HUMAN RIGHTS DEFENDER

UNSW
Australian
Human Rights
Institute

How far we've come on LGBTQI rights
RODNEY CROOME AM

The protection of human rights defenders
MARY LAWLOR

Gun 'rights' in Australia and the USA
REBECCA PETERS AO

SPECIAL 30TH ANNIVERSARY ISSUE

THE PAST, PRESENT AND FUTURE OF HUMAN RIGHTS

AUSTRALIAN HUMAN RIGHTS INSTITUTE
Website: www.humanrights.unsw.edu.au
Email: humanrights@unsw.edu.au
Twitter: @humanrightsUNSW
LinkedIn: Australian Human Rights Institute
Subscribe: humanrights.unsw.edu.au/subscribe

MANAGING EDITORS:

DR ANNI GETHIN is a health social scientist with an interest in domestic violence law reform. She coordinates the Brigid Project, a peer support charity for survivors of domestic violence, runs a research consulting business, and lectures in public health and criminology at Western Sydney University. Anni will commence a PhD at Sydney University law school in 2020; her research will be on legal remedies for victims of domestic violence, and perpetrator accountability.

JOSH GIBSON is a current PhD Candidate and Garth Nettheim Doctoral Teaching Fellow at UNSW. He is a member of the Australian Human Rights Institute and Gilbert + Tobin Centre. Josh's research interests include human rights litigation, public interest issues and the role of the courts in the Australian human rights praxis. Josh has experience teaching public law, and legal research at UNSW, and human rights law at Macquarie University.

DR CLAIRE HIGGINS is a Senior Research Fellow at the Andrew and Renata Kaldor Centre for International Refugee Law, at UNSW Sydney. She is the author of 'Asylum by Boat: origins of Australia's refugee policy' (NewSouth, 2017) and was a Fulbright Postdoctoral Scholar at Georgetown University, Washington DC, in 2018.

ANGELA KINTOMINAS is a Scientia PhD Scholar at the University of New South Wales and Teaching Fellow at UNSW Law. As a feminist legal researcher, Angela's interests are in the intersections of gender, migration and work. She is a Research Associate with the Migrant Worker Justice Initiative and the Social Policy Research Centre.

AMREKHA SHARMA is a senior advisor on Global Engagement at Greenpeace International, where she has led on the design and development of international environmental campaigns for over ten years. She focuses on climate justice and litigation projects. Her background is in Communications and International Security Studies, and she is currently a final year Juris Doctor candidate at the UNSW Faculty of Law and Justice, continuing her interest in climate change and human rights.

ANDY SYMINGTON is a PhD candidate at UNSW Law and an Associate of the Australian Human Rights Institute. He is researching business and human rights, focusing on the extraction of lithium in the high Andean salt flats of South America. In 2018 he was honoured to be the recipient of UNSW's inaugural Judith Parker Wood Memorial Prize for human rights law. He is an experienced freelance writer and journalist.

STUDENT EDITORS: Grace James and Lubna Sherieff
PRODUCTION MANAGER: Drew Sheldrick
DESIGNER: Stephanie Kay, On the Farm Creative Services

FOREWARD AND INTRODUCTION

04 **Foreword**
Professor Justine Nolan

05 **Achieving human rights progress is hard but vital**
Hugh de Kretser

THE PAST AND PRESENT

07 **Defending those who defend our rights**
Mary Lawlor

09 **Have national human rights institutions reached their use-by date?**
Chris Sidoti

12 **Interview with A.G. Saño**

18 **Black Lives Matter and 30 long years since the Royal Commission into Aboriginal Deaths in Custory**
Keenan Mundine

21 **The path to full equality**
Rodney Croome AM

26 **From lawn bowls to pronouns – trans advocacy now and then**
Teddy Cook

29 **Gun ownership is not a right**
Rebecca Peters AO

33 **Involving women in gun control for peace**
Magda Coss

35 **Supporting human rights defenders**
Patrick Earle

38 **Then and now: Women's human rights in Asia**
Priyanthi Fernando

THE FUTURE

40 **What would it look like if Australia treated climate change as an emergency?**
Ketan Joshi

43 **Seeing Indigenous humanness**
Professor Jacinta Ruru

46 **Gender equality and the future of work**
Dr Briony Lipton, Professor Rae Cooper and Dr Meraiah Foley

48 **Data sharing and consent in the world of 6G**
Dr Ian Oppermann

ART FEATURE

51 **Speaking out to be met with silence**
Hoda Afshar

FOREWORD

PROFESSOR JUSTINE NOLAN

Justine Nolan was named Academic of the Year in 2019 for her work as a Professor in the Faculty of Law and Justice at UNSW Sydney. In 2020, Justine became the Director of the Australian Human Rights Institute. Her research tends to focus specifically on the intersection of business with human rights.

The modern era of human rights began post World War II with the establishment of the United Nations and the adoption in 1948 of the *Universal Declaration of Human Rights*. The *Universal Declaration* provides us with a basic list of 30 fundamental human rights. On this 30th anniversary year of the *Human Rights Defender*, it is timely to consider which of those 30 rights have progressed and which have fallen behind.

Human rights are much more than a set of principles on a piece of paper. They provide us with a framework for striving to ensure that everyone around the world – no matter their race, gender, ethnicity, socio-economic status or sexual orientation – is treated with dignity. But too often their implementation falls short of the lofty standards set in the *Universal Declaration*.

Human rights are in a constant state of evolution and this issue demonstrates we must never be complacent about their acceptance, recognition and implementation around the world. But we all must start somewhere, and often that will be ensuring rights are respected and protected in our own backyards.

In the famous words of Eleanor Roosevelt:

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world.

UNSW, and in particular, the Faculty of Law & Justice in which the Institute is located, has a long history of research and advocacy dedicated to progressing human rights. Building on the outstanding legacy of the Australian Human Rights Centre (est.1986), the Australian Human Rights Institute was established in 2018 to increase public awareness and academic scholarship on human rights. In the last three years, the Institute has successfully delivered high quality interdisciplinary human rights research, influenced policy and practice, whilst also broadening understanding of human rights within communities.

The Institute's goal is to grow the next generation of human rights experts and we are proud to amplify the voices of human rights defenders around the globe via this magazine. Our aim is to continue to develop cutting edge research and foster collaborations to advance human rights solutions to real world problems. ■

ACHIEVING HUMAN RIGHTS PROGRESS IS HARD BUT VITAL

HUGH DE KRETSER

Hugh de Kretser is the Executive Director of the Human Rights Law Centre, a national not-for-profit organisation that uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice. Hugh previously led the Victorian Federation of Community Legal Centres and the Brimbank Melton Community Legal Centre. He is a Director of the Sentencing Advisory Council and previously served as a Commissioner of the Victorian Law Reform Commission.

Achieving human rights progress can be hard. It can take years and sometimes decades of advocacy, campaigning, strategy, suffering and sacrifice. Sometimes all that effort comes to nothing. Sometimes things go backwards despite our best efforts. Sometimes change happens, but the pace is far too slow.

Thirty years ago, the Royal Commission into Aboriginal Deaths in Custody laid out a road map to stop Aboriginal people from dying in police and prison cells. Recognising the disproportionate and harmful impact of the crime of public drunkenness on Aboriginal people, the Commission recommended its abolition. One of the deaths investigated by the Commission was that of Harrison Day, who died from an epileptic seizure in a police cell in Victoria in 1982 after being arrested for an unpaid $10 fine for public drunkenness.

At the time of the Commission's report, Victoria was on the verge of decriminalising public drunkenness, but later abandoned the reform for political reasons. Twenty-six years later, in 2017, Harrison's niece, Tanya Day, was arrested for being drunk on a train in country Victoria and locked up in a police cell. Police officers did not monitor her welfare and safety as required. She fell numerous times, hit her head and tragically died from the injuries.

In the lead-up to the coronial inquest into Tanya Day's death, the Victorian Government committed to abolish the crime of public drunkenness. In February this year, 30 years after the Royal Commission, the laws passed the Victorian Parliament. Change was finally won, but it was bittersweet. Tanya Day should never have died.

I took my first paid human rights job, running a community legal centre in Melbourne's outer west, in 2004. One of our reform projects was addressing the impact of old, irrelevant criminal convictions on people's ability to access employment. Research confirms that securing work helps people who have offended to get their lives back on track, while excluding them from jobs can send them spiralling downward. We heard from many people who had turned their lives around, lived crime-free for years, and yet were still haunted by old and often minor convictions.

Unlike every other Australian jurisdiction, Victoria had no legislated spent convictions scheme which mandated when an old conviction should no longer appear on your criminal record. Ambitiously, or perhaps naively, I set a goal to achieve such a scheme by 2007 and then told the Executive Director of the Fitzroy Legal Service, with whom we were collaborating. She said she had found a law reform file in their office on the issue from around 1978. I took a deep breath. Around 15 years later, in March this year, the scheme was finally legislated by the Victorian Parliament.

What made both these long overdue changes happen this year and not before?

That's a long story but a big part of it is the determined and courageous advocacy by people directly affected by the injustices. Tanya Day's adult children powerfully spoke up and pressed for change so that no other family had to endure the loss that they suffered. They used the focus of the coronial inquest to highlight the failures that led to their mother's death, spoke to the media and met with politicians to convince them to pursue reform.

With criminal record reform, a project led by Woor-Dungin, a partnership between Aboriginal organisations and philanthropy, was critical. The project highlighted the disproportionate impact of old criminal records on Aboriginal people and the stigma, discrimination and exclusion they experienced as a result. It shone a light on the injustice of past practices when children removed from their families were given a criminal record. It involved affected people and helped them to tell decision makers about the need for change.

So many human rights changes happen this way. Years and sometimes decades of strategic advocacy, campaigning and legal action are often involved. Sometimes good work goes unrewarded for long periods until, in the language of acclaimed political scientist John Kingdon, a "policy window" opens and the change is won.[1]

For human rights supporters, it's vital to look back and reflect on how change is won. Bill Quigley, in his insightful and inspiring "Letter to a Law Student Interested in Social Justice" warns that failure "is an inevitable part of social justice advocacy" and it is the response to failure that is the challenge. Quigley speaks of the vital importance of hope in this response: "When hope is alive, change is possible."[2]

Looking back on human rights progress can give us hope about what is possible in the future. It helps us to remember injustice and to remain vigilant against regression. It ensures we don't take change for granted and teaches us how to avoid mistakes and how to be more effective in our human rights advocacy. Perhaps most importantly, it can energise our efforts to achieve further progress to address the many challenges that remain.

In the 30 years that this magazine has been published, it is clear that, despite the setbacks, there has been significant human rights progress in Australia. Progress has been sometimes small, sometimes big. It has never been linear and never been certain. But each step forward, whether in advancing women's rights or achieving marriage equality, has cumulatively amounted to a major and undeniable positive shift towards realising human rights in this country.

Of course, many gaps and challenges remain. Thirty years after the Royal Commission, Aboriginal and Torres Strait Islander people are still dying in custody at shocking rates; a product of choices by governments and parliaments to adopt laws and policies that have made the crisis of Aboriginal and Torres Strait Islander over-imprisonment worse. Australia has gone backwards on its approach to people who come to our country seeking safety from persecution. Wealth and income inequality is increasing, and new areas of acute risk have emerged with the impacts of climate change and new technologies on human rights. And we still don't have a national Charter of Human Rights that implements the promises that governments have made to protect people's rights in Australian law.

Yes, achieving human rights progress can be hard, but it is vital that we pursue it. Looking back over this magazine's 30-year history should teach us that while sometimes human rights progress may not happen despite our efforts, it will certainly not happen if we do not try. For supporters of human rights, the progress achieved over the past 30 years should reinforce the critical need to continue our work and to do it better. When human rights progress is achieved, people's lives are better, our communities are stronger and healthier, and we are closer to realising our shared vision of a fairer, more compassionate nation. ■

1. John W. Kingdon, Agendas, Alternatives, and Public Policies, New York, Longman, 2002.
2. William P. Quigley, Letter to a Law Student Interested in Social Justice, 1 DePaul J. for Soc. Just. 7 (2007) Available at: https://via.library.depaul.edu/jsj/vol1/iss1/4

DEFENDING THOSE WHO DEFEND OUR RIGHTS

MARY LAWLOR

Mary Lawlor, from Dublin, Ireland, has worked with human rights defenders for over 20 years, and has been engaged in human rights work for double that. She became a Board member of the Irish Section of Amnesty International in 1975, was elected Chair from 1983 -1987 and in 1988 became its Director. She founded Front Line Defenders in 2001 to focus specifically on the protection of human rights defenders at risk. As Executive Director from 2001-2016, Mary had a key role in the development of Front Line Defenders into the prominent international organisation it is today. On 1 May 2020, she took up the mandate of the Special Rapporteur on the situation of human rights defenders, where she has adopted a people-centred approach to the mandate.

I'm told I wrote a piece on human rights defenders nearly 30 years ago for this magazine's first volume. I honestly can't remember writing it, but it was a long time ago, and a lot has happened since.

In 1992 I was with Amnesty International in Ireland, mobile phones were unheard of, and Whitney Houston was number one in Australia with "I Will Always Love You".

In the early 1990s we were struggling to have human rights defenders recognised by the UN as a specific category of people to be protected. Human rights defenders are those who work peacefully to protect the rights of others. The Declaration on Human Rights Defenders was eventually adopted by consensus by the General Assembly in 1998, after 14 long years of negotiations.

My mandate, that of Special Rapporteur on the Situation of Human Rights Defenders, came into being in 2001, and I took up the position in May 2020. I'm the fourth person to hold this mandate – which is awarded for three years, and renewable once. My mandate is to work to protect human rights defenders at risk, and to promote their work in accordance with the 1998 UN Declaration.

Many defenders work at great risk. In July 2019, the NGO Karapatan in the Philippines received a text message from an unknown individual containing a death threat against Zara Alvarez, a woman human rights defender on its staff. In April 2020, a text message was sent to Ms. Alvarez, purportedly from State security forces, harassing her after she had distributed rice to impoverished members of her community during lockdowns enforced in the context of the COVID-19 pandemic. On 17 August 2020, she was shot dead on the street in Bacolod City.

> Every day I receive information from civil society about human rights violations against defenders, and I use this information to raise my concerns with governments in formal letters, called communications, which become public 60 days after being sent.

I engage with UN member states, formally and informally, about the situation of human rights defenders in their countries through meetings, webinars and other events. In normal times, when travel is possible, I make two official visits to States annually to assess the situation for defenders there and write a report afterwards which includes recommendations to the government on how to better support and protect them.

These include ensuring that State officials issue regular and public recognition of the value of the work of human rights defenders, and publicly denounce threats against them, and that States pass and enforce laws that specifically protect human rights defenders.

I also write two thematic reports which are presented at the UN Human Rights Council and UN General Assembly – the last one was on the killings of human rights defenders, and the threats that often precede them, and my next report – to be presented to the UN in October, will be on the long-term detention of human rights defenders, many of whom are sentenced to 10 years or more in jail.

Since I took up this position last year the COVID-19 lockdown has meant I've been unable to leave Dublin and, like many of you, my work has shifted online. I've spoken to hundreds of human rights defenders from my computer in Dublin, and of course the virus has also dramatically affected how many current defenders work too. Many continue to face grave risks, and some have shown me death threats made against them, often in public. At least 1,323 defenders have been killed in 64 countries since 2015, that's in almost a third of all UN member states.

For example, in March 2019, Indigenous Bribri leader Sergio Rojas Ortiz was killed in Costa Rica. He had worked for more than four decades defending the rights of Indigenous peoples against the illegal occupation of their territories. He had been repeatedly threatened over a number of years before his murder and had survived an assassination attempt in 2012 when a car he was in was shot at six times. At the time of his killing, he had been living alone to avoid putting his family at risk.

On 11 September 2020, human rights defender Roberto Carlos Pacheco was shot dead by unknown attackers. He and his father, Demetrio Pacheco, who is a well-known environmental human rights defender, had been receiving threats since 2012 that were linked to their opposition to illegal mining in the Tambopata Reserve, Madre de Dios region, in the Amazon in Peru. Over the years, they had been beaten up and threatened at gunpoint. In 2017, a bullet was left on Demetrio's dining room table and Roberto had a gun pointed at him by attackers.

Defenders tell me how some threats are shouted in person, posted on social media, delivered in phone calls or text messages, or in written notes pushed under a door. Some are threatened by being included on published hit lists, receiving a message passed through an intermediary or having their houses graffitied. Others are sent pictures through the mail showing that they or their families have been under long-term surveillance, while others are told their family members will be killed.

Many are attacked with gendered threats, including when women defy cultural norms, and they are often targeted because of who they are as well as what they do. The new reliance on digital communication has brought further new challenges. The apps and platforms defenders use are vulnerable to attack, and we've seen an increase in online threats, including death threats, on Facebook and Twitter.

We've seen over the last year, too, the direct damage done by COVID-19 to defenders and their work. We know that the most vulnerable have been hit hardest. I've heard from women human rights defenders who have been confined at their home, looking after children or other relatives, and at increased risk because they can't escape to safety because of COVID-19 travel restrictions.

I've seen too how COVID-19 has meant that defenders have had to redefine their work, sometimes from a focus on advocacy to one of distributing food and medicine to local communities, and how many have been targeted for exposing the incompetence or corruption of authorities in dealing with COVID-19.

In some places, this has helped to reshape some public opinion towards defenders, who see their work at closer hand than before. I believe we have some opportunity here to mobilise public support for defenders when we remind people who defenders are – that they are the people taking on COVID-19 in hospitals and clinics, those supplying provisions to communities, and journalists telling the truth about the virus and how governments are handling it.

For some defenders, this has meant significant adjustments in how they serve their communities. COVID presents new challenges, in how to work and what to work on, the full significance of which isn't yet apparent. In the coming decade there is likely to be a development around the idea of collective, as we as individual, protection for defenders, with more tailored and context-specific protection mechanisms established.

I don't know when I'll be able to travel again, but I will continue to meet defenders online and continue to raise issues with governments about the protection of defenders. My hope is that 30 years from now, after three more decades of pushing for the recognition and protection of defenders, the Special Rapporteur of the day will be able to write for you again, reporting that States are finally properly supporting and promoting the work of human rights defenders.

HAVE NATIONAL HUMAN RIGHTS INSTITUTIONS REACHED THEIR USE-BY DATE?

CHRIS SIDOTI

Chris Sidoti has worked in and with national human rights institutions for the past 35 years. He was the first Executive Director of the Australian Human Rights Commission and later Australian Human Rights Commissioner. He was also worked with United Nations mechanisms, most recently as an Expert Member of the UN Human Rights Council's Independent International Fact Finding Mission on Myanmar.

IN THE BEGINNING

Thirty years ago, when the *Human Rights Defender* was born, National Human Rights Institutions (NHRIs) were emerging as one of the great hopes for significant progress in the implementation of international human rights law. NHRIs are official, independent legal institutions established by the State and exercising the powers of the State to promote and protect human rights.[1]

International human rights lawmaking was already very well advanced by 1991 and it was apparent that the greatest challenge was not lawmaking but implementation. There was a yawning gap between the fine promises of the law and the actual enjoyment of human rights on the ground. Under the law, States were responsible for ensuring the human rights of all persons within their jurisdiction. International law and international mechanisms were no substitute for domestic responsibility and domestic accountability. NHRIs were developed as a principal mechanism for domestic implementation of these international obligations.

That period, 30 years ago, was a critical one for the development of NHRIs. The first independent NHRIs had been established in the late 1970s and early 1980s, in New Zealand, Canada and Australia. By the early 1990s there were about 20 of them claiming to be independent. The UN sponsored the first gathering of NHRIs in Paris, in October 1991. They drafted and adopted the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles), which were subsequently endorsed by the UN Commission on Human Rights and General Assembly.[2] Then, in 1993, the UN's Second World Conference on Human Rights (the Vienna World Conference) endorsed and encouraged the establishment of independent NHRIs worldwide in accordance with the Paris Principles.[3]

The 1993 World Conference initiated a period of great growth, led by the Office of the High Commissioner for Human Rights. Today there are 117 NHRIs that are members of the Global Alliance of National Human Rights Institutions, 84 of which are recognised as fully compliant with the Paris Principles and 33 of which are partially compliant.[4] Twenty-five of them are located in the Asia Pacific region.[5]

Over these 30 years, NHRIs have achieved a great deal.[6] They have investigated tens of thousands of complaints of human rights violations. They have exposed systemic patterns of human rights violation and recommended ways to effect systemic change and change to cultures. They have provided human rights education and training for perhaps hundreds of thousands of people. They have advised parliaments and governments on laws that should be made or amended or repealed and of policies and programs that should be adopted or changed. They have informed and helped shape the work of the UN's human rights mechanisms. There can be no doubt that they have contributed to building more human rights respecting societies and cultures.

Take the national human rights inquiry process, pioneered in the Asia Pacific region, as an example. These inquiries have enabled NHRIs to undertake a wide-ranging, public process that exposes violations, gives recognition and reparations to victims, leads to legal and policy and program change and also raises awareness educates about real life situations. The Afghanistan Independent Human Rights Commission has conducted inquiries into violence against women and girls and into abduction and sexual exploitation of boys. The Samoa Ombudsman has inquired into family violence and recommended major legal, political, social and economic changes. The Australian Human Rights Commission has conducted many inquiries, starting with homeless children, racist violence and mental illness in the late 1980s and early1990s.

BUT HAVE NHRIS NOW REACHED THEIR USE-BY DATE?

The nature of the world and individual societies has changed dramatically since the 1990s. In retrospect, that decade may well have been the high point of the great post-World War II human rights project. It was the decade after the collapse of the Soviet Empire. The new authoritarian Russian kleptocracy was yet to emerge. China was chastened after the 1989 Tiananmen Square massacre and was not yet assertive and expansionist. Western states and many new democracies were liberal and democratic, not yet marked by the far-right populism of Trump's America, Orban's Hungary, Duterte's Philippines or Bolsonaro's Brazil. There was democratic space in which independent activist NHRIs could be established and operate. Those days have gone.

In their early days, NHRIs generally were vibrant, creative, pushing boundaries. They were young institutions with young staff and had the characteristics of youth – energy, commitment, a perception of their own invincibility, a vision that they could and would accomplish great things. They combined the independence, vigour and flexibility of non-government organisations with the authority and resources available only to state institutions.

Today, many NHRIs seem old and tired.

Where they were once human rights experts, even human rights activists, NHRI leaders are now more often retired academics, retired judges or retired civil servants. They are also invariably political appointees selected to suit the temperament of the Government of the day, far more cautious in what they do and say, not wanting to be seen as offending the Government or as speaking outside the mainstream. Yet, if NHRIs are to do their jobs well, their leaders must be prepared to offend their governments. They must also espouse views that many in their societies do not support, speaking up for victims of human rights violations and their families and communities, including unpopular minorities. Often, they do this at great personal and institutional cost. The President of the Australian Human Rights Commission, Professor Gillian Triggs, was attacked by the Australian Prime Minister, Attorney General and other ministers and members of Parliament for her outspoken comments on the treatment of asylum seekers. They constantly demanded that she resign. She stood firm and served her term of office in full. The Philippines President has detained for four years the former Chairperson of the Philippines Human Rights Commission, Leila de Lima, on false charges and he has repeatedly threated the current Chairperson, Jose Luis Martin Gascon.

As for NHRI staff, many have been there for more than 10 or 15 years, in some cases since the very beginning. They have aged in place as their institutions have aged. NHRIs are in need of fresh ideas, fresh ways of looking at and doing things. And they are in need of new energy.

Furthermore, as NHRIs have become larger (and most of them have over time), they have also

become more bureaucratic, more risk averse, more cautious. They have developed procedures and now stick rigidly to them, as if the process is more important than the result. The number of complaints opened and closed efficiently becomes more important than the number of victims who receive justice. As the human rights project has waned and extremism has grown, the radical enthusiasm of once youthful NHRIs has often been replaced by conservative inaction.

A SECOND FOUNDATION

Perhaps the time of NHRIs has passed. Perhaps NHRIs have done as much as they can do for human rights and there's now a need for different institutions and organisations doing things differently. Perhaps … but I don't think so. For me, this is not the time for abolition but for a second foundation, for transformation.

The signs of life are still there to be seen. The Afghanistan Independent Human Rights Commission continues to perform its frontline work with courage and determination despite targeted killings of its Commissioners and staff.[7] The Philippines Commission on Human Rights has undertaken a national inquiry on human rights in relation to climate change and the role of the major international oil companies.[8] The Australian Human Rights Commission is undertaking a major study of human rights issues relating to technological developments, especially artificial intelligence, facial recognition and global data markets.[9] These are important, innovative projects. And new, vibrant institutions are still emerging, like the Samoan NHRI, the Ombudsman.

NHRIs must discern where their efforts are most required. Who are the people and communities most in need? What are the issues that have received inadequate attention? What are the new and emerging areas? And they must have the tenacity to pursue these issues. They have to be ahead of societal trends and technological developments, to anticipate and respond to human rights challenges and human needs.

The second foundation must also involve learning from NHRIs' experiences – not only what worked but how. They must learn from what went wrong, including the loss of energy and courage that so many have experienced over the past decade.

There are ways to re-capture the youthful energy of the early years and to build on what has been learned since. NHRIs need types of new leaders, ones with expertise in human rights and a determination to act to protect human rights. They need regular staff turnover, allowing for the infusion of new staff, knowledgeable, idealistic young graduates who are eager to learn and to push. They need a new focus on results and not merely procedures. They need to move out of their comfort zone and into the real world where human rights are routinely violated. They need to break the civil service mindset.

NHRIs can accomplish much of the necessary change themselves. They don't have to wait for governments to lead. On the contrary they need to act in spite of governments. After all, they are supposed to be independent. This transformation requires the vision, will and leadership to do it. ■

1. For a comprehensive introduction to NHRIs, including their history and functioning, see Asia Pacific Forum of National Human Rights Institutions *Manual on National Human Rights Institutions* 2018 at https://www.asiapacificforum.net/resources/manual-on-nhris/.
2. Commission on Human Rights resolution 1992/54; General Assembly resolution 48/134.
3. Vienna Declaration and Programme of Action; Part 1, para. 36.
4. See https://ganhri.org/membership/.
5. See https://ganhri.org/membership/.
6. See again Asia Pacific Forum of National Human Rights Institutions *Manual on National Human Rights Institutions* 2018 at https://www.asiapacificforum.net/resources/manual-on-nhris/ and other resources and manuals on the Asia Pacific Forum website.
7. https://www.aihrc.org.af/.
8. https://chr.gov.ph/nicc-2/; https://essc.org.ph/content/archives/10479/. The inquiry is still to release its report.
9. https://humanrights.gov.au/about/news/protecting-human-rights-era-artificial-intelligence.

INTERVIEW WITH A.G. SAÑO: SUPER TYPHOON YOLANDA SURVIVOR AND PETITIONER IN THE LANDMARK PHILIPPINES HUMAN RIGHTS AND CLIMATE CHANGE INQUIRY

GUERRERO M. SAÑO (AKA A.G.)

Environmentalist. Visual Artist. Landscape Architect. Musician. Mental Wellness Advocate. Peace Adocate

A.G. Saño is a renowned and multi-awarded Filipino artist who has painted more than 800 murals in 16 countries depicting peace and environment. He graduated from Quezon City Science High School and University of the Philippines-Diliman, College of Architecture.

On November 8 2013, Super Typhoon Yolanda, a Category 5 storm, devastated the Visayas region of the Philippines, leaving at least 10,000 people dead. At the time, A.G. Saño was in Tacloban en route to a work assignment. While he survived, A.G. lost his friend, Agit to the storm.

Photo: Lady with umbrella in the aftermath of Super Typhoon Yolanda. (Image by A.G. Saño)

In 2015, Greenpeace South East Asia (Philippines) along with typhoon survivors, including A.G., and civil society groups filed a historic complaint with the Philippines Commission on Human Rights (CHR), calling for an investigation into the possible human rights violations of the 47 biggest fossil fuel and cement companies (the "Carbon Majors") resulting from climate change. It is the world's first investigation into corporate responsibility for the climate crisis.[1]

Photo: One of A.G's early photos, a whale fluke in the Babuyan Islands in northern Philippines. (Image by A.G. Saño)

WHO WERE THE PEOPLE AND WHAT MOMENTS WOULD YOU SAY SHAPED YOU AS AN ARTIST AND ACTIVIST?

I would say I'm an accidental activist. I grew up in Quezon City, but my father grew up in Tacloban and every weekend growing up, he would take us out of the city into wilderness and nature. I was already doing urban planning as a child, always building things with Lego and drawing on graph paper, my parents thought I'd be an architect. I learned how to draw in the fourth grade, and I started workshopping with the artist, Fernando Sena, my first mentor. I worked with him for 11 years.

My eldest brother, Stef was very involved in environmental education policy in the early 1990s when I was young, and his friends were always at our home so I was exposed to their ideas. My brother Yeb worked at WWF, that's how I found out about what would be my first assignment as a conservation photographer.

After high school, I went to the University of the Philippines to study a Masters in landscape architecture, but I had also cross-enrolled in photography. I loved the assignments, and I ended up choosing to continue with photography instead. My first photographic assignment was in 2000 with WWF on a remote island off the Philippines near Taiwan, it was to document and gather data for shaping conservation policy for whales. It was love at first sight: the whales, the tall trees, the beauty of the landscape. It was different to anything I had ever seen in the Philippines.

There was another important moment. My girlfriend had sent me this new documentary to watch called "The Cove." The grief and shock stayed with me for weeks. It was then I decided that I would paint a dolphin for every one captured in Japan to help spread awareness of what was happening. So, my first mural was of dolphins, I painted it with ten volunteers. It's been 11 years since I've been painting murals and I've painted hundreds of dolphins and also whales in different countries, and about 200,000 volunteers have helped to paint since that first mural. I paint the outline and anyone can come and paint a piece – even jeepney drivers have come to paint murals in the community.

I can't talk about the people who shaped me without talking about my friend, Agit Sustento. He was part of a world music band and I was friends with his bandmates. He wanted to return to Tacloban where his family was from, and I thought this was an opportunity to go back to my own roots as well. I would go to visit him and his family there, we painted murals together, he even taught me how to do traditional tattoo. It was an instant adventure whenever we were together.

Photo: A.G.'s first dolphin mural. (Image by A.G. Saño)

Photo: A.G. and Agit painting a nature mural together in Tacloban City. (Image by A.G. Saño)

IF YOU HAD TO DRAW A LINE FROM YOUR CONSERVATION PHOTOGRAPHY AND MURAL PAINTING TO THE COMMISSION ON HUMAN RIGHTS PETITION, WHAT WOULD IT LOOK LIKE?

Well, it would be a tremendously crooked line! I would say it went from honeymoon to major trouble. My first photography project on that island was love at first sight, with all of the nature there. The CHR petition came out of a heartbreaking episode in my life, witnessing the devastation and grief nature can bring with Super Typhoon Haiyan. I used to be a storm chaser before Haiyan, taking photos of awesome nature. But Haiyan moved me from behind the camera.

I was in Tacloban from about three days before Haiyan struck for a documentation project on Camotes Island. At the time, Haiyan was a small disturbance in the East Pacific, we didn't know it would be a super typhoon. We grew up with typhoons, all category 1, 2, 3…we never saw category 4 or 5. I thought I had prepared enough for this, I had everything I needed, I had a plan. The day before it made landfall, I was visiting with Agit and his friends; we went to the beach, had a picnic, it was a beautiful day. We were observing the fisherfolk doing their last minute fishing, and Agit asked us, "how do you think this will look two days from now?" We all went quiet. When he said goodbye to me, the last time I saw him the day before Haiyan struck he said, "be careful. This will not be like the other ones."

Three days later, I would hear from a friend, "Agit is gone. Geo is gone. Tarin is gone." His wife and son did not survive either. This was the same day my brother, Yeb, spoke at the UN climate meeting in Warsaw;[2] he had just found out that I was alive.

The night that Haiyan struck, I was staying on the fourth floor of a hotel. When the rain started to subside, there was still water from the storm surge, but I went outside with my camera, looking for a phone signal and food, and started heading towards City Hall. I saw some firefighters who needed help carrying a dead body; there were so many bodies and so much debris everywhere. I went over to them and grabbed the feet. Later, I was with a young doctor and who was loading bodies onto a dump truck and ended up working with him for six days. That is how I ended up in cadaver retrieval in the aftermath of Haiyan.[3]

So, when Greenpeace asked, it was easy for me to sign my name to the CHR petition. Agit was in my mind. I wanted justice for my friend and his family. This seemed like a way to begin. Being a witness to lives lost, livelihoods lost, education lost. The right to life becomes sacred when you lose someone you love. So many in the US and Europe do not live this truth about climate change like we do.

Photo: In the aftermath of Super Typhoon Yolanda. (Image by A.G. Saño)

Photo: Dozens of community witnesses, as well as local and international science and legal experts testified in the CHR hearings which were held in Manila, New York, and London in 2018. (Image © Roy Lagarde / Greenpeace)

WERE THERE HIGHLIGHTS IN THE COURSE OF THE CHR JOURNEY?

Every time a witness spoke at the CHR hearings. The European pilgrimage we did in 2018,[4] the solidarity of other pilgrims from all over the world we met along the way. Meeting so many people from around Europe who were in this fight with us. Throughout the CHR journey, travelling and meeting other plaintiffs bringing cases in their countries, it was like making an instant global family. I will never forget on the final day of hearings in December 2018, after dinner when petitioners were making speeches. I thought to myself, 'everyone here is a survivor of different disasters.' They have been through so much to get here. And they were mostly women. They had the courage to say, this was only a beginning.

HAS YOUR ART CHANGED SINCE THE SUPER TYPHOON YOLANDA AND THE CHR?

I do more images about climate change since the CHR petition. At COP 23, I painted a mural of Agit in Paris. This was a couple years after Haiyan when the narratives about 'the strongest typhoon' were still fresh. About 50 artists helped me finish Agit's portrait. His face represents the human face of climate change, it's not about statistics and legality. Agit lost his life. It was a way for me to honour him, to share his story.

Photo: A mural art session in Dusseldorf. (Image by A.G. Saño)

HAS YOUR ART CHANGED SINCE THE SUPER TYPHOON YOLANDA AND THE CHR?

I do more images about climate change since the CHR petition. At COP 23, I painted a mural of Agit in Paris. This was a couple years after Haiyan when the narratives about 'the strongest typhoon' were still fresh. About 50 artists helped me finish Agit's portrait. His face represents the human face of climate change, it's not about statistics and legality. Agit lost his life. It was a way for me to honour him, to share his story.

Photo: Photo of Paris mural for Agit. (Image by A.G. Saño)

THERE WAS JUST A HISTORIC WIN BY MILIEUDEFENSIE, GREENPEACE NETHERLANDS, NGO ALLIES, AND 17,000 COMMUNITY MEMBERS AGAINST SHELL IN THE NETHERLANDS – ONE OF THE RESPONDENT COMPANIES IN THE CHR INVESTIGATION. WHAT DOES THIS WIN MEAN TO YOU?

It almost brought me to tears. There was a bit of hopelessness in the air. The media here seems to be getting tired of reporting disasters. Typhoon Ulysses flooded communities near Manila last year during COVID-19. We are waiting for that important piece of paper from the CHR, and getting tired, even though everyone is active working with their communities on the ground. But with the win in the Netherlands, there is new hope. The resolution of the CHR is important, the value of the data gathered, the testimonies. But other wins are happening, too.

When Haiyan struck, the ground floor of the hotel I was staying in was flooded and the water was rising to the third floor. I remember being in the corridor thinking about how to get out when I had the thought, 'you can run but you can't hide'. I felt so alone in that corridor. Discovering other climate activists afterwards, I realised I was never alone. I just didn't know it yet.

Photo: A.G.'s tamaraw mural. Tamaraws are endangered buffalo species that can be found only on one island in the Philippines. (Image by A.G. Saño)

1. Greenpeace Philippines, "The Climate Change and Human Rights Inquiry Archive," (Web Page, 2021) < https://www.greenpeace.org/philippines/the-climate-change-human-rights-inquiry-archive/> accessed June 5 2021.
2. See Yeb Sano's speech at Warsaw climate meeting in 2013, "An emotional, powerful speech on climate change," TDC (YouTube, 12 November 2013) <https://www.youtube.com/watch?v=7SSXLIZkM3E> accessed 6 June 2021.
3. Jen Y. Geronimo, "AG Sano, the man who helped bury the dead," Rappler, (Web Page 16 November 2013) < https://r3.rappler.com/move-ph/issues/disasters/typhoon-yolanda/43898-ag-sano-tacloban-dead-story> accessed 5 June 2021.
4. Joe Ware, "Climate change pilgrims trek 1,500km to Poland," Church Times, (Web Page, 14 December 2018) < https://www.churchtimes.co.uk/articles/2018/14-december/news/world/climate-change-pilgrims-trek-1500km-to-poland> accessed 5 June 2021.

BLACK LIVES MATTER AND 30 LONG YEARS SINCE THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

KEENAN MUNDINE

Keenan Mundine is the Co-Founder and Ambassador for Deadly Connections. Keenan is a proud First Nations man with connections to the Biripi Nation of NSW through his mother who is from Taree and Queensland through his Father who is from Cherbourg. Keenan is the youngest of three boys, born and raised on Gadigal land. After losing both his parents and being placed into care Keenan made some poor decisions in his adolescence which resulted in his lengthy involvement with the justice system. Keenan found his passion in giving back to his community and working with people who have similar experiences to him. Keenan's journey has taken him to the United Nations in Switzerland to address the Human Rights Council and share his story so that they may lean on Australia's Government to raise the age of criminal responsibility. Keenan's journey inspired him and his wife to create a unique, community led solution and response to the current mass incarceration and child protection crisis of First Nations people.

The Black Lives Matter movement was one that took me by complete surprise.

For me personally, the movement meant growing awareness of what is happening in Australia to my people. It made me hopeful that international pressure may increase on the Australian Government, to hold them accountable for the almost 474 Aboriginal deaths in custody since 1991 and improve the treatment of indigenous people in the justice system. It also made me proud to see mass demonstration and people walking *alongside* First Nations people.

The impact of the Black Lives Matter movement on the organisation I'm a part of, Deadly Connections, cannot be quantified. We saw a significant increase in donations, which helped us to grow. As a result we could take on new challenges, implement sorely-needed programs, extend our family with new staff and volunteers. It also cemented our place within the justice space as the only specialist, First Nations-led grassroots organisation, achieving multiple levels of advocacy and support.

The Black Lives Matter movement elevated our voice. It put us on the map. We saw for the first time that people were seeking out Deadly Connections and demanding answers to this endemic of deaths in custody. They were asking for *our* answers, as Aboriginal people.

Photo: Always Was, Always Will Be Aboriginal Land. (Image by Johan Mouchet - Unsplash)

Photo: Black Lives Matter Protests in Melbourne. (Image by Mitchell Luo - Unsplash)

Photo: Stop Black Deaths in Custody (Image by Ohan Mouchet - Unsplash)

MOVEMENTS FADE, INACTION REMAINS

It did concern me, however, that it took the death of an African-American man in the United States for us to take a closer look at our own justice system in Australia and the way it affects our mob and our people across the nation.

As with many movements, we have seen Black Lives Matter begin to fade and the recent 30-year anniversary of the Royal Commission into Aboriginal Deaths in Custody demonstrated that the government still doesn't truly understand the complexities that keep our mob involved in these institutions.

Thirty years on and the full scope of the Commission's recommendations have not been implemented. In terms of alternatives to imprisonment, there has been no meaningful change at a federal, state or local level. In New South Wales, the State Government continues to commit to building new prisons and re-opening ones that were once closed. And while committed to expanding the justice system, there appears to be no similar commitment to the building of new schools or new youth centres.

LOOKING TO ABORIGINAL COMMUNITY CONTROLLED ORGANISATIONS

When thinking about the lives of our mob – who we continue to lose – I try not to stay negative about the lack of action from the Australian Government. Instead, I remain solutions-focused.

The government needs to hear our voices and invest in our communities by directly funding Aboriginal Community Controlled Organisations (ACCOs). Within the areas that we operate across the City of Sydney and Inner West local government areas, there is not one youth centre or community centre owned and operated by Aboriginal people.

This is why Deadly Connections was founded, because our mob are forced to go to non-Indigenous spaces. It is essential that we make First Nations organisations sustainable. The Australian Government needs a long-term commitment to self-determination for our people and communities by funding Aboriginal-owned organisations.

We do not need any more research, statistics, or data. We need solutions that are community-led and practical. Aboriginal people have the knowledge, expertise and capacity to deliver this. We need practical infrastructure and resources to be able to implement these solutions and we need long-term investment for our people to become self-determined once again.

Information should always be sought from Aboriginal people and organisations. Research what ACCOs exist within your local area. Find out what you can do that is within your own capacity. Write to your local member, ask them what they're doing to stop Aboriginal deaths in custody. Amplify our voices through social media and show the Aboriginal community that you are just as frustrated and angry as them.

Photo: Black Lives Matter Protests USA. (Image supplied by Pexels)

DECARCERATION

Deadly Connections' focus is on decarceration. For one word, decarceration has a very broad scope. It comes at multiple levels, including the community, grassroots, families as well as the state and federal levels. Decarceration cannot occur without addressing the underlying causes of offending. It all stems from racism, trauma and poverty.

Poverty is criminalised. I would never chase somebody taking a loaf of bread or a piece of fruit from a shopping centre. I would ask them if I could pay for it because I know what it's like not having anyone to turn to. When people are criminalised, they get excluded from society. It is easy for us to pass judgement on lives we've never lived ourselves.

We are failing to address the causes of crime all while continuing to focus on the symptoms – that is why we aren't seeing the change we want. We can stand on the sideline and throw rocks or we can build something tangible and practical.

In the past I left it up to other people to come up with solutions. I was let down continuously. Now, whenever I see a challenge, it is my obligation to deliver a solution.

ACT

I once had a very different life from which not many people have the privilege to come back from – nor the opportunity to talk about these experiences so openly. But sharing my story only does so much. I ask readers, what are you going to do? Can you donate to our organisation, Deadly Connections? Can you volunteer your time at our office? How will you offer practical solutions to First Nations people and walk alongside us in ending Aboriginal deaths in custody? How will you make a difference? ■

THE PATH TO FULL EQUALITY

RODNEY CROOME AM

Rodney Croome is a long time advocate for LGBTIQA+ human rights. He fronted the campaign to decriminalise homosexuality in Tasmania and was the national director of Australian Marriage Equality. He has also been heavily involved in campaigns for LGBTIQA+ discrimination protections, family and relationship recognition, improvements in education, health and policing policies, anti-suicide and anti-poverty measures, and blood donation. He is currently a spokesperson for national LGBTIQA+ advocacy organisation, Just. Equal Australia. In 2003 Rodney was made a Member of the Order of Australia and in 2015 he was named Tasmanian Australian of the Year.

(Image by Ann-Marie Calilhanna; Star Observer)

Australia is progressing towards LGBTIQA+ equality. In 2017 we voted for it. But the backlash to that progress poses a serious threat. The question before us is how do we continue to make progress despite the backlash.

FROM BIGOTS ISLAND TO THE RAINBOW ISLE

Thirty years ago, my article for the first edition of the Human Rights Defender explained a ground-breaking appeal I was involved in to the UN Human Rights Committee against Tasmania's then laws criminalising gay intimacy with up to 21 years in gaol.

That appeal was ultimately successful. It gave us a platform to seek federal legislation and a High Court ruling against the offending state law, it gave the Commonwealth Parliament a mandate to prohibit anti-LGBTIQA+ discrimination, and it set a precedent for decriminalisation in other countries from Belize to India.

The Tasmanian UN decision has played a critical role in LGBTIQA+ emancipation. But it would be wrong to attribute change in Tasmania and elsewhere solely to that decision. Its ramifications have been greatest where there was already a community-based campaign in place.

In Tasmania this campaign involved everyday LGBTIQA+ people reaching out to potential allies and telling their personal stories about why decriminalisation mattered. It was because of this larger campaign of community engagement that when the dam of criminalisation finally broke, with repeal of the offending laws on May 1st 1997, some of the world's most progressive LGBTIQA+ discrimination, hate speech, relationship and gender recognition laws flowed out.

Attitudes have also turned around: Tasmania went from below-national-average support for decriminalisation in the early 1990s to a marriage equality 'Yes' vote above the national average in the 2017 postal survey. In the last 30 years Tasmania has gone from worst to best on LGBTIQ+ equality, from being labelled "Bigots Island" by the UK press after the UN decision to being the Rainbow Isle today.[1]

MARRIAGE EQUALITY WAS A TURNING POINT

By the mid 2000s most states had enacted basic discrimination protections and legally recognised de facto same-sex couples and their families, so the attention of some LGBTIQA+ advocates turned to marriage equality.

The 2004 federal ban on recognising same-sex marriages revealed low levels of public and parliamentary support for marriage equality. But slowly that changed thanks to a grassroots campaign similar to the one in Tasmania a decade before.

By 2015, when the then Federal Government first proposed a plebiscite as a precondition for reform, there was already majority support in Parliament and the community. Indeed, the plebiscite was a last-ditch effort to derail that growing support. It failed, of course. In 2017 the nation overwhelmingly voted 'Yes' as did Federal Parliament.

Marriage equality was a turning point for LGBTIQA+ Australians, and for the nation more broadly. But we should be careful when assessing its significance and learning its lessons.

It was not the end of the LGBTIQA+ equality story, as some people still assume. As I'll outline, there are still many inequities experienced by LGBTIQA+ Australians. But neither was marriage equality just about allowing some LGBTIQA+ people to walk down the aisle and throw a big party afterwards.

Marriage equality and the campaign leading up to it demonstrably reduced prejudice and discrimination against same-sex couples and their families, not just in the law but across society. It was the culmination of decades of activism to recognise same-sex relationships and parenting, and prior to that, to decriminalise male same-sex relationships.

LESSONS FROM THE MARRIAGE CAMPAIGN

As for what we can learn from marriage equality, we must turn to aspects of the campaign that are too often overlooked in the mythology that has grown up around the issue.

First, it was won not by the postal survey, but the decade and a half of unprecedented community activism prior to 2017. This activism involved relentless lobbying and advocacy. It involved innovative approaches like state same-sex marriage laws. It involved seeding local electorate groups across the nation and bringing in unlikely allies from football teams to religious leaders. It mobilised tens of thousands of people to march in the streets and to tell their personal stories around kitchen tables.

Second, the transformation of the marriage equality campaign ahead of the postal survey, from one that was community-owned and driven to one that was top-down, donor-driven and professionalised, resulted in deeply flawed outcomes. This transformation occurred in 2016 and was led by major donors to the 'Yes' campaign who acted out of the best intentions: winning a 'Yes' vote. But they weren't accountable to the LGBTIQA+ community or able to draw on its experience of defeating prejudice. I'll call this the managerial campaign because the top-down structure managed stakeholders rather than campaigning for change.

The managerial campaign refused to challenge the new movement against marriage equality that grew up in the final years of the marriage debate and focused on "religious freedom" and "gender fluidity in schools" rather than same-sex marriages. The managerial campaign didn't understand that it was possible to engage with the negativity of the 'No' case in a way that would turn that negativity into another argument for equality. It took the opposite approach and made marriage equality a small target out of fear of losing 'Yes' voters. But a 'Yes' vote was never in doubt. Instead, vulnerable LGBTIQA+ people were left to defend themselves, and we lost the best chance we had to nip resurgent prejudice in the bud.[2]

The managerial campaign also failed to fend off compromises in the final marriage legislation that allowed anti-LGBTIQA+ discrimination in the name of "religious freedom". These compromises gave Australia some of the world's worst marriage equality legislation. Again, this was not necessary. Given strong momentum after the 'Yes' vote, better legislation would have passed. The managerial campaign was simply too close to politicians making decisions and not close enough to those affected by those decisions.

Now, I want to turn to resurgent prejudice that made such inroads at the end of the marriage equality debate, particularly where it came from, the tricks its plays and the threat it poses to reforms to come.

RESURGENT PREJUDICE

One measure of how important marriage equality has been is the strength of the backlash to it. This backlash arose first in the United States following the US Supreme Court's decision to allow marriage equality across that country. It took three forms:

1. Weakening discrimination protections under cover of "religious freedom"

In the US this began as an attempt to protect the "religious freedom" of bakers and marriage registrants to refuse to provide services to marrying same-sex couples. But it soon grew into state Religious Freedom Restoration Acts which allow the denial of many different services to LGBTIQA+ people and others who fall foul of traditional religious values. "Religious freedom" advocates justified this discrimination with a confected, fear-based narrative that traditionalist Christians are now an oppressed minority who need protection from persecution by LGBTIQA+ people and our allies.

In Australia the "religious freedom" push also took root as provisions allowing discrimination in wedding services. In response to the case of rugby player, Israel Folau, who was disciplined for public comments against LGBTIQA+ people, "religious freedom" advocates successfully pushed for the Federal Government's Religious Discrimination Bill. It purports to protect people from discrimination on the basis of their faith, which is something we can all support. But it actually allows discrimination and hate speech in the name of faith. In short, the movement demanding more "freedom for faith" is actually seeking privilege for prejudice.

2. Blocking transgender recognition, inclusion and equality

Activism steadily raised the visibility of trans and gender diverse people throughout the 2000s. But since the US adopted marriage equality in 2015, anti-transgender prejudice has been very deliberately weaponised across the western world. Marriage equality makes it harder to demonise gay and lesbian people. Trans and gender diverse people are a smaller and less understood minority. It's no coincidence that after marriage equality in Australia, the 'No' campaign transformed into Binary, a group dedicated to opposing trans inclusion and equality.

In the US, the contemporary anti-trans movement began as state "bathroom bills" outlawing trans and gender diverse people from using bathrooms corresponding to their gender identity. In Australia, the anti-trans movement has focused on young trans people transitioning, and trans inclusion in sport and schools.

As with "religious freedom", the anti-trans movement has developed a victim narrative to legitimise itself and confected a fear-based narrative to draw public attention. These narratives are essentially that "the safety of women and girls" is threatened by "biological men invading women's spaces", despite evidence overwhelmingly showing trans women at greater risk of violence and discrimination.

3. Blocking LGBTIQA+ school inclusion

Schools have always been a favoured playground for culture warriors and moral panickers. In the US and Australia there have been campaigns against LGBTIA+ school inclusion for decades. But like trans equality, school inclusion programs were weaponised to undermine support for marriage equality and then as a backlash to it.

In 2016 and 2017 Australia's first federally funded LGBTIQA+ inclusion program, Safe Schools, was targeted by fearmongers. Since then, similar programs continue to be targeted with One Nation going so far as to introduce a Bill that would outlaw inclusive policies and practices.

The cover for all this? Parental rights. The confected, fear-based narrative? LGBTIQA+ inclusion actually fosters bullying rather than diminishing it. The true victims? LGBTIQA+ students who are thrown to the wolves of stigma, hate and isolation.

This three-fold backlash to marriage equality continues to grow. Sadly, too many institutions that stood with the LGBTIQA+ community towards the end of the marriage debate, when it was easy, have retreated from their former ally-ship. Not surprisingly, community surveys show LGBTIQA+ Australians feel as bad now as they did during the postal survey when their rights were up for grabs.[3]

In the midst of this backlash it can be hard to focus on future challenges, but focus we must if we are to move beyond the backlash.

REFORMS TO COME

Here's a short and by-no-means exhaustive laundry list of those future challenges…

A ban on LGBTIQA+ conversion practices.
These practices are based on the pseudo-scientific ideology that LGBTIQA+ people are "broken" and can be "fixed".

Australian research shows they are still being undertaken and have a disastrous impact on mental health. Bans have been enacted in Victoria and the ACT, with a watered-down version in Queensland. The other states are debating it.

A ban on unnecessary medical intervention to "normalise" intersex children.
Unnecessary medical interventions on children with variations of sex characteristics still occur and cause deep harm despite. A ban has been recommended by the Human Rights Commission and the Tasmanian Law Reform Institute. It is currently being considered in Tasmania, Victoria and the ACT.

Allowing trans and gender diverse people to amend their birth certificates without medical intervention.
This has been enacted in Victoria and Tasmania with Tasmania allowing the removal of gender from birth certificates altogether. It is currently being considered in NSW and WA.

Removing exemptions that allow discrimination against LGBTIQA+ people by faith-based schools, hospitals and welfare agencies.
Tasmania is the only state that does not allow this discrimination. The ACT does not allow it in schools. The Federal Government has yet to fulfill its promise to protect LGBTIQA+ students from discrimination under the Sex Discrimination Act.

Removing the ban on blood donation by sexually-active gay and bisexual men, and trans women.
The current ban stigmatises LGBTIQA+ people as a threat to public health and reduces the amount of safe blood available to save lives. In a number of countries, including the UK, the has been replaced by a new policy that screens all donors for the individual risk.

The post-marriage equality backlash is making some of these reforms harder to achieve, especially a ban on conversion practices, recognising gender identity and removing religious exemptions. The standard objections, as I've indicated already, are that these reforms threaten religious freedom, women's rights, parental rights, or all three.

(Image by Sharon McCutcheon @sharonmccutcheon - Unsplash)

So, how are we making change?

A RETURN TO COMMUNITY-BASED CAMPAIGNING

Australia's two most successful LGBTIQA+ law reform campaigns since marriage equality have something in common.

The Victorian campaign to ban conversion practices resulted in the world's best legislation despite a strident campaign for "religious freedom" and against trans folk.

The Tasmanian campaign for gender recognition also resulted in laws that are the best in the world despite very noisy fear-based, anti-trans campaigning.

Both those campaigns were led by the people directly affected. They organised themselves into campaign groups with clear strategies. They not only told their personal stories to politicians and the community, they also drafted legislation, set policy guidelines, crafted their own media messages and worked with decision-makers every step of the way. They made sure members of affected groups were engaged and their leaders accountable. They found new and more effective ways to conceptualise the problem they faced and solutions to these problems, and to translate both into law.

They didn't relinquish control to government or non-government professionals who sought to make reform a small target and were satisfied with the easiest outcome. They didn't believe the empty promises of those politicians who want to please everyone and satisfy no one. They didn't hide from opponents of reform, but flipped the opposition's case around, judo-like, into another argument for reform. They didn't accept expedient compromises to keep existing supporters. Instead, they patiently educated everyone about why reform was necessary, creating supporters in the process and bringing them along.

In short, they followed the high standard set by the community-based campaigns for decriminalisation in Tasmania and for marriage equality nationally, and avoided the pitfalls of the managerial, top-down approach I've already described.

These post-marriage equality campaigns light the path toward full equality for the LGBTIQA+ community and our allies. They show how we can overcome the backlash and make real change. They hold out the promise of an Australia that is truly inclusive of all LGBTIQA+ people.

1. Rodney Croome, 'Lessons from the Rainbow isle: Rodney Croome on Advocacy', *Q News* (online, 15 November 2020) https://qnews.com.au/lessons-from-the-rainbow-isle-rodney-croome-on-advocacy/.
2. Rodney Croome, 'Why it Was a Mistake to Make Marriage Equality a Small Target', *Q News* (online, 30 January 2018) https://qnews.com.au/mistake-make-marriage-equality-small-target/.
3. Mike Hitch, 'New Research Shows Religious Debates Taking Heaving Toll', *Star Observer* (online, 16 November 2019) https://www.starobserver.com.au/news/new-research-show-religious-debates-taking-heaving-toll-on-lgbtiq-australians/189815.

FROM LAWN BOWLS TO PRONOUNS – TRANS ADVOCACY NOW AND THEN

TEDDY COOK

Teddy Cook (he/him) has over 15 years of experience in community health and non-government sectors. Joining ACON in 2012, Teddy is currently acting as Director, Community Health where he oversees client services, LGBTQ community health programs, Pride Training and Trans Health Equity. Teddy specialises in community development, health promotion and program delivery, and is architect of TransHub. He is the Vice President of the Australian Professional Association for Trans Health (AusPATH) and Adjunct Lecturer for the Kirby Institute, UNSW. Teddy is a proud man of trans experience.

If you've read anything about trans people, published over the last couple of years in the mainstream media, you'd be forgiven for thinking that being trans is a new fad. The truth, though, is that the trans experience (which describes the phenomenon of knowing your gender – female, male, non-binary – is different to that presumed at birth) has been part of humanity since time immemorial.

The media scrutiny seems squarely focused on trans young people right now, re-emerging in recent years with the marriage equality fight over and the visibility of trans people starting to reach that tipping point promised by *Time* in 2014.[1] We find ourselves in a protracted culture war that not only denies the validity and importance of the trans experience, but calls into question the very existence of trans people, and the support offered by our families, friends, communities and health professionals.

We must be doing something right for all this attention to erupt but of course this is also not new; trans people have been treated like a spectacle since the advent of the silver screen, positioned as deceivers and abusers, disrupters of social harmony by daring to exist.

But indeed, we've always existed: we see gender diversity manifested across every First Nations clan group on earth, including in Australia – home to the longest living continuous culture. Perhaps it could be said that rigid gender norms and the gender binary, catapulted into the cultures of colonised countries, are the new fad.

Trans advocacy in Australia is also not new; we have been fighting for basic human rights for a long time here. In 1979, a Sydney woman called Noelena Tame was kicked out of her lawn bowls club for being trans; soon afterwards, she founded a support group for trans women – the Australian

Transsexuals Association (ATA). Enter the-now-legendary-advocate Roberta Perkins and by 1982, the ATA was hosting Australia's first trans rights rally in Manly.

Perkins wrote that the trans woman "…experiences difficulties in finding housing and employment, suffers public ridicule and hostility and sees the police taking over the role of punitor from parents and teachers".[2]

We're still fighting to address these disparities today.

Trans adults have been visible and active in communities for thousands of years, so too have trans kids, in those heady years of the first internet spaces, they sought forums and bulletin boards for connection and information about gender affirmation. Social media has meant more opportunities for trans people to converge, to find new language, to orient our advocacy at the global scale. We find each other because we are trans, not because we seek new recruits. The trans experience isn't catching, we are simply reaching for each other in a world that seems determined to see us as a problem, rather than a gift.

The political hand-wringing, 'concerned' clinicians, and judicial processes keep coming, and tend to shroud trans health and rights in controversy.

Across the Global North, I have read and watched deep untruths about the trans experience proliferate as fact, often underpinned by fundamentally flawed research methodology, ideological opposition, or just plain ignorance. We are debated without being allowed in the room, and treated like we're sick, a threat or worse. I've seen Australian politicians create petitions, table motions and use their political platforms to demonise trans people, particularly my trans sisters and trans kids, although non-binary people haven't escaped the gaze of those keen on deleting us from public life. Men who are trans are apparent deserters of feminism, or just confused girls crushed by the patriarchy, if we even exist at all.

The burden of this weighs heavily on trans communities, and it's sometimes hard to know who our allies are. The hate can spew from all angles: conservatives and faith communities, so-called feminists, debunked psychiatrists and even members of our own rainbow community. A community which is much more of a human rights movement than an identity club. We are in this fight together because the same systems oppress us.

Historically, trans people and cis people of diverse sexualities (gay, bi+, lesbian etc) faced similar structural challenges and discrimination. Our communities, who've gathered for centuries, worked together to gain and protect shared rights and freedom. Yet in 2021, pronouns, gender neutral language, and bathrooms seem to dominate the media landscape and political discourse.

National media polls listeners on where we should be allowed to pee, sports stars spout bigotry with limited consequence, and public figures reveal their gender to death threats. The Pope believes nerds like me are more harmful than a nuclear bomb.[3]

Peer-reviewed research tells a very different story though. The health of trans communities in Australia is at a crisis point; we are experiencing extreme distress, suicidality, substance use and homelessness, disconnection from family, services, culture and faith. Many trans people, particularly my trans sisters, face significant violence every day; we deal with fear and discrimination at work, in healthcare, in education, in public and at home. The domestic and sexual violence rates for trans people of all genders is alarmingly high, and yet we feel the least supported by police, even though a minority tend to report to them. All the above has of course been compounded by COVID-19.

The structural problems and human rights issues we face should be the front-page story, but instead we see debunked theories and heart-felt opinions by people who have never treated or cared for a trans person. We see vulnerable parents, desperate for support, being exploited, rejected and demonised simply for allowing their little one to express themselves with a new haircut. The lifesaving medical treatment needed by some trans adolescents, first and safely offered in the 1990s, is positioned as experimental, harmful, permanent.

The actual side effects of gender-affirming medical care, for those who can access it, include a significantly improved quality of life, significantly better health and wellbeing outcomes, a dramatic decrease in distress, depression and anxiety and a substantial increase of gender euphoria and trans joy.[4] The protective factors that keep trans people safe from harm are simple – access to affirmation, community connectedness and living free and equal in society.

We are not at risk of harm by affirming our gender, but rather due to *cisgenderism*, a cultural and social ideology that suggests there are only two genders, that gender is fixed, can be presumed based on genitals at birth and is always the same as that recorded on someone's first birth certificate.

Cisgenderism delegitimises people's own understandings of and relationship with their bodies and genders, it pathologises the trans experience as being disordered and rejects the validity of non-binary genders. Cisgenderism creates barriers to healthcare and marginalises trans people from society.

Simply because of how we are treated, trans people are one of the most minoritised and at-risk groups in this country. It is unequivocal that Sistergirls – Aboriginal trans women – are the most resilient and yet most vulnerable women on this planet.

Recently in NSW, One Nation's Hon. Mark Latham tabled the *Education Legislation Amendment (Parental Rights) Bill 2020*, that would erase and ban trans kids from educational settings, and punish their teachers for providing support, all in the name of parental rights. Not the rights of parents with trans kids mind you, and certainly not with respect to the rights of the child.

For two days in April, the Upper House Education Portfolio Committee heard testimony from 42 expert witnesses, most of whom had made submissions in support of the Bill. Some submissions though, such as AusPATH's, sought to reject the Bill in its entirety.

As an expert on trans health and rights issues, I was one of the 42. I was disappointed but not surprised to find that I was the only trans person giving evidence. It's something I'm used to; in fact, it's so common I'm surprised and overjoyed when I find myself in a room or video grid with another trans health professional. I feel a tremendous responsibility for, and duty to my community. I try to use every ounce of my privilege to elevate, support and make way for those who face much more minoritisation than I ever will.

Some politicians want to talk about the trans experience as an ideology and call it 'gender fluid', while actual genderfluid people have always existed and deserve to be known. The reality is that the trans experience has got nothing to do with what a person looks like, nothing to do with the bathroom we use, the hormones or surgery we might have, or the marker listed on our birth certificate - you can't tell who is trans by sight. The trans experience isn't an ideology, it's a person you know.

The lives of trans people depend on our allies; with that in mind, consider this a call to action.

Go home and talk to your families and friends – tell them you want to learn and talk more about trans issues, ask them to help you. Wander through TransHub (www.transhub.org.au), ACON's leading resource for all trans people, our loved ones and health professionals. It was written by trans people, for trans people but is for everyone. Spend some time with the 101 and language sections; you won't regret it.

It is in the best interest of all societies to protect and defend the human rights of our most vulnerable, and while trans people are the most resilient people I know, they are also vulnerable, and deserve our love and support. In 2021, surely, we can do better than this. ■

1. Steinmetz, K., 2014. *The Transgender Tipping Point.* [online] Time. Available at: <https://time.com/135480/transgender-tipping-point/> [Accessed 4 June 2021].
2. Perkins, R., 1983. Transsexuals and Police Persecution. *Alternative Criminology Journal,* [online] (6), pp.6-7. Available at: <http://www5.austlii.edu.au/au/journals/AltCrimJl/1983/2.html> [Accessed 15 May 2021].
3. Tornielli, A., 2015. *This Economy Kills*. Liturgical Press.
4. Riggs, D., Ansara, G. and Treharne, G., 2015. An Evidence-Based Model for Understanding the Mental Health Experiences of Transgender Australians. *Australian Psychologist*, 50(1), pp.32-39; Andrzejewski, J., Dunville, R., Johns, M., Michaels, S. and Reisner, S., 2021. Medical Gender Affirmation and HIV and Sexually Transmitted Disease Prevention in Transgender Youth: Results from the Survey of Today's Adolescent Relationships and Transitions, 2018. LGBT Health, 8(3), pp.181-189.

GUN OWNERSHIP IS NOT A RIGHT

REBECCA PETERS AO

The efforts Rebecca has gone to in her fight to prevent gun violence is evident through her being a recipient of an Officer of the Order of Australia in 2007. Prior to this Rebecca received the Australian Human Rights Medal for her advocacy on law reform. Not only has Rebecca had a significant role in gun law reform in Australia but she also focuses her attention on helping survivors of gun violence in Guatemala. Rebecca served as a Director of the International Action Network on Small Arms from 2002 to 2010.

Nearly 30 years ago I wrote a short article for the *Human Rights Defender* about the 'right' to own guns. In those days there wasn't much to say. Even in the gun-crazy United States of America (USA), the courts had consistently ruled that the vaunted Second Amendment to the Constitution was no obstacle to regulation of firearms; its power was psychological and political, rather than legal. My article was prompted by the emergence of rights rhetoric from the Sporting Shooters Association of Australia (SSAA), part of the Australian pro-gun lobby, which had formed an alliance with the US National Rifle Association (NRA). This article briefly reviews how the relationship between gun ownership and human rights has fared since then, and where Australia stands.

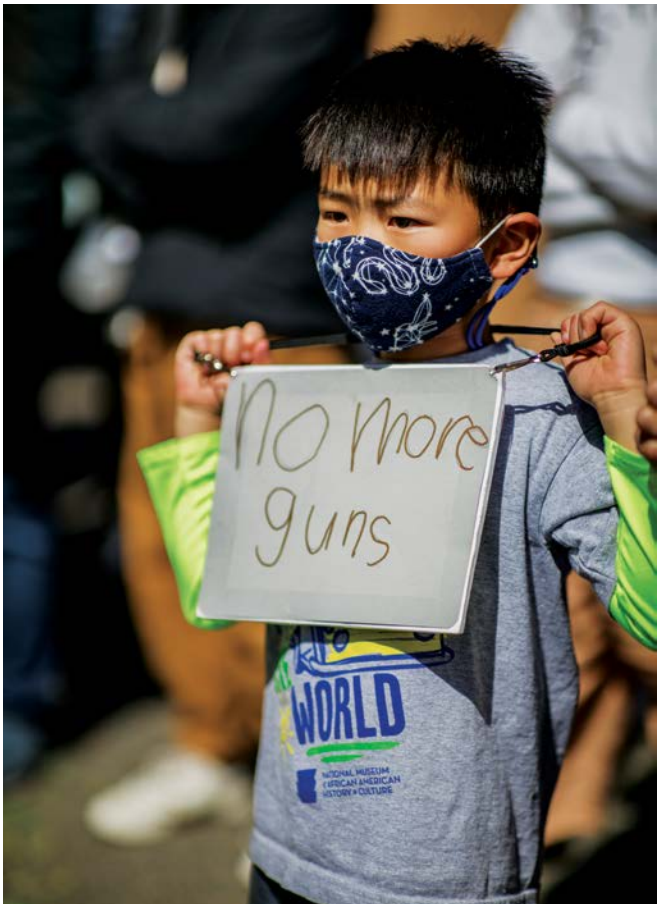
HISTORY OF GUN 'RIGHTS' IN USA AND AUSTRALIA

Like the NRA, the SSAA had for many years succeeded in blocking improvements to our patchwork of gun laws by threatening to mobilise votes against any reform-oriented political party. In 1992, the Australian gun lobby crept closer to its US big brother by claiming there existed a right to bear arms in Australia. However, subsequent decades saw the two nations move further apart on gun control.

In 2008, that putative American individual right became real when the Supreme Court reversed its position and declared, based on the Second Amendment, that the law banning handguns in Washington DC was invalid.[1] Two years later the Court also struck down a handgun ban in Chicago.[2] While these were major victories for the pro-gun lobby, gun control advocates could draw some comfort from the Court's observation that the Second Amendment is not unlimited and still permits a wide range of gun control measures.

Meanwhile in Australia, the gun rights cause suffered a setback after the 1996 massacre of 35 people at Port Arthur, Tasmania. Then-Prime Minister John Howard secured consensus among all jurisdictions on the National Firearms Agreement (NFA),[3] setting new minimum standards for all states and territories. The NFA's main pillars were a ban and buyback of self-loading rifles and shotguns, registration of all firearms, and tougher licensing requirements including the obligation to prove a 'genuine reason' for having a gun. On the latter, the NFA declares: '[p]ersonal protection is not a genuine reason'.[4] This is a crucial point of difference with the USA, where personal protection is a very common motivation for acquiring guns. Australia's personal protection exclusion frames gun ownership as a privilege since arguments for the rights interpretation are grounded in a notional right to self-defence. In fact, the NFA's opening paragraph affirms that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety'.[5] A privilege, not a right. This principle is incorporated, expressly or implicitly, in our state and territory firearm laws.

Nonetheless, some pro-gun lobbyists continued to insist on an Australian right to own firearms, and at least one has sought support from the courts. Martin Essenberg, a former One Nation political candidate in Gympie, Queensland, protested the gun laws by inviting arrest, showing the police several guns that he held without a licence. He was convicted twice in the local court for unlicensed possession, and appealed unsuccessfully to the District Court. He then sought leave to appeal twice in the Queensland Court of Appeal,[6] and twice in the High Court of Australia – all unsuccessfully.[7] In all the proceedings Mr Essenberg relied on ancient sources of human rights. The Magna Carta of 1215, he said, entitled him to a trial by jury rather than a local magistrate. Further, the English Bill of Rights of 1688, guaranteeing the right of Protestants to have arms for self-defence, invalidated the *Weapons Act 1990* (Qld) under which he had been convicted. Both higher courts denied him leave to appeal, since those two venerable documents, while influential, do not override laws made by parliaments in Australia.



(Image by Jason Leung - Unsplash)

GUNS AND HUMAN RIGHTS IN INTERNATIONAL LAW

The convergence of guns and human rights has received considerable attention internationally over the past 30 years, particularly as the United Nations (UN) pushed for countries to cooperate in preventing gun trafficking and violence. The focus has been on the victims of abuses committed with firearms, rather than on ownership rights. Gun proliferation and misuse affect human rights directly through injuries, killings, rapes and threats; but also in a broader sense by creating a climate of insecurity and burdening the health and criminal justice systems.

The early view of human rights violations in relation to guns was restricted to abuses committed by government officials. For example, if a police officer kills a civilian, the shooting might be a violation of the right to life guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). To prevent such violations, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted by the UN in 1990. Most litigation on human rights and guns has been about police shootings and arbitrary executions.

However, international law has evolved to recognise that human rights violations can also be committed by private civilians: a civilian murdered by her husband has been denied her right to life under the ICCPR just as surely as if the killer had been a police officer. According to this broader view, international law obliges governments not only to refrain from committing human rights violations, but also to exercise 'due diligence' by taking reasonable steps to prevent violations committed by private citizens.[8]

> This conceptual shift is particularly relevant for abuses involving guns, because 85% of the world's more than one billion guns are in the hands of civilians; and most shootings involve only civilians, not state officials.

In 2002, the UN Sub-Commission on Human Rights appointed a Special Rapporteur on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons (the latter phrase being UN nomenclature for guns). The Special Rapporteur conducted a global study and developed Draft Principles, endorsed by the Sub-Commission in 2006, providing the foundation for later deliberations by the UN Human Rights Council.[9]

The Special Rapporteur outlined States' responsibilities to prevent armed human rights violations, both by their own

agents and by armed non-state actors. According to Draft Principle 10, governments should adopt firearm licensing requiring specific reasons for firearm possession, training in gun use, and minimum criteria based on age, mental fitness, criminal record and history of domestic violence. Other suggested measures included the prohibition of assault weapons among civilians.

Gun control as a human rights obligation has since been stressed in numerous resolutions, decisions, statements and reports by UN agencies, as well as regional bodies such as the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights. Increasingly it features in discussions on gender-based violence. The UN Special Rapporteur on Violence Against Women first sounded the alarm in 1996 (shortly before Port Arthur); and has continued to insist that strong gun laws are a critical component of domestic violence prevention. The UN Secretary General's 2018 Agenda for Disarmament highlights many ways that reducing firearms proliferation will advance implementation of the Sustainable Development Goals. The most categorical statement on guns and human rights came in the 2019 annual report of the UN High Commissioner for Human Rights:

> ***'Increased civilian access to firearms, including lawfully acquired weapons, leads to increased levels of violence and insecurity which negatively impact human rights… Given the potential harm and devastating impact of the misuse of firearms on the enjoyment of human rights, legislation and public policies concerning civilian access to firearms should be formulated and reviewed with a human rights lens.'***[10]

GUNS FOR SELF-DEFENCE?

The Special Rapporteur specifically addressed the principle of self-defence, which protesters like Martin Essenberg contend gives rise to a right of gun ownership. She noted that self-defence is widely accepted as an extenuating circumstance or grounds for an exemption from criminal responsibility after a defendant is charged. However, there is no support in human rights jurisprudence – nor in State practice, according to the survey responses – for personal self-defence as an independent right that States are obliged to uphold.

(Image by Maxim Hopman - Unsplash)

Further:

> ***'Even if there were a "human right to self-defence", it would not negate the State's due diligence responsibility to maximize protection of the right to life for the society through reasonable regulations on civilian possession of weapons… The State must consider the community as a whole, and not just the single individual, in carrying out its obligation to minimize physical violence."***[11]

Thus, the legally enforceable right to guns for self-defence puts the USA at odds with other countries – and with international law.[12]

HOW IS AUSTRALIA FARING?

These UN deliberations have yielded lists of minimum provisions for gun laws that protect human rights, including some measures from Australia's NFA. Gun control in Australia is among the world's strongest, but our national uniform scheme is vulnerable to erosion. There is no mechanism to stop states and territories from unilaterally changing their laws; and the gun lobby has substantial influence through minor parties that wield disproportionate power in our finally balanced state parliaments. For example, the NFA requires a 28-day waiting period for every firearm purchase, but several states have waived this requirement for a person's second and subsequent weapons.

One area where Australia falls short of the UN recommendations is the commissioning of research to facilitate evidence-based policymaking. It continues to be very difficult in Australia to obtain data on gun violence and gun regulation, apart from number of deaths by gunshot (encouragingly, that number is now less than half the figure from 30 years ago). But we still need to know whether, and how, our laws are effectively controlling civilian access to firearms. For example, how are the laws being enforced? How many license applicants fail to qualify? How many licenses are cancelled, and for what reasons? I have been told anecdotally that the main reason for licenses being cancelled was domestic violence. Domestic killings are the most predictable category of homicides, especially given that a woman's risk of being murdered triples if there is a gun in the home.[13] Australia's laws prohibit gun possession for domestic violence offenders, but flaws in information systems, enforcement mechanisms and police attitudes can still result in tragedies like the 2018 murders of teenagers Jack and Jennifer Edwards by their father in Sydney.[14]

Freedom of Information requests by Greens MP David Shoebridge have revealed some individuals in NSW amassing huge personal arsenals;[15] how is that consistent with our supposedly strict laws requiring proof of genuine reason? What reason can a resident of Cremorne or Mosman, a few minutes from the centre of Sydney, have for owning 300-400 guns? Perhaps self-defence against King James II of England, as Martin Essenberg of Gympie might suggest. Australia can't afford to rest on its gun control laurels – research and vigilant monitoring are our weapons against complacency.

1. *District of Columbia v. Heller*, 554 U.S. 570 (2008).
2. *McDonald v. Chicago*, 561 U.S. 742 (2010).
3. Council of Australian Governments (2017). National Firearms Agreement. This version includes additional provisions inserted in 2002 and 2012. https://www.resources.qld.gov.au/__data/assets/pdf_file/0010/1399510/17-257.pdf
4. NFA at [10].
5. NFA at [1].
6. *Carnes v Essenberg* [1999] QCA 339; *R v Essenberg* [2002] QCA 4.
7. *Essenberg v The Queen* [2000] HCATrans 297; *Essenberg v the Queen* B12/2002 [2003] HCATrans 836.
8. Eg See the UN Human Rights Committee's General Comment 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, U.N. Doc. CCPR/C/GC/36 (2018). The obligation under international law to prevent gun violence is discussed specifically in relation to the USA in Sadat LN and George MM (2019). Gun violence and human rights. *Wash. UJL & Pol'y* 60 (2019): 1.
9. Her final report is A/HRC/Sub.1/58/27 (27 July 2006) and A/HRC/Sub.1/58/27/Add.1 (8 August 2006).
10. A/HRC/42/21, paras 60, 62.
11. A/HRC/Sub.1/58/27, para 34.
12. The same conclusion was reached in Jan Arno Hessbruegge's comprehensive study: Hessbruegge JA (2017). *Human rights and personal self-defense in international law*. Oxford University Press.
13. Anglemyer A, Horvath T, and Rutherford G (2014). The accessibility of firearms and risk for suicide and homicide victimization among household members: a systematic review and meta-analysis. *Annals of internal medicine* 160, no. 2: 101-110.
14. McGowan M (2021). Murders of Jack and Jennifer Edwards by estranged father 'were preventable', NSW coroner rules. *The Guardian*, 7 April.
15. Chung L and Singhal P (2021). Instruments designed to kill: The suburbs where NSW keeps a million firearms in private arsenals, *Sydney Morning Herald*, 2 May.

INVOLVING WOMEN IN GUN CONTROL FOR PEACE

MAGDA COSS
Magda Cross is a passionate gun control advocate and the Director of Inspiring Girls, Mexico.

For activists from other regions, witnessing Australia's advances in gun control provoke admiration, but are also a painful reminder that progress has been much slower in other parts of the world. Many countries have seen an increase in gun proliferation and violence, especially the region of Latin America, which continues to be the deadliest region in the world, mostly because of gun violence.

My home country, Mexico, suffers from an epidemic of gun violence. According to national authorities,[1] more than 90 people are murdered every day. Ten of them are women, six of whom die by gunshot. However, the presence of firearms in homes is so normalised that the peril is not identified until too late, even by the women themselves who think that their partners would not use the weapons against them or their children.

In addition to the traditional arms trafficking routes, new forms of smuggling now enable the production of weapons that bypass regulation. Modular components can be bought and assembled into unmarked 'ghost guns', and blueprints for 3D printed guns are freely available on the web. This type of violence affects society as a whole but affects women in particular. There are a variety of reasons for this, but perhaps one of the most obvious is that men are more likely to own guns than women.[2]

THE NEED FOR A GENDERED NATURE WHEN THINKING ABOUT GUNS

Myths persist about gun possession: that it will bring peace to our countries and security to our homes, that it's not dangerous in the hands of the 'good guys'. The idea that 'having a gun makes a real man' also persists. What naturally develops from this adage is a requirement to address the issue of gun violence through a gendered lens. We can collect data, develop policies, and ratify international treaties, but we must also act to break the links between guns and toxic masculinity. Traditional gender roles are fundamental to the continuation of gun violence. Understanding these gendered dynamics and transforming them will have profound effects on disarmament and prevention of domestic violence.

Most gun users are men. Most gunshot victims are also men.[3] Men also dominate the officially-sanctioned armed domains of the police, military and private security. Gun possession feeds into and confirms the problem-solving strategy of brute force: whoever can exert or threaten the greatest physical injury 'wins'. In Mexican culture, guns are a common symbol of male empowerment and masculinity. This motivates men to acquire guns, many times illegally. Research shows that the presence of a firearm in a home increases the risk of violent death of a family member, but in the case of women the risk is three times higher.[4]

Domination through physical force is an element of toxic and hegemonic masculinity. In patriarchal societies, a gun provides easy access to status and power. That power is too often used and wielded over people of lesser status, including women, children and other people who do not conform to the predominant stereotype of masculinity.

POLICY MAKING AND MISSING VOICES

Applying a gender lens must then become a central objective in the activists work against gun violence around the world. This involves awareness-raising and education of the whole community on topics including equity, alternative models of masculinity, and conflict resolution. Likewise, it demands that public policies and government institutions include a gender perspective when addressing this issue if they hope to have an impact on the lives of women who are in danger.

It also means extending the policy discussion table so that voices and perspectives can be heard that were previously excluded or overlooked. This might include, for example, the voices of victims or families of victims who have been impacted by gun violence, and welcoming them into decision-making processes. In most countries, gun policies are developed by men from the armed domains mentioned above. Their focus is often on traditional national security concerns such as terrorism and organised crime, with much less concern about interpersonal violence, domestic abuse, sexual assault or suicide.

The legal framework needs to support women's empowerment too. Australia's prohibition on guns for domestic violence offenders is an essential element which remains lacking in many other countries. Canada also requires that a license applicant's current or former spouse be asked their opinion as part of the licensing process. Many countries are introducing provisions enabling family members to report people who should not have access to guns. These kinds of measures recognise that 'public security' cannot be achieved without safety in the 'private' or domestic sphere.

LOCAL INITIATIVES IN RESPONSE TO GUN VIOLENCE

Another aspect of our gender-informed work against gun violence is an increased emphasis on local contexts, not just the national experience. Local conditions in a neighbourhood can create demand for guns, and therefore attract traffickers. Local knowledge about family and neighbourhood history, tensions and dynamics can be far more effective than police systems in identifying dangerous situations before a shooting occurs. Local relationships can also influence how energetically police officers enforce the laws on guns and on violence against women. Therefore, a critical element in reducing gun violence is strengthening women's understanding and confidence of their rights and building their capacity for advocacy and peacemaking.

In Mexico, there are testimonies of women in refugee shelters who have said they suffered armed violence long before they knew they need to escape from those situations.

THE FUTURE OF GUNS THROUGH A GENDERED LENS

The inclusion of a gender perspective in gun control policies is urgent in regions such as Latin America and Africa, which not only suffer the effects of armed violence, but of profound gender disparity. There is an urgent need to improve gun-control laws in Mexico, but also to strengthen the buy-back policies regarding guns and removing them from homes and communities. The Australian responses to gun violence could be adapted and enforced in Mexico if the political will is present. The Australian experience – alongside other international success stories – should be part of the framework that the Mexican authorities consider in order to curb gun violence in the country.

Building peace in society should begin by building peace in the homes of the women and children that, every day, face the threat of gun violence. This has to be our priority. ■

1. Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública (2021). Víctimas de Delitos del Fuero Común 2020. Centro Nacional de Información. https://drive.google.com/file/d/1v58-MmqI-4imKsdmSmHOZTmfKFP3Ecr4/view.
2. Donges, H., & Karp, A. (2014). Women and gun ownership. Small Arms Survey Research Note 45. http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-45.pdf
3. Naghavi, Mohsen, et al. "Global mortality from firearms, 1990-2016." Jama 320.8 (2018): 792-814.
4. Anglemyer, Andrew, Tara Horvath, and George Rutherford. "The accessibility of firearms and risk for suicide and homicide victimization among household members: a systematic review and meta-analysis." *Annals of internal medicine* 160.2 (2014): 101-11.

SUPPORTING HUMAN RIGHTS DEFENDERS

PATRICK EARLE

Since 2003 Patrick has been the Executive Director of the Diplomacy Training Program. Within this position Patrick has helped create human rights courses focusing on contemporary issues. Prior to this appointment, Patrick worked with the Human Rights Council on 'The Right Way to Development – Policy and Practice'. Patrick continues to advocate for human right issues, specifically through his role as a Visting Fellow at UNSW where is able to spread his knowledge and share his experiences with students.

Congratulations to the *Human Rights Defender* on its 30th Anniversary.

It is striking looking back 30 years to the Diplomacy Training Program's (DTP's) first contributions to *Human Rights Defender* – with their focus on human rights in Cambodia and on the difficulty of getting Australian aid funding for training of human rights defenders.

As I write this, I am reading of the arrest and detention of environmental human rights defenders working for an NGO called Mother Earth in Cambodia – and working on funding applications to DFAT. While these challenges remain, so much has changed over the last 30 years.

DTP was established by Jose Ramos-Horta and Professor Garth Nettheim (founder of AHRC and *Human Rights Defender*) at a time of great, perhaps naïve, optimism for progressing human rights in the region, with hopes that Australia would play a significant role in such progress.

The end of the Cold War promised a new focus on international human rights standards as shared values of humanity and human progress. The success of peoples' movements against authoritarian regimes in South Korea and the Philippines promised a new age of democracy and respect for human rights in the region. Global movements to end apartheid in South Africa, against poverty and for women's rights were demonstrating the power of international solidarity and global civil society.

By 1990, with the adoption of the UN Convention on the Rights of the Child and the Migrant Workers Convention, there was a comprehensive set of binding international human rights treaties. The human rights challenges lay not in definition, but implementation.

The vision of DTP's founders was in seeing the value in investing in human rights defenders and movements; in making knowledge of human rights and international law accessible and practical to those working on the frontline of struggles for self-determination, democracy, peace, and justice. These individuals and movements are critical in generating the necessary political will to implement human rights and human rights standards. In their hands human rights standards and mechanisms become tools for justice and change.

All of this was distilled into DTP's approach to building the capacity of human rights defenders and their movements. Established as an NGO based in Australia, DTP connected struggles of Australia's First Nations, Timorese, and other diaspora communities in Australia with the human rights movements in Asia and the Pacific. Respecting the perspectives and experiences of its participants, its programs recognised the value of sharing knowledge, in building practical advocacy skills and networks.

The importance of these civil society movements was evidenced in Bangkok in 1993, when Asian NGOs came together ahead of the UN World Conference on Human Rights. Their Bangkok NGO Declaration was influential in refuting the push by some authoritarian governments in the region to undermine the universality of human rights in the name of Asian values. The importance of hearing the voices not just of governments, but of civil society, affected peoples, communities and their organisations was firmly established. The concept of "peoples' diplomacy" has been critical to the growth and effectiveness of civil society movements, encouraging advocates to think about how they can find allies and friends, build relationships across borders.

The growth and diversity of these movements has been one of the striking changes over the last 30 years, and DTP has been working with them over this time to build their capacity. DTP has now provided practical training to over 3500 Indigenous peoples rights advocates and human rights defenders in over 50 countries. In nearly every country in the region there are alumni of DTP's courses.

We see DTP alumni[1] active in the human rights and democracy movements across Asia and the Pacific – in the movements challenging religious intolerance and discrimination,[2] promoting the rights of women and gender equality,[3] asserting the rights of Indigenous peoples,[4] holding corporations accountable[5] for their impacts, defending the environment, affirming the rights of migrant workers in countries of origin and destination,[6] and the rights of persons with "disability",[7] protesting censorship. We see them in the movements defending democracy and the right to participate in decision making and demanding action on the climate emergency.

Some of these alumni became senior figures in political parties, seeing that as the way to bring about change, others joined the UN system contributing to human rights that way and some, particularly in Timor Leste, became ambassadors for their new governments. Others have risen to the leadership of their human rights organisations and movements. Still others were appointed as Human Rights Commissioners. A number have received awards for their work. It is a unique network.

Peaceful human rights advocacy can claim many gains, especially in the recognition of rights. Laws have been changed, discrimination outlawed, prisoners freed, individuals saved from torture and "disappearance". Forests and rivers have been saved; dams stopped. New standards on Indigenous people's rights, disability and "disappearances" and torture have been adopted. New international accountability mechanisms developed, and national human rights institutions established.

Peaceful human rights advocacy helped end conflict and enable self-determination in Timor-Leste and Bougainville. Change can be slow to come, progress invisible, and then suddenly there are breakthroughs.

There have been many successes, but many failures too, as well as new challenges.

Respect for human rights is in retreat in many countries in the region, including in Cambodia.

The optimism of 30 years ago has been tempered as new human rights standards have been adopted but not implemented, impunity for human rights violations has become endemic, and new authoritarianism and populism has combined with old prejudices, amplified by new technologies to undermine democracies and institutional and social protection of rights. New strategic rivalries have grown, and with them new attempts to undermine the universality and interdependence of human rights, including by promoting "rice before rights".

There is a need to step up efforts to support human rights and human rights defenders. Australia has a vested interest in ensuring that countries in the Asia-Pacific are peaceful, stable, and respectful of core values of human rights. Currently Australia's support for human rights movements and human rights defenders in the Pacific and Asia falls short. Australian diplomats have no equivalent of the EU Guidelines on Human Rights Defenders to prompt and guide their actions. More Australian funding to human rights movements in Asia and the Pacific is needed to complement diplomatic commitments to defend the space in which dissent can be voiced without fear of torture, imprisonment, or "disappearance".

DTP is working with its partners in the human rights movements within the region to address these and other challenges to human rights. Front Line Defenders act to defend our alumni at risk or in detention. WITNESS[8] provides training in video advocacy and online security. With our partners, Migrant Forum Asia, Asia Indigenous Peoples Pact, Asian Forum on Human Rights and Development (FORUM-ASIA) and the Pacific Islands Association of NGOs we have developed and delivered new and specialised capacity building programs on Business and Human Rights, the rights of Indigenous Peoples, and Migrant Workers Rights. We are working with our partners as they respond to the challenges of COVID, and the climate emergency.

We have been building the capacity of human rights advocates to use commitments to use the Sustainable Development Goals (SDGs). To be achieved by 2030, the SDGs link action on poverty, inequality, and climate change. With their imperative to "*leave no one behind*" and to prioritise the "*furthest behind first*" they call for a different kind of development with human rights values at their core.

Building knowledge of global commitments, international laws, constitutions, and national laws remains at the heart of DTP's work, our partnerships with human rights movements in the region and our work with and for human rights defenders. Advocacy and campaigning techniques continue to change, but the principles remain constant – the need to be clear, focused, and realistic about objectives. The need to consider context and consequences. The need to find allies and build support. Persistence is a necessity. Enabling advocates to come together to share knowledge and experience continues to be an essential part of our work, even as we move much of that work online in response to COVID.

In the diversity of our participants and the causes they work for we are constantly reminded of the potential of human rights values to provide common cause, and a basis for effective solidarity.

In nominating DTP for the 2019 Asia Democracy and Human Rights Award, DTP alumna Yuyun Wahyuningrum, Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights (AICHR) said:

> ***I believe that over 30 years DTP has made a uniquely valuable contribution to human rights and democracy in Asia... If our region seems to be resilient despite rampant human rights abuses and violence, perhaps that is because of DTP's contribution to our capacity to cope and resist the challenges.***

In sharing and provoking critical thinking on contemporary challenges, and providing space for a diversity of voices, the *Human Rights Defender* is also making important contributions to the wider movements for human rights. On behalf of DTP, I congratulate all involved on its anniversary. We are looking forward to building more collaboration in the future.

1. UNSW, 'Diplomacy Training Program', DTP Alumni (Website, 2021) https://www.dtp.unsw.edu.au/alumni-0.
2. Forum Asia, Asian Forum for Human Rights and Development (Website, 2021) https://www.forum-asia.org.
3. Asia specific Forum on Women, Law and Development, 'Latest Updates' (Website, 2021) https://apwld.org.
4. Asian Indigenous Peoples Pact, 'Publications' (Website, 2021) https://aippnet.org.
5. CIVIDEP India, 'Workers Rights and Corporate Accountability', Towards Decent Work for All (Website, 2021) http://cividep.org.
6. Migrant Forum in Asia, 'Human Rights and Dignity' (Website, 2021) https://mfasia.org.
7. Pacific Disability Forum (Website, 2021) https://pacificdisability.org.
8. Witness, 'See It, Film It, Change It' (Website, 2021) https://www.witness.org

THEN AND NOW: WOMEN'S HUMAN RIGHTS IN ASIA

PRIYANTHI FERNANDO

Priyanthi Fernando is a feminist from Sri Lanka, passionate about issues of social justice and about fighting the structural inequalities that constrain the rights of marginalised communities and specifically women. She is currently the Executive Director of the International Women's Rights Action Watch Asia Pacific based in Kuala Lumpur.

The 1990s was a hopeful time for women's rights. During this decade, the Vienna Conference on Human Rights (1993), the International Conference of Population and Development (1994) and the Fourth World Conference on Women in Beijing (1995) which culminated in the Beijing Platform for Action, brought gender equality to the forefront of global thinking. These global convenings managed to reconcile divergent views and articulate a new agenda for population and development, sexual and reproductive health and rights, and gender equality.

Malaysian women's rights activist, Shanthi Dairiam, attended all three of these landmark conferences. She says these events gave her conceptual clarity and first-hand understanding of how global politics influence debates on gender and human rights. Shanthi, driven by these experiences, went on to found the International Women's Rights Action Watch Asia Pacific and to strategically guide its work using the principles of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

CEDAW is the international bill of rights for women. It is based on the principles of substantive equality, non-discrimination, and state obligation. It provides a framework to hold states accountable to recognise, protect and fulfil the rights of all women.

The intense mobilisation that Shanthi and the founding members of the International Women's Rights Watch Asia Pacific carried out with national and local women's groups in the global south built awareness among these groups of the importance of CEDAW, and laid the foundation for many positive developments in women's human rights over the next three decades.

Today, in most countries of the global south there are strong coalitions of women's and feminist organisations working tirelessly to enshrine CEDAW principles in domestic laws and ensure compliance at the national and local levels. All countries in South and Southeast Asia have now ratified CEDAW.[1] Several countries have also implemented legislation to protect women's rights including laws criminalising domestic violence. In Nepal, women's rights organisations successfully campaigned for changes to discriminatory inheritance laws and the inclusion of a non-discrimination clause in the country's constitution.[2] Thailand, Vietnam and Mongolia have also implemented gender equality acts following the advocacy of women activists and organisers.[3]

In 2020, the women's human rights movement celebrated several anniversaries of global commitments to women's human rights including the 40th anniversary of the CEDAW Committee and the 25th anniversary of the Beijing Platform for Action. At the same time, it witnessed pushback on these past achievements.

In Asia and beyond, right-wing populist governments are being elected to office. Religious extremism, often backed by state power, threatens the rights and very existence of ethnic and sexual minorities. Regressive and conservative forces are seizing opportunities to frame narratives and agendas in opposition to human rights. Many women in the global south displaced by conflict, development and corporate projects and climate change are pushed into precarious work. This includes undertaking risky migration to find work with few, if any, avenues to access justice for violations of their labour and human rights or social protection. Meanwhile, transnational corporations move freely across borders, demanding tax cuts that deplete state revenues for social protection, and agitate for 'pro-business' legislative changes that restrict workers' rights in their global supply chains.

The concepts of 'state obligation' and 'decent work', as framed in our human rights frameworks and ILO conventions, are beginning to lag behind new challenges such as the future of work in the gig economy and the rise of labour 'flexibilisation', technological advancements, temporary labour migration and extraterritorial business violations of human rights.

Climate change and environmental degradation bring new challenges for the protection of women's human rights across our region. Six out of 15 of the most devastating climate events in 2020 took place in Asia.[4] Our reliance on market-based and neoliberal 'solutions' to environmental degradation only replicate existing power inequalities. More often than not, women and marginalised groups are left with the least resources and least capacity to adapt to these natural disasters and acts of environmental sabotage.

The global COVID-19 pandemic also exposed the fault lines in our societies and economies. It showed very clearly what needs to be changed: the underfunding of public health systems, the lack of recognition and the vulnerability of 'essential' informal-sector workers including migrants and women workers.

In Asia, many states are using the pandemic as a smokescreen to carry out state-sponsored violence, to crack down on critics and dissenters and to reverse democratic processes. Misogyny, racism, homophobia and anti-rights actions seem to be gaining in strength. The eagerness to attract foreign direct investment as a solution to economic downturn is threatening the environment and destroying biodiversity. The global intransigence in enabling equal access to COVID-19 vaccines put many lives at risk across the global south.

But in 2020 we also caught a glimpse of the possibility of a different reality: a world in which power is not concentrated in a few. Where the colour of your skin, your sexual orientation, your beliefs, or your mother tongue are not reasons for exclusion. Where the goal of economic growth is debunked in favour of a feminist ethics of care and the wellbeing of people. Where the tyranny of individuality is replaced by reasserting the importance of the commons.

So as we move ahead from an unprecedented, unpredictable and unbearable year, we are grimly conscious that our work on making the promise of CEDAW a reality is far from done. Not in Asia, not anywhere. Now more than ever we need to focus on those who are excluded and marginalised and to work towards eliminating the barriers to ensuring justice for everyone. International Women's Rights Action Watch Asia Pacific commits to support the intergenerational and intersectional advocacy of women with disabilities, migrant women, women from the labour rights movement, sex workers, women who use drugs, indigenous women, domestic workers, caregivers and many others whose voices are muted in global standard-setting and decision-making spaces and who are further marginalised as civic spaces contract at the national level. We will work towards countering the regression in human rights, interrogate borders and their impact, challenge gender inequality in the world of work, push for environmental justice and aim to transform economic and development praxis using a feminist perspective. We will aim to replicate the energy, enthusiasm and rigorous analysis of our founder and address ongoing obstacles to substantive equality, non-discrimination and state obligation. We will contribute not just to 'leaving no one behind'[5] or to accelerating the progress to gender equality,[6] but also working to co-create peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.[7]

1. See "Status of Ratification Interactive Dashboard: Convention of All Forms of Discrimination against Women" *United Nations Human Rights* <https://indicators.ohchr.org/>.
2. See Mara Malagodi, "Challenges and opportunities of gender equality litigation in Nepal" (2018) 16(2) *International Journal of Constitutional Law* 527.
3. See "Gender Inequality Index" *United Nations Development Programme* <http://hdr.undp.org/en/content/gender-inequality-index-gii>.
4. Christian Aid, *Counting the Cost 2020: A Year of Climate Breakdown* (2020) <https://www.christianaid.org.uk/resources/our-work/counting-cost-2020-year-climate-breakdown>.
5. UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1 <https://sdgs.un.org/2030agenda>.
6. Generation Equality Forum <https://forum.generationequality.org/>.
7. SDG 16 <https://sdgs.un.org/goals/goal16>.

WHAT WOULD IT LOOK LIKE IF AUSTRALIA TREATED CLIMATE CHANGE AS AN EMERGENCY?

KETAN JOSHI

Ketan is a prolific writer, analyst and science communicator focusing on clean energy and climate change. He previously worked in climate and energy for private companies and government agencies, and now writes journalism and commentary from the front lines of climate and energy battles around the world. He is based in Oslo.

A number of jurisdictions are now declaring climate emergencies. Declarations of climate emergency signify the state of urgency we are in. But declarations must be backed-up by immediate, concrete actions to rapidly decarbonise our economies. Greenhouse gases are accumulating in Earth's atmosphere and oceans; this is a problem of a finite space filling with balance-tipping poison. An oft-cited metaphor is a bathtub perilously close to overflowing. Do you race to turn to the tap off, or do you think about buying a new mop next week?

In December last year, New Zealand declared a climate emergency. "This declaration is an acknowledgement of the next generation. An acknowledgement of the burden that they will carry if we do not get this right and do not take action now," said Prime Minister Jacinda Ardern. "It is up to us to make sure we demonstrate a plan for action, and a reason for hope".[1]

This declaration is a promising first step. But is New Zealand *treating* climate change like an emergency? Gauging and quantifying climate action is hard. The online portal 'Climate Action Tracker' is a helpful tool which uses independent scientific analysis to track government action against the Paris Agreement. It ranks New Zealand's policies as 'Insufficient'. The Climate Action Tracker explains that New Zealand excludes methane from agriculture and waste (40% of the country's emissions) in its climate targets, splitting them out from its zero-carbon goal and requiring only a 24% reduction by 2050.[2] Therefore, "New Zealand lacks strong policies, despite its Zero Carbon Act", concludes Climate Action Tracker.[3] The country struggles to balance its climate priorities with those of its primary industries.

Australia similarly struggles with this balancing act. It has not declared a climate emergency. We must do so. But as the case of New Zealand shows, we will only benefit from a declaration if it is followed up by rapid actions for the full-scale reduction in greenhouse gas emissions. Australia's emission reductions have flatlined over the past half-decade, as rising renewable growth is cancelled out by a growing fossil gas mining industry. The government's latest emissions projection, published in December 2020, shows emissions falling only a few percentage points (against 2005 levels, as per Australia's 2030 Paris targets) in the next decade.[4] At this rate of decrease, we will hit net zero by around 2294.

Photo: Coal Power Plants.
(Image supplied by Markus Distelrath)

If Australia declares a climate emergency, a number of immediate actions can then be taken to reduce emissions. If enacted well, these actions can also serve to directly address pre-existing inequalities. High electricity bills, for instance, disproportionately burden lower-income households, due to the sheer necessity of electrical power. But the growth of renewable energy puts downward pressure on electricity prices.[6]

What would treating climate change like an emergency look like? Action on coal is the first step. Recent analysis from Climate Analytics shows that for Australia to meet the 1.5˚C global climate target, coal must be phased out of Australia's grid by 2030.[7] This roughly aligns with commitments made by similar countries such as Germany, the UK and the US. However, Australia's fleet of coal plants is set to retire only when the plants are too old; a scenario which would see Australia blow comfortably past its carbon budgets.

A second step is ending Australia's export of fossil products to other countries. A recent report published by the International Energy Agency finds that all new fossil fuel exploration must halt if the world is to align with a 1.5˚C target.[8] The emissions from burning the coal and gas sold to global markets are many times greater than the emissions from fossil fuels burnt within our borders.[9] An active, justice-driven and equitable phase-down of fossil fuel production in Australia would add important pressure onto the global fossil fuel industry.

Third, Australia's transport and building sectors remains an untapped well of climate action. If we treated climate change as an emergency, we would need to undertake in a massive transformation of our transportation system.

The sale of combustion cars should cease by 2030, preferably earlier. Public transport and active transport (such as walking and cycling) should be heavily incentivised. Cities and suburbs should become far friendlier to zero emissions transport. Bans on the connection of new homes to the fossil gas network must occur, alongside generous incentives for energy efficiency and electrification across buildings.

The risk of a fast yet unfair transition lingers across the world. The construction of electric vehicles, for instance, requires a significant increase in the extraction of resources like lithium, copper and rare earths; too often associated with human rights abuses. But a clear program of recovery and recycling can significantly reduce these extraction requirements, thus creating breathing room for car manufacturers to put money and effort into strict supply chain controls.[10] In haste, the costs of the energy transition may flow to vulnerable communities, while the benefits flow to wealthy ones. Effort is required to avoid this.

The physical reality of the climate problem is that declarations only reduce emissions when they are paired with ambitious and justice-driven policy that drives rapid technological, social and economic shifts. But declarations themselves can serve as powerful catalysts for this physical change, and deserve to be considered more widely.

Photo: Iceburg from the Colombia Glacier, Prince William Sound, Alaska. (Image by Melissa Bradley @alaskanhoneybee - Unsplash)

1. New Zealand Parliament, Parliamentary Debates, 2 December 2020 (Jacinda Ardern, Prime Minister).
2. Climate Action Tracker, New Zealand (Report, 30 July 2020) https://climateactiontracker.org/countries/new-zealand/.
3. Ibid.
4. Australian Government Department of Industry, Science, Energy and Resources (Cth) Australia's Emissions and Projections 2020, (2020).
5. Shuba Krishnan, 'Low-income Households Hit Hardest with Thousands of Australians Stuck on Expensive Electricity Plans', ABC (online, 4 December 2019) , https://www.abc.net.au/news/2019-12-04/some-energy-consumers-not-seeking-out-a-better-deal/11753818.
6. The Australian Energy Market Commission, Residential Electricity Price Trends 2020 (Review, 21 December 2020) https://www.aemc.gov.au/market-reviews-advice/residential-electricity-price-trends-2020.
7. Climate Transparency Australia, 'Climate Transparency Report', Comparing G20 Climate Action and Responses to the Covid-19 Crisis (Report, 2020) https://www.climate-transparency.org/wp-content/uploads/2020/11/Australia-CT-2020-WEB2.pdf.
8. International Energy Agency, 'Net Zero by 2050', A Roadmap for the Global Energy Sector (Report, 2020) https://www.iea.org/reports/net-zero-by-2050.
9. Grattan, Global Emissions from Australian Carbon Exports Dwarf any Declines in Australia's Domestic Emissions (Blog Post, 2 May 2019) https://blog.grattan.edu.au/2019/05/global-emissions-from-australian-carbon-exports-dwarf-any-declines-in-australias-domestic-emissions/.
10. Earthworks, Reducing New Mining for Electric Vehicle Battery Metals: Responsible Sourcing Through Demand Reduction Strategies and Recycling (Report, 27 April 2021) https://www.earthworks.org/publications/recycle-dont-mine/.

SEEING INDIGENOUS HUMANNESS

PROFESSOR JACINTA RURU

As an advocate for Indigenous Peoples rights and interests, Jacinta Ruru shows the connections between Māori, water and land. She has had a significant impact on changing the landscape of Indigenous land rights in Aotearoa New Zealand. Becoming the first Māori Professor of Law in the country, her influential impact on her students at Otago University has been recognised by the Prime Minister who awarded Jacinta with the Supreme Award for Tertiary Teaching in 2016.

I was born in the 1970s during an era of emerging new domestic and international law and policy more attuned to reconciliation with Indigenous peoples, rather than stark annihilation. The colonial awakening of justice for Indigenous peoples has been a slow burn. As I near the age of 50, I reflect on the change, especially in recent years. There is now a nod, in some legal quarters, to not just the human rights of us as Indigenous peoples in the collective sense but also to our embodied ancestors in lands and waters.

THE SLOW BURN

Initial growth of international law in the early 20th century fundamentally ignored us as Indigenous peoples, including our ongoing assertions in law as continuing sovereign entities with jurisdiction over our lands, territories and resources.[1] International law ignored our humanness. Attempts to engage with the League of Nations were rebuffed. For example, Indigenous representatives in the 1920s were denied access to speak to the League about the rights of their people to live under their own laws, on their own land and under their own faith.[2] International human rights law could not see Indigenous peoples. It was not until the 1970s that the United Nations and member states began taking small steps towards recognising Indigenous peoples' rights and responsibilities.[3] Earlier views that Indigenous peoples should be simply assimilated or integrated became unacceptable, at least by some.[4] Indigenous peoples often remained sceptical even with the development of international human rights because of its tendency to focus on the individual rather than the group.

A transformative moment was in 2007 with the United Nations General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples. The Declaration has been applauded for pushing the liberal human rights paradigm "by explicitly referring to the right to self-determination, embracing collective rights, and expressing an understanding of the interrelationship between rights to heritage, land, and development".[5] For example, the expansive Declaration recognises that "Indigenous peoples and individuals are free and equal to all other peoples and individuals",[6] and that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationships with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard".[7]

This is good. This is just. But law in all its forms can and should do more. If we are to disrobe the colonial shackles and recognise Indigenous peoples and our legal systems not as 'savage' but as equally, albeit differently, civilised then our state legal systems can and should adapt. And, this is happening, slowly.

Photo: Mount Taranaki.
(Image by Tyler Lastovich @lasty - Unsplash)

THE NEW JUST SWELL

In my home country, Aotearoa New Zealand, in the Māori way of understanding the world, we are all connected. Kinship is at the heart of the Māori legal system. Kinship is "a revolving door between the human, physical, and spiritual realms"[8] meaning we as Māori personify the landscape around us.

There is now a suite of laws that aspire to recognise this, our Indigenous peoples' humanness. Of international acclaim, in 2014, Te Urewera, a large forested then national park, became simply: Te Urewera "a legal entity" with "all the rights, powers, duties, and liabilities of a legal person".[9] Three years later, in 2017, legislation gave legal personality to the country's third longest river, the Whanganui River.[10] Law is currently being drafted to recognise Mount Taranaki / Egmont – the mountain that stands as the centre piece of the country's second created national park – as a legal person "effectively giving the mountain the same protections as a citizen".[11]

Legal personality of this land, river and mountain mark a significant positive transformation for Aotearoa New Zealand's environmental and constitutional laws. These laws provide a connective example of how western colonial law can positively forge a bridge to Indigenous laws. These resolutions are ground-breaking political solutions to constructively accept at a national level Māori Indigenous laws for knowing, caring for, and using lands and waters. They recognise our human rights as Māori in a very Māori way.

So, through the eyes of Māori, Te Urewera is the heart of the fish caught by Maui (a demigod); Whanganui River is a tupuna (ancestor) as is Mount Taranaki/Egmont. For example, in the Whanganui River legislation, the statute importantly recognises that specific Maori tribal federations have responsibilities for the health and wellbeing of the river because: "Ko au te Awa, ko te Awa ko au: I am the River and the River is me".[12] The Act recognises that the face of the river – Te Awa Tupua – is "a legal person and has all the rights, powers, duties, and liabilities of a legal person".[13] An office has been created to "be the human face of Te Awa Tupua and act in the name of Te Awa Tupua".[14]

The new 'management' plan for Te Urewera, which is more of a care plan for the land and a management plan for the people, deliberately sets out to "disrupt the norm."[15] The Plan openly embraces a process of "unlearning, rediscovery and relearning to seize the truth expressed by our beliefs."[16] The orientation of the Plan is stated as: "Deliberatively, we are resetting our human relationship and behaviour towards nature. Our disconnection from Te Urewera has changed our humanness. We wish for its return."[17] This Plan knows that the answers to biodiversity wellbeing lie intimately within the lands themselves if we listen carefully:[18]

> ***Nature speaks all the time and is understood only by the sincere observer and heedful mind and heart. Humanity has much to gain from reigniting a responsibility to Te Urewera for within these customs and behaviours lies the answers to our resilience, to meet a forever changing climate. Through committing to Te Urewera values, we are innovating our instincts and adjusting our behaviour to ensure a prosperous future that is secure.***

This is what recognising the full human rights and responsibilities of Māori looks like. I hope state legal systems around the world can continue to build on this positive transformative momentum which is being realised in Aotearoa New Zealand to recognise not just Indigenous peoples as having human rights, but that our ancestors in the mountains, forests and lakes do too.

Photo: Gender Bias.
(Image by Sandy Miller - Unsplash)

1. For example, see James Anaya, *Indigenous Peoples in International Law* (2nd ed, OUP, 2004); Claire Charters, 'A Self-Determination Approach to Justifying Indigenous Peoples' Participation in *International Law and Policy Making' International Journal on Minority and Group Rights*, 17/2 (2010): 215.
2. See, for example, Claire Charters, 'Indigenous Peoples and International Law and Policy' in Benjamin J Richardson, Shin Imai and Kent McNeil (eds) *Indigenous Peoples and the Law. Comparative and Critical Perspectives* (Hart Publishing 2009) 161.
3. Mattias Åhrén, *Indigenous Peoples' Status in the International Legal System* (OUP 2016) 83.
4. Sarah Pritchard, 'Working Group on Indigenous Populations: mandate, standard-setting activities and future perspectives' in Sarah Pritchard (ed), *Indigenous Peoples, the United Nations and Human Rights* (The Federation Press 1998) 40-41.
5. Karen Engle, "On Fragile Architecture: The UN Declaration on the Rights of Indigenous Peoples in the Context of Human Rights" (2011) 22(1) *The European Journal of International Law* 141, 142. See also: Claire Charters, 'The Sweet Spot between Formalism and Fairness: Indigenous Peoples' Contribution to International Law" (2021) 115 AJIL Unbound 123.
6. United Nations Declaration on the Rights of Indigenous Peoples, art 2.
7. United Nations Declaration on the Rights of Indigenous Peoples, art 25
8. Waitangi Tribunal, *Ko Aotearoa Tēnei. A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture* and Identity. Wai 262 (Wellington: Waitangi Tribunal, 2011) at 13.
9. Section 11(1) Te Urewera Act 2014. J Ruru "Indigenous Ancestors: Recognizing Legal Personality of Nature as a Reconciliation Strategy for Connective Sustainable Governance" in Sumudu Atapattu, Carmen G. Gonzalez and Sara Seck (eds) *Environmental Justice, Sustainable Development and the Social Pillar: Intersections and Critical Perspectives* (Cambridge University Press, 2021) 183-195
10. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (2017 Act).
11. Blanton Smith "Mt Taranaki to become legal personality under agreement between iwi and government" *Taranaki Daily News* 21 December 2017 https://www.stuff.co.nz/taranaki-daily-news/news/100085814/mt-taranaki-to-become-legal-personality-under-agreement-between-iwi-and-government?rm=m
12. This well-known belief is captured in section 13(c) of the 2017 Act. See also L. Te Aho, "Legislation – Te Awa Tupua (Whanganui River Claims Settlement) Bill – the endless quest for justice" (2016) *Māori Law Review*.
13. Section 14(1) of the 2017 Act.
14. Section 18(2) of the 2017 Act.
15. Te Urewera Board, *Te Kawa o Te Urewera* (2017), at 7, online: <https://www.ngaituhoe.iwi.nz/Te-Kawa-o-Te-Urewera>.
16. *Ibid* at 9.
17. *Ibid* at 8.
18. *Ibid* at 11.

GENDER EQUALITY AND THE FUTURE OF WORK

DR BRIONY LIPTON

Briony Lipton is a Postdoctoral Research Associate within the Women, Work and Leadership Research Group at The University of Sydney Business School.

PROFESSOR RAE COOPER

Rae Cooper is Professor of Gender, Work and Employment Relations as well as Co-Director of the Women, Work and Leadership Research Group at The University of Sydney Business School.

DR MERAIAH FOLEY

Meraiah Foley is the Deputy Director of the Women and Work Research Group at The University of Sydney Business School and a Lecturer in Work and Organisational Studies and Work Integrated Learning.

New technologies, such as driverless cars and robot surgeons, have captured the public imagination about the future of work. Advances in artificial intelligence, digital connectivity, reproductive technologies, big data, algorithms, and robotics will have a profound impact on the availability of jobs and the nature of work over the coming decades. Such epochal prophecies fail to consider how the unfolding future of work and professions may affect women and men differently, potentially replicating and further embedding gender inequality in workplaces.

The mass entry of women into the labour market represents a remarkable transformation in the world of work over the past 60 years. Yet, workplace gender equality remains elusive. Women and men are differentially positioned in the labour market and are therefore exposed to vastly different risks and opportunities in this changing world of work. How do we build upon women's and men's current workplace experiences to construct a more gender-equitable future of work? This is one question at the heart of research in the Women and Work Research Group at the University of Sydney Business School.

The recent Australian Women's Working Futures Project (AWWF) focused on what young women value and think is important for future success at work. The landmark, nationally representative survey found that young Australian working women reported that what 'matters most' in a job are: respect in the workplace (80%), job security (80%), decent pay (65%). Remarkedly, 2/3 of women say there isn't gender equality in the workplace, while 2/3 of men say there is. Looking into the future, around half (53%) of women thought that gender equality in the workplace would improve in the next 10 years, while 38% expected gender equality in the workplace to stay the same or get worse.

These results are driving further research on the future of work in the form of a new project funded by an Australian Research Council (ARC), entitled 'Designing Gender Equality into the Future of Work'. This project examines how women and men working in retail and the law – two industries at distinct ends of the labour market – understand and experience the transformations occurring in their workplaces, such as increasing automation and digital disruption.

Both the retail sector and the legal profession are now experiencing rapid work intensification and technological change, driven by increased digitalisation, workplace fissuring, and employment flexibilisation. Gender inequality remains a seemingly intractable problem in both areas.

Persistent bias and discrimination – coupled with inflexible work cultures that do not accommodate, and in fact penalise, those with caregiving responsibilities – stymie women's career progression. As a result, women are under-represented in senior positions across both sectors. Sexual harassment and violence continue to marginalise women at work, as highlighted by the #MeToo movement and the more recent March for Justice, which this year saw more than 100,000 women in cities around Australia protest sexism and gendered violence.

In the retail sector, online shopping is shifting employment opportunities from stores to distribution centres, and self-checkout machines and iPads are changing how workers interact with customers. Women are significantly more likely to perform the routine tasks targeted for automation, and are overrepresented in 'flexible', part-time roles in service, and sales positions – where automation is already well underway. Men, in contrast, remain disproportionately concentrated in full-time work and are relatively better represented in leadership roles across the industry.

In the legal profession, women outnumber men two-to-one in commencing graduate roles within Australian law firms, yet they have not yet been recruited and promoted into the highest levels of the profession at these same rates as men. International evidence suggests that law firms are increasingly relying on a pool of freelance or casually employed solicitors to bid on and complete projects. In addition, machine learning applications are beginning to automate legal tasks, such as document review, freeing up workers from the more mundane tasks but also making the workers (predominantly women) who perform these tasks vulnerable to displacement.

Gender bias—including but not limited to the stereotyping of women and men—remains a persistent barrier to women's career advancement in the legal profession and is a feature of the routine harassment and abuse faced by women working in retail. The impact of technological innovations and work intensification on workers' experiences of harassment and bias, and their perceived ability to progress with their careers, remains uncertain.

The Human Rights and Equal Opportunity Commission's survey of sexual harassment in the retail sector found that about half of women shop assistants have been harassed about seven times in a year and that it is more often a problem for women under 30.

'Designing Gender Equality into the Future of Work' endeavours to build insight toward constructing an equitable and sustainable future of work to ensure that workers – women and men, highly-paid and lower-paid – have access to decent, fair, and safe employment and can meaningfully contribute to the country's productivity and economic growth.

Progress towards gender equality is most often defined in temporal terms, as either moving forwards or backwards. In thinking about 'the future', gender equality, much like human rights discourse, becomes a projection of the 'not yet' into the 'always there'. Designing gender equality into the future of work in Australia holds possibilities that gesture towards a future that is better than the present and the current structural inequalities and discrimination within it.

Photo: Gender Bias.
(Image by Sandy Miller - Unsplash)

DATA SHARING, PRIVACY AND CONSENT IN THE WORLD OF 6G

DR IAN OPPERMANN

Dr. Ian Oppermann is the NSW Government's Chief Data Scientist working within the Department of Customer Service. He is also an Industry Professor at the University of Technology Sydney (UTS). From 2015 to 2019, Ian was also the CEO of the NSW Data Analytics Centre (DAC).

Ian is considered a thought leader in the area of the Digital Economy and is a regular speaker on "Big Data", broadband enabled services and the impact of technology on society. Ian has an MBA from the University of London and a Doctor of Philosophy in Mobile Telecommunications from Sydney University. Ian is a Fellow of the Institute of Engineers Australia, a Fellow of the IEEE, a Fellow of the Australian Academy of Technological Sciences and Engineering, is a Fellow and President of the Australian Computer Society, and a graduate member of the Australian Institute of Company Directors.

INTRODUCTION

The introduction of widely available mobile communications in the 1990s in the form of GSM (2G) fundamentally changed our world, from the way we socialised to how we conducted business. Many will recall the liberation of being able to make or receive a call from (almost) anywhere. Since then, technology has marched along with 3G in the early 2000s, 4G in 2010 and 5G from 2020. As the technology has improved, the ability to make or receive calls as the dominant use case has increasingly been replaced by access to the internet, data services and connections to devices rather than people. 5G has also heralded the first real ability to reliably monitor and operate remote devices, to stream multiple channels of high-definition video, or drip feed a few bits at a time between billions of sensors measuring anything from soil moisture to air quality. Voice calling remains a feature of 5G, but is now a "special case" functionality rather than the main driver.

The race towards developing 6G by 2030 has begun.[1] 6G will underpin widely anticipated future services: from immersive entertainment to secure and reliable operation of autonomous devices; from monitoring personal health devices to securely and reliably managing driverless cars, trains, ships and aircraft. All these services are critically dependent on the combined elements of instant, virtually unlimited wireless connectivity, as well as access to a wide range of constantly evolving and potentially highly personalised datasets. It moves 6G towards a distributed "prosumer" network where data is constantly generated as well as consumed by participants in the network. The third important element is widespread use of artificial intelligence (AI) to make sense of the rising tide of data, to generate insights, to spot anomalies and to locally optimise systems. AI can also be used to augment human systems through direct human engagement (personalised assistants), or as intelligent autonomous mechanical

systems (classical robots). These three factors combined - connectivity, data and autonomous intelligent systems – create a range of new considerations when we contemplate the trade-offs between the uses of data for delivery of highly individualised services; and treatment of personal information throughout the network, ensuring consent is obtained and handled in a meaningful way, and developing security frameworks in highly complex systems. These considerations are present for existing networks, but are fundamental to the envisaged goals of 6G.

PRIVACY AND CONSENT IN 6G

In most legal systems worldwide, there is no unambiguous, nationally accepted test for personal data (PD), personal information (PI) or personally identifiable information (PII) in a dataset. Often the terms are conflated. Most privacy assessments worldwide rely on tests of judgment described in terms such as “reasonably” or “likely”. Article 4 of the EU’s General Data Protection Regulation (GDPR) only applies to personal data, which is described as any piece of information that relates to an identifiable person.[2]

The new services and capabilities promised by 6G will present enormous benefits for users of the network. Inescapably however, any data collected about people directly, their actions, location, environment or any aspect of the context they operate in has some aspect of what may be regarded as personal information even if “deidentified” to remove unique identifiers. If the datasets used for these purposes are linked and analysed to provide sophisticated, personalised services, a great deal of PD or PI may be contained in the joined data, possibly sufficient to reidentify the individuals represented therein. The challenge is to quantify the amount of PD or PI in a dataset at any point in time and in any given context. This extends to developing machine-understandable thresholds for when an individual is “reasonably identifiable”, while considering personal attributes, temporal and spatial aspects of data, and rich contextual environments.

Similar issues arise when considering “consent”, referring to the explicit, informed and freely given consent for data about an individual to be created, transmitted, stored, used and reused. Under Article 6 of the GDPR, businesses must identify which of the six possible legal bases for their data processing is applicable. Consent is one of these six and is considered one of the easiest to satisfy as it allows companies to undertake a wide range of uses of the data provided what is to be done is clearly explained and explicit permission is obtained from the data subject.

The challenge arises when data is collected inadvertently about a person, when the human subject is unaware of data collection about them, or the human operator or owner of a device is unaware of data being collected about an individual. The use of data about an individual initially used for service delivery which is then reused for other purposes such as local optimisation may also create problems from a consent perspective.

(Image by Markus Spiske - Unsplash)

Consider the example of a swarm of drones providing local mobile hotspot coverage[3] during a peak-hour commute. A drone may move to follow the driverless vehicle of a high data-using individual who is engaged in a multi-party video conference during the commute. To provide effective hotspot coverage, the drone must track the driverless vehicle relatively closely (or hand over to other drones) giving the drone information on origin, destination, route taken, time of day and volume of data traffic used by the data subject. If the drone is also used for other non-telecoms purposes such as vehicular traffic control and environmental monitoring such as described in[3], it may regularly report the data subject's vehicle location as part of a city-wide traffic profile, and even monitor ambient temperature possibly including the temperature of the passengers in the autonomous vehicle.

The level of PD or PI which has been accumulated will depend on many factors including duration of the coverage by a drone (or network of drones), the spatial and temporal resolution of vehicle location reporting, and the resolution of temperature monitoring. It also depends on what form the data has been collected, transmitted, stored, analysed and ultimately used. In all cases, it is unlikely that the data subject would expect to need to consent to their body temperature being recorded as part of the agreement to access mobile communications services.

The safeguards of GDPR explicitly seek to protect individuals and data captured about them. The richness of the data available in 6G will also prove valuable if the goal is misuse – gaining commercial advantage, creating mischief or coercive control – rather than protection. Systems which explicitly measure and manage the level of PD and track the chain of consent at all points in the network provide the possibility to build in protective frameworks whilst still delivering sophisticated services.

CONCLUSIONS

Future envisaged 6G services have the potential to deliver enormous benefits, however their very nature highlights challenges when contemplated within existing regulatory frameworks.

As 6G develops, the management of privacy and consent when collecting, sharing and using these datasets will need to be considered alongside the technological capability.

New methods for providing and handling consent, new frameworks for sharing and using data, and new considerations for security in highly complex networks will need to be considered.

Photo: Data and Privacy. (Image supplied by Pixabay)

One of the principal technical challenges will be to develop a measure of PD or PI in datasets used for the delivery or optimisation of services. This measure must go beyond simply considering personal attributes captured in data and must consider preferences revealed through use of services, temporal and spatial aspects of the data, as well as the specific context for the use of services.

1. Latva-aho M., Leppänen K. (Editors), "Key drivers and research challenges for 6G ubiquitous wireless intelligence", September 2019
2. General Data Protection Regulation 2016 / EU679.
3. Mozaffari M., Lin X., and Hayes S., "Towards 6G with Connected Sky: UAVs and Beyond", arXiv:2103.01143v1 [cs.IT] 1 March 2021.

ART FEATURE: SPEAKING OUT TO BE MET WITH SILENCE

THE DIFFICULT, ISOLATING WORK OF WHISTLE-BLOWERS IN EXPOSING AUSTRALIA'S SYSTEMIC INJUSTICES

HODA AFSHAR

Hoda Afshar was born in Tehran, Iran and is a Melbourne-based, award-winning visual artist and lecturer in photography and fine art.

ARTIST STATEMENT

Acts of whistleblowing aimed at calling attention to alleged wrongdoing or misconduct continue to make headlines around the world. But despite the introduction of policies meant to protect them, the efforts of whistle-blowers in Australia are increasingly being undermined by gag orders, policing, and other forms of control – by efforts to silence those who have spoken out, and to discourage anyone who might think to.

Meanwhile, the possible consequences for one who chooses to blow the whistle remain the same: if one is not simply ignored, one faces the real threat of legal proceedings and imprisonment, or worse.

Agonistes is based on the experiences of several men and women – former employees in the areas of immigration, youth detention, disability care, and other government agencies –who chose to speak out, and who now live with the consequences. They describe the personal and professional ruin, the breakdown of friendships and family relationships, and the physical and mental anguish that followed their decision to call out alleged abuses, and the reasons that led them to do so, despite knowing their possible fate. They explain that if they could go back, they would do it all again.

While their individual stories differ, the shared struggle of these men and women and their portraits expose the same agonising truth: that the choice between responsibility and obligation – between morality and the law – is, in a very real sense, the essence of tragedy.

- Hoda Afshar

Commissioned for PHOTO 2021, Australasia's largest photography festival, Agonistes featured nine individual portraits of whistle-blowers and a 20-minute documentary on their stories presented outside of Melbourne's St. Pauls Cathedral and Nicholas Building between 18 February-8 March 2021.

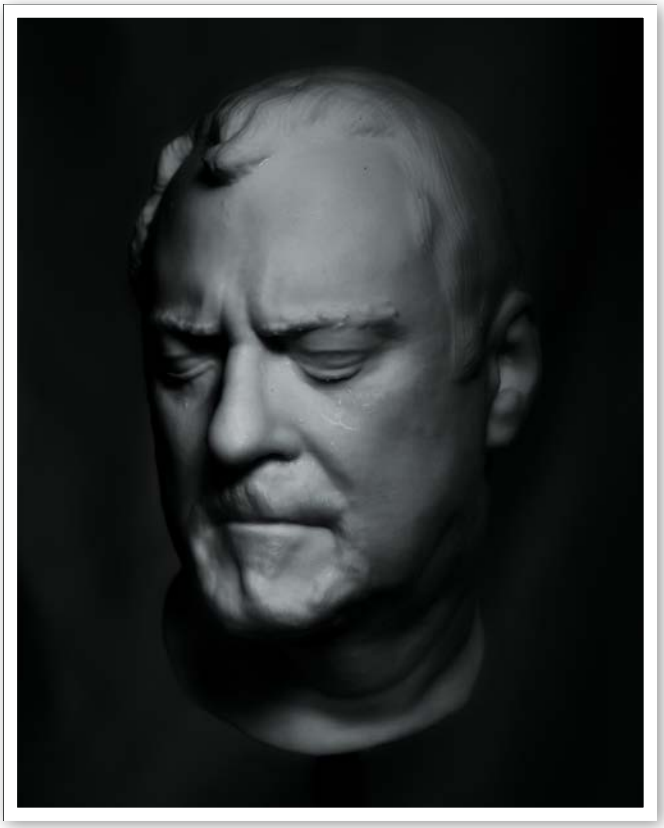
Agonistes, which is Latin for a person engaged in struggle, draws from the Greek tragedy. Afshar flew her subjects into Melbourne and used 110 cameras functioning simultaneously to take their 3D images. She later discovered that the technology could not capture the expression in the eyes of her subjects, similar to how the expressions in the eyes of Greek sculptures have been lost over the years. Afshar understood that the Greek tragic figure was often caught between conflicting choices of responsibility and obligation, of morality and the law, and of the public and the state.[1] Although the whistle-blowers in Agonistes are publicly identifiable, Afshar has intentionally not named any of them. Rather, she is determined to ensure that her subject's actions – and the intentions and impacts of their actions – are the focus. In her words, 'the character is secondary to the action. It's about what they did, not who they are.'[2]

Agonistes serves as a powerful opportunity to reflect upon how Australia confronts its human rights record.

All artwork and biographies have been provided courtesy of Hoda Afshar and she retains the original copyright.

AN OFFICER AND LAWYER IN THE AUSTRALIAN SPECIAL FORCES

While serving in Afghanistan, he raised concerns that the Australian Government were covering up the corruption of Australia's Defence Force for political gain, and sacrificing the lives of Australian soldiers. After his concerns were consistently ignored, he copied a hundred secret documents and distributed them to several journalists and to the ABC. He faces trial on five charges relating to national security. If found guilty, he will face lifetime imprisonment.



AN OCCUPATIONAL HEALTH AND SAFETY MANAGER WORKING FOR SECURITY FIRM G4S AT MANUS ISLAND IMMIGRATION DETENTION CENTRE

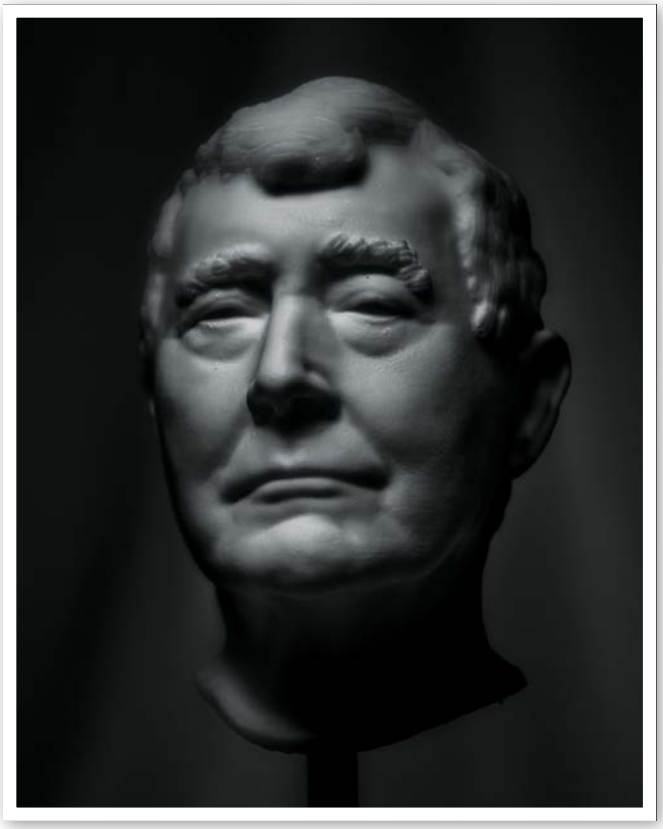
He raised his concerns with the Department of Immigration about the atrocious conditions he witnessed there. When instances of sexual abuse and torture were uncovered, he expressed his doubts to the Department about its ability to protect asylum seekers and meet its duty-of-care obligations. He resigned after his concerns were ignored, and spoke to the media as a whistleblower. He was threatened with a two-year jail sentence for speaking out and has been haunted by legal battles since.

A COMMUNITY LAWYER

She spent three years in the Northern Territory, working primarily with incarcerated Aboriginal children. She represented child victims of police brutality and violence experienced while in youth detention. She raised concerns with the Minister and responsible government departments, but these were met with either unresponsiveness or defensive and hostile reactions. She left her job after exhausting all avenues to protect the rights of her child clients. Instead, she spoke out publicly, hoping that increased scrutiny would offer these children some protection.

A FORMER MIGRATION SUPPORT WORKER

At the age of 22, she was employed by the Salvation Army to work in offshore refugee processing centres at Nauru and Manus Island. She was shocked at the conditions there. While some officers left in response to the inhumane treatment of refugees, she remained to bear witness, installing secret cameras to document what was happening. She lived in fear during this time and was later threatened by the Department of Immigration with a jail sentence. She will never be able to work for a government organisation but continues to speak out about Australia's inhumane border protection policies.



A SOLICITOR AND BARRISTER, AND FORMER ATTORNEY GENERAL

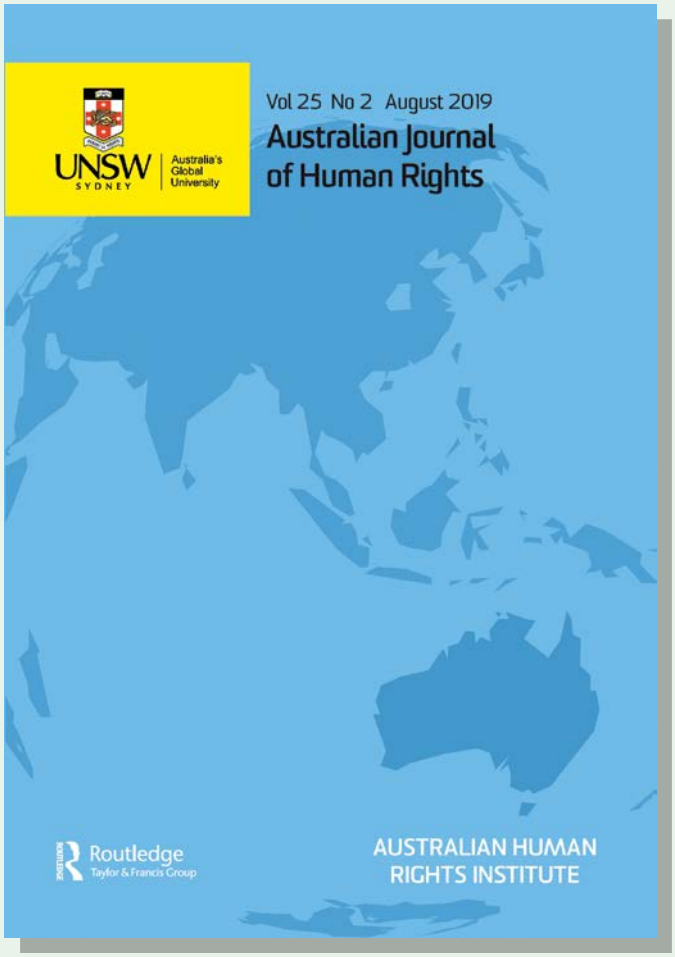
Throughout his career, he has been an advocate for human rights. He represented East Timor at the International Court of Justice during the maritime border dispute with Australia in 2016. With 'Witness K', he is accused of conspiring to alert the East Timorese government to the bugging of their offices by the Australian Government, and of sharing this information with the media. He and 'Witness K' are charged with conspiracy to breach the Intelligence Secrecies Act 2001, and could face two years' imprisonment.

A GENERAL PRACTITIONER

She founded 'Doctors for Refugees' to ensure that detained refugees can access medical care. In 2015, the Federal Government imposed a 'gag order' on anyone working in the immigration detention network, including doctors, with a penalty of a two-year prison sentence if they publicly challenge the government on their policies or speak out. In 2016, her organisation challenged the 'Secrecy Provision' in the 2015 Border Force Act. She was investigated in private and public by the Australian Federal Police at the government's insistence.

1. https://www.theguardian.com/culture/2021/feb/10/from-behrouz-boochani-to-bernard-collaery-photographer-hoda-afshar-turns-her-lens-on-whistleblowers
2. https://photo.org.au/channel/making-of-agonistes

THE AUSTRALIAN JOURNAL OF HUMAN RIGHTS



The Australian Journal of Human Rights (AJHR) is Australia's first peer-reviewed journal devoted exclusively to human rights scholarship.

The Journal aims to raise awareness of human rights issues in Australia, the Asia-Pacific region and globally by providing a forum for interdisciplinary scholarship and discussion.

Submissions are accepted year-round. We welcome original research articles from all disciplines (6000-10,000 words) and shorter less formal current perspective pieces (1500-3000 words) such as field notes, discussions of recent developments in policy, practice and case law, creative interventions in human rights, interviews, and reflective pieces on what it means to work in and research human rights.

CONTACT US

Contact us with ideas for future editions and collaborations: *ajhr@unsw.edu.au*

UNSW Australian Human Rights Institute