Mining, Security and Human Rights

Inside

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Gala dinner announced for 2012

On October 25, the Castan Centre will again be holding a gala dinner at Carousel on Albert Park Lake with Noel Pearson AM as the keynote speaker. Mr Pearson will talk about the proposed constitutional recognition of Indigenous Australians.

Following on from the success of 2010’s 10th anniversary dinner, which was attended by 350 people and featured Michael Kirby and Patrick McGorry, the evening promises to be a fantastic event. It will be another great opportunity for the human rights community to come together to enjoy some great food and wine, laugh along to the antics of the MCs, and maybe even place a bid in the charity auction...

Details are still being finalised, but invitations will be sent out soon. Be sure to put the date in your diary!

Centre Alumnus Wins Monash Alumnus Wins

The 2012 Sir John Monash Medal for outstanding achievement has awarded to Cara Bredebusch. The award, originating in 2009, is given each year to an undergraduate law student who is judged to have an excellent academic record and to have demonstrated a significant commitment, while at Monash, to advancing the University’s goals of social justice, human rights and a sustainable environment.

Cara has been dedicated to social justice throughout her academic and professional career. She developed her interest and understanding in human rights through study, extra-curricular activities and volunteer work. Cara studied various human rights law subjects and participated in the Victorian Charter of Human Rights and Responsibilities Mooting Competition in 2010, researching and advocating the application of the Charter in Victoria.

As a university student, Cara tutored refugee students and volunteered as a paralegal at various Community Legal Centres. She was also a member of her local council’s Youth Advisory Group. She built on her passion by completing the Castan Centre’s Global Internship in 2010-2011 where she worked with a refugee legal centre in South Africa. The internship was supported by the Monash-Oxfam program. Upon her return to Australia, Cara was an in-house intern at the Castan Centre and continued to contribute to the organisation’s goals.

Cara is currently completing a traineeship with a law firm, whilst still pursuing her personal interest in human rights. She continues to volunteer at Community Legal Centres and is also a part of the Starlight Foundation as a ‘wish granter’. Whichever direction Cara’s career may take her, she is dedicated to contributing to society and will continue to follow her passion for human rights.

New Book on Human Trafficking

Recent decades have seen an alarming increase in human trafficking, through sex trafficking, labour trafficking, forced marriages and forced adoptions. Over the past few years Professor Susan Kneebone and Dr Julie Debeljak have conducted intensive research in this field, particularly in the South East Asian region. As a result of that work, they have just published a new book, Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion, which explores this very issue.

Through a case study of the Greater Mekong Subregion (GMS) – Cambodia, the Yunnan Province of the People’s Republic of China, Lao People’s Democratic Republic, Myanmar, Thailand, and Vietnam – this book provides an evaluation of national, regional and international responses to the transnational crime of human trafficking. Drawing observations from the findings of a three year study conducted in the region, involving on-the-ground interviews with more than 60 individuals from relevant organisations and agencies, the book examines the social, political and historical factors which form the background to human trafficking in the GMS.

Prof. Kneebone, a former Deputy Director of the Centre, and Dr Debeljak, a Deputy Director, consider issues of competing mandates, and gaps in the strategies devised for protection. They also look to the broader lessons that can be learned from the situation in the GMS, providing valuable suggestions as to how governments and non-governmental institutions can attempt to end human trafficking.
An Update on the Accountability Project

In a bid to use its expertise to improve legal protections, particularly for vulnerable Australians, the Centre launched its Accountability Project in August last year. The project uses policy work and public engagement to highlight weaknesses in Australia’s protection of human rights. Since then, Accountability Project Manager Adam Fletcher has been busy with the wide variety of tasks required to keep various state, territory and federal governments accountable. As Adam puts it, “The Accountability Project is a unique hybrid of policy and academic work; a challenging role which I have enjoyed immensely over the last 10 months. The Project is an interface between the Centre and policy-makers, external experts and the general public.”

The most public aspect of the project has been Adam’s regular posts for the Centre’s blog. With seventeen posts since he took on the position, Adam has been posting every few weeks on topics as diverse as asylum seekers, the consolidation of federal anti-discrimination law, the need for better privacy protection in Australia and independent oversight of detention conditions. One blog post, on changes to extradition and mutual assistance changes, was the first piece of public commentary on new legislation that passed unnoticed in a week that saw the infamous Labor leadership spill between Julia Gillard and Kevin Rudd. The post has gone on to be our most popular ever. An offline version can be read on pg. 7.

Another core activity of the Accountability Project has involved making submissions to various government inquiries. The Centre’s submissions so far in 2012 have included in-depth research papers for the Federal Attorney-General’s Department on consolidating anti-discrimination laws and on the third Optional Protocol to the Convention on the Rights of the Child, and for parliamentary committees on the Government’s proposal to become a signatory to the Optional Protocol to the Convention Against Torture; and on mandatory and minimum sentences for people smugglers. The latter submission saw one of the Centre’s recommendations directly adopted by the Senate Committee in its final report.

At the moment, the Centre’s biggest policy project is the drafting of a report on rates of imprisonment, focusing on vulnerable groups including Indigenous Australians, youth and those with a cognitive disability, and current analysis of utilisation of alternative sentencing options. The report has been commissioned by the Commonwealth Government as part of its Human Rights Action Plan. It will be delivered to the Government in June and will influence policy in this area.

When not working on the report, Adam is keeping his eyes on the issues of the day. As he says, “New issues worthy of comment crop up every day, and the Centre can’t cover them all in depth, but through the Project we aim to give as much air as possible to the human rights law perspective in debates on these issues.”

The Accountability Project also engages with the human rights debate through the mainstream media. Since taking on the role, Adam has written for the ABC’s “The Drum”, new academic journalism site “The Conversation”, and been interviewed for “New Matilda”. This work adds to the Centre’s growing engagement with the media which saw media mentions and appearances double in 2011.

With all this work to do, Adam has been ably assisted by the Centre’s in-house interns, who he also manages. Currently, the bulk of his time is taken up working on the Alternative Sentencing for Vulnerable Offenders project which is being funded by the Attorney-General’s Department through the Grants to Australian Organisations Program. This research project is due to report in June.

The Accountability Project is partly funded by the Helen and Bori Liberman family.

Check out the Castan Centre Blog at castancentre.com.

Castan Centre submissions can be found at www.law.monash.edu.au/castancentre/publications/submissions.html

Big names headline this year’s conference

Global warming, the ‘war’ on obesity and social media in the Tunisian revolution are just some of the areas that will be explored during Human Rights 2012, the Castan Centre’s annual conference. The conference, to be held on 20 July 2012 at the Spring Street Conference Centre, is sure to provide an engaging dialogue on human rights, while ruffling a few feathers along the way.

Tim Flannery, Professor at Macquarie University and 2007 Australian of the Year, will launch the day by discussing the intermingling nature of human rights and global warming. As a topic of continued debate within the political community, especially amidst the introduction of the carbon tax in Australia, this will provide an insightful look into the future.

The second session will focus on age discrimination with Ms Susan Ryan AO, the Commonwealth Age Discrimination Commissioner discussing equality before the law in light of age bars in Commonwealth laws and policies. This will be tied in with her current inquiry for the Australian Law Reform Commission into barriers to work for older persons. Dr Kerry Arabena, Professor and Director of Indigenous Health at Monash University, will explore the topical issue of the recognition of Indigenous people in the Australian Constitution and Dr Samantha Thomas, Senior Research Fellow at Monash University, will address the highly topical problem of obesity facing young Australians. The focus of the session will highlight the myths surrounding obesity and its links to human rights.

Mr Gareth Evans AO QC, former Australian Foreign Minister and CEO of the International Crisis Group, will kick off the afternoon session with an in-depth analysis of the Responsibility to Protect after the recent uprisings in Libya and Syria. Sami Ben Gharbia, Tunisian blogger and Advocacy Director of Global Voices, will follow this up with a contemporary discussion on the role of social media in the Tunisian revolution, in the context of the Arab Spring.

The day will close with Mr Allan Asher, former Commonwealth Ombudsman, exploring the energetically debated rights of asylum seekers, and Mr Ron Merkel QC, barrister and former Judge of the Federal Court of Australia, addressing the historical changes in the current constitution. All in all, it promises to be an enthralling day of human rights discussion and debate.
Sell-out conference addresses human rights in “closed environments”

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

These words, from Article 10 of the International Covenant on Civil and Political Rights, enshrine a well-recognised right to humane treatment for all persons. Despite this, there is an alarming silence within the human rights discourse as to how state-run institutions like prisons, closed psychiatric and disability facilities and immigration detention centres can ensure that the rights of those whose liberty they confine are respected. Seeking to address this very issue, on Monday 20 February 2012, Associate Professor Bronwyn Naylor and Dr Julie Debeljak conducted a two day conference on Implementing Human Rights in Closed Environments.

The first plenary session saw fascinating addresses from Prof Claudio Grossman, Ellen Hansen and Oliver Lewis. Speaking from distinctly international perspectives, these three speakers began the conference by discussing how human rights in closed environments are recognised across the realms of international treaty based law, immigration detention and disability institutions. Ellen Hansen’s (Senior Protection Officer for UNHCR Regional Representation in Canberra) address was particularly shocking as she discussed human rights within the context of Australia’s immigration security detention centres.

The second plenary session involved speakers from the UK (Dame Anne Owers), Canada (Dr Ivan Zinger) and New Zealand (Ms Natalie Pierce). Each discussed their experiences primarily in the prison system of their own state. These three speakers highlighted a universal need to focus on the everyday, and seemingly mundane, needs of individuals when implementing human rights in closed environments.

The conference then broke out into parallel sessions, allowing for the exploration of the international and comparative perspectives of the morning in sector specific settings. In the parallel session on closed psychiatric settings, it was suggested that those in psychiatric facilities are absent from the public mind more than any other detained group. Tom Dalton, CEO of Forensicare, suggested that the national system was fractured due to an absence of national policy statements or principles on forensic mental health.

Other parallel sessions addressed prisons, with a presentation by Neil Morgan and facilitated by Dame Anne Owers and Ivan Zinger; disability settings, with a presentation by Ron McCallum and facilitated by Claudio Grossman; and asylum detention, with a presentation by David Manne and facilitated by Ellen Hansen.

The first day of the conference finished with a session on the current research of the ARC research group led by Dr Julie Debeljak and her colleagues. Their research will assess how human rights standards and obligations, which correspond to treating all humans with respect and dignity, are carried out with a variety of partners and interest groups with a focus on prisons; police cells; forensic psychiatric institutions; closed disability settings and immigration detention. A critical aspect, as highlighted by Dr Inez Dussuyer, is monitoring of the role of oversight agencies.

The second day began with a discussion of monitoring closed environments. Four speakers addressed the topic from different but overlapping perspectives. Mr Richard Harding, formerly Inspector of Custodial Services in Western Australia warned that Australia appeared unlikely to ratify the United Nations Optional Protocol to the Convention Against Torture (OPCAT). Catherine Branson, President of the Australian Human Rights Commission, while being a strong advocate for the positive effects of monitoring, suggested monitoring itself was not enough, given the very serious human rights breaches in the very fact of mandatory and indefinite detention. John R Taylor, the Victorian Deputy Ombudsman since 2004, added to this by comparing current conditions of prisoners now as opposed to 5 years ago, highlighting both improvements and inadequacies in the system.

The sixth plenary session was based on the premise that changing the culture within closed environments is fundamental if a human rights framework is to be successfully implemented. Jern Stevens, Asia Pacific Programme Officer at the Association for the Prevention of Torture made clear that it is not only management, but also the views and values of the people held or detained – as well as broader societal attitudes – which have a role in shaping the culture within a closed environment. Colleen Pearce, Victoria’s Public Advocate, was critical of the limited nature of public intervention in these areas.

The seventh session again broke out into parallel gatherings, allowing deeper exploration of the practically focused session of the morning in sector-specific sessions. In the parallel session on psychiatric settings, the diversification of psychiatric care presented many challenges in dealing with policy implementation. The parties in the session’s discussion recognised that the bottom line in maintaining the desired level of care is ongoing training and strong leadership. It is clear that this is an essential aspect to the successful implementation of change in many closed environment settings. The other parallel sessions addressed prisons, disability settings, and asylum and immigration.

The final session of the conference saw the presentation of recent ARC research findings concerning human rights issues relating to Australian prison and immigration detention environments. Dr Bronwyn Naylor revealed a number of critical concerns within prisons, including issues surrounding family visits, healthcare and overcrowding. Tania Penovic, Deputy Director of the Castan Centre for Human Rights Law, gave an insightful presentation on the implementation of human rights in immigration detention specifically. The issues demonstrated the manner in which human rights and respect go hand in hand.

The conference papers and research findings presented across the conference show that Australia still has a long way to go in ensuring that the treatment of some of our most vulnerable people – those detained in closed environments – accords with human rights standards and obligations, which correspond to treating all humans with respect and dignity.
Global Interns Return Home

By Mini Chandramouli

The 2012 Global Internship program provided a platform for exciting new opportunities and experiences for all twelve of our high calibre interns. This year's program was our most diverse and expansive with placements ranging from the Center for Constitutional Rights in New York to Plan International in Haiti. Each intern had a unique experience of human rights issues on the continents they visited.

Three of our interns headed to Africa and advocated for key issues specific to the region. Kylie Pearce interned at the Human Rights Advocacy Centre in Ghana. Within her first week, Kylie was in the field conducting interviews in the local slum which had been demolished unannounced by government authorities. She was on a fact finding mission and her subsequent report was submitted to parliament and garnered national media attention. Kylie saw human rights violations, bribery and corruption at the highest levels of government during her internship, but far from being disheartened, Kylie has started her own NGO – Human Rights Youth Advocacy Centre in Ghana. Within her first week, Kylie was in a specific to the region. Kylie Pearce interned at the Human Rights Center for Constitutional Rights in New York to Plan most diverse and expansive with placements ranging from the Center for Constitutional Rights in New York to Plan

Sandra Murray and Divya Roy undertook a six week internship with Oxfam Australia in South Africa, where they were placed within the Refugee and Migrant Rights program. The interns were the first point of contact for drop-in clients and one of the most common issues was the lack of identification documents required to apply for asylum seeker permits. The interns would assist these people in writing affidavits and this simple document meant the difference between a person being an illegal alien or a documented asylum seeker. Sandra and Divya often attended client interviews when they investigated why clients left their originating countries. The majority of these people had experienced or witnessed horrific acts of violence and the interviews Divya and Sandra to understand firsthand how lawyers deal with such sensitive matters. For both interns, the experience solidified their ambitions to pursue a career in social justice and stimulated a new interest in refugee law both in Australia and globally.

Interning in The Hague, Giselle Diego and Jeremy Shelley underwent an enriching experience at the offices of International Criminal Law Services. One of their major projects was to create training manuals for practitioners who were conducting domestic war crimes trials in Kosovo. In order to gain guidance on the political and legal landscape in Kosovo, they had the opportunity to meet the head of chambers at the International Criminal Tribunal for the former Yugoslavia, Catherine Marchi-Uhel. The experience instilled in them a strong belief in the goals of the International Criminal Law Services.

Amanda Thompson interned a little closer to home at International Women's Rights Action Watch – Asia Pacific in Kuala Lumpur. The majority of Amanda’s work was focused on preparing for the 51st reviews session for the Convention on the Elimination of all forms of Discrimination Against Women in Geneva. As part of her stint, Amanda had the opportunity to attend the session in Geneva and was witness to the amazing capacity that these sessions have to trigger change, however incremental, in State parties. Amanda’s experience broadened her appreciation of gender development and policy and she felt empowered by the work of the organisation.

At Human Rights First in New York City, Nabila Buhary completed an enthralling internship working predominantly with the Refugee Protection Program. Within the first week, Nabila had the chance to work directly with clients and she was constantly amazed by the wealth of knowledge within the organisation. The most rewarding experience for Nabila, and one which cemented refugee law as her future career choice, was seeing one of her clients granted asylum. Nabila hopes that the knowledge and experience she has gained will allow her to continue to pursue social justice for refugees.

Alison Cole also interned in New York, at the Center for Constitutional Rights. Alison’s interest in corporations and human rights fit perfectly with the Center’s work on the Kiobel case before the US Supreme Court, a case which is set to determine the liability of US corporations for human rights abuses abroad. Alison’s experience in New York has strengthened her desire to find a career in human rights law.

Manav Satija interned with the International Commission of Jurists in Geneva. Throughout his experience, Manav had the real sensation that the work he was doing was ‘cutting edge’ and critical in the area of economic, social and cultural rights. One of his major projects involved conducting research for an ICJ submission to the UN Economic and Social and Cultural Rights Committee on rights relating to employment. Manav found the experience inspirational, insightful and enjoyable and he is confident that he will be able to integrate some of his incredible experiences into practice.

Four more interns, Jeremy Shelley, Elisabeth Howard, Melody Stanford and Tessa Daws interned at International Criminal Law Services in The Hague, Plan International in Haiti, UNHCR in Kuala Lumpur and the Special Rapporteur on the Right to Health in Delhi. You can read their final reports on pages 13 to 16.

The 2012 Global Internship program was extremely successful, with each of the interns bringing back a unique perspective on global human rights issues which will be sure to enrich their future endeavours, whether here in Australia or overseas.

For more information on this year’s Global Interns, visit castanglobalinterns.wordpress.com.

The Global Internship Program was made possible by the support of Daniel and Danielle Besen, Sylvia and Michael Kantor, the Dara Foundation, the Nordia Foundation, the Alan and Elizabeth Finkel Foundation, the Monash Law Faculty's Student Mobility Fund, the Monash University Office of the Deputy Vice Chancellor (Education) and MyriA 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.html.
Mining, Security and Human Rights

Opinion by Centre Associate, Joanna Kyriakakis

Australia could be doing more to regulate the activities of Australian companies operating abroad. In the past decade a handful of troubling cases have been reported connecting Australian mining companies to serious human rights abuses overseas. Anvil Mining and Oceana Gold were two prominent examples where Australian mining interests had come under the spotlight for alleged human rights abuses connected in some way to those companies’ overseas operations.

As recently as December last year Arc Exploration Limited (ARX) made headlines when two protesters were shot dead and others were injured by Indonesian police while protesting against the company’s mining exploration licence in Sumbawa, Indonesia. Protesters have opposed potential mining in the area due to concerns as to environmental and economic impacts. The company initially halted its operations following the violence. Indonesian authorities have since revoked the company’s licence entirely citing civil disturbance and security issues as the basis for its decision.

While there is no suggestion that ARX was involved in the violence in this case, questions were raised as to the relationship between the company and the police in question. This is quite rightly information that should be on the public record.

Relationships between mining companies and security forces are an issue of legitimate public interest and concern. According to the UN Special Representative for Business and Human Rights, of the worst cases of corporate-related human rights abuses in recent years the extractive industries utterly dominate the field. Typically this is for conduct by security forces seeking to secure company assets and property.

The risks associated with security and mining operations is a subject that has received increasing attention in recent years. Coining by Craig Forcese, ‘militarized commerce’ is the increasing phenomenon of companies acquiring services from military or para-military forces as security for firm operations. Risks emanating from such arrangements are most acute where mining takes place in conflict or post conflict areas or in states with weak governance unwilling or unable to mitigate the adverse impacts of mining.

In the Arc Exploration Limited case, a spokesperson for ARX has indicated that no benefits or other payments have been made by the Company to the Indonesian police. But the case does give us reason to pause and consider the vexed issue of security, mining and human rights.

One international mechanism developed in order to address the specific risks arising from mining and security is the Voluntary Principles on Security and Human Rights. By joining these Principles, signatory companies, of which there are currently 19, agree to undertake risk assessments to identify security risks arising from their operations. The assessment must consider whether a company’s actions may heighten particular risks, the human rights records of security partners, and patterns of violence in the region.

Whilst the Principles have enabled an important ongoing dialogue between participating parties and have achieved success particularly where companies internalise the principles endorsed, they are ultimately aspirational being neither legally binding nor incorporating any form of grievance mechanism where they are not met. These are limitations common to the voluntary and self regulatory mechanisms that dominate the regulatory landscape in the field of business and human rights internationally.

Some individual states are taking steps towards strengthening regulation. Seeking to go beyond voluntary initiatives and the current status quo of an ostensibly ‘sanction-free environment’, John McKay MP introduced Bill C-300 to the Canadian Parliament in 2009. A relatively modest proposition, the Bill would have enabled Canadian government authorities to investigate complaints against Canadian resource companies operating abroad and to withhold public funds from companies found to have breached certain environmental and human rights standards. The Bill was motivated by reports of serious human rights violations related to Canadian resource operations abroad and the impact these were having upon the reputation of Canada internationally. The Bill was narrowly defeated by 140 to 134 following a significant campaign opposing the Bill undertaken by the mining lobby.

An issue at the heart of the Bill was the use of Canadian taxpayer monies to fund and support extraterritorial Canadian resource operations, even where credible evidence exists that such operations may be linked to environmental or human rights damage. The same issue is important here in Australia. Jubilee Australia for example is one organisation seeking to put the spotlight on the Australian government’s export credit agency, the Export Finance and Insurance Corporation, and on a troubling lack of transparency and human rights considerations in its decision making.

In this respect, one avenue that might be considered is requiring public funding to be conditional upon the kinds of risk assessments endorsed by the Voluntary Principles being undertaken by Australian companies seeking government support.

In Australia, the public debate regarding the regulation of our mining companies abroad has been largely silent since the failed attempt in 2000 by the Australian Democrats to introduce the Corporate Code of Conduct Bill (Cth). That Bill sought to impose and enforce human rights standards on the overseas conduct of Australian corporations. Exceptions to this silence are those laws that have recently come into operation with extraterritorial dimensions that attach to corporations largely as an incidence of their application to natural persons. Examples include prohibitions on bribery, sex tourism and international crimes (e.g. war crimes, crimes against humanity, genocide).

The recent experience in Canada shows the polarisation of views likely to be encountered with any proposal to directly regulate Australian mining operations abroad. But as recent events remind us, it is an issue that cannot be ignored.
Extradition and Mutual Assistance Changes
Slip in Under the Radar

At the beginning of March this year, in the aftermath of the infamous Labor leadership showdown and when all eyes were on the Carr for Canberra drama (doesn’t that all seem like ancient history?), federal Parliament passed the Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011. Unless I missed it, the passage of this Bill into law garnered not a single headline at the time; but it should have, because it makes major changes to Australia’s cooperation with other countries in criminal cases.

According to the Government’s press release, the Bill is aimed first and foremost at ‘streamlining the extradition process and cutting delays.’ A lot of this streamlining involves relieving the Attorney General of the burden of taking into account various considerations relevant to a person’s eligibility for extradition (mostly rights protections) because such consideration is said to duplicate the work of the magistrates who deal with extradition applications at first instance. An alternative view is that it removes a layer of accountability from a process which has already been criticised for its lack of review rights, but it will no doubt save time as intended.

For the first time, the Commonwealth Extradition Act 1988, as amended by this Bill, allows a person to be extradited for minor offences (punishable by less than 12 months imprisonment) or to waive the extradition process altogether. A magistrate presiding over the case must be satisfied that the waiver is voluntary, and must inform the person of the consequences of his/her decision, but a lot of checks and balances can be bypassed this way. Thankfully, a requirement that the person be given an opportunity to have legal representation has been included, although it would be better if it were a mandatory requirement, given the gravity of the decision.

Some of the existing protections in the Act involve refusal of extradition where a person may face the death penalty or torture. They still apply after these amendments, but the wording of the death penalty protection is different if someone waives extradition. In other circumstances, before authorising ‘surrender,’ the Attorney-General has to consider the likelihood of the person being (a) tried, (b) convicted, and (c) sentenced to death, before proceeding to consideration of whether the death penalty is actually likely to be carried out. The new section on surrender determination after waiver simply requires her to consider whether there is a ‘real risk’ of the execution actually happening.

Still, there is less emphasis on diplomatic assurances from the requesting country, which is a welcome development. Such assurances are usually non-binding promises that the suspect will not be executed or tortured. Since there’s no reason to seek them unless the country in question is known to persecute people, they are a dubious way of ensuring compliance with the duty not to send people to places where we know their rights will be violated (the international obligation known as non-refoulement).

Unfortunately, and despite recommendations from bodies such as the Law Council, the amendments still do not prevent extradition if the person faces cruel, inhuman or degrading treatment or punishment which is not severe enough to amount to torture. Concerns over the likelihood of the person receiving a fair trial are also overlooked.

One of the more worrying aspects of these amendments is their potential effect on people who might be extradited for political offences. Before this Bill, extradition had to be refused if the alleged crime was really in the nature of a political protest. Specific crimes outlawed by multilateral treaties such as hostage-taking and war crimes have always been excluded, as have large scale crimes or attacks on diplomats or heads of State. Now though, the definition of ‘political offence’ will exclude ‘any offence that involves an act of violence against a person’s life or liberty’ or ‘any offence prescribed by regulations…’

The Explanatory Memorandum accompanying the Bill clarifies that terrorist offences are among those which will not be considered political offences, but there have been many instances of unpleasant governments around the world which have not hesitated to call any group agitating for better political representation or independence ‘terrorists.’ Not even pacific Buddhist monks are immune. In fact, Fox News has called the Occupy protestors ‘domestic terrorists,’ and reported that a US Department of Defence exam labelled protests a form of ‘low-level terrorism.’ It is to be hoped (and expected) that the Australian Government would not extradite such people, but it would be better if the legislation excluded the possibility explicitly.

Despite these concerns, the Bill is noteworthy for some positive changes. For example, people can no longer be extradited if they ‘may be punished, or discriminated against upon surrender, on the basis of [their] sex or sexual orientation.’ This is in addition to the existing grounds of objection – namely race, religion, nationality and political opinion.

In addition, when it comes to the provision of official assistance in criminal matters under the 1987 Mutual Assistance Act, Australia can now refuse to assist if it would result in torture or discrimination on the basis of sexual orientation (in addition to existing grounds). Refusals on the basis of human rights can also be made at the investigation stage (rather than after prosecution or punishment as previously), which greatly expands this protection. However, as with extradition, ill treatment not amounting to torture and unfair trials still do not constitute grounds for refusal.

This Act constitutes major reform in the area of extradition and mutual assistance, and raises several other human rights issues (including e.g. presumptions against bail, ‘serious offence’ thresholds and cooperation with requests for surveillance from foreign countries). If you have an interest in this area, I urge you to familiarise yourself with these important changes and consider their implications.

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Cambodian NGO Releases Landmark Report on Resettlement

By Roxana Zamani-Ashni

The Cambodian railway project recently received funding by the Asian Development Bank (ADB) and AusAID to begin a rehabilitation and large-scale redevelopment program. 650 kilometres of the railway infrastructure were to be refurbished, and the Australian firm Toll Holdings and Cambodian firm Royal Group secured a 30-year concession to operate the rehabilitated railways. Bridges Across Borders undertook a recent study on the impacts of the rehabilitation of the Cambodian Railway and particularly the resettlement of those living nearby.

The report, entitled DERAILED, A Study on the Resettlement Impacts of the Rehabilitation of the Cambodian Railway, was the subject of a recent Castan Centre event in Melbourne. The event examined the impact that the project had on more than 4000 affected families living near the railway lines and the challenges faced by large-scale redevelopment and resettlement. Further, the report’s findings assess the extent to which the resettlement component of the project complies with international human rights law obligations and the ADB’s Policy on Involuntary Resettlement.

Presenter David Pred, Executive Director and founder of Bridges Across Borders Cambodia began the panel discussion by outlining the effects of the involuntary resettlement process. He stated that only the most vulnerable groups in society were forcibly displaced and thereby thrust into deeper poverty. He further indicated that the worldwide resettlement record was a shameful one that made a mockery of human rights law compliance. He outlined that recognising and mitigating the risks associated with involuntary resettlement needed to be at the heart of ADB’s resettlement policy. Despite that the project had the potential to be a model for resettlement processes elsewhere. Unfortunately, as Mr. Pred observed that the resettlement process has been an ‘unmitigated disaster’ and the DERAILED report is accordingly damning.

According to Dr. Natalie Bugalski, a leading human rights lawyer and co-author of the Derailed report, the stated aims of ADB and AusAID’s $143 million rehabilitation project was to stimulate economic growth and alleviate poverty in the region. Of major concern was access to information. Although a public booklet was disseminated, over 20 percent of affected men and 40 percent of affected women were illiterate or have primary education. Therefore, over 80 percent did not receive adequate information and one-third felt intimidated or pressured. Dr. Bugalski further noted that the compensation received was not enough to prevent poverty or cover the replacement cost of building a house. In addition, it was indicated that the resettlement sites were not conducive to effective housing conditions. Dr. Bugalski noted that a minimum standard should be set in order to avoid the gap in resettlement costs and compensation awarded. It was further noted that the location and access to basic services provided troubling results. People should not have been resettled more than 5 kms away from their original homes but in some cases people were resettled more than 25 kms away from their old homes, creating difficulties with staying near employment. It was also noted that families received significantly less income after resettlement and were forced to borrow from high interest sources and in turn lost sites due to resettlement costs.

Eang Vuthy, Development Watch Program Manager of Bridges Across Borders detailed the experience of a resettlement family in Poipet, one of the five resettlement sites. He described the experience of Mr. Sareth, who thumb printed (as many affected people were illiterate, acquiescence to the resettlement process was documented through thumb prints) out of fear of not getting anything at all. Mr. Sareth was given $2180 and was afraid that if he did not accept the money he would get nothing. Mr. Vuthy also told the audience that the resettlement sites had no infrastructure. Mr. Sareth had to live in a tent and in the process of building his new house, he had to get a loan. He received no response to complaints by the government and was accused of blocking the development.

The panel discussion following the presentations featured Matthew Hilton Chair of AidWatch, Dr. Adam McBeth, Deputy Director of Castan Centre for Human Rights Law and Jessica Rosien, Advocacy Coordinator of Oxfam Australia. Matthew Hilton detailed the possibility that economic growth can result in increased poverty. Ms. Rosien recommended that information disclosure in such resettlement schemes should involve meaningful consultation and that consultation should be at the current market rate. She further noted that once damage is done to resettled families, the remedying of such violations is extremely hard to track. Additionally, black market lenders involved in lending to affected families are hard to trace. Dr. McBeth noted human rights standards within the context of redevelopment and discussed the issue of extraterritorial human rights obligations and posited the question of whether Australia was implicitly in violation in relation to the breaches of human rights during the resettlement process. He indicated that the Australian government operating outside of its territory via AusAid has a responsibility as member of the ADB, and an obligation at least to do no harm. This means that when persons are likely to be adversely affected, adequate safeguards need to be applied.

Questions asked of panel members ranged from recommendations for the Australian government and adequate compensation rates. Further discussion ensued in relation to the possibility of having an AusAid guideline or policy, which would be binding. Panel members noted that whilst aid is appreciated, it should reach the right places and there should be a complaints mechanism for affected people in relation to resettlement processes. Finally, the experience of affected people was voiced and highlighted the urgency of remedying the adversely affected and actioning an effective improvement plan.
UN expert on human trafficking speaks out

By Rachel Loftus

Slavery was formally abolished by the UK and its colonies in 1807, yet 204 years later it still exists; albeit in a different form. While far less visible, it is no less harmful to its victims. In fact, its consequences are much more extensive and far-reaching. Human trafficking has become a huge issue in international human rights law over the past decades. Indeed, it affects every single country in the world. Ms Joy Ezeilo, the UN Special Rapporteur on trafficking in persons, especially women and children, has been working tirelessly over the past three years to increase States’ awareness of the implications of this crime, and to encourage them to take proactive steps towards not only preventing trafficking, but also providing support to those who are trafficked.

One of the three protocols that supplement the United Nations Convention against Transnational Organised Crime is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Australia ratified the Protocol in 2005, and there are currently 147 States who are party to the Protocol. Late last year, Ms Ezeilo delivered the Castan Centre/Mallesons Stephen Jaques (now King & Wood Mallesons) annual lecture at the State Library of Victoria. Throughout her presentation, Ms Ezeilo frequently referred to human trafficking as a form of modern slavery. Vulnerable individuals are often lured by false promises of a better life and a respectable job to deal with traffickers voluntarily, but their consent to travel is vitiated the moment they are coerced or deceived. Victims often remain trapped indefinitely by the debt they owe to the traffickers, whether real or artificial, and are treated as commodities rather than human beings. Article 3 of the Protocol broadly defines human trafficking to include any form of movement for the purpose of exploitation, such as forced prostitution or labour, removal of organs and domestic servitude.

A large problem faced by the UN is that many countries are still in denial about the existence of human trafficking within their borders, or do not see it as their responsibility. Consequently they take no preventative action. Furthermore, most States that actually criminalise trafficking do so within a very limited scope, reflecting widely-held beliefs that men cannot be victims and that trafficking is limited to the sex industry. There is therefore a need for States to comprehensively define trafficking, in line with Article 3 of the Protocol. For example, trafficking for the purpose of harvesting organs is not readily recognised, even though it is a lucrative and thriving business for traffickers who have clients in wealthy Western nations. Domestic servitude is also commonly ignored, largely because some States do not recognise such a form of slavery as a crime, with domestic matters considered the private domain of individuals.

Ms Ezeilo focused on Article 6 of the Protocol in her presentation, which imposes obligations on States to provide assistance, protection and information to victims of human trafficking. These obligations include facilitating their right to effective remedies and to shelter, medical treatment, counselling and language support. While awareness of the crime of human trafficking is growing, most responses are focused on prosecuting those responsible and ignore the independent needs of victims. Those who are trafficked are often afraid of their traffickers. It is counter-productive to ambush victims immediately and demand they testify against their traffickers. Even if authorities manage to secure a conviction, this will not redress the harm suffered by victims, nor ensure their reintegration into society.

Australia is no stranger to human trafficking, with traffickers enticing vulnerable and desperate people in our neighbouring Asian countries through false promises of a better life. Victims of human trafficking are often confused with refugees, even when they have no intention to seek asylum. Human trafficking victims are tricked into thinking they will be able to enter and work legally in Australia, but find themselves exploited, confined and forced into dangerous and illegal work to pay off the debts they incur along the way. There have been many media reports on illegal brothels being run in Melbourne, full of young Asian women who are forced to live in cramped and unhygienic conditions, and to work long hours without being able to keep any of the proceeds. Yet the focus is still on prosecuting those responsible, with relatively little attention paid to what is being done to assist victims and ensure they are not exiled to the outskirts of society, both geographically and socially. Currently, according to the Special Rapporteur, Australia is in violation of its international obligations to victims of human trafficking. Our government needs to modify its responses to this crime so that they are culturally appropriate to the region and take into account the differing needs of victims. Stereotypes of ‘ideal’ victims of trafficking must be broken down, and responses need to be personalised.

The presence of the UN Special Rapporteur on trafficking in persons in Australia has highlighted the fact that the Federal Government can do more to help victims of human trafficking. Ms Ezeilo’s powerful and moving presentation shocked the audience, but it was also a spur to action. The standing of Ms Ezeilo’s UN Office, not to mention her own incredible knowledge and experience, left the audience in no doubt that our Government can do more to help victims of human trafficking.
Why the Convention Against Torture can redress violence against women

By Sagarika Platel

The usefulness of the Convention Against Torture (CAT) in preventing violence against women is not immediately apparent. Joanna Renkin, senior associate and manager of the pro-bono community support program at Landers and Rogers and Rachel Ball from the Human Rights Law Centre opened a recent lecture by Professor Claudio Grossman by noting that CAT was originally drafted to reflect contexts in which men are often tortured. It has taken some creative re-interpretation for this convention to be applicable to the experiences of women. Ms Ball also pointed out that Australia's review under CAT was due to occur in August this year and as a result, it was a good time to think about the ways in which CAT could be used as an effective advocacy tool for women.

Prof. Grossman, who is currently Chair of the United Nations Committee Against Torture, started by giving an overview of CAT and some of its articles. Prof. Grossman noted that CAT defines torture as any act, physical or mental, whether at the instigation, consent or acquiescence of a public official, where severe pain or suffering was intentionally inflicted for a range of purposes including discrimination. Such acts are also prohibited if they meet the slightly lower standard of “cruel, inhuman or degrading” treatment or punishment. Under Article 14 of CAT, states must ensure that victims have a means of reparation and redress against those responsible for acts of torture.

Prof. Grossman put forward the idea that if gender violence were considered a form of discrimination, then this violence could amount to torture. He noted that women and girls are victims of violence because they are the objects of stereotyped gender roles and, as a result, there is a discriminatory undertone to such violence. By accepting the idea that violence against women and girls is a form of discrimination, a parallel can, in some situations, be drawn between torture and gender violence. Prof. Grossman also used this contention to support the proposition that domestic violence is no longer confined to the private realm but that it is now a human rights issue in the international arena when it reaches the level of torture or cruel, inhuman or degrading treatment defined in CAT.

Prof. Grossman then dealt with the argument that CAT should not prevent violence against women and girls if such violence were part of a cultural or traditional norm. He said that the CAT committee rejects the idea that violence against women and girls should be sanctioned where it is part of cultural practice, such as the practice of forced marriage in Yemen or so-called crimes of honour. He argued that CAT places the values of criminal law where they should be, meaning that it prevails over questions of honour and cultural practices.

Prof. Grossman also discussed the problems arising when gender intersects with other characteristics such as having a disability, being an orphan or an immigrant. These women and children become ‘open game’ for abuse and therefore more vulnerable.

Fortunately, the CAT Committee is able to monitor and address instances of gender violence in countries that have ratified the Convention. Prof. Grossman referred to Ireland and Slovakia as examples of how the convention was used to supervise and address violence against women and girls. With regards to Ireland, Prof. Grossman noted that the CAT committee addressed the need to criminalise female genital mutilation, to take various measures to reduce domestic violence and to clarify the scope of legal abortion in situations where pregnancy would risk the mother’s life. With regards to Slovakia, the committee report recommended that all allegations of involuntary sterilisation of Roma women be investigated and prosecuted diligently, which resulted in the Slovakian government establishing a commission to investigate the allegations.

After Prof. Grossman’s presentation, Fiona McCormack, chief executive of Domestic Violence Victoria, gave some poignant statistics on the Australian situation. She noted that family violence is rife in Victoria and that it accounts for one women being murdered every week, 50% of child protection cases and the single most significant contributing factor for women and children leaving home, incidentally making women and children the largest cohort of homeless persons in Australia. Fiona expressed her frustration with these statistics but explained that the situation is what it today because family violence has been an under-resourced area for many years and that it has been excused to a certain extent on a cultural basis.

The event was a fascinating look at how the Convention Against Torture could be used to address an historical blind spot in international human rights law.
Non-violent resistance in the Middle-East: why it works

By Mini Chandramouli

Over the last 18 months, continued unrest in the Middle East has highlighted the strategies and policies utilised by people across the region to respond to autocratic regimes. As the situation in the Middle East remains unresolved, this has become a key issue in international law discussions. Dr Stephen Zunes, during a recent Castan Centre lecture, scrutinised these regimes and presented his theories on the most effective modes of response to be employed by oppressed peoples.

Stephen Zunes is a Professor of Politics and International Studies at the University of San Francisco, where he chairs the program in Middle Eastern Studies. He is also the chair of the academic advisory committee for the International Centre on Nonviolent Conflict. Prof. Zunes was able to use his knowledge and experience to provide valuable insight to the audience on resistance mechanisms used throughout history.

Prof. Zunes began his talk with his persuasive portrayal of the ‘two extremes’ dominating the Western media’s view of Middle Eastern political struggles. That is, Middle Eastern citizens are characterised either as terrorists or passive participants in American interventions. He stated that both these views were incorrect and that in fact the Middle East had historically been heavily involved in non-violent resistance, citing the examples from Egypt in 1919 to Western Sahara in recent decades.

He went on to explain the basis for his belief in non-violent resistance. He stated that ‘dictators are only as strong as people’s willingness to obey them. Non-cooperation is essential.’ This strong statement was backed up by powerful statistics. According to Prof. Zunes, of 70 nations that have transformed from a dictatorship to a democracy, a very small amount did so through violent uprising. Nonviolent resistance is said to have a 56% rate of success, whereas violent resistance has only a 26% rate of success.

Although the US appears to be playing a key role in the breakdown of Al Qaeda, Prof. Zunes made clear that both the Obama and Bush administrations had not assisted the pro-democracy struggle in the Arab world. The Bush administration provided more support for dictatorships that any other US administration. Obama’s approach on the other hand consisted of constantly rejecting the neo-conservative doctrine of his predecessor without actually taking a pro-active role in supporting democracy. Prof. Zunes argued that the Obama administration did not want to be on the ‘wrong side of history’. President Bush had an extremely superficial structuralist view of human rights which equated elections with democracy, whereas the Obama administration had a more nuanced understanding that democracy relies on civil society and national institutions.

Although the internet has been revolutionary in improving communication, Prof. Zunes reiterated that too much emphasis should not be placed on social media and its contribution to successful non-violent regime change. As Prof. Zunes pointed out, ‘when people are committed to a struggle they will find ways to communicate.’ He followed by outlining that it was critical not to deny agency to those who were capable of pursuing democracy, as this was a ‘home grown phenomenon’, which needed to be respected.

Prof. Zunes continued by assessing the success of non-violent resistance in individual nations. He was hopeful for Egypt in the longer term due to the recent revolution and the rejection of fatalism in the youthful population. He expressed appreciation for the dramatic growth in Egyptian civil society. Yemen, he stated, after going through civil war, recognised the power of non-violent resistance. Libya’s recent uprising against Gaddafi was widely misinterpreted as being an example of the failure of non-violent resistance. However, according to Prof. Zunes, it only became violent after the NATO intervention. The model case for Prof. Zunes was Tunisia. Tunisian society, which is modest Islamist, is drafting a new constitution and heading towards a more pluralistic society. Prof. Zunes suggested that this was where much of the Arab world would be moving and saw this as a positive outcome.

Prof. Zunes emphasised that non-violent resistance allows large cross sections of the country to participate in the regime as opposed to just healthy young men who can be part of an armed resistance. He also highlighted that dictatorships were more prepared for armed resistance as opposed to the less organised non-cooperation that constitutes non-violent resistance. By emphasising the benefits of these tactics, Prof. Zunes’ opinion had a powerful impact on the audience.

Prof. Zunes is driven by more than just morals. He supports non-violent resistance because it works. The audience left inspired by an evening with one of the world’s leading experts on the Middle East, and hopeful that peaceful, democratic change can continue in the region.
Recent Developments concerning the Convention on the Rights of the Child

By Imogen White

The recently adopted third protocol to the Convention on the Rights of the Child may have been a triumph for child rights advocates but the hard work is just beginning, according to speakers at the Castan Centre’s recent children’s rights symposium. The event, held at the Monash University law Chambers in late April brought together speakers with diverse experience within Australia and internationally, before an audience of more than 100 people.

The symposium opened with Associate Professor Paula Gerber and Associate Professor John Tobin discussing the adoption of the landmark Third Optional Protocol to CROC by the UN General Assembly in December 2011, which will provide children with a means to bring allegations of rights violations before CROC. In a highly informative session, these two speakers drew attention to the contradictions inherent in the adoption of this protocol. Although it represents promising progress and significant strengthening of the international framework for the protection of children’s rights, both speakers stressed that any optimism should be cautious and that expectations should be carefully tempered.

Gerber’s thorough discussion of the protocol drew attention to the fact that it does not provide for collective complaints on behalf of groups of unspecified children and allows states to opt out of the inquiry procedure. Similarly, Tobin expressed a concern that it empowers CROC with the capacity to develop jurisprudence regarding children’s rights norms, despite a well documented tendency to generate judgments that are – as Nettle J once noted – “long on assertion, short on reason”.

Speaking to a room filled, almost overwhelmingly, with legal practitioners, Gerber echoed Tobin’s concerns, cautioning that it must be children, rather than lawyers, who take “centre stage” in the children’s rights movement.

In the second session, a dynamic panel explored the upcoming review of Australia’s implementation of CROC. Ben Schokman, the Director of International Human Rights Advocacy at the Human Rights Law Centre opened this session by discussing Australia’s periodic reporting process. He noted that the government’s most recent report to the Committee on the Rights of the Child focuses too heavily on money spent, rather than on progress, priorities, and goals.

Franca Musolino, the Principal Legal Officer at the International Human Rights Law Section of the Attorney General’s Department, then provided a counter to Schokman by providing intriguing insight into the bureaucratic nature of the reporting process. She responded to his criticism by highlighting the bureaucratic, “patchwork” nature of the report, where deadlines often defeat specificity.

Following on from this, Chris Varney, Former Australian Youth Representative to the United Nations discussed the process by which the 2011 Listen to Children shadow report was compiled and presented to the UN Committee on the Rights of the Child in Geneva, October 2011. Stressing that “the government will not do anything further unless there is community demand”, Varney highlighted how important it is that young peoples’ voices are heard in the reporting process. For Varney, unless we ensure that the voices of those who are marginalised are heard, we cannot begin to fulfil CROC’s promise that all children “enjoy all of their rights”.

The third session then brought the focus to the ground level, with speakers discussing innovative approaches being pursued by child focused non-government organisations. The Hon Alastair Nicholson AO RFD QC spoke about initiatives Children’s Rights International have implemented to advocate for the introduction of child friendly justice systems and children’s courts in Cambodia and Vietnam.

Vanessa Zimmerman, Legal Advisor at the UN Special Representative on Business and Human Rights then discussed the UN Guiding Principles on Business and Human Rights. She suggested that this symposium be an annual event that aims to keep a steady spotlight on children’s rights by providing a space to facilitate ongoing dialogue between governments, businesses, the academy and the broader community. Often daunting and always complex, the contradiction inherent in the adoption of this protocol. Although it represents promising progress and significant strengthening of the international framework for the protection of children’s rights, both speakers stressed that any optimism should be cautious and that expectations should be carefully tempered.

The phrase “wait and see” recurred repeatedly throughout the day. In her concluding remarks, Paula Gerber noted that this phrase indicates that work in the area of children’s rights is a journey. She suggested that this symposium be an annual event that aims to keep a steady spotlight on children’s rights by providing a space to facilitate ongoing dialogue between governments, businesses, the academy and the broader community. Often daunting and always complex, the cause of children’s rights needs events like this symposium, where groups can come together to collaborate and share knowledge with the goal of stimulating ideas and actions. In a hopeful sign, Gerber’s comment that she would like to see the appointment of a National Children’s Rights Commissioner took less than one week to come true. Now her wish that such a Commissioner would speak at next year’s event doesn’t seem so farfetched.
The Right to Health

Internship report by Tessa Daws

In 2011 I had the great fortune to be selected by the Castan Centre to intern at the office of the United Nations Special Rapporteur on the Right to Health. In December last year, I set off to Delhi, India, to spend three months working with the Special Rapporteur, Mr Anand Grover, and his team.

Once I had settled into my new accommodation (a room rented from a family in the local area) and made a quick trip to the Taj Mahal, I began my internship. Mr Grover and his two assistants had just returned from a country mission to Viet Nam. In a press statement at the end of the mission, Mr Grover had made some comments about the mandatory detention of drug users in “treatment” facilities, which received considerable media attention. It was certainly exciting to be starting my internship in the midst of this controversy; although, as I was soon to learn, Mr Grover is certainly not one to shy away from confronting the difficult issues.

Over the next three months I assisted the office in a number of ways. I conducted research for reports and presentations; I drafted a number of communications; and I assisted in the research, drafting and editing of reports that will ultimately be submitted to the Human Rights Council or the General Assembly of the United Nations. I was extremely lucky that I was able to work with such a great team that provided me with this experience. Mr Grover’s two assistants, Mihir Mankand and Brian Citro, were great mentors and provided me with guidance and support throughout my time at the office. As a result, my skills as a legal researcher and writer certainly improved over the course of my internship.

The most valuable thing that I have taken away from my experience is an increased awareness of human rights issues. Throughout my internship I became very familiar with Mr Grover’s work. Mr Grover is a strong advocate for the decriminalisation of drug use, same-sex sexual relations and abortion; his work in this area has achieved real change, particularly in his native country of India, to improve the realisation of the right to health. Working with someone with such drive and passion to improve health outcomes and the realisation of human rights was inspiring. Mihir and Brian were just as passionate about their work. It was an enlightening experience to come into work each day and discuss any number of issues relating to the right to health, and also human rights issues more generally.

Further, the team shares an office with a collective of human rights lawyers founded by Mr Grover and his wife. These lawyers do invaluable work, particularly regarding access to HIV/AIDS medications, rights of those affected by HIV/AIDS and also a number of women’s issues, including domestic violence. For three months I was surrounded by very committed and passionate lawyers who were dedicated to improving the lives of others through human rights law. To have spent three months in such an environment was truly inspiring.

Completing the internship against the backdrop of the chaos of Delhi was also fantastic. India is an incredibly interesting country, with such a rich history and very friendly and generous people. During my stay I tried my best to immerse myself in the culture. One of the women from the family that I was renting my room from really took me under her wing, and every day I would go with her to the local Sikh Gudwara. Often we would participate in langar, the community meal prepared and served by volunteers, which was always amazing. During my stay in Delhi I also gained a small insight into some of the challenges the country faces. Having lived all my life very comfortably in Australia, it was quite devastating to see the extreme poverty that so many Indians experience. It certainly highlighted to me how much more must be done to improve the lives of the disadvantaged, and how important the work of human rights lawyers is in achieving this.

Overall my internship was a great success. I cannot thank the Castan Centre and the Special Rapporteur and his team enough for providing me with this invaluable experience. I only hope that my future career path will involve work that is as important and rewarding as that of the Special Rapporteur.
Although all Castan Centre Global Interns have challenges and thought-provoking experiences, I am probably the only one who faced so many challenges before heading off on assignment. My initial placement was to be an eight month internship with Africa-Middle East Refugee Assistance in Cairo, commencing July 2011. With the advent of the Revolution, however, and because the Egyptian elections were scheduled for September 2011, I became concerned that my internship in Cairo would be terminated prematurely. I therefore decided, with the kind assistance of the Centre, to apply to UNHCR Malaysia as an alternative.

I chose UNHCR Malaysia as I have a basic grasp of Bahasa Malay and am interested in working in South-East Asia once I complete my studies. Fortunately I was accepted to intern with their ‘OPI’ (Outreach, Protection and Intervention) unit at UNHCR Malaysia from early December 2011 until the end of March 2012.

Due to most refugees and asylum-seekers living in cities and towns for long periods of time without legislative recognition, there is wide scope for legal issues to arise in their daily lives. The OPI unit, which is unique to UNHCR Malaysia, was developed precisely to deal with legal issues encountered by refugees post-recognition and prior to resettlement in another country.

The crux of my role at OPI was managing a fluctuating caseload along with 2-4 Malaysian legal aid students and another intern (at first, Karen from Malaysia, and later, Martin from Sweden). OPI operates by way of walk-in, not prescheduled, interviews and so between 10-30 POCs (Persons of Concern – encompassing asylum seekers and refugees) were interviewed daily.

The issues reported during interviews commonly included the denial of wages from employers, assaults and robberies, extortion by authorities, sexual and gender based violence, requests for financial assistance and forced deportations.

After completing an interview we were required to write a report and consult an OPI Officer regarding further action to be taken. In many cases, a solution or partial solution could be found for the POC. In many others, however, I was pained to explain to the POC that the UNHCR was unable to provide assistance. This usually occurred where the POC lacked the legal standing to pursue action, where the UNHCR mandate didn’t encompass the matter at hand, or where there were insufficient resources to help the POC. I found this latter situation a challenge to accept, especially in cases of financial assistance for medical patients. The line drawn between saving a life and making a life comfortable to live always seemed arbitrary and based on a theoretical point of view.

Access to justice and social services were undoubtedly the greatest challenges faced by POCs in Malaysia. One positive development is that the Malaysian government has agreed to reduce the foreigner’s rate at public hospitals by 50% for refugees holding a UNHCR card. This still represents, however, a cost far in excess of that paid by Malaysian residents. One access issue that particularly concerns me is that refugee children, technically ‘illegal immigrants’ under Malaysian law, are denied access to public education. Further, there is a legislative bar to NGOs providing education to ‘illegals’. As a result, refugee schools operate clandestinely and with no public funding or uniformity in curriculum, and have low attendance rates.

Overall, I thoroughly enjoyed my internship with UNHCR Malaysia. I most enjoyed the personal interactions I had, and relationships I developed, with both individual POCs and the people I worked alongside. I now feel far better equipped to work with refugees and asylum seekers here in Australia, as I bettered my interpersonal skills, interview techniques and ability to manage difficult caseloads. Unexpectedly, I also learned a great deal about office politics and managing difficult personalities in the workplace. My experiences at UNHCR Malaysia will have a lifelong impact, as I feel more certain than ever that my passion lies with refugee advocacy.

There are many people in Victoria without the means to get good legal help. The Public Interest Law Clearing House (PILCH) connects people and organisations with legal problems to lawyers willing to act pro bono.

There are many cracks for vulnerable people to fall into. Legal aid and community legal centres do a great job but they can’t do it all.

We see people being let down by an unfair infringements system – people who have many thousands of dollars in fines; people with legitimate claims for asylum who have had their claim rejected; seniors who have been taken advantage of, sometimes by close family; we see small organisations trying to contribute to a better community but hitting legislative hurdles.

We seek to leverage pro bono resources to ensure this legal need is met.

Sometimes the best way to help people get justice is to fix unfair laws. We undertake law reform work to ensure that laws are fair and to increase people’s access to legal help. Recently, we advocated strongly with many others to keep the Victorian Charter of Human Rights and Responsibilities and received a commitment from the Attorney-General to fix the law that prevents in-house lawyers doing pro bono work.

We’re always looking for people to get involved in our work. One way to do this is to attend our annual Human Rights Dinner which we host jointly with the Human Rights Law Centre. It’s on the 15th of June. Tickets go quickly, but for those who miss out there is a fantastic collection of items up for auction: dinner with Nicola Roxon, a cricket box signed by Merv Hughes, rare photographic prints, wine and much more. Details can be found here: https://register.pilch.org.au

To learn more about PILCH and other ways to get involved visit: www.pilch.org.au
Haiti, not Tahiti

*Internship report by Elisabeth Howard*

Haiti, not Tahiti; and no it’s not in Europe but yes, they do speak French.

My first struggle for the internship was getting my friends and family to understand “where” I was going – then came the “Who? What? When? Why?!”

So where? Haiti: the western part of the island Hispanola in the Caribbean. Being the first ‘black republic’ Haitians won their freedom from slavery almost 200 years ago, but have struggled to effectively implement long term democracy ever since. Political instability partnered with natural disasters, unequal trade agreements and disease have culminated to stunt Haiti’s growth since their birth as a nation.

Who? Plan Haiti, an international non government organisation (INGO) working towards development and empowerment through the promotion of child rights and the enforcement of the Convention on the Rights of the Child (CRC). The organisation was started 75 years ago, and has been working consistently in Haiti for almost 40 years, long before the earthquake or cholera of 2010 which made Haiti an ‘NGO republic’.

What? Child Protection. Plan do not generally engage in-house, human rights lawyers, so my role was niche. It involved training in child protection and then the completion of a long and complicated child protection risk assessment tool. That is, I was charged with an internal audit of all of Plan Haiti’s departments to ensure they met international child protection standards. Being based in the Country Office in Port-au-Prince, I visited each of the 3 program units in the South, East and the North-East at least once to interview staff and see programs being implemented. Often confronting, always colourful and punctuated with roads beyond bumpy, it was a fantastic way to see the grass roots work this INGO is involved in. Meeting with community members, parents and children who had been touched by Plan’s involvement in their region was a definite highlight and encouragement. While the stories of abuse children told were troubling, there were definite signs of improvement in education, sanitation and the quality of life which made the work inherently rewarding.

When? Three months over summer 2011 – 2012. During the internship Haiti commemorated the two year anniversary of their devastating earthquake, so it was a fascinating time to be there. I was able to be a part of the re-evaluation INGOs and the government were conducting in order to assess what a tremendous amount of work had already been done and plan long term measures for the future.

Living in a house with other ex-pats, it was really encouraging to hear of the progress Haiti has made in the last two years. However, it did become disappointing clear just how misinformed the rest of the world appeared to be in relation to the full, complex situation. Haiti hasn’t has a stable government for a very long time. Of the government it did have, around a third of the civil servants were killed in the earthquake. The reasons for the poverty and uneven wealth distribution have developed over a long period of time and, to a certain extent, are ingrown. A lot of media seemed to be asking why Haiti hadn’t progressed more since the earthquake and why the billions of dollars thrown at the government and NGOs haven’t resulted in a tropical paradise. The answer is that in Haiti’s case, lack of money is not the problem. It’s far more complex than that – there is a lack of infrastructure, employment, industry – in short, a very limited base for sustainable growth.

According to the reflections of my colleagues, Haiti has come a long way. Undeniably, it was experiencing problems before the earthquake, many of which prevail. Yes, the government has a lot of work to do. But the fact that Plan has been in Haiti for almost 40 years indicates that sustainable change takes time and community engagement – not just money and relief workers. Those things help, but we cannot simply throw money at Haiti and demand change. From time to time I saw a building which had collapsed, but for most Haitians, daily life is continuing – hopefully for the better!

Why? My interest in human rights and the work of INGOs made this internship the perfect combination. Being charged with completing the risk assessment tool to ensure that every department within Plan was maintaining the highest possible standards of child protection was a rewarding challenge. I interviewed everyone from IT to Media, HR to Sponsorship, technical advisors, staff sample groups and all levels of management. With these results I filled out a 12 sheet Excel table and wrote a report documenting the investigation methods and recommending improvements for future practices.

Being able to complete this project was a hugely rewarding experience. I look forward to monitoring the progress of Haiti and keeping in touch with the work of Plan.
I found my experience interning with International Criminal Law Services (ICLS) very rewarding. Over the course of the internship, we had cause to meet a number of the ‘ICLS Experts’. They are all very senior officers at the international criminal courts and tribunals, as well as senior academics and other experts. It was a privilege to talk with these people and have their input on our work at ICLS and to share their understanding of the law, but also the nature of the institutions which give effect to it.

During our time at ICLS, Giselle Diego (the other Castan Centre intern) and I did basic administration, maintained the website, and worked on three main projects. The first was the adaptation of international criminal law (ICL) training materials for legal practitioners in Kosovo. A series of training materials had already been developed for practitioners in Serbia, Bosnia and Herzegovina, and Croatia. Our task was the adaptation of these materials to the Kosovar context. While much of the material on ICL was substantially the same, the main work was in researching the interaction between international and municipal law in Kosovo. This necessitated an understanding of all the constitutional systems which have been in place in Kosovo during the relevant period. In contrast to Australia which has had a single constitution since federation with very few amendments, Kosovo’s constitutional history is somewhat different. For the period in which we were interested, Kosovo was subject to Yugoslav, Serbian, UN and now, its own constitutional arrangements. It was necessary to establish the role of all of these instruments in terms of importing international law into the domestic legal order, and determining the applicable criminal law. This process caused us to develop a significant understanding of Kosovar legal history and its implications for international criminal justice.

The second project to which we contributed at ICLS was a guide to ICL for business people. ICLS recognises the increasing support for effective ICL accountability mechanisms which address the involvement of businesses and business people in atrocity crimes. Given many armed conflicts are closely linked to natural resources, the involvement of business is of no surprise, but there has been limited exploration of possible accountability mechanisms. Our role was to do preliminary research to determine how the business community could best be informed as to potential liabilities and how they could best avoid them. My research focused on enterprise risk management (ERM) as a framework, familiar to business, which could be used to assess and avoid risks associated with ICL. This aspect of the guide could be framed as a tool to assist risk management specialists to implement reporting or internal control systems which are broader in scope than those dealing with financial risks only. On the other hand, characterising international criminal liability either of individual company members or of the enterprise as a whole, as a financial risk allows ICL awareness to be incorporated into traditional ERM structures. By assessing this kind of corporate behaviour in this way it is hoped that the guide will be a highly accessible tool for businesses and reduce the instance of business involvement in war crimes, crimes against humanity and genocide. This project largely took up the third month of the internship though we spent time on it during the first two months as well to break up work on the Kosovo project.

Finally, we spent a couple of weeks on a new ICLS project, gathering materials on trial monitoring practice and ethics. ICLS will be training NGOs in Croatia how to monitor war crimes trials. These organisations currently monitor the war crimes trials in Croatia and are seeking training in more advanced aspects of this endeavour. Our work in support of this project focused on assessing the current expertise of these organisations and developing preliminary materials to guide development of a training course to improve their existing capacities. This project commenced very late in our time in The Hague and we spent only the last couple of weeks working on it.

It can be seen that the work of ICLS is broad and fascinating. For me, the chance to contribute to capacity building in conflict affected states and especially to work so closely on the Kosovo training materials allowed me to understand the place of institutions like the ICC and the International Criminal Tribunal for the Former Yugoslavia (ICTY) in post-conflict and transitional justice processes. The ability of these institutions to publicly and internationally bring the perpetrators of the most serious crimes of concern to the international community to justice is crucial, but it is just one aspect of the exercise. The work of organisations like ICLS needs to be supported to ensure ICL has real meaning for directly affected communities.
Six questions for:

André Dao

What made you apply for the Project Officer position?
I’ve been interested in human rights law ever since I started studying law, and have always intended on pursuing a career in that field. I soon became aware of the Castan Centre’s work through the Centre’s strong engagement online and in social media, so when I found out the position was available I was really keen to get involved with the Centre.

How are you finding the job thus far?
It’s great! I really enjoy the variety of work I’m doing – from running student programs to working on the Centre’s social media output. I’ve particularly enjoyed starting each day trawling the web for human rights related news for our Twitter feed – I feel particularly aware of human rights news not just in Australia but around the world. I get a similar feeling when a big legal development occurs – like the High Court judgment on Momcilovic or the Malaysia Solution – and the corridors are buzzing with academics discussing the ins and outs of the case. Working at the Centre, I really feel plugged into the human rights community.

What did you do before working for the Centre?
I was studying Arts/Law at the University of Melbourne. I’ve also been the Editor-in-Chief of Right Now, a human rights media organisation for a few of years. I do that in a volunteer capacity, and it complements my work at the Centre well. Currently, I’m writing my honours thesis in English Literature.

What are you writing your honours thesis on?
I’m writing on The Book of Daniel, a novel by E. L. Doctorow, which tells the fictional story of Daniel Isaacson, whose parents were executed by the US Government for being Communist spies. The story is based on the real-life case of the Rosenbergs, who were executed by electric chair in the 1950s. My thesis focuses on how the law is depicted in the novel, especially as a tool for narrative-making and memory building.

What do you do when you’re not busy updating Twitter?
I really enjoy music, and when I have the time I still like to play a bit of piano. I also do some writing in my spare time – I’m hoping to find time to write more fiction after I finish my thesis.

What’s your favourite TV show?
It would probably have to be The Wire, followed by The Sopranos in a close second. The thing I loved about The Wire was how realistic it seemed to be, with really memorable, individual characters, without losing its ability to tell a larger story about urban decay and the failure of American justice.

Where are they now?

Jessie Taylor

What interactions did you have with the Castan Centre (internships, moot etc)?
I was selected for the internship to the Australian Delegation to the UN Commission on Human Rights in Geneva. It just so happened that it was the final Commission before the changes that led to the birth of the Human Rights Council. I got to sit behind the “Australia” desk in the UN Plenary hall for the closing ceremony of the commission, listening to speeches and tributes to its long history. It was an amazing moment to participate in at such a young age. Witnessing the operation of the UN human rights machinery was an exercise in balancing hope and cynicism! I still benefit from it to this day.

Do you have anything to say about your experiences with the Castan Centre?
What a privilege it was to interact with such a well-respected academic centre right there in my own Law Faculty. One thing I love about the Centre is that its members and staff are not just top-notch academics and lawyers; they are passionate human rights devotees who have found their place in the Centre because they care deeply about the protection and promotion of human rights. Words can’t express how much that matters, and what a difference it makes to the education of a fledgling human rights enthusiast!

What did you do after you graduated?
I was admitted to practice and began a fascinating couple of years where I did anything but practice law! I worked on the National Human Rights Consultation, went to Indonesia to make a film called “Between the Devil and the Deep Blue Sea” (www.deepblueseafilm.com), and then finally landed a job as an Associate to Justice Bromberg in the Federal Court of Australia. It was a wonderful period of time. Working as a judge’s associate in particular is an amazing experience. When that ended I worked as a duty lawyer with Victoria Legal Aid, and in September 2011 was called to the Bar. I am now practising as a barrister. Every day I have cause to pause and reflect on how lucky I am to be so professionally fulfilled and challenged.

Do you have any advice for students interested in pursuing careers in human rights?
I will pass on the advice given to me by a trusted mentor when I was a student interested in pursuing a career in human rights. That is: before you can be a good human rights lawyer, you must be a good lawyer. Do the hard yards, earn your stripes and prove yourself capable in every area of the law that you set your mind to - even the ‘boring’ stuff. Then and only then will you be taken seriously as a human rights lawyer.

Also - remember that most human rights challenges are through the avenues of administrative law. Admin might seem horribly dry and boring during a bleak Bar mooting lecture, but it is the playing field of David & Goliath. Learn it.

Oh and illegitimi non carborundum (sic)…!
Publications and other activities by Centre faculty members

Note – joint pieces are listed under first named author

GIDEON BOAS

Article
‘Comment’ in response to Christian De Vos, ‘Someone who comes between one person and another: Lubanga, local co-operation and the right to a fair trial’, in Melbourne Journal of International Law, Online Symposium, 2011

Book Chapters


‘Command Responsibility for the Failure to Stop Atrocities: The Legacy of the Tokyo Tribunal’ in Yuki Tanaka, Timothy LH McCormack and Gerry Simpson (eds), Beyond Vico’s Justice? The Tokyo War Crimes Trial Revisited (Martinus Nijhoff, in press 2011), 163-173

Media
‘Killing the killers makes a mockery of international justice’, opinion piece, Sydney Morning Herald, 26 November 2011.


MELISSA CASTAN

Articles


Blog

Media
‘It’s time to recognise Indigenous Australia’, The Conversation, 12 December 2011

ANDRE DAO

Blog

Submission
National Human Rights Action Plan: Exposure Draft, Submission to Australian Government Attorney-General’s Department Consultation, February 2012

JULIE DEBELJAK

Articles


Book
Susan Kneebone and Julie Debeljak Transnational Crime and Human Rights: Responses to Human Trafficking in the Greater Mekong Subregion (Routledge, 2012)

Other

Edited proceedings, Monitoring and Oversight of Human Rights in Closed Environments: Proceedings of a Roundtable, Monash University Law Faculty (2012), (with Inez Dusseyer, Bronwyn Naylor and Stuart Thomas ledsl)


PATRICK EMERTON

Article
‘Judges and non-judicial functions in Australia’ in H P Lee (ed), Judicatures in Comparative Perspective (Cambridge University Press) (with HP Lee)

ADAM FLETCHER

Blogs
‘Do we need better privacy protection in Australia?’, Castan Centre for Human Rights Law Blog, WordPress, 30 October 2011


‘Transparency and accountability – is the UN leading by example?’ Castan Centre for Human Rights Law Blog, WordPress, 18 April 2012

Media
‘Undermining the migration act’, The Drum, 13 October 2011

Submissions
Submission on Commonwealth Government’s Issues Paper: A Statutory Cause of Action for Serious Invasion of Privacy, October 2011

Submission to the Senate Legal and Constitutional Affairs Committee regarding the Inquiry into Deterring People Smuggling Bill 2011, November 2011

Submission to Australian Government Attorney-General’s Department regarding the Consolidation of Anti-Discrimination Laws paper, January 2012 (with K. Vandenberg, R. Lootus, K. Tu)

Submission to the Department of Foreign Affairs on a draft Charter of the Commonwealth, February 2012

Submission to Senate Legal and Constitutional Affairs Committee, Migration Amendment (Removal of Mandatory Minimum Peniteniary) Bill 2012, February 2012

Submission to the Joint Standing Committee on Treaties regarding ‘The Optional Protocol to the UN Convention against Torture’ March 2012

Submission to the Attorney General’s Department in Favour of Australia Signing and Ratifying the Third Optional Protocol to the Convention on the Rights of the Child, April 2012 (with P. Gerber)

PAULA GERBER

Articles


Blog
‘Children will soon be seen AND heard by the courts’, Castan Centre for Human Rights Law Blog, WordPress, 21 May 2012

‘Serious Invasion of Privacy, October 2011

Book chapter

Media
‘Denying gay marriage will only hurt the children’ Opinion piece, The Age, page 15, 7 September 2011
Radio interview with 98.9FM (National Indigenous Radio Service) based in Old, on the Indigenous Birth Registration Project, 28 February 2012, (with Melissa Castan)
Same-sex pairs: An ‘1 do’ dilemma’, Monash Weekly, 23 April 2012

Paper
‘10 things you should know about the new Optional Protocol’ Symposium on the Recent developments concerning the Convention on the Rights of the Child, 24 April 2012

Submissions
Shadow Report to the UN Committee on the Rights of the Child Regarding Australia’s compliance with Article 7 of the Convention on the Rights of the Child; 22 June 2011

STEPHEN GRAY
Articles

Books
The Protectors, a journey through whitefella past, Allen & Unwin, 2011
Brass Disks, Dog Tags and Finger Scanners: The Legal System in the Amazon’ (2012) 3 Journal of Human Rights 70-91

SARAH JOSEPH
Articles

Blogs
The “Occupy” movement and the importance of civil protest’, Castan Centre for Human Rights Law Blog, WordPress, 26 December 2011

‘Sometimes cricket is “just not cricket”, Castan Centre for Human Rights Law Blog, WordPress, 16 January 2012

Book
Blame it on the WTO: A Human Rights Critique

Media
Radio Interview with ABC Radio Australia on the High Court decision M70 on the Malaysian solution, 19 October 2011
‘Abbott’s asylum seeker policy floats in murky legal waters’, Online: The Conversation, 24 January 2012

TANIA PENOVIĆ
Articles
‘Labor’s ‘New Directions in detention’ three years on: Plus ça change’ (2011) 36(4) Alt LJ 222, 240-244
‘An end to the “Malaysia Solution”, (2011) 36(4) Alt LJ 222, 280

Blogs

Other
Training of delegates from the Iraqi Ministry of Human Rights in Transitional Justice (2012)

RONLI SIFRIS
Book Chapter
‘“Is Australia respecting a woman’s right to reproductive freedom?”: An analysis of recent legal developments’ in Paula Gerber and Melissa Castan (eds), Contemporary Human Rights Issues in Australia (Thomson Reuters, forthcoming)

JANNA KYRIAKAKIS
Blogs
‘Pirates Incorporated: The US Supreme Court to decide if corporations are liable under the Alien Tort Statute’, Castan Centre for Human Rights Law Blog, WordPress, 5 March 2012

Book
The International Law of Human Rights 2011, Oxford University Press, Melbourne, (with J Nolan & S Rice)

Media

MARIA O’SULLIVAN
Article

Blogs

Other
Completed PhD Supervision - Ekram Haque

JOANNA KYRIAKAKIS
Blogs
‘Pirates Incorporated: The US Supreme Court to decide if corporations are liable under the Alien Tort Statute’, Castan Centre for Human Rights Law Blog, WordPress, 5 March 2012

ADAM MCIBETH
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The International Law of Human Rights 2011, Oxford University Press, Melbourne, (with J Nolan & S Rice)

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BLOGS
‘Southern Somalia: Don’t let the Kenyan military run the show’, Castan Centre for Human Rights Law Blog, WordPress, 23 February 2012

SARAH JOSEPH
Articles

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The “Occupy” movement and the importance of civil protest’, Castan Centre for Human Rights Law Blog, WordPress, 26 December 2011

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Human Rights 2012
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Friday 20 July, 2012 – Spring Street Conference Centre

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‘Global warming and human rights’

Ms Susan Ryan AO, Commonwealth Age Discrimination Commissioner
‘Human rights never age’

Dr Kerry Arabena, Professor and Director of Indigenous Health at Monash University
‘Recognition of Indigenous peoples in the Australian Constitution’

Dr Samantha Thomas, Senior Research Fellow at Monash University
‘Unintended consequences of the ‘war’ on obesity: A public health and human rights approach’

Mr Gareth Evans AO QC, former Australian Foreign Minister and CEO of the International Crisis Group
‘The responsibility to protect after Libya and Syria’

Mr Sami Ben Gharbia, Tunisian blogger and Advocacy Director of Global Voices
‘The role of social media in the Tunisian revolution, in the context of the Arab Spring’

Mr Allan Asher, former Commonwealth Ombudsman
‘People just like us: human rights for asylum seekers!’

Mr Ron Merkel QC, barrister and former Judge of the Federal Court of Australia
‘Has Australia’s horse and buggy Constitution acquired a few jet engines?’

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