Previewing Australia's appearance before the UPR

By Marius Smith

Australia's human rights record was scrutinised at its second Universal Periodic Review (UPR) in Geneva on 9 November.

11 days beforehand, the Castan Centre, the Human Rights Law Centre and the UN Association of Australia (UNAA) held a preview event in Melbourne to raise awareness of the UPR and to help people understand why it is important. After all, Australia's first review in 2011 had received scant media coverage and only about 10% of the recommendations were fully implemented in the following four years.

So, it was important that the head of Australia's delegation to the 2015 UPR, John Reid of the Attorney-General's Department, found the time to fly down to attend, along with Kevin Playford, the Director of the Human Rights and Indigenous Section at the Department of Foreign Affairs and Trade.

Playford was frank in acknowledging that the Government faced some "areas of challenge" in relation to human rights. Reid stated that the Government was hoping for defined, measurable recommendations. Often, countries will make vague recommendations which are virtually impossible to implement.

Playford and Reid were joined by the Castan Centre's Director, Professor Sarah Joseph, Darren Dick of the Australian Human Rights Commission and the Human Rights Law Centre's Anna Brown, while UNAA's Wendy O'Brien chaired the event.

Brown had just returned from Geneva where she, and other NGO representatives, met with delegations from a number of countries in preparation for Australia's UPR. Brown said the report by the NGO coalition was seen as a credible summary of Australia's human rights record by time-poor diplomats wanting to make relevant recommendations at the UPR. While Australia's record on asylum seekers "boggles the mind" of other countries, according to Brown, they also have a generally positive view of Australia's human rights record.

Dick had also been in Geneva, hoping to ensure that the Government received recommendations beyond the hot button issues of Indigenous and refugee rights. At the UPR a few weeks later, he would get his wish as many different topics, including women's rights, disability, children and more were highlighted. Dick noted that six countries recommended ratifying the Optional Protocol to the Convention Against Torture in 2011, and the government accepted those recommendations. Yet it hadn't happened. A few weeks later, 27 countries made the same recommendation at the 2015 review.

The event was a great explainer of the UPR process for those present. Now that the review has come and gone, the Government must decide which of the 299 recommendations to accept.

Our news item on the UPR is on page 2 of this newsletter, and an opinion piece about the UPR is on page 5.

Perennial Outlaws – the Shadow Side of International Criminal Justice

By Caitlin McInnis

What happens after a person is acquitted in an international criminal trial? Issues surrounding applications for asylum, fair-trial and compensation are all important topics, but they are rarely discussed. In September, the Castan Centre, in partnership with Holding Redlich, hosted a public lecture by Professor Elies van Sliedregt, the Director of the Centre for International Criminal Justice and Dean of the Faulty of Law at Vrije Universiteit Amsterdam. During her lecture, Prof. van Sliedregt discussed what currently happens to those acquitted by international courts and tribunals, and what needs to change to improve the status quo.

Van Sliedregt began her lecture by highlighting the situation in Rwanda as an example of what life is like for the accused after acquittal. A number of acquitted persons cannot return to Rwanda, and live in a safe house in Arusha (Tanzania), the seat of the Rwanda Tribunal, with few prospects for a change in circumstance.

Furthermore, it is difficult for them to apply for asylum as they are barred from being classified as refugees. The reason for this, van Sliedregt explained, is that the Refugees Convention excludes those who may have committed serious crimes. Indeed, in analysing the exclusion clause of the Refugees Convention, she explained that because of its breadth, a person who has been acquitted of a crime may still be excluded. She highlighted that this sentiment has been expressed in courts in countries such as New Zealand, the UK and Canada.

Van Sliedregt then turned to the issue of what happens when your country is ruled by your adversaries. She noted that there have been different experiences for those acquitted by the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for Yugoslavia, where some have returned home heralded as heroes.

She noted that countries cannot be forced to take acquitted people as refugees, instead she suggested there should be a system in place that allows countries to register to take them.

Van Sliedregt concluded by observing that one of the main issues is that there is no uniform practice for determining the crimes covered by the Refugee Convention exclusion clause. She suggested that the solution was not to renegotiate the Refugee Convention but perhaps changing the interpretation of the clause bearing in mind the purpose of the Refugee Convention: protection.

The Centre was delighted to host Professor van Sliedregt. The night was a success, providing insight into an issue that is rarely raised, but which must be addressed if we want a functioning system of international criminal justice.

Professor Elies van Sliedregt travelled to Australia as a Holding Redlich Distinguished Visiting Fellow, and also taught in the LLM program at the Monash Law Faculty.