judge C.G. Weeramantry
Judge ad hoc, International Court of Justice

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Publications


Media


Papers

S. Joseph, ‘Multinational Corporations, Development, and Human Rights’, International Conference on Human Rights and Development: Approaches to Reform of Governance in Asia, School of Law, City University of Hong Kong, Hong Kong, 9 May 2005


S. Kneebone and E. Howell, Submission to the Senate Legal and Constitutional References Committee regarding the Inquiry into the Administration and Operation of the Migration Act 1958, July 2005.

M. Castan, ‘Native Title and Mabo: An insiders insight’, National Native Title Tribunal.


Native Title Report Completed, Internships Established at Indigenous Bodies

Melissa Castan, Associate Director of the Castan Centre, and Honorary Research Fellow Richard Potok, from the University of New South Wales, have completed a report examining Native Title law and practice.

The Report evaluates the challenges Native Title Representative Body (NTRB) lawyers face while representing the interests of native title claimants. The Report also outlines appropriate strategies for developing training and professional development programs.

Research for the Report involved comprehensive consultations with legal and managerial staff of NTRBs, as well as other professionals who work or otherwise deal with NTRB lawyers. Substantial background research was also undertaken.

The research project has the involvement and support of NTRBs across the country, Aboriginal Torres Strait Islander Services, the National Native Title Tribunal, the Federal Court of Australia, the Australian National University, the University of New South Wales, law firms Chalk and Fitzgerald, Arnold Bloch Leibler and Gilbert + Tobin, as well as several philanthropic foundations.

As a result of the research and feedback gained during the project, student internships have been established to increase student participation and awareness of career opportunities in native title. Students spend six weeks at an NTRB or a policy think tank such as the Cape York Institute for Policy and Leadership. Students undertake a range of tasks including research and preparation of witness evidence. Feedback from the program has been overwhelmingly positive. Melissa and Richard were assisted by Monique Sweetland, who provided tireless research work.

The Report is available at: www.law.monash.edu.au/castancentre/
Six Questions for Paula Gerber, new Associate Director of the Castan Centre

Where were you working prior to coming to the Castan Centre?
I was a partner in a large Melbourne law firm until 2000 when I left full-time private practice in favour of a portfolio career consisting of: Senior Fellow in the Faculty of Architecture, Building & Planning at the University of Melbourne and Director of Construction Law Studies at the Law School there; consultant with Lander & Rogers, Lawyers; and Sessional Member at VCAT.

Tell us about your time as a construction lawyer.
I was in private practice for 20 years before making the move into academia. Most of the time I enjoyed it because it allowed me to work in some great places – I spent five years in London and five years in Los Angeles.

What inspired the switch to human rights law?
Basically I became jaded with construction law; every dispute looked the same and there was nothing new or exciting about it. So, in my search for other areas of law that might be more meaningful and interesting, I decided to do a masters in law at Monash and one of the first subjects I did was International Human Rights Law with Sarah Joseph. I was hooked and knew that I had found my niche. So I finished my masters doing as many human rights subjects as I could and then enrolled in a PhD at the University of Melbourne.

Which area of human rights law are you most passionate about?
My PhD looks at the international law obligation to educate children about human rights. A few years ago, I taught a Human Rights course at the University of Prishtina in Kosovo and was surprised by my students’ lack of knowledge about human rights. Then I realised that Australian students are no different because they don’t learn about human rights at school.
So my passions are human rights education and children’s rights. I believe that one of the best ways to improve respect for human rights is to educate the young about their rights. One of my favourite expressions is: 
If you are thinking a year ahead - plant seeds; if you are thinking 10 years ahead - plant a tree; if you are thinking 100 years ahead - educate the people (Kuan Tzu).

What do you see as the biggest human rights issues in Australia?
Human rights has become a dirty phrase. It has been labeled as something that only the “chattering class” is interested in. As a result human rights here are regressing. This can be seen in David Hicks’ detention at Guantanamo Bay and our government’s silence in the face of his pending ‘trial’ which violates all standards of fairness and natural justice; the demonising of asylum seekers and their indefinite imprisonment; and the treatment of indigenous Australians, in particular the lack of reconciliation. One way that we can address these issues is through formal and informal education.

Where do you see the Castan Centre going in the future?
The centre has a reputation as one of the preeminent human rights law centres in Australia. I see this continuing, particularly in the field of human rights education. We have conducted human rights training for delegations from Iraq and Indonesia as well as for our own Department of Foreign Affairs and Trade. I see these courses as a vital part of the centre’s work and envisage them increasing in the future.

In 2006, the Monash Law School will launch the first Masters in Human Rights Law in Australia. This is in line with our mission to protect and promote human rights through the provision of education. I would like to see the centre at the forefront of human rights education, not just for lawyers and law students but for the community generally. We have a key role to play in promoting human rights through inter-disciplinary education of people from all sectors of society.
New Publication

Human Rights 2004: The Year in Review

Edited by Marius Smith

The edited, collected papers of the Castan Centre’s ‘Human Rights 2004: The Year in Review’ conference is now available in book form at AUD22 per copy (GST included).

Authors include: Richard Bourke, Elizabeth Evatt AC, Anne Gallagher, Pru Goward, Debbie Mortimer SC, Heisoo Shin and Margaret Thornton.

To purchase, simply follow the links on our website:
www.law.monash.edu.au/castancentre

Conference

Human Rights 2005: The Year in Review

Friday, 2 December, CUB Malthouse, Southbank

Arjun Sengupta, UN Independent Expert on Human Rights and Extreme Poverty and Holding Redlich Distinguished Visiting Fellow

International cooperation for fighting extreme poverty

Kirsty Nowlan, World Vision

Beneath the wreckage: Locating human rights discourse in the responses to the Asian tsunami and Hurricane Katrina

Bernadette McSherry, Monash University

Human rights and mental health: The gap between legislating and implementing human rights

Martin Flynn, UWA

Reconciling “Practical Reconciliation” with the Racial Discrimination Act 1975 (Cth)

Colin Fenwick, Centre for Employment & Labour Relations Law, University of Melbourne

Australia’s new labour laws: An international legal perspective

Andrew Byrnes, UNSW

‘Reform’ of the UN human rights bodies: an era of larger freedom or fighting the same battles once again?

Helen Watchirs, ACT Human Rights and Discrimination Commissioner

The ACT Human Rights Act 2004: Lessons and experience from 18 months of operation

David Wiseman, University of Windsor, Canada

Poverty and a Victorian Bill of Rights: A view from Canada

For more information: 03 9905 3327

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