Castan Centre engages in same sex rights debate

Two recent parliamentary inquiries provide hope that the tide is turning in favour of better human rights protection for same-sex couples in Australia. Deputy Director Dr Paula Gerber and Law Faculty Centre Member Dr Adiva Sifris made comprehensive submissions to both inquiries regarding the human rights impact of proposed changes to the relevant laws.

In its submission to the New South Wales parliamentary inquiry into adoption by same-sex couples, the Castan Centre argued that homosexual couples should be granted the same rights to adopt children as heterosexual couples. As the law stands in New South Wales, a non-biological parent in a same-sex couple is not eligible to adopt his or her partner’s biological child while a similar partner in a heterosexual relationship may do so. Also, homosexual couples are not allowed to adopt a child who is not related to them. The Centre argued that the current legislation breaches a number of Australia’s obligations under the UN Convention on the Rights of the Child, particularly the requirement that laws protect the best interests of the child, as well as anti-discrimination provisions in various international human rights treaties. It impressed upon the committee that the Adoption Act should be amended so that same-sex couples are eligible to adopt and subject to the same eligibility criteria as heterosexual couples.

A federal parliamentary inquiry into proposed amendments to the Marriage Act allowed Drs Gerber and Sifris to argue in favour of a law that would allow couples of any sex to enter into marriage. They noted that the current marriage laws, limiting marriage to heterosexual couples, constitute a breach of a number of recognised human rights, including freedom from discrimination, the right to privacy and the rights of children and families. Drs Gerber and Sifris also pointed out that the social landscape in Australia and the world is changing rapidly in relation to same-sex marriage and gay rights in general, and it is about time that Australia moved away from the ‘separate but equal’ regime currently in place, and amend the law to grant equality to all people. Dr Gerber noted that “many countries around the world have reformed their laws to ensure that all people are treated the same, regardless of their sexual orientation. Australia needs to embrace this movement for change, rather than be left behind.”

The two inquiries signal that our governments may finally be ready to start seriously examining these areas of entrenched discrimination. Any reform in this area would most likely be welcomed by the Australian public; a recent survey indicating that 60% of people supported same-sex marriage.

Copies of both submissions can be found on the Centre’s website: www.law.monash.edu.au/castancentre/publications/submissions.html

Celebrating our 10th anniversary in 2010

When Justice Michael Kirby launched the Castan Centre in October 2000, he stated that the centre’s areas of focus should include Indigenous rights and the push for a bill of rights in particular. Nine years on, the centre is actively involved in the current campaign for a bill of rights in Australia, which may come into being as early as next year, and has just agreed to extend its role in the Aurora Project, which builds capacity among the nations’ Native Title Representative Bodies, for a further three years.

The centre was the brainchild of Sarah Joseph and Julie Debeljak, who were then junior human rights academics working in the Monash Law Faculty. The untimely passing of Ron Castan AM QC came in October 1999 as the effort to get the centre started was building momentum. To Sarah, Julie and others in the faculty, Ron’s role as lead counsel on Mabo, his tireless work on a variety of Indigenous causes and his broader work to further human rights in Australia made him an authentic human rights hero. To them, it made sense that the centre be named after Ron.

Since its foundation, the centre has developed expertise in the areas of research and teaching, public education, student programs, parliamentary engagement and capacity building. We believe that the centre has made great advances over the past 9 years and look forward to celebrating our 10th year in 2010. There will be a number of events over the course of the year, culminating in the 10th anniversary dinner in late 2010. Details of the dinner will be released shortly, and we will include a retrospective series in next year’s newsletters.

2009 marks the 10th anniversary of Ron Castan’s death. A memoir by Glenda McNaught, barristers’ clerk is on page 6 of this newsletter.
The 2010 Global Internship Program will expand to South America with the addition of a three month placement at the Amazon Defence Coalition (FDA), in Quito Ecuador. Another new placement has been added with the Centre for Constitutional Rights in New York City.

David Sztrajt will be the first Castan Centre Intern to work with the FDA. The FDA works to defend the peoples and environment of the Amazon. It is currently involved in prosecuting Chevron Oil for the devastating pollution of the Amazon region. David’s interest in indigenous rights and the environment made him a perfect fit for this internship. He has been a volunteer at a number of community legal centres as well as the North Australian Aboriginal Justice Agency, the Castan Centre and the Asylum Seeker Resource Centre.

Michael Adams’s interest in corporate social responsibility and human rights will be utilised during his internship with the Centre for Constitutional Rights in New York City. Michael will be working on litigation generated by its Corporate Human Rights Abuse campaign. Michael has been a legal research assistant conducting research into legal philosophy and corporate social responsibility, and volunteers with the Australian Society of Legal Philosophy and Amnesty International.

The former internship with the International Criminal Tribunal for the Former Yugoslavia has been resurrected for a final year. David Carolan will travel to the Netherlands in January to work with the tribunal for a six month stint. David undertook an in-house internship with the Castan Centre and has been involved in the Human Rights Moot competition, and the International Humanitarian Law Moot.

This year, the International Women’s Rights Action Watch – Asia Pacific (IWRAW) internship will include a 2 week stint in Geneva working with IWRAW during the 45th Session of the UN Committee on the Elimination of Discrimination Against Women. On the eve of the session Global Intern Emily Dickson will help IWRAW train grassroots women’s groups from various countries in how to lobby the Committee. Emily’s interest in women’s rights came from studying Sharia Law in Malaysia. Emily has a strong commitment to community development and has volunteered with Embrace Education.

Jeremy Noye will also be travelling to Geneva where he will intern with the Australian Delegation to the UN Human Rights Council. Jeremy has been a Student Rights’ Advocate in the Monash Student Association and volunteer for over two years at the Asylum Seeker Resource Centre. He has also worked as a student support worker, child care worker, and private tutor and is fluent in French. Catherine Miller will undertake her internship at Human Rights First in New York. Catherine has been a volunteer at the Asylum Seeker Resource Centre for over 4 years and will be working with asylum seekers in the USA. She has also worked as a legal research assistant and a Student Rights’ Advocate in the Monash Student Association.

In its second year, the Monash-Oxfam agreement will see two Castan Centre interns, Amy Burton and Helen Fabinyi, work with Oxfam partner organisation the Campus Law Clinic in Durban, South Africa, where they will provide legal services to poor and disadvantaged communities. Amy is actively involved at Monash and has volunteered with a number of community legal centres and as a teacher’s aid in Peru. Helen has volunteered at the Asylum Seeker Resource Centre, the Sudanese Australian Integrated Learning Program, the Environment Defenders Office of Victoria, and Native Title Services Victoria. Helen also taught English and engaged in community development work in Rajasthan India.

Generous funding from Daniel and Danielle Besen and the Monash Law Faculty’s Student Mobility Fund makes the Global Internship Program possible.
The Castan Centre congratulates Gabrielle Sing from Woodleigh School, the winner of its 2009 Writing for Human Rights Essay Competition. The competition was open to all Victorian year 11 and 12 students, who were asked to write on the topic “We’re not morons: governments should butt out of young people’s lives.” Students were allowed to argue either for or against the statement and were encouraged to refer to specific instances of recent government intervention, such as internet censorship and curfews.

There was a fantastic response to the competition, highlighting how interested today’s youth are in both human rights and controversial public issues.

In Gabrielle’s insightful essay, she noted that governments have traditionally limited the rights of young people to protect them and the whole of society. In her essay, she discussed the balance that must be achieved in protecting young people and ensuring their freedoms and liberties. She was presented with her $1,200 prize by Castan Centre Deputy Director, Dr Julie Debeljak and Joh Kirby, Executive Director of the Victoria Law Foundation during the Monash Law School’s 2009 Great Law Week Debate.

Place-getters and recipients of special commendation awards were also presented with their prizes. Second prize and $800 went to Laura Tucceri from St Aloysius College. Laura suggested that government restrictions have never been as stringent and invasive as they are today, and restrictive laws are usually drafted without consultation with young people. Third prize and $400 went to Susannah Guthrie from St Catherine’s School. Susannah argued that while the government’s influence over young people in Australia is restrictive in some areas, it is necessary for the maintenance of safety and stability in society. Certificates of commendation for their outstanding submissions were awarded to Philippa Symon, also from St Catherine’s School, Ivona Lonac of Northcote High and Tim Gibson of Woodleigh School.

The Castan Centre for Human Rights Law School of Excellence award and $2000 went to St Catherine’s School in Toorak for the overall quality of its submissions. St Joseph’s College Melbourne placed second in the schools prize and received a certificate of commendation.

The judging panel was impressed by the entrants’ ability to thoroughly explore both the specifics and generalities of the topic, illustrating their understanding of the need to balance the rights of individuals with those of society. In particular, essays highlighted the often dichotomous need to both protect young people and preserve their human rights and freedoms.

The Writing for Human Rights Essay Competition is sponsored by the Victoria Law Foundation. The winning essays are available on the Castan Centre website at www.law.monash.edu.au/castancentre

**2010 Essay Competition**

The 2010 writing for Human Rights Essay Competition topic will be ‘Criminals don’t deserve the same human rights as everyone else’.

For the first time the competition will be open to students in year 10, as well as years 11 and 12. The Centre received several petitions last year from year 10 teachers and students arguing that year 10 students should also be given the chance to think critically and creatively about human rights and the law.

In line with tradition, all winners, their families and nominated teachers will be invited to attend the Great Law Week Debate on 19 May 2010, with prizes presented at the conclusion of the debate. Three individual prizes up to the value of $1200 are on offer and the winning essay will also be published in Inscape, the annual publication of VCE literature. The Castan Centre for Human Rights Law School of Excellence award valued at $2000, will also be awarded to the winning school based on the number and quality of submissions received.

Schools will be notified of the upcoming competition in mid-November with entries closing on 22nd March 2010. More information will be posted on the Castan Centre for Human Rights website in the coming weeks.

In previous years students have shown incredible insight into the challenging topics and the Castan Centre believes the 2010 competition will see more outstanding submissions than ever.
The People have spoken, and want a Human Rights Act for Australia

After 66 roundtables in 52 locations across Australia, 35,000 submissions and a national opinion poll, the National Human Rights Consultation Committee has released its report recommending a Human Rights Act for Australia. The report was launched by the Attorney-General, RobertMcClelland, at a Human Rights Law Resource Centre event in early October, and was greeted with enthusiasm by the human rights community. The Consultation Committee, chaired by Father Frank Brennan, was launched on Human Rights Day, 10 December 2008, to “initiate a public inquiry about how best to recognise and protect the human rights and freedoms enjoyed by all Australians.” The Committee has decided that while more education is the highest priority for improving and promoting human rights, Australia does in fact, need a Human Rights Act.

The Committee called for a “dialogue model” of human rights, which encourages the courts to alert the government and parliament to legislation that is inconsistent with human rights. It also recommended that the proposed act go further than the similar acts in Victoria and the ACT by granting individuals the rights to take legal action against federal “public authorities” (such as ministers, departments and federal agencies, and private organisations undertaking government tasks, such as employment agencies) for breaching their human rights. Public authorities would be obliged to act and make decisions in accordance with human rights.

Another innovation suggested by the Committee was that some economic, social and cultural rights should be included in a Human Rights Act. The role of ESC rights would be disappointingly more limited, however. For example, people alleging a breach of these rights would not be able to take court action. They would instead be able to complain to the Australian Human Rights Commission.

The proposed act would empower judges to interpret legislation compatibly with human rights if it is possible to do so without affecting the purpose of the legislation. Where such an interpretation is not possible, a judge would have to issue a declaration that a law is incompatible with human rights. This declaration would not invalidate the law, but the government would be required to respond to the declaration in parliament and explain whether it intended to change the law or not. A similar provision exists under the UK Human Rights Act, and since its enactment, parliament has always changed a questionable law based on a Declaration made by the House of Lords. The United Kingdom is bound by the decisions of the European Court of Human Rights, which places additional pressure on the UK Parliament to amend rights incompatible legislation. Australia is not subject to similar decisions and its parliament would not necessarily be under the same pressure.

While the recommendations have received support from a broad range of social groups, organisations and individuals, there has been spirited debate in the nation’s media, particularly in newspapers and online. While those on both sides of the debate are receiving air time, The Australian newspaper is leading a concerted campaign against a national Human Rights Act. The paper and other opponents have attacked the Consultation as unrepresentative, despite the enormous number of submissions and the clear response to the Committee’s independent national opinion polling (57% were in favour, and only 14% opposed). Other common claims are that a Human Rights Act would greatly increase litigation despite evidence from the UK, Victoria and the ACT showing that this is not true, and that religious groups would be threatened despite the fact that an act would protect freedom of religion.

The federal government has yet to respond to the Committee’s report but has said it will do so before the end of the year. It is assumed, therefore, that the government will make clear whether or not it intends to pass a Human Rights Act before Christmas. Over the coming weeks, both sides of the debate will engage in furious lobbying of the government. The battle is far from over.

The Castan Centre submission to the Committee, and a separate submission by Dr. Julie Debeljak, are available at www.law.monash.edu.au/castancentre/publications/submissions

Castan Centre Deputy Director’s new book on global economics and human rights

International human rights law was originally designed to protect the inherent dignity of every human being from abuse by governments. But in an age of a global economy, where international institutions and multinational corporations operate on a global scale, beyond the reach of any one State, what is the role of human rights law? When individuals are killed, enslaved or tortured, when they are evicted from their homes or poisoned in the name of commerce or economic development, rather than at the hands of an oppressive government, can international human rights law still deliver accountability?

Deputy Director Adam McBeth’s first book, International Economic Actors and Human Rights, recently released, addresses these questions. The book looks at the effect international economic actors can have on human rights and analyses how human rights law should address the impact these organisations have. The book analyses three different kinds of international economic actors, the World Trade Organization, international financial institutions (such as the World Bank and the IMF), and multinational corporations. Through his analysis, Dr. McBeth shows the reader that while international human rights law could be interpreted to apply to these actors, changes to the way they operate and the current accountability mechanisms are needed. This book is a culmination of the research conducted for his PhD.
Ten years on: remembering Ron Castan

By Glenda McNaught

Ron Castan signed the Roll of Counsel of the Victorian Bar in 1966. It was there that I first came in contact with him in June 1974 on commencement of my employment as secretary to Bill Gillard and Tim Smith, with whom Ron shared chambers. In approximately 1977, on the resignations of his secretary, Ron joined the group and thus commenced a more than 20 year association, first as his secretary, and from 1991 as his Clerk.

The matters in which Ron was involved ranged from tax matters, Aboriginal land rights, Constitutional law, and all areas of commercial law to issues of human rights and civil liberties. His involvement in land rights issues was not confined to litigation, but included negotiations with mining companies and Commonwealth Ministers and their departments. The warmth of his personality, intellect and commitment to his clients, earned the respect of those involved, proving invaluable in negotiating successful outcomes.

Ron saw the proposed introduction of an “Australia Card” as a serious threat to the privacy and civil liberties of every Australian citizen. His commitment to this issue was such that for the 6 weeks preceding the vote on the proposal, he devoted all his energies to its opposition. Ron made numerous appearances on radio and television, (including an edition of 4 Corners on the ABC), wrote opinion pieces and organized full page advertisements in local and national newspapers supported by prominent members of the community.

This issue coincided with the demise in all but name, of the Victorian Council for Civil Liberties. Needing an appropriate vehicle for opposing the Australia Card, Ron successfully revived the VCCCL. Since that time, it has become a well-respected organization under its new identity “Liberty Victoria”. His ability to explain complex issues clearly and simply was a gift used to great effect in that instance. Ron’s participation in the debate, undoubtedly contributed to the ultimate defeat of this proposal.

The issue of human rights was a matter central to Ron’s beliefs, and as a member of the Human Rights and Equal Opportunity Commission, sat regularly as a Commissioner. At a Melbourne sitting, the Commission was subjected to a bomb threat. The police were called and the building cleared. Undeterred, Ron resumed the hearing in the street, recorded by television crews and broadcast on the evening news.

Ron is best known for his role in the Mabo litigation. It was extraordinary in many respects, running for 10 years from issue of the Statement of Claim to final decision before the High Court, testing the patience, resilience and commitment of all concerned.

Without Ron’s intellectual vigour, personal and professional commitment, it is unlikely to have been brought to a successful conclusion. For some 8 of the 10 years of this litigation, the matter proceeded without the assistance of an instructing solicitor. Under those circumstances, Ron relocated his daughter Melissa (who had completed 1 year of her law degree) and her now husband, to Brisbane for several months to assist his junior, Bryan Keon-Cohen, during the hearings in the Supreme Court of Queensland.

Constitutional law was an area Ron found particularly interesting and intellectually stimulating, as evidenced by his numerous appearances before the High Court. The Hawke Government’s decision to invite him to be part of the Constitutional Commission proved an inspired choice and an opportunity he greatly enjoyed. The group of which he was part included Tom Keneally and Peter Garrett; indeed, Tom Keneally and Ron were responsible for writing the report concerning Individual and Democratic Rights. More than 20 years later, this report has proved invaluable for lawyers engaged in preparing a submission on behalf of the International Commission of Jurists to the current National Human Rights Consultation, relating to a proposed Australian Bill of Rights.

Life in Ron’s chambers was always interesting, stimulating and great fun. His sense of humour was never far from the surface and the banter with fellow practitioners highly amusing and without malice.

Ron’s interests ranged far beyond the law – in particular to art and music. He had a passion for bike riding, and was proud of his record of participation in the first, and many subsequent, Great Victorian Bike Rides. He rode to chambers when opportunity allowed, and could be seen around the streets of Kew on weekends riding his recumbent. Bike magazines regularly took precedence over all other items of mail!

Ron was an extraordinary human being. His strong moral compass led him to pursue issues that were seen by many as a “lost cause”. He acted according to his conscience, devoid of ego and, in some cases, despite strong opposition. The respect afforded him by the bench of the High Court during his numerous appearances, reflected that demonstrated by the profession generally and the wider community.

As a student from a one-teacher primary school of 36 pupils in Yuna, (50 miles north-east of Geraldton), I wonder at my good fortune in knowing this extraordinary person so well. Without question, the years spent working with Ron and enjoying his friendship, were the most enriching and influential of my life.

After 10 years, I, along with Ron’s wife Nellie, their three children and their families and Ron’s many colleagues and friends, continue to feel his untimely passing keenly. Equally, we share a great sense of gratitude in having come under his influence and enjoyed his friendship.

Glenda McNaught is a Barristers’ Clerk based at Owen Dixon Chambers in Melbourne. She and Melissa Castan have recently established, the ‘Ron Castan Education Fund’ at the Melbourne Community Foundation. Please contact Glenda if you wish to make a contribution.

Rapporteur
How to combat Genocide, from a survivor of Genocide

By Emily Moskovitch

The road from childhood Holocaust survivor to eminent international human rights jurist may not be a common one, but for Justice Thomas Buergenthal of the International Court of Justice, it just made sense. While delivering the Castan Centre’s 2009 Annual Lecture as part of the Melbourne Writers Festival, Justice Buergenthal said “if you yourself have been a victim of human rights violations, then you have a much better appreciation of what it is like to be a victim”.

Buergenthal delivered the Annual Lecture while visiting Melbourne in August to promote his book, A Lucky Child, about his experiences in labour and concentration camps during World War II. Buergenthal was one of three children to survive the death march from Auschwitz at the end of the war, and the title of his book refers to his father’s comment that he was lucky to get into Auschwitz: most children were killed before arriving at the camp because they were not able to work.

After the war, Buergenthal was reunited with his mother (his father did not survive Auschwitz), and lived with her in Germany where he attended school alongside many children whose fathers had been Nazis. As a teenager he moved to the United States, where he excelled in law at Harvard and began his rapid rise from academic to human rights expert. Before he was appointed to the ICJ, Buergenthal was a judge on the Inter-American Court of Human Rights, a member of the UN Truth Commission for El Salvador and a member of the UN Human Rights Committee.

In his lecture, Buergenthal grappled with the issue of how the world should respond to Genocide. As one would expect, he focussed strongly on the deterrent potential of international human rights law, calling it a “history in progress”. Buergenthal drew a direct line from the foundation of the UN in 1945, through the ad hoc criminal tribunals such as the International Criminal Tribunal for the former Yugoslavia, to the establishment of the International Criminal Court in 2002. According to Buergenthal, the UN Charter and 1948’s Universal Declaration on Human Rights were the catalysts for the slow creation of an international human rights culture, which in turn led to the international community shunning pariah states and pursuing the perpetrators of grave atrocities, particularly through international tribunals and courts. Buergenthal believes that tribunals can have a deterrent effect, not only because alleged perpetrators are eventually put on trial, but also because the issuing of indictments prevents them from travelling abroad freely, for fear of arrest: they are prisoners even when they are free.

Buergenthal also credited the European, US and African regional human rights courts and tribunals with creating culture-specific human rights institutions which socialise governments into compliance with international human rights obligations and “give hope that human rights protection will be possible”. In answer to a question from the audience, Buergenthal confirmed his strong support for a similar mechanism for the Asia-Pacific.

Buergenthal did acknowledge that the world should not be fooled into thinking that the current system is fully protective and well-functioning. Although it has saved lives and increased the pressure on governments to take their obligations more seriously, Buergenthal strongly believes we still live in a “world-wide movement of human beings yearning to be treated with dignity”.

On a more personal note, Buergenthal described the difficulty he has experienced in bending the perception that victims of human rights violations apply the law in a manner whereby the “victim always wins”. Buergenthal depicted judicial impartiality as a primary aspect of any judicial office but confirmed that not all victims of gross violations could or should be asked to recuse themselves on this basis alone. In his book Buergenthal comments on his childhood experiences saying they “equipped me to be a better human rights lawyer, if only because I understood, not only intellectually but also emotionally, what it is like to be a victim…I could, after all, feel it in my bones”. On the night, Buergenthal demonstrated to the audience of more than 500 that he possesses the necessary mix of empathy and impartiality.

The Castan Centre 2009 Annual Lecture was sponsored by Holding Redlich as part of the Melbourne Writers Festival.
Labelling a terrorist, a separatist, and an extremist by her own
government, exiled Uighur leader Rebiya Kadeer received
a warm welcome from a packed house at a recent Castan
Centre event in Melbourne. Speaking on the struggle of
the Uighur people in China’s Xinjiang Uighur Autonomous
Region, Ms Kadeer gave her lecture amidst strong calls from
Chinese government representatives in Australia to ban a
documentary on her life which screened at the 2009 Melbourne
International Film Festival (MIFF). The 10 Conditions of Love
is a film about Ms Kadeer’s relationship with her exiled
husband, also an activist for Uighur rights, and the impact of
her political struggle on her family – specifically, three of her
eleven children who have received jail sentences in China. The
Cultural Attaché at the Chinese Consulate in Melbourne made
direct call to MIFF director, Richard Moore, demanding that
the film be withdrawn and further rebuked him for allowing
Ms Kadeer to appear at the festival. When Mr Moore refused to
withdraw the film from MIFF, a host of internet users in China
hacked into the festival’s website causing massive disruptions
to online ticket sales and the website’s general utility.

Unfortunately, China’s intense reaction to her dissent is familiar
territory for Ms Kadeer. Having served a five year prison term for
sending newspaper clippings to her husband overseas, Ms Kadeer
has lived in exile in the United States since her release from jail
in 2005. This year, the Chinese government has accused her of
bringing about the July ethnic clashes that occurred in Xinjiang’s
capital Urumqi which led to almost 200 dead and over 1,700
injured. However, as a Nobel Peace Prize nominee and leader of
the World Uighur Congress, Ms Kadeer stressed that hers was a
peaceful, non-separatist movement seeking realisation of the rights
of Chinese Uighurs which the Chinese government themselves
had promised.

Since 1949 Xinjiang has been one of five autonomous regions
in China, meaning that it has the right to self determination and
self-government under Chinese law. Uighurs have the right, in
theory to live freely, in touch with their cultural, religious, and
linguistic diversity. However, in her address, Ms Kadeer described
the Chinese government repression of Uighurs since the terrorist
attacks of 11 September 2001, labelling it ‘cultural genocide’. She
spoke of the Chinese government using the September 11 attacks
as a ruse to label the mostly Sunni Muslim Uighurs as terrorists,
providing a pretext for intense and systematic discrimination
against them.

However, according to Ms Kadeer, such discrimination has been
going on for much longer than just the last 8 years. She told of
witnessing the 1997 ‘Gulja Massacre’ in which hundreds, possibly
thousands of Uighurs peacefully protesting the growing repression
of Uighur culture were killed in Xinjiang. Ms Kadeer lamented the
massacre as ‘nothing short of another Tiananmen Square’. Ms
Kadeer also told of the 2001 forced transfers of young Uighur
people to Chinese schools for cultural indoctrination and the 2003
‘Bi-lingual Language Policy’ introduced by the Chinese authorities.
This was really an invasive imposition of the Chinese language,
she said, in an attempt to destroy the Uighur language. The policy
led to the dismissal of various Uighur teachers and professors
unable to teach in Chinese, who now work as unskilled labourers
due to dramatically reduced job opportunities for Uighur people.
Ms Kadeer also talked of the 2006 policy forcing rural Uighur
women to work in sweatshops against their will. In addition, many
Uighur farmers have had their land repossessed by the ‘Xinjiang
Construction Company’ and subsequently been forced to work
as cheap labour in Chinese speaking eastern China. Ms Kadeer
pointed this out as another attempt by the Chinese government to
dilute Uighur culture and language.

Regrettably, the list of offences goes on: the Chinese government
has labelled the Uighur ‘barbaric peoples’, and have charged
approximately 15,000 Uighur peoples with terrorism and
separatism related offences. At the end of her lecture, Ms
Kadeer returned to the Chinese accusations that she was the
instigator of the July violence in Xinjiang. She claimed that the
Chinese authorities randomly opened fire on Uighur people after
nightfall, and then “disappeared” hundreds of protesters in the
weeks following. Continuing her ceaseless commitment to the
peaceful struggle for her peoples, it seems that Ms Kadeer’s most
immediate goal now is exposing the truth behind the 2009 protests
- protests in which almost 200 Uighur people died holding up
Chinese flags, asking for their rights as Chinese citizens.
Sell-out conference hears wide range of views on human rights

By Neda Monshat

A sell-out crowd of over 200 was on hand to hear Commonwealth Attorney-General, The Hon. Robert McClelland, open the 2009 Castan Centre Annual Conference. As the National Human Rights Consultation was still underway at the time, the Attorney-General shied away from discussing the need for a Human Rights Act, but that did not stop the audience from trying to glean hints from his speech, particularly when he discussed the lack of comprehensive human rights protection in the common law.

Where the Attorney-General tiptoed around the issue of a Human Rights Act, Dr Ben Saul, Director of the Sydney Centre for International Law at the University of Sydney, claimed that Australia needs something stronger than the “dialogue model” adopted in Victoria, the UK and elsewhere. Dr Saul criticised the Victorian Charter of Human Rights and Responsibilities (“Charter”) “under which there are no new causes of action, no remedial rights to compensation, and no power of judges to declare legislation inoperative where it is inconsistent with human rights”.

In the day’s second session, The Hon. Justice Chris Maxwell, President of the Victoria Court of Appeal, and barrister Alistair Pound gave an update on the Charter. Justice Maxwell weighed into the issue of judicial activism, stating that judges had been successfully interpreting legislation and precedent for centuries and were unlikely to suddenly discard judicial restraint because of statutory human rights protection. For this reason, according to Justice Maxwell, the Charter had not been the lawyers’ feast some had predicted.

Mr Pound, co-author of An Annotated Guide to the Victorian Charter of Human Rights and Responsibilities, gave four more reasons for the absence of the predicted “flood” of Charter-related litigation. First, the Charter has only been in force for 18 months. Second, in many cases where Charter issues would have arisen, disputes have been settled before the matter had a chance to get to trial. Third, the Charter does not in and of itself create new causes of action. Finally, unlike the UK, where lawyers had been exposed to the European Court of Human Rights for 30 years prior to the enactment of its Human Rights Act, Victorian lawyers are generally unfamiliar with the scope and application of the Charter.

After lunch, the Hon. Robert Hill, former Australian Ambassador and Permanent Representative to the United Nations, and Professor Hilary Charlesworth, Director of the Centre for International Governance and Justice at the Australian National University, discussed the level of international engagement under the Howard and Rudd governments. Mr Hill stated that while Mr Rudd presents a public image as an ‘active participant in a multinational system’, in substance his approach to international human rights has been similar to Mr Howard’s. As evidence, Mr Hill discussed the recent Concluding Observations on Australia from the UN Human Rights Committee, which praised the Rudd government for its ‘constructive dialogue’, while stating that it ‘did not see a great deal of change in substance’. Professor Charlesworth often agreed with Mr Hill, and pointed out that while some of the Howard government’s interactions with the UN had bordered on the offensive, other interactions – such as its support for the International Criminal Court – were very positive.

The final session focussed on human rights from an international perspective. Professor Chris Sidoti, the former Australian Human Rights Commissioner, offered an interesting, though somewhat downbeat, analysis of the success of the UN Human Rights Council so far. Pointing to ‘the domination of the Council by hardline states and their accomplices’, he lamented that the Council was at risk of becoming ‘as discredited as its predecessor’. He was, however, optimistic about the allowance for dissenting reports under the Universal Periodic Review, and the use of secret ballots. Castan Centre Director Professor Sarah Joseph, finished the conference by summarising three major recent cases on the human rights compatibility of measures taken to implement Security Council anti-terrorism resolutions, democratic rights in Fiji, and gay rights in India.

Throughout the day, the interaction between speakers and delegates, and the buzz in between sessions, were indicative of a stimulating, exciting day.

The Castan Centre Annual Conference will take place in July 2010.
It was two weeks before the start of the third annual Castan Centre Charter of Rights Mooting Competition. Things were progressing as normal when news came through that one university would only be able to field a single team instead of two, leaving the competition one team short.

Rather than leave the competition with an odd number of teams, the Castan Centre sent the call out to the three other Universities to see if they could possibly field a third team. Little did we know the interest from students at those universities would be overwhelming and all three were more than happy to provide an additional team. Thus, the La Trobe 3 team was created a mere ten days before the start of the competition. The team did not know, however, that it would have to overcome one more challenge before it could start its run to the grand final.

Disaster struck on the morning of the first preliminary round. At 9 am, La Trobe 3 informed the Castan Centre that two of its three team members were sick and would be unable to participate in the evening’s competition. Rather than concede and pull out, they requested permission to ask another student to join the team at the last minute and moot with the remaining healthy competitor in the evening’s preliminary round. Their request was approved, yet with only 8 hours for the newest member to prepare his arguments and learn the relevant material, things were looking dim for the team.

The preliminary rounds went off without a hitch, with students arguing the human rights of a group protesting the dredging of Port Phillip Bay. After two rounds of well reasoned debate and tough questioning from the seasoned bench of Clayton Utz (the competition’s sponsors) solicitors, the four teams to progress to the Semi Final were Melbourne University 1, Melbourne University 2, La Trobe University 1 and La Trobe University 3, the team that only a few days earlier had entered the competition shorthanded. Thus the stage was set for a Melbourne University v La Trobe University faceoff in both Semi Final moots.

In the Semi Final round, both La Trobe teams were victorious in arguing the case of their client, a young Indigenous offender who wanted to be treated the same as other youth offenders. At issue was whether the young offender had the right to choose whether or not his sentencing hearing would be heard before the recently created Children’s Koori Court of Victoria, and whether the Magistrate failed to take his human rights into consideration when he ignored the youth’s request on the issue. This raised a number of Charter issues, but specifically the question of whether Judges must take all human rights in the Charter into consideration when making decisions. Barristers Chris Young, Brendan Loizou and Simon Moglia joined Clayton Utz partners to judge the Semi Final moots.

The 2010 Grand Final was the first Grand Final any La Trobe team had reached in the moot. La Trobe 1 argued the case of the appellant, a young woman who was seeking admission to become a lawyer in Victoria, but who felt that having to disclose any mental illness she has had in the past, a disclosure required by the Board of Legal Examiners before it would support her nomination for admission, would breach her human rights. This issue was highly topical given the students mooting would one day be required to disclose similar information should they decide to become admitted as lawyers.

Justice Chris Maxwell, President of the Court of Appeal, Judge Anthony Howard of the County Court, both veteran judges of the moot competition, and Padma Raman, CEO of the Victorian Law Reform Commission, new to the moot, judged the exciting end of a great competition of mooting before a packed house in the Court of Appeal. Having overcome some major hurdles, it was a fitting end to their fairytale run that La Trobe 3, made up of Mark Basile, Aimee Chadzynski and Daniel Diaz, proved victorious, taking home the $3000 grand prize. They join past winners Monash University and Melbourne University as winners of the competition.

The Castan Centre Charter of Rights Mooting Competition is sponsored by Clayton Utz.
War reporting and the legacy of Balibo

By Erica Contini

“War is everywhere and ongoing”, journalist and author Tony Maniaty declared as he discussed the intersection of war and journalism at a Castan Centre public lecture in October. Maniaty is a former war reporter who had been covering the nascent war in East Timor when the Australian journalists who became known as the “Balibo Five” were killed in 1975. Maniaty released the book Shooting Balibo about the incident in June of this year and was a consultant on the recent movie Balibo. During his public lecture, Maniaty weaved stories from his own experience into his exploration of the legal protections for war reporters.

Maniaty argued that journalists need to better know and understand the laws of war, often referred to as International Humanitarian Law (IHL). IHL provides protection for journalists during armed conflicts by treating them the same way as civilians, and Maniaty commented that he would have benefited from knowing the laws (or at least having heard about them) when he was reporting from East Timor. In addition to providing the basic rules for legal protection of journalists, Maniaty stated that IHL is important because “it also lets them know what is legally permissible in their role as media representatives and also what – legally - combatants can do about the presence of journalists and what they cannot.”

In East Timor, some of Maniaty’s television colleagues reported on how they had conveyed information of a military nature from one group of Fretilin forces to another, clearly breaching their obligation under IHL to remain neutral and impartial observers.

Knowledge of IHL is not just a matter of survival, but also, according to Maniaty, a way of furthering the cause of justice. As witnesses to violations of IHL, war correspondents can quickly and accurately tell the world what is happening and document violations, thereby encouraging later prosecution of offenders. Furthermore, while invoking IHL and the rule of law may not deter young soldiers, it can offer a powerful deterrent to senior officers by putting them on notice that their actions are under international scrutiny.

War reporting is more dangerous now, according to Maniaty, on account of two related influences: on one hand, it is often hard to visually distinguish journalists from soldiers due to the protective clothing both groups wear, and on the other hand journalists are no longer seen as neutral observers but as “an active component in the process of modern war” who can influence military strategies, as occurred in the 2003 invasion of Iraq. Maniaty conceded that journalists are now deeply entrenched in the war machine as they tend to provide war coverage from one perspective alone...the more embedded journalists become, the harder it is for them to maintain their status as civilians.

In the very complex environment of modern warfare, Maniaty still sees an important role for IHL. He noted the role it has played in providing justice to the families of victims of war crimes, citing the current Australian investigation into the deaths of the Balibo Five. He argued that the weakness of IHL is not its sometimes outmoded laws, but rather the need for the political will to ensure “vigorous implementation of the rules, and systemic investigation, prosecution and sanction of violations [of IHL].”

Maniaty closed the lecture by highlighting the continuing importance of having journalists in war zones and the need for stronger enforcement of IHL. He stated that, to generate greater acceptance of IHL, society needs “to stop viewing and presenting war as a heroic enterprise, and see it for what it fundamentally is – an inhuman, horrific and desperate act by people devoid of imagination, for whom brute force is not the last resort but usually the first.”

Tony Maniaty’s paper can be found online at: www.law.monash.edu.au/castancentre
American Professor Frank Garcia recently claimed that global trade policy and global justice are not the incompatible concepts that many claim, and that the world must not walk away from its commitment to use trade to create greater fairness for all.

Professor Garcia, an academic at Boston College Law Faculty, focussed in his speech on the current “Doha Round” of the World Trade Organisation’s trade negotiations, on which he has worked as a consultant for the Caribbean Regional Negotiating Machinery. He stressed that, in the context of the current economic crisis, a failure to conclude the Doha Round would, in the words of the WTO deputy director general, be “immoral.” Professor Garcia cited a recent World Bank study to the effect that hundreds of thousands of poverty-related deaths may flow from the contraction of the global economy, deaths that Doha could help alleviate.

Professor Garcia wove his discussion of justice into an assessment of the current state of Doha negotiations. It is generally accepted that the Uruguay Round – which directly preceded the Doha Round and saw the transition from the General Agreement on Tariffs and Trade to the WTO – was a bad bargain for developing countries. Their lack of bargaining power led them to accept heavy restrictions on their trade rights and to allow developed nations to wiggle out of their promises. After the Uruguay Round, the Doha Round was launched in a spirit of justice. Developed countries were not to use their superior economic positions to demand their pound of flesh in exchange for market liberalisation. While there have been some significant achievements in the round, in particular the reform of intellectual property laws and the availability of HIV/AIDS medication, the entire process has been in jeopardy since July 2008 when an impasse between major developing countries – China, India and Brazil - and developed countries - particularly America, the European Union and Australia - developed over the issue of agricultural subsidies and tariffs.

Professor Garcia stressed that even if an agreement comes out of the Doha Round, it will probably protect developed nations’ right to protect domestic industries. However, despite its current flaws, he argued that Doha could be a crucial insurance policy against protectionism and more broadly serve as the groundwork for a new system of global regulation and support of the sort that is currently being debated by the G20. According to Professor Garcia, Doha is the equivalent of a global ‘stimulus package’, and would result in hundreds of billions of dollars a year in increased trade revenues. He called for a re-commitment to the negotiations, a halt in the creeping rise of tariffs and a return to the spirit of justice invoked when the Doha Round began.

During the questions from the audience, the argument was made that Doha is just a distraction because it is not discussing the major issues of sustainable development, energy policy and the problem of exchange rates and undervalued currencies. Professor Garcia agreed that there were a number of important issues that Doha left out, however he reiterated the beneficial effect of Doha on the global economy and in relieving world poverty. Furthermore Doha has already made a number of achievements and is relatively near completion; why waste over eight years of work?

Professor Garcia ended his talk by responding to an audience member’s doubts about the ability for both developing and developed countries to come to the negotiating table in a spirit of fairness and cooperation given the dire economic times. He conceded that the road ahead was unclear, but his rejoinder was to reiterate that the very nature of the global credit crisis meant that Doha could benefit both developing and developed countries and that there is a growing awareness of the significant implications of Doha for global justice. Professor Garcia ended as he began, exhorting his audience to maintain hope that Doha could still achieve both economically sound and morally principled results.

Professor Garcia is currently Vice-Chair of the ASIL International Legal Theory Interest Group and an active member of the International Economic Law Group. He recently taught the Monash JD subject ‘Globalization and international economic law’.

By Angus McLeod
Getting a new perspective in the Top End

By Romy Grace

Since leaving school I have been eager to learn about and engage with Aboriginal communities. During the past few years I have taken an interest in government policy affecting Aboriginal communities and have participated in various community engagement and work experience programs throughout Australia. The opportunity to undertake an Aurora internship at the Northern Land Council (NLC) was therefore invaluable as it enabled me to combine my interest in Aboriginal land rights with my paralegal skills in a dynamic and interesting organization.

Prior to arriving in Darwin, I was told to have no expectations, but the internship didn’t disappoint – the work was extremely diverse and kept me engaged and busy. During the internship I worked on a land claim, a native title claim, a lease agreement, a tourism development scheme and a mining license agreement.

A highlight of the internship was the opportunity to travel (on tiny planes) to remote communities in the Northern Territory such as Croker Island on the Coburg Peninsula and Yarralin.

Life in Darwin was fantastic and I loved the laid back outdoor culture. I spent my weekends at the Asian food markets, visiting galleries, walking and riding through the national park and at the local yoga school. Living with two local criminal lawyers in a ‘troppo’ style house was heaps of fun. It took a while to adapt to all the wildlife but two months later, I was happily showering with green tree frogs, watching the food scraps ‘decompose’ within hours, and falling asleep to the buzz of mosquitoes and other mysterious flying insects.

Working for Aboriginal communities and dealing with the government on land rights issues can be extremely frustrating. Added to this is the complexity of legislation, the remoteness of many clients and the delays in achieving results. Notwithstanding the many challenges, the legal and non-legal staff at the NLC believe in what they do, and do their best to satisfy their clients’ wishes. The cultural sensitivity and understanding demonstrated by the NLC lawyers when dealing with clients was very impressive. A particular example of this occurred in a remote town, during a ‘client interview’. We had flown down in order to get instructions from a client regarding a land claim. The client couldn’t read or write in English and was very elderly. The meeting took place under the trees, in the dirt, with feral dogs roaming around, and lots of children eager to sit in. The NLC lawyer worked with the anthropologist in order to get the most accurate instructions from the client and their family.

My experience working at the NLC has definitely altered my legal career aspirations for the better and I hope to return to the Northern Land Council in the near future as a practising lawyer. I would recommend doing an Aurora Internship to all law students interested in learning more about the land/native rights of Aboriginal Australians and the complex legal system in which these rights operate.

Where are they now?

After graduating from Monash with an Arts/Law degree Katie joined the Castan Centre as its first Project Officer. In this role Katie worked on a variety of projects including human rights training programs, submissions to parliamentary inquiries and Castan Centre publications, including Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies (OMCT, Geneva), which she authored with Professor Sarah Joseph and Linda Gyorki.

Katie left the Centre to travel, live and study in Spain and returned to Melbourne last year. She is currently completing post-graduate studies at the Victorian College of the Arts in documentary filmmaking. Her recent short film is a portrait of Vickie Lee Roach, an Indigenous activist who took the Howard Government to the High Court of Australia in 2007 to challenge the constitutionality of legislation which removed the right to vote in federal elections from all sentenced prisoners. Vickie was a prisoner at the Dame Phyllis Frost Centre at the time of the case, taking it on with the assistance of an outstanding legal team including Ron Merkel QC and Phil Lynch from the Human Rights Law Resource Centre. The documentary will be screened at the Australian Centre for the Moving Image in December this year.

When Katie is not making films she is watching them in her role as Programming Manager for the Human Rights and Arts Film Festival (HRAFF). HRAFF aims to explore, interrogate and reflect on the concept of human rights through art and film, inviting the audience to engage with human rights issues through a variety of mediums and perspectives. The third iteration of the festival will kick off in Melbourne on 30 April 2010 and promises to be an exciting, challenging and inspiring ten days of art and cinema.

For more information on HRAFF please visit www.hraff.org.au

Katie Mitchell

November 2009
Learning about women’s rights from grassroots organisations

By Carly Price

Throughout the three months that I spent with International Women’s Rights Action Watch Asia Pacific (IWRAW-AP), I was privileged to meet many passionate people working in international human rights, from the committee members of UN human rights treaty bodies, to female lawyers of Southern Asia, and most importantly the women from grass roots organisations around the world who are advocating for the advancement of women’s rights in their home countries.

IWRAW-AP uses international human rights law, specifically the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to educate law enforcement officials and women’s groups about women’s rights.

When I arrived at IWRAW-AP in Kuala Lumpur, I was thrown into the middle of an Expert General Meeting (EGM). The EGM invited female lawyers and women’s rights activists from various parts of Southeast and South Asia to consult on the obstacles that are faced by lawyers when using CEDAW in domestic litigation. The outcome of the EGM was to create a set of briefing papers that will address these obstacles and provide strategies for lawyers to overcome these challenges in their own litigation. Being able to act as rapporteur for IWRAW-AP during this EGM was a very rewarding experience. The shared stories of women from Nepal who are helping to rebuild the entire legal system, and of women from Pakistan who are fighting domestic violence in the absence of any legislation, enabled me to identify some of the practical and political constraints that impact on the course of justice for women in these countries.

The highlight of my trip, however, came about in my role as rapporteur for IWRAW-AP in its “Global to Local Programme” that coincided with the 43rd session of the CEDAW Committee in Geneva, Switzerland. The Global to Local Programme brings together women’s rights NGOs from each of the countries required to submit a report at that session of CEDAW. The four day training course educates participants on CEDAW and the UN system generally, and provides practical training for lobbying the CEDAW Committee. This lobbying allows the NGOs to report on the reality of the situation in their home country and to identify the key issues limiting the realisation of women’s rights.

As well as providing training for the participating NGOs, my role in Geneva involved liaising with CEDAW Committee members and holding a briefing on women in armed conflict, with the aim of encouraging the CEDAW Committee to issue a General Recommendation on the topic. At the briefing, women from Guatemala shared the horrific experiences of women who became weapons of war and victims of hate murders during the periods of civil conflict. These female victims and their families still have no recourse to justice for the crimes committed against them. While it is unclear how immediately the CEDAW Committee will attend to a General Recommendation on women affected by armed conflict, it has been marked as an area to revisit in the future.

Being able to participate in this process, and work so closely with women from Rwanda, Haiti, Cameroon, Dominica, Guatemala and Armenia was a privilege and a profound learning experience. I was inspired by the women who risked persecution back home to attend the Session. I was intrigued when the women of Haiti would not acknowledge that there had been conflict in their country and pondered the contextual reasons for this. Additionally, I was humbled by the women who came to Geneva, with little if any prior knowledge of CEDAW, but who came to bring the stories of their sisters back home. The work of IWRAW-AP in this process had a significant impact on me and alerted me to the high level of civil society participation in this treaty body process.

I would like to express my sincerest gratitude to the Monash Law School and to the Castan Centre for their support, generosity and encouragement. This is a truly unique experience and highlights the absolute commitment of Monash to the learning and personal development of its students. I will be forever grateful for having had this opportunity.
I was very fortunate to attend the tenth session of the Human Rights Council at the United Nations in Geneva, Switzerland. I was one of two interns at the Australian delegation and I was supervised by Australian diplomats from the Australian Mission in Geneva. It truly was one of the most interesting experiences of my life.

Prior to the internship, I was extremely interested in the UN and its role in protecting and promoting human rights around the world. However, I knew very little about what this actually entailed. I am very grateful to the Castan Centre for the opportunity to participate in this initiative and to get hands-on experience in this field.

As an intern at the Australian delegation, I attended the plenary session of the Council and many side meetings and events. At these sessions, I drafted reports which were used to inform the Department of Foreign Affairs in Canberra on what was occurring at the Council. I was also very fortunate to deliver Australia’s statements on a number of human rights issues during various debates. Furthermore, I was given the opportunity to lobby delegates from other countries to support a resolution on torture.

A great deal of human rights issues were addressed at the Council, ranging from the rights of children and people with disabilities, to the situation in North Korea, the Middle East and Somalia. All of these issues were discussed in the plenary session of the Council and in side meetings, where diplomats from different states debated on and refined the wording of resolutions that would be passed at the conclusion of the Council. I also very much enjoyed attending the meetings put on by various NGOs. One of the best aspects of attending the Human Rights Council is that there were seemingly endless opportunities to attend talks put on by many prominent speakers about a vast amount of different human rights issues.

One meeting that sticks out in my memory was a panel of speakers that discussed forced disappearances in South America and the possibility of using forensic science to find and identify the bodies of the victims. One of the speakers was an elderly lady, who represented the organisation of grandmothers that were looking for their grandchildren, who had been disappeared by various regimes. The passionate stories told by this woman and her relentless search for her disappeared grandson brought tears to my eyes.

Of course, the Human Rights Council is not without its problems. Throughout the internship, the strengths and weaknesses of multi-lateral forums, and the Human Rights Council in particular, were brought to my attention. This was highlighted by the Universal Periodic Review (UPR). The UPR is a process by which the human rights situation in every country is reviewed by other states and by civil society. Over a number of years, every state is given the opportunity to present a report and other countries and NGOs may make comments and recommendations regarding the report and the general state of human rights in that country. At the session that I attended 16 countries were reviewed. It was clear from the outset that the process was very political and that despite a country’s actual conduct in relation to human rights, it was often praised by its peers and criticised by its enemies. It was difficult to escape politics throughout the duration of the Council and, even though this was disheartening, overall I still believe that the UN and large multi-lateral meetings have a role to play in promoting and protecting human rights around the world.

Another aspect of the Council that I enjoyed is that it truly is an international experience. It was incredible to look around the room and to see faces of representatives from almost every country in the world. Similarly, I really enjoyed living in Geneva, as it is also a very international city. Whether at the UN or on my days off, I met many interesting people from all around the world and this added to the richness of the experience. The city itself is very quaint and beautiful and the mountains surrounding it are spectacular.

Overall, I had an amazing experience. I would not have been able to learn so much about so many human rights issues and to get an insight into the intricacies of the UN without this opportunity.
Global Interns

An eyewitness to the bravery of asylum-seekers

By Tania Marcello

Every time I hear an asylum seeker’s story, I find myself admiring the person’s bravery and reflecting on my own. Would I sing a song praising the Dalai Lama even though I might be beaten and thrown in jail? Would I endure the persecution that comes from simply being a member of a particular ethnic group? Would I do what I believed to be right or simply choose the path of least resistance? The asylum process in countries such as Australia and the US seems to overlook this courage and treat the vulnerable with deep skepticism. Everyday, during my time with the Refugee Protection Program at Human Rights First, I was given the chance to engage with people who had been subjected to horrific acts, fled everything that they ever knew and were greeted in the US with a complicated and arbitrary system, or even jail.

HRF’s pro-bono program partners with top law firms in New York to provide free representation to asylum seekers at all stages of the asylum process. My main role was to be involved with the elaborate intake procedure. I would attend client interviews in which we would hear the person’s entire life story and the persecution that they endured. Their stories were always heartbreaking, and often confronting. I would then draft a detailed report which would include extensive country conditions research. This was always very interesting work and allowed me to learn a lot about various countries ranging from Iraq to Tibet and Camereroon. One day I would be researching the treatment of Belorussian student activists and the next I would find myself looking for details on a protest that took place in Samarkand in 1992.

By being involved in cases that were at all stages of the asylum process, I learnt a great deal about the US asylum system and was interested to see how the process works without the tabloid fuelled public hatred for asylum seekers that we have in Australia.

In addition to being involved with intakes, I also worked on various other tasks including projects relating to the report on detention that HRF released in April entitled U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison. I also had the chance to visit an immigration detention centre in Elizabeth, New Jersey, where I found the conditions to be alarmingly prison-like. The detainees have to wear prison uniforms and have regular headcounts, and can only visit with their loved ones through a glass partition. It is hard to imagine why such conditions are necessary for a non criminal population.

I also spent time working at the Washington DC office of HRF, which is located directly across the road from the Capitol building and the Supreme Court! This gave me the opportunity to attend House and Senate committee hearings during my lunch break, one of which was chaired by John Kerry.

My time at HRF was always interesting, and I had the opportunity to work with some very dedicated and remarkable people. I was particularly lucky to be a part of HRF during the change in administration. It was thrilling to get email updates with inside information about the imminent closure of Guantanamo Bay, and I was excited to see that a coalition of former Generals that was brought together by HRF was standing behind Obama as he signed the executive orders. I also had the chance to learn about the operations side of an NGO by seeing the effect that the global financial crisis is having on organisations, particularly in New York. On the up side, the pro bono program has never had so much demand for work from unoccupied corporate lawyers!

My time at HRF was an immensely rewarding and enriching experience. I am very grateful to the Castan Centre and Monash Law School for this opportunity, and a big thanks to Erica Contini and Marius Smith for all of their support.

Tania Marcello poses in front of United States Capitol Building during her time with Human Rights First in Washington DC
Dissecting the commercialisation of Indigenous land

Author and former native title lawyer David Ritter explored the difficulties involved in the Australian native title system in his public lecture given at the Castan Centre in September. Ritter, who recently released the book *The Native Title Market*, sought to paint a realistic portrayal of the agreement and negotiation process.

Ritter marvelled at how quickly things changed in the 1990s. Before then, the concept of native title often seemed naive and unimaginable. For today's generation, it is difficult to conceive of a time before Mabo, the landmark native title case run by Ron Castan AM QC, after whom the Castan Centre is named. Ritter suggested that Indigenous issues relating to native title were at their most prominent in Australian politics during the mid-1990s. However, since this time such issues have taken a back seat as native title has now settled into a system of negotiation and agreement making. The objectives of this process are to allow for successful agreements to be entered into by all involved parties.

The *Native Title Act*, which was passed in 1993, monetised the relationship between Indigenous people and resource companies seeking to use the land, according to Ritter. This meant that Indigenous groups had the right to negotiate how their land was used. Ritter describes this process as a “virtual shopping centre in which miners, explorers and energy companies purchase their permissions to go on native title land from Indigenous groups acting as vendors”.

Ritter argues that, contrary to popular belief, agreement making under the right to negotiate is not particularly alternative; is unconcerned with principles of compensation or interest satisfaction in a broader sense; does not necessarily address Indigenous disadvantage, is disconnected from reconciliation; and rather than necessarily promoting community or solidarity, may actually encourage greater atomization and individualism within Aboriginal communities. However, despite this Ritter maintained that his central objective is not to condemn the native title system, but to steer understanding and debate to the actual process by which native title land is traded.

Six questions for: Tania Penovic

What were you doing prior to coming to Monash University?

I worked as a solicitor and yearned all the while to devote myself to something I cared about more profoundly than the outcomes of the commercial disputes I worked on.

What area of human rights law are you most passionate about?

The conferral of hard rights on members of marginalised groups.

You teach torts law… do you find a significant cross-over between torts and human rights law?

Yes. Human rights and tort law share some key objectives and in the absence of a federal bill of rights, a number of victims of human rights violations have addressed the wrongs done to them through torts such as negligence and false imprisonment. Of course, these victories are hard won and can only be enjoyed by those who have ridden the rollercoaster of civil litigation (and usually the appeal process as well). As human rights gain wider acceptance, hopefully with the boost offered by a federal bill of rights, it is likely that tort law and the developing jurisprudence of human rights will be mutually influential. Another important point that we can take from the torts arena is that longstanding common law actions such as negligence are built on notions such as “reasonable foreseeability” and “harm” which are no less vague than human rights norms which are regularly mis-characterised as non-justiciable.

You have worked on a number of submissions to government inquiries for the Castan Centre, which has been the most rewarding for you to work on?

The Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 sought to phase out the onshore component of Australia’s humanitarian programme. All asylum seekers who reached (or tried to reach) Australia by boat would have been processed in offshore centres such as Nauru. Australia would have ceased to process boat arrivals irrespective of circumstances like the danger they fled, their age or medical condition.

After providing a written submission to the Senate committee reviewing the Bill, I appeared before the committee with my colleague Azadeh Dasttyan. We were thrilled when the committee recommended that the Bill should not proceed and even more thrilled when it foundered in the face of imminent defeat in the Senate.

What inspired your interest in human rights?

My maternal grandfather was disappeared as a young man in the former Yugoslavia in the kind of circumstances that have occurred repeatedly across the world and still occur today. When my grandmother’s life ended 14 years ago on the other side of the world, she died in ignorance as to his fate and with the unrealistic hope that he might still be alive. My cousins in Croatia tell similar stories about events which played out much more recently. International human rights law and the related area of international criminal law have offered a vocabulary for articulating why this kind of situation is intolerable. The need to refine this vocabulary and concomitant legal remedies continues to inspire me.

If you could give students one piece of advice, what would that be?

Don’t forget that while following your dreams, you are more likely to succeed with a solid grounding in the kinds of subjects that you might not associate with human rights; constitutional and administrative law, torts and even equity! It may sound dull but it will give you the most solid grounding from which to develop your thinking about human rights!
What inspires or drives you about human rights?

David Carolan: My inspiration derives from the fact that although human dignity is supposed to be a well established concept, it is so commonly denied, even in countries that claim to be the most developed and forward thinking.

Romy Green: I have an innate sense of justice, which unfortunately I can’t place. I feel a connection to marginalized groups, and a strong desire to do what I can to make things easier for them. I guess I’m just an idealist.

What past community-related experience have you had?

Neda Monshat: I went to South Africa as part of the Castan Centre Global Internship Program to volunteer at an Oxfam-affiliated NGO assisting refugees and asylum-seekers. I have also volunteered with World Youth International in Kisumu, Kenya and at the Asylum Seeker Resource Centre in Melbourne.

Namrata Kant: Over the 2008 summer holidays I travelled to India and spent several weeks teaching (as a volunteer) at a school located in a slum area of Delhi. It is clichéd but true to look back on it as a life-changing experience. Since mid-2008 I have also regularly been volunteering at the Sudanese Australian Integrated Learning Program and for the Community Visitors Scheme.

What did you do during your internship?

Angus McLeod: I helped in the background research for the Castan Centre’s submission to the National Human Rights Consultation for an Australian Human Rights Act, met with the chair of the national consultation Father Frank Brennan, and conducted research into the problem of the registration of indigenous births in Victoria.

Maida Kopac: Miscellaneous tasks, such as the UNHCR decisions reports, research for the submission to the National Human Rights Committee, the report of the violation of the basic rights of Indigenous Victorians in remote communities under the IICPR... and many hours of research involved therein in reading old documents.

What do you hope to do in the future?

Helen Fabinyi: Pursue an active and varied career in human rights — either through legal or community development work — at a local and international level. Pursue further study at some point in human rights, Indigenous law and/or International Development.

David Sztrajt: Make a power presentation on Human Rights, turn it into a movie and then win a Nobel Peace Prize for my efforts (as if that would happen).

Gideon Boas

Article


Chapters

‘Forms of responsibility in International Criminal Law — Some Problems and Answers’ in Larissa van den Herik et al (eds), Future Perspectives on International Criminal Justice (Kassel Press/Cambridge University Press, 2009)


Melissa Castan

Book

Handbook for Interns: A guide to internships at Native Title Representative Bodies, Native Title Service Providers, Indigenous corporations, government bodies, community groups, not-for-profit, policy and other Indigenous organisations, Carmen Watts and Melissa Castan (eds) (The Aurora Project 2009)

Grant

Monash Law Faculty Small Grant to work on the issue of Birth Registration and Indigenous People (with P. Gerber).

Paper

‘Human Rights and Indigenous Archives’ Research Forum, presented by the Centre for Organisational and Social Informatics in conjunction with the Centre for Australian Indigenous Studies and Castan Centre for Human Rights Law, 7 August 2009

Erica Contini

Submission

Submission to the Standing Committee on Legal and Constitutional Affairs on the Inquiry into Marriage Equality Amendment Bill, (with P. Gerber, A. Sifris, and M. Smith), August 2009

Julie Debeljak

Grant

Awarded an Attorney-General’s Department “Grants to Australian Organisations Program 2009-2010” to run a Workshop entitled “Legal and Criminal Justice Responses to Trafficking in Persons in Australia: Obstacles, Opportunities and Best Practice”, 9 November 2009 (with S. Kneebone)

Submission

Submission to the National Consultation on Human Rights, submitted to the National Consultation on Human Rights Committee, 15 June 2009, 1-88

Paula Gerber

Article

‘Making Visible the Problem of Invisibility’ (2009) 83(10) Law Institute Journal 52


Grant

Monash Law Faculty small grant to work on the issue of Birth Registration and Indigenous People, (with M. Castan)

Other

‘If I were Attorney-General …’, Human Rights Law Resource Centre Bulletin, June 2009

Paper

‘Human Rights Education’, presented to the United Nations Youth Association Conference, University of Melbourne, April 2009


Submission


Sarah Joseph

Article

Chapter
‘Trade and the Right to Health’ in Andrew Clapham and Mary Robinson (eds) Realizing the Right to Health (Swissbook, Geneva, 2009), 361-369

Papers
‘Human rights and Digital Story-telling’, Australian Centre for the Moving Image, Melbourne, 16 May 2009

‘Israel, the Occupied Territories and Human Rights’, Australian Centre for Jewish Civilisation, Monash University, 6 August 2009

Submission
Submission to the National Human Rights Consultation, ‘A Federal Human Rights Mechanism’, on behalf of the Castan Centre, June 2009

Susan Kneebone
Chapter

Grant
Awarded an Attorney-General’s Department “Grants to Australian Organisations Program 2009-2010” to run a Workshop entitled “Legal and Criminal Justice Responses to Trafficking in Persons in Australia: Obstacles, Opportunities and Best Practice”, 9 November 2009 (with J. Debeljak)

Other

Papers
‘Governance of Labour Migration in South East Asia’, presented to 6th Asian Law Institute Conference, University of Hong Kong, 29 May 2009
‘Immigration Detention in Australia: Success or Smokescreen?’, address to the Immigration Legal Practitioners’ Association (UK), London, 10 June 2009
‘Governance of Labour Migration in South East Asia: Lessons for the Globe?’ presented to IASFM 12, Nicosia, Cyprus, 29 June 2009
‘Protection and Victims of Trafficking in the Greater Mekong Sub-region’ presented to IASFM 12, Nicosia, Cyprus, 30 June 2009
‘Refugee Futures: Perspectives from South East Asia’ presented to the Refugee Futures Conference, Prato, Italy, 10-12 September 2009
‘Refugees, Crime and Security: The Trafficking-refugee nexus’ presented to the Refugee Futures Conference, Prato, Italy, 10-12 September 2009

Submissions
Submission to the Legal and Constitutional Affairs Committee on the Migration Amendment (Immigration Detention Reform) Bill 2009, (with T. Penovic, H. Fabinyi and E. Moskovitch), August 2009
Submission to the Standing Committee on Legal and Constitutional Affairs on the Inquiry into the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009, (with L. Healy and M. Money), August 2009
Evidence given to the Standing Committee on Legal and Constitutional Affairs on the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009, 27 August 2009

Joanna Kyr亚kakis
Article

Paper
‘Mental Impairment as a Defence in International Criminal Law’, presented at the 24th IVR World Congress on Philosophy of Law and Social Philosophy, China Law Society, Beijing, 16 September 2009

Adam McBeth
Book

Paper

Bernadette McSherry
Article

Submission
Submission to the National Justice CEOs Group, ‘Diversion and Support for People with Mental Illness’, (with Prasanna Venkataraman), 31 August 2009

Maria O’Sullivan
Papers
‘The Cessation Provisions of the EU Qualification Directive – Do they provide protection against persecution or “effective protection”?’, delivered at the Cuenca Colloquium on International Refugee Law, Spain, 1 October 2009

Tania Penovic
Paper
‘Public International Law and Human Rights in Australia’ presentation to Australian Institute of International Affairs ACCESS Youth Network Forum ‘Inside the World of International Law’, 30 September 2009

Submission
Submission to the Legal and Constitutional Affairs Committee on the Migration Amendment (Immigration Detention Reform) Bill 2009, (with S. Kneebone, H. Fabinyi and E. Moskovitch), August 2009

Adiva Sifris
Article

Papers

Submission

Marius Smith
Submission
Rapporteur is published bi-annually and is the official newsletter for the Castan Centre for Human Rights Law.

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Telephone: +61 3 9905 3327

The Castan Centre for Human Rights Law
Faculty of Law, Building 12
Monash University
Victoria 3800 Australia
+61 3 9905 3327
+61 3 9905 5305
www.law.monash.edu.au/castancentre

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