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Political Representation and Rural and Regional Australia

Water Management in Rural Australia

Addressing the Digital Divide

Human Rights Defender

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Front Cover Artwork
Amanda McLean, *Cloudscape Narrengullen (Wee Jasper), Pastel on Board, 23 x 23cm*, Courtesy of the artist and Aarwun Gallery.

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editorial

Janice Gray

Sue McPherson, *Go West,*, Acrylic and oil pastel on canvas, 60 x 100cm. Courtesy of the artist and Gallery Eumundi.

In the immediate aftermath of the 2010 Federal election in Australia, rural and regional issues received much attention. In large part, this was because neither the Australian Labor Party nor the Liberal/National Party coalition gained outright electoral success and as a result three independent members of parliament from rural electorates held (and continue to hold) the balance of power. From this strong negotiating position, the independent members of parliament could highlight rural concerns. They could and did argue for a 'better deal for the bush', securing more funding and political promises along the way.

The ensuing focus on rural and regional communities served to bring particular rural concerns to the attention of the wider Australian community. Issues such as broadband internet delivery; bush suicide, rural health and hospital closures; mining communities and their impact on both families and rural economies; agriculture and water sharing; coal seam gas exploration; rural debt; refugee re-settlement; gender and sexuality choice; and rural education emerged as topics or issues of concern.

While these issues have obvious political and policy ramifications, many also have human rights dimensions which arguably, to date, have not received the attention that they deserve. This edition of the *Human Rights Defender*, with its focus on human rights in rural and regional areas, therefore, seeks to address some of those perceived deficiencies, bringing into sharp relief the salience of the gap between the formal entitlement to rights on one hand, and the substantive enjoyment of those rights on the other. As a highly urbanised nation, it is perhaps easy to overlook the disadvantage of Australia's rural residents in a number of areas. Yet that disadvantage commonly aligns with the concerns of key human rights treaties and declarations which protect political, social and cultural rights and the rights of women and children, for example.

In this edition Jennifer Curtin's article sets the scene for a consideration of disadvantage in rural and regional communities by providing a critique of rural political representation in which she highlights rural unemployment, rural poverty and poor access to non-government schools. Although Curtin acknowledges the difficulties in encouraging group representation on the basis of rural 'identity' or rural citizenship derived from a shared sense of place, she points out that increasingly place is informing rural politics in Australia and indeed in the world more generally. Her article asks how the voices of Australian rural residents can be fairly heard in Australia's representative democratic system?

Meanwhile, Katie Vasey's article details the experiences of one particular rural group in Australia; that of Iraqi refugees, who have been resettled in non-urban areas. Vasey notes that the immense challenge of resettlement is compounded in rural communities by a dearth of appropriate services and attitudes that impact on employment opportunities.

Kerry Carrington and Russell Hogg explore another aspect of rural life in their article. It looks at the radical reshaping of the demographic makeup of rural communities brought about by the mining boom and considers the attendant costs to communities of a highly paid and highly transient workforce. Their article demonstrates that such costs have human rights implications, particularly in terms of physical and mental health, as well as economics.

The remaining contributors to this edition take up a number of other rights issues facing rural communities. Paul Martin and Amanda Kennedy argue for the importance of a 'social' rights based approach to considering water allocation in the Murray-Darling Basin plan as a counterweight to the prevailing economics and science led model currently employed. Carolyn Dalton and Emma Keir's essay explores through the question of access to broadband in rural communities: as technological developments unfold, should such access be considered a component of a right to freedom of information? Micheil Paton and Mark Evenhuis' contribution shifts location and takes us to Papua New Guinea, where their work experiences are relied on to provide an insight into the challenge of rurality in implementing child protection reforms.

The issue concludes with an interview with a recent guest of the Australian Human Rights Centre, Boris Dittrich, who spoke to Student Intern/Student Editor, Julie MacKenzie. Dittrich, Advocacy Director of Human Rights Watch's Lesbian, Gay, Bisexual and Transgender (LGBT) rights program, provides in his interview another instance of the gap between formal rights and their substantive realisation, this time in relation to the rights of LGBT people.

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Political Representation and Rural and Regional Australia

Jennifer Curtin

Amanda McLean, *Brindabella Bluek.*, Pastel on Board, 97 x 67cm. Courtesy of the artist and Aarwun Gallery.

It might seem counter-intuitive to be talking about the need for better representation of rural and regional Australians given the current state of play in federal politics. Two rural independents, Tony Windsor and Rob Oakeshott, spent 17 days negotiating with the two major parties in order to secure a government that was committed to what they understood to be key issues of import to rural and regional Australia: climate change; Indigenous recognition; broadband policies; and rural health. Some might argue that rural and regional Australians have never had it so good. And yet, the New South Wales election result, where three rural independents lost their seats, was read as rural and regional Australia rejecting the deal done by the federal independents.

What then does this somewhat paradoxical outcome tell us about the political representation of rural and regional Australia more generally?

Intrepreting a Paradoxical Outcome

In recent years, increasing scholarly attention has been paid to both the empirical and theoretical dimensions of political representation and how it might or should be expanded conceptually and practically in ways that address Indigenous and minority representation, the representation of women, group representation and so on. At a theoretical level Iris Marion Young stressed the importance of claims of social differentiated groups to be represented alongside individual representation.[1] Such work retains a legislature-constituency focus and seeks to alter electoral and parliamentary systems to allow for more group representation.[2]

Young did not specify which groups might count as eligible for group representation, but her ideas challenge the modern idea of one vote, one value. In the case of Australia, this focus on individual equality in voting has always been qualified in ways that have been read as advantaging rural Australians. For example the Australian Constitution guarantees equal representation of states in the Senate regardless of population size, thereby disadvantaging the highly urbanised states such as Victoria and New South Wales. But alongside this, and arguably more contentious, has been the way in which national and state electoral systems have favoured rural voters over urban voters. Referred to as malapportionment, this advantage has been achieved in two ways: via electoral regulations that allowed rural electorates to have enrolments under the state-wide average (rural weightage), or through the use of zoning, whereby electorates falling within rural zones would be guaranteed over-representation.[3]

Historically, arguments for this geographic advantage were not made in terms of Young's idea of group representation. Early conservatives believed that ensuring country regions had sufficient representation was necessary to offset the radical tendencies associated with the newly enfranchised masses in the cities (similar claims were made in other settler societies). Second, there was the argument that rural Australia deserved enhanced voting power because of the large contribution it made to the country's economy (a storyline that has had incrementally less traction over time).[4] More recently, it has been argued that without some degree of rural weightage, the combined effects of the large and remote nature of many rural electorates with increasing trends in urbanisation would prevent equality of access to elected representatives. While a federal structure is theoretically supposed to bring government closer to the people, especially in geographically large countries, in practice the amalgamation of local councils in many rural areas and the location of Senators' offices primarily in capital cities, has undermined the perception amongst rural voters that they have the same quality of representation as urban voters.[5]

At the national level, until 1974 the allowable deviation rate from the average enrolment in each state was 20%, when it was then reduced by the Whitlam government. It remains at 10%. In 1984, changes to the *Electoral Act* removed the 5000sq km rule and, in so doing, further entrenched the 'one vote, one value' principle. As a result, there has been a steady decline in the number of rural electorates, the impact of which has been felt most acutely by the National Party.

It is not surprising then that the introduction and maintenance of mechanisms of rural malapportionment have been initiated and supported (and the reform thereof resisted) by those political parties most likely to gain electorally – particularly (although not exclusively) the Country/National Party. Even the process of boundary re-drawing is dominated by political party submissions rather than individual voters' perspectives on what constitutes their community of interest. So, although some scholars frame electoral weightings as giving rural voters more power, rural voters do not see themselves as having an electoral advantage or additional voting power. Rather, they see their concentration in largely safe electorates that are shrinking in number as increasingly disempowering.[6]

...of the ten electorates with over eight per cent unemployment, seven are country electorates; of the ten electorates with the highest proportion of persons of Indigenous origin, eight are rural; of the 48 electorates with more than 25 per cent of families on weekly income of less than $650 per week, 41 were in either rural or regional Australia.

Thus, while 'one vote, one value' is taken to be the modern test of electoral fairness, it remains contested, theoretically and in practice, by voters themselves. So what might this mean for the representation of rural and regional Australians in the future?

One Vote, One Value

In recent decades, we have seen the emergence of new political voices within Australian society - social movements politicised the absence of particular groups from our governing institutions, groups based on gender, race and ethnicity for example. Thus 'identity' rather than geography came to dominate discussions of representation.[7] Yet, for those in rural and regional Australia it seems a little premature to discard geography as a relevant category of its own. In policy terms, the emergence of a more globally competitive world market,

Amanda McLean, *Near Jeir Creek,*, Pastel on Board, 30.5 x 30.5cm. Courtesy of the artist and Aarwun Gallery.

Rural representation provides us with a social perspective that is fluid but place-based. Without it we risk undermining the communicative and responsive dimensions of a representative democracy.

a decline in national dependence on agriculture, and domestic reforms that have shrunk state infrastructure in many parts of rural Australia, have to some extent helped to galvanise a stronger sense of rural community amongst an increasingly diverse country Australia. This is not the traditional rural identity based on the 'agrarian myth' of struggle, scarcity and moral virtue. Indeed Young suggests that groups themselves do not have identities as such, but individuals will construct their identities on the basis of group positioning. For Young, this positioning is derived from the 'social', but it may just as easily be derived from geographically-concentrated commonalities and a sense of the importance of 'place'.

Representation and Place

In terms of socio-economic differentiation, we know that rural and regional electorates are overrepresented in a number of census data categories. For example: of the ten electorates with over 8% unemployment, seven are country electorates; of the ten electorates with the highest proportion of persons of Indigenous origin, eight are rural; of the 48 electorates with more than 25% of families on weekly income of less than $650 per week, 41 were in either rural or regional Australia. Rural Australians are also less likely to have access to non-state schools, less likely to be educated beyond year 10, and considerably less likely to have a broadband internet connection.[8] That group representation be encouraged on the basis of a less tangible concept of rural 'identity' or rural citizenship derived from a shared sense of place is perhaps not as easy to argue for. However, increasingly we are seeing the idea of place informing people's politics and demands for representation, not just in Australia but around the world.[9] Such claims are unlikely to diminish, and may even increase should the number of rural electorates continue to fall and, as a consequence, the various and diverse rural perspectives (as opposed to rural parties) become increasingly marginalised in parliament. The argument for continuing to allow for a special weightage in rural electorates then can be justified in the terms outlined by Iris Marion Young. Rural representation provides us with a social perspective that is fluid but place-based. Without it we risk undermining the communicative and responsive dimensions of a representative democracy.

Jennifer Curtin teaches comparative politics and public policy at the University of Auckland. She has published widely on Australian rural politics and the rise of independent MPs in federal parliament.

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Regionalising immigration – some reflections on the experiences of Iraqi refugees[1]

Katie Vasey

Arone Meekes,Navigation Story, Linocut, 50 x 80cm. Courtesy of the artsist and Gallery Eumundi.

In 2004 the Australian Government announced that it would seek to increase refugee and humanitarian settlement to rural and regional Australia. Humanitarian settlers face multiple adjustment tasks associated with settlement and post-settlement support services play an important role in this adjustment process. In this article, I explore access to employment, education and health/welfare systems as experienced by a number of Iraqi refugee women and men in a small regional town in Australia. I suggest that the current policy of regional settlement risks pushing humanitarian settlers into further exclusion. This may have negative implications for their longer-term resettlement.

James Ainslie,*Afternoon Light,* Archilyc on arches, 48 x 28cm. Courtesy of the artsistand Gallery Eumundi

Dispersal of refugees to regional areas

Refugee settlement tends to concentrate in large cities due to their social, cultural and economic resources compared to non-metropolitan areas. However, the regional or non-metropolitan settlement of refugees is an increasing trend in several industrialised host countries, including Australia, Canada, the United Kingdom (UK) and other EU countries. Since 2004, the Australian Government has actively resettled to regional towns refugee and humanitarian entrants with no existing social or family links in Australia.[2] The rationale behind the policy was to share the 'burden' of hosting new arrivals and to prevent the concentration of immigrants in certain localities. It was anticipated that regional settlement would assist humanitarian entrants to contribute to, and participate in Australian society as soon as possible after arrival and, at the same time to help build regional economies.

To date, research on regional refugee settlement is rather underdeveloped. This short paper is an attempt to address this gap, and presents data collected as part of an ethnographic study conducted on the everyday lives of refugee Iraqi men and women and their experiences of resettlement in a regional setting in Victoria, Australia. I refer to the settlement area pseudonymously as Taraville. Here, for the past 15 years, there has been a steady flow of Iraqi settlers who had entered Australia under the Refugee and Humanitarian Program, an organised annual intake program of 13,000 people. In-depth interviews were conducted over a period of 15 months with 36 Iraqi women and men, 16 service providers and members of the wider community. To preserve confidentiality, names and identifying details have been changed.

Iraqi immigration to Australia

In 2003, the United States, UK, Australia and other forces invaded Iraq to end the regime led by Saddam Hussein and to disarm the country of its reputed stock of weapons of mass destruction (WMD). By this time, almost 5 million Iraqis, around 20 per cent of the population, had become refugees, around half displaced internally and others seeking refuge, formally or illegally, in neighbouring countries and more widely.[3] Australia has given some priority to this population, and people born in Iraq have been one of the groups with the highest number of Humanitarian Program migrants. At the time of the 2006 Census, there were 32,520 Iraqi born people in Australia, of whom 8,615 lived in Victoria.[4]

Despite the common humanitarian roots of the refugee participants in the study population in Taraville, their backgrounds were diverse, their socio-economic situations differed, levels of education varied from primary school to masters degrees, and their employment histories were wide-ranging. Their ages ranged from 21 to 42 years. All participants were married and their family sizes ranged from no

"The orchardists do abuse the Arabic workers because they are literally saying to them 'you work for $10 cash in hand or you have no job.' Now, they can't do that with the Australian workers, you know they have to pay them whatever the going rate is. But these people are equally entitled to earn a proper hourly rate, to have superannuation or sick leave."

children to seven children. Some people spoke fluent English; others spoke only a few words. The vast majority were welfare-dependent, although several were employed, working either on a permanent basis or seasonally in the agricultural industry. They initially arrived in Australian capital cities and subsequently moved to Taraville because of its existing Iraqi community, availability of seasonal work and public housing, rather than as part of the government settlement strategy. Nonetheless, the experiences of refugees already in regional areas provided a unique opportunity to explore immigrant, local and service provider perspectives on regional resettlement and integration.

Experiences of regional integration

Work: quality and quantity

In Australia, successful economic adjustment is central to refugee resettlement policy,[5] based on the assumption that economic participation leads to self-reliance. However, many regional areas in Australia have struggled economically in recent years. Growing inequality between urban and metropolitan areas is evidenced by the fact that while only 26% of the Australian population lives in regional areas, these localities make up 39% of all areas in poverty.[6] This economic volatility translates to a significant discrepancy, in some areas, between what services refugees officially should have access to under the regional resettlement scheme,[7] and what is actually available to them on the ground. For example, although policy documents emphasise adequate employment opportunities in regional areas, from unskilled positions to skilled opportunities,[8] the options available to the Iraqi refugees in this study were limited.

The majority of Iraqi women were not working or actively looking for work, due to household and childcare responsibilities. The Iraqi men relied on seasonal fruit picking work to supplement welfare payments, despite the fact that some had gained professional qualifications in Iraq. They commonly stated that they found the wages poor and the work demanding and demeaning. According to local perceptions, the work is available for people who make the effort. Yet, other factors come into play in trying to secure employment, such as lack of English, recency of arrival, non-transferability of qualifications and unfamiliarity with the labour market. While these factors also apply to refugees in major cities, the limited labour market in regional centres means that they are more cogent for refugees in these areas. In addition to these barriers, attitudes of some employers towards Iraqis were a considerable obstacle. For example, a local fruit grower suggested:

> I am not prejudiced about giving anybody a job, but if someone does the work the way you want it to be done, then half your problems of running a business are over. If you have to employ someone else to look after these people [Iraqi] to make sure that they are doing it the way you want them to do it, it is not cost effective. I don't think this problem is because of a language barrier, they are very intelligent people, they are more educated than I thought they were, I thought Iraqis were very backward but they are not. I think they know the difference between right and wrong, it is just that sometimes they don't want to conform.

Regional areas in Australia are generally less culturally diverse in their population demographics than are major cities, and perceived cultural difference may provide the foundations and justification for informal exclusion. As illustrated above, failure to conform to established 'customary' norms and expectations of mainstream employers was an additional barrier to securing employment. Moreover, given the limited employment opportunities in regional areas, Iraqi refugees are potentially more vulnerable to exploitation, as Nicole, a service provider, commented in regards to basic working rights and entitlements:

> The orchardists do abuse the Arabic workers because they are literally saying to them 'you work for $10 cash in hand or you have no job.' Now, they can't do that with the Australian workers, you know they have to pay them whatever the going rate is. But these people are equally entitled to earn a proper hourly rate, to have superannuation or sick leave.

Language

Language skills are imperative to successful settlement. Without English language skills, refugees are excluded from many aspects of life, including employment, education, access to services, and social interaction.[9] However, as Jennifer, an English-as-a-Second Language (ESL) teacher commented, refugees faced significant difficulties in gaining English language proficiency:

> I think the main issue here is access to English, because it drops in and out. There has been no consistency, and you can't learn a language without consistency, so access to English is probably the biggest issue that Iraqi people face here.

During the research, when the childcare worker (who was caring for the children while women attended English classes) found other employment and a replacement could not be found, the English classes stopped altogether. After this, many Iraqi women stopped attending classes because they did not have childcare. This example again indicates the disjuncture between refugee settlement entitlements and the reality of resettling in regional areas, where there is often a shortage of resources and qualified personnel. Similarly, the availability of and access to services within the social and health sector were limited in this regional context. For example, offices representing government agencies, as well as specialist health services such as

Amanda McLean, *Near Jeir Creek,*, Pastel on Board, 30.5 x 30.5cm. Courtesy of the artist and Aarwun Gallery.

...when the childcare worker found other employment and a replacement could not be found, the English classes stopped altogether... This example again indicates the disjuncture between refugee settlement entitlements and the reality of resettling in regional areas, where there is often a shortage of resources and qualified personnel.

gynaecologists, obstetricians and psychiatrists were absent in the town. There were no agencies available to deal adequately with problems such as domestic violence and emergency housing. There was also a lack of translated materials from government and health related services, as Anne, the maternal and child health nurse, commented:

> We are starting to get all the parenting stuff in Arabic in the last year, but this has been a 4-year problem; for years we had nothing. But a lot of it is just written in Arabic and we don't have the translated version of it, I hate giving out stuff when I don't know what it says.

Conclusion

Refugees are directed to and expected to remain in locations, that have seen demographic decline and out-migration due to limited opportunities. They are often expected to accept and retain low skilled jobs. It can be assumed that the loss of status, poor working conditions and discrimination that many refugees face is simply a trade-off between economic imperatives and the restriction of their rights.

However, in combination, low socio-economic status, language dispossession, and insufficient and poor familiarity of health, welfare and other services (e.g. housing assistance) inhibit successful resettlement. Limited access to health and welfare services is then reflected in social disadvantage and a poorer standard of living.

Recent government policy to facilitate the dispersal of refugees to smaller regional centers may consequently compromise refugee rights particularly in terms of access to employment, education and support services that are crucial especially in the early resettlement period.

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Benefits and Burdens of the Mining Boom for Rural Communities

Kerry Carrington and Russell Hogg

Gordon Waye, *Untitled,* Oil on Board, 76x38 cm. Courtesy of the artist and Gallery Eumundi.

Rural communities of the Australian interior have long enjoyed a special place in the Australian national identity. In 1900 over 60% of the population lived in inland rural Australia; however fewer Australians now live in these communities. Today almost nine in ten Australians reside within 50 kilometres of the coast, while 84% live in one per cent of the land mass concentrated in metropolitan centres – compared to a miniscule 0.3 per cent of the population dispersed over half the continent.[1] This presents major obstacles to sustaining rural communities in much of the continent, as the geographer John Holmes noted some 30 years ago.[2] The situation has only worsened in recent years.

At the core of the Australian rural ideal was the family farm around which stable patterns of settlement and small townships were expected to flourish. Yet the demise of the family farm alongside the rise of global agribusinesses since the 1960s has eroded the need for a local labour force and hence rural communities. Governments, both state and federal, have also significantly retreated from an older nation-building agenda, which saw many government services and cross-subsidisation make up some of the shortfall in the provision of local services. This has created a negative multiplier effect, deepening the structural problems identified by Holmes concerning the difficulties in servicing regional Australia, leaving rural communities at the mercy of global market forces.

Violence turned inward on rural family members and the abject self is just one of the outcomes of the rural crisis, reflected in the higher than average rates for suicide, risky alcohol consumption, and sexual and domestic violence in rural Australia.[3] Yet those who experience these adverse consequences from living in rural Australia have far less access to support services compared to metropolitan centres.[4]

Some may look hopefully on the mining boom to revive services, employment and community in many parts of regional Australia. If so they may be disappointed. Australia is no stranger to mining booms. From the gold rushes of the 1850s, which brought with it the first big wave of free immigrant settlers to the colonies, mining booms have

Arone Meekes, Boad/Shield?Lovers, 2 plate etching 76 x 56cm. Courtesy of the artist and Gallery Eumundi.

Mining...is often seen as a rapacious mode of activity: temporary, speculative, exploitative, prone to rent-seeking, and inclined to engender disordered landscapes and rootless lives.

punctuated Australian history and made a significant contribution to population growth, economic development, and the establishment of towns, transport networks and other infrastructure in the interior.[5] The resources sector is now the largest contributor to Australia's export trade, with a total value of $118.4 billion in 2008-09, it is growing at 15 per cent per annum and has invested $133 billion in new resource projects.[6] Global demand, especially from rapidly growing Asian economies, together with improved methods of extraction, processing and transportation and lucrative commodity prices, has fuelled this boom.

There is ambivalence about the mining-based development of the Australian rural interior. Farming was seen as conducive to social order, permanence and cultivation (of individual, family and national virtues, as much as the landscape). Farming settlement schemes served the ends of nation-building, national defence and the husbanding of scarce resources: that is, they constituted a moral, political, and economic, enterprise. Mining, on the other hand, is often seen as a rapacious mode of activity: temporary, speculative, exploitative, prone to rent-seeking, and inclined to engender disordered landscapes and rootless lives. These images stretch back to anxieties surrounding the impact of the first great mining boom, the 1850s gold rush,[7] and are borne out by the many mining settlements that have come and gone since.[8] Yet the negative images are belied by the resilience of rural mining communities prospering in many parts of Australia, like the Hunter Valley in NSW and the Bowen Basin in Queensland, with their strong traditions of local community identity and solidarity.[9]

Nor is Australia a stranger to the terrible human tragedy that can attend mining activities. Mine collapses, causing mass deaths in small tightly knit communities, have been a recurrent feature of the coal industry over its history in Australia.[10] The shift to open-cut mining alongside a safer mining culture has done much to reduce this harm. While many of these risks and dangers have significantly abated, new post-industrial mining regimes raise a fresh set of challenges for communities engaged in a David and Goliath struggle to survive.

Until the 1970s mining leases tended to be issued by governments subject to conditions that companies build or substantially finance local community infrastructure, including housing, streets, transport, schools, hospitals and recreation facilities. Townships and communities went hand in hand with mining development. However, Roxby Downs was the last mining town to be built in Australia, in the 1980s. Since that time, and under the growing influence of global economic forces, mining companies have moved progressively to an expeditionary strategy for natural resources extraction. This involves increasing reliance on non-resident (fly-in, fly-out or drive-in, drive-out) contract work forces, who typically work block rosters (seven days on, seven days off is common), reside in work camps adjacent to existing communities and travel large distances from their homes. This new regime of resource extraction operates a continuous production cycle involving 12 hour shifts alternating day and night with each roster cycle. Post-industrial mining regimes take corporatist neo-liberal logic to an extreme, one perhaps encapsulated in the figure of the fly-in, fly-out worker – contracted, non-unionised, with bulging pay packet, compressed work roster, fragile job security and truncated family and community life.

In crude terms, the resources sector has been at the forefront of a trend to encourage the trading of rights, security and conditions for high wages. A longer term, more holistic, view of the role of work in relation to well-being, personal identity, family and community is giving way to a narrower, shorter term focus on immediate economic benefits.

The increasing reliance on non-resident workforces has meant an ever-decreasing permanent resident workforce undermining sustainable community development.[11] 'Fly-over' effects threaten the continuing sustainability of some towns,[12] fostering tensions between residents ('insiders') and the non-resident workers ('outsiders').[13] Residents see themselves as having a long-term commitment to the community and as bearing a disproportion of the social costs of resource developments. In addition to the sheer number of transient workers (mostly male) with no meaningful commitment to place, the block roster system of 12-hour shifts, has hugely disruptive effects on families and communities. Where economic drivers subjugate all else, where a sense of local community based on dense patterns of acquaintanceship, participation in local sporting and other activities and high levels of implicit trust is seriously eroded, rural communities become much less attractive places to live.[14]

Insofar as new mines are being developed in or near existing communities it is typically the case that few of the benefits accrue to those communities but they are lumbered with a whole new set of burdens. The effective local population may massively increase overnight as a predominantly male, itinerant labour force moves in, reversing the hard-won inroads of women into this traditionally male dominated industry.[15] The burden on local services soars along with housing costs and other local costs of living.

Some of the costs relate to new patterns of violence. The housing of thousands of men in work camps with little else to do off roster than consume alcohol, can have a profound impact in some cases on chronic levels of male-on-male alcohol fuelled violence.[16] While most of this violence is unreported and managed informally by private security guards, 'hotspots' for violence are being recorded for mining towns at the forefront of the boom. In one Western Australian mining community the rate of violence was 2.3 times the state average and had risen almost threefold since the beginning of the resources boom.[17] In another mining community at the forefront of the boom in Queensland, the rate of offences against the person had grown from 534 per 100,000 in 2001 to 2,315 per 100,000 in 2003 – a rate more than twice the state average.[18]

Non-resident workers are seen to benefit more under these post-industrial mining regimes. But do they? There are handsome economic rewards for workers but one could hardly devise a work regime more hostile to sustainable family and community life. The routine separation from family, support and informal social controls and sense of belonging to a community can have seriously negative impacts on the wellbeing of non-resident workers and their families – among them suicide, family breakdown and violence, alcohol and substance abuse, and fatigue related deaths and injuries.

Most non-resident workers live in work camps located adjacent to the towns. These are typically demountable dwellings or 'dongas' uniformly arranged in compounds with a common mess, laundry and entertainment facilities, usually little more than a wet mess. They vary greatly in conditions from air-conditioned five star quarters with en-suite amenities, to hastily and sometimes illegally erected structures, surrounded by barbed wire, resembling a modern day 'gulag'.[19] There is a paucity of planning regulations regarding such temporary dwellings.

More flexible work arrangements are part of a larger global trend in the pattern of employment in a post-industrial world.[20] Research about increasingly precarious employment conditions suggests that these can adversely impact on worker health and well-being, occupational health and safety, union membership, job satisfaction, gender equity, and skills development.[21] In crude terms, the resources sector has been at the forefront of a trend to encourage the trading of rights, security and conditions for high wages. A longer term, more holistic, view of the role of work in relation to well-being, personal identity, family and community is giving way to a narrower, shorter term focus on immediate economic benefits. Precarious work practices may have a range of diffuse, often adverse, social consequences for individuals and communities, even if work is generously rewarded. The problem is that these regimes, by their very nature, ensure there is no collective voice to register and articulate these wider, longer term consequences. They are extruded from the collective consciousness because the vehicles of that consciousness (communities, trade unions and other forms of social life) are seriously eroded.

The present mining boom is producing huge economic benefits and is widely regarded as safeguarding Australia's prosperity into the future. This is the key to its unstoppable expansion. What receives far too little attention is that the distribution of the benefits and burdens of the mining boom are highly uneven. Even some within the industry question whether these regimes are sustainable in the long term. Efforts to leaven the adverse effects have been limited, but still noteworthy.

There is Queensland's new social impact guidelines and Western Australia's 'Royalties for Regions' program as well as the Australian Labor Government's proposal for a mining super profits tax driven by a desire to secure some of the wealth of the boom for future generations. The 2011 budget strategy of leveraging off the resources boom to revitalise regional Australia gives some hope for optimism. However unless this

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strategy is accompanied by a self-enlightened resources sector acting in concert with mining communities to maximize their social licence to operate, one of the many escalating costs may be a continuing rise in violence and other social harms among workers, families and communities adversely affected by the mining boom.

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Water Management in Rural Australia: The Human Rights Dimension

Paul Martin and Amanda Kennedy

Sue Linton, *A Cooling Off,* Framed Oil, 23 x 59cm. Courtesy of the artist.

In Australia a heated contest has emerged over the *Water Act* 2007 (Cth). That Act reflects policy beliefs that water extraction should be limited to scientifically-determined sustainable limits[1] and that water should be allocated to all uses through tradeable private rights to extract.[2] These propositions are advocated by strong political groups and supported by scientific interests

We argue that concealed in the legislation is a disenfranchisement of non-economic or non-scientific interests and while such a disenfranchisement affects everyone to some extent, it particularly affects rural communities where the *Water Act* plays out. Treatment which reduces the importance of non-economic and non-scientific interests in the *Act* highlights broader social justice concerns associated with private markets for environmental goods. Minority interests are subordinated to the needs of efficient markets through the automatic importation of pro-competition, trade or market freedom laws, and Constitutional or other requirements for mandatory compensation for property resumption, overriding the 'interventionist' traditions of public law.[3] Legal power is centralised in the administrative sector of government, diminishing the opportunity for political and judicial 'interference'. There are benefits from this approach, but the hidden cost is the erosion of the role of the courts and parliament in adjusting privilege to ensure social justice. We argue that there is a case to reassert social justice as a core value in the operation of all market mechanisms, even in the face of arguments that this may be 'inefficient'. Such a re-asssertion would help restore the voice of rural communities.

The *Water Act* and the community interest

Australian management of water rests principally with the States, which in the post Council of Australian Governments (COAG) 1994 era have applied 'marketised' systems for water management.[4] The *Water Act* 2007 harmonises water trading in one of Australia's iconic regions. The Murray Darling Basin.[5] A Guide to the (as yet un-released) Draft Plan which was released on 8 October 2010.[6] The guide drew strong

A role of law is to ensure that there are fair mechanisms for the resolution of social conflict. We argue that the Water Act has curtailed the ability for those detrimentally affected to contest their rights, and has required that government buy water rights to make public interest adjustments.

Lindsay Bird Mpetyane, *Arrkernk (Bloodwood Seed), 90 x 60cm, Acrylic on linen.* Courtesy of the artist and Mbantua Gallery and Cultural Museum.

protest from two groups; water access entitlement holders and a wider group of rural and regional communities.

The Act contains an ostensible requirement to consider non-property socio-economic concerns. Under Section 4(2) of the Act, 'decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations' with s 21(4)(c)(v) prescribing that the Minister must have regard to 'social, cultural, Indigenous and other public benefit issues' in making decisions. Section 10(2)(h)(vii) provides that the Authority's rules must take into account 'the economic and social wellbeing of the communities in the Murray Darling Basin'. Affected communities are not satisfied that this aspect of the law has been implemented. Unfortunately, the Act allows negligible latitude for the administration or the Minister to move beyond scientifically determined sustainability and water property interests, and the community lacks mechanisms within the Act to contest decisions that they see as adverse.

The Act is specific concerning the creation and review of the scientific models underpinning sustainable extraction, under the *Mandatory Requirements for a Basin Plan* (s 22) and in the core functions of the Authority (s. 172(1)(ea)). Under the Murray Darling Basin Agreement Clause 39, the Authority and the relevant State governments are obliged to review their models on a regular basis. Water property right holders also have specific rights of appeal for decisions affecting their economic interest (s. 77(7) and s. 83(8)). The legislation is, however, silent on appeals or review should a party believe (for example) that the approach, data, or outcomes of these processes are misinformed or unfair. In summary, whilst the legislation ostensibly requires that 'socio-economic' interests and 'communities' be given consideration, this nominal protection is significantly weaker than that allowed for science or property.

The treatment of community or individual interests which cannot be readily encompassed within the mechanics of government buying back water licences or adjustment of allocations, water trading rules as advised by the Australian Competition and Consumer Commission (ACCC), or changes to flow regimes within science-determined sustainability limits, is unspecified. What sorts of non-dominant social concerns might such 'orphan'/residual issues reflect? Conflicts have already emerged over community impacts, reflecting the absence of social adjustment mechanisms. The concerns have been greatest in impoverished rural communities, notably in the southern irrigation districts of the Murray Darling system.

International experience suggests that water sovereignty, particularly for Indigenous peoples, could also be important as foreign ownership of water rights becomes more apparent. Future cultural and economic

interests of Indigenous people may require adjustments that clash with the science/commerce balance in the Guide to the Plan. Alternative scientific perspectives on (a) the models or data used for water allocation, or (b) questioning of the dominant paradigm embedded in the Act, seem possible given the debates to date.[7] Many other conflicts related to water interests beyond those encompassed by science and markets can be envisaged.

In relation to such potential concerns one is left with the question: in practice, how is the interest of the less powerful, who may be affected by the implementation of the Basin Plan, to be managed? The absence of sections of the Act that enable protection of the non-dominant interests by adjustment of the dominant, or rights of appeal when individual or minority interests are harmed, suggests that the only answer that can be given is outside of the system of legal rights, in the area of political benevolence. The use of social adjustment and planning mechanisms outside those provided by the Act (such as additional government investments in infrastructure and communities) is what is being proposed to 'work around' the community protests that have already emerged.

What has in effect been achieved through the *Water Act* is the removal of the safeguards of the common law or citizen-driven political action that are the jurisprudential safeguards of the less powerful. There has been a shift from rights enforced by the courts to 'administered arrangements' that privilege the interests of the more powerful. This is one illustration of a more deep-seated adjustment in society's conceptualisation of rule by law, the role of the administration and the ambit of the courts.

A role of law is to ensure that there are fair mechanisms for the resolution of social conflict. We argue that the *Water Act* has curtailed the ability for those detrimentally affected to contest their rights, and has required that government buy water rights to make public interest adjustments. The rule of law should underpin Australia's legal approach to ensuring the water security of all its citizens, and international statements of principle are insufficient to address such complex matters.[8] Our legal framework should be 'transparent, credible and responsive',[9] providing a system which achieves positive water outcomes for our most vulnerable citizens. Water management that 'provides tools for ensuring the continuous integrity of the regime – that is through monitoring and assessment of compliance and implementation, dispute prevention and settlement'; and which 'allows for modifications of the existing regime in order to be able to adapt to changing needs and circumstances' is a desirable objective.[10] The Act limits the adaptive mechanisms and the needs, circumstances and conflicts that are given legal support.

Conclusion

Water has always had special treatment because of its value-laden and essential character. Its economic utility and ecological importance are well recognised in Australian law. Water also carries cultural and recreational, aesthetic and climatic, and nationalistic values. It has always been a public good, unable in its natural free flowing form to be privately owned.[11] Many issues of social justice are 'tied up' in the flow of water and the benefits it provides. Standing back from the immediate conflicts over water, we observe that its management is a mirror of important aspects of our jurisprudential traditions. Seen in this light, the *Water Act* has some disconcerting characteristics, because it largely reduces the legitimate social interest in favour of economic interest, and it strips out the 'neighbourly relations' and public accountability characteristics that are needed to protect complex values. In this new world, those who can harness science or money have a strong voice. However, the ability of legal and democratic institutions to intervene when instrumental arrangements fail to deliver the full suite of social goods that society expects of water, and in particular, when the cost of this failure falls upon the less privileged, has been reduced. It is possible to discern a partial shift from rule through democratic processes to rule through plutocratic means.

Whilst it is not the ambition of this article to prescribe the solution to this problem, some possibilities suggest themselves. They include broadening the discretions and adjustment mechanisms available to the Authority and the relevant Minister under thae Act; incorporating a distinct national interest test into Ministerial action, and providing for merits review of administrative decisions. Such suggestions are likely to be criticised as potentially compromising the laudable aims of the *Water Act*, but history tends to support the view that greater transparency and the contesting of dominant interests is more likely than not to improve rather than diminish, resource and social governance. In all natural resource management arrangements, not least of all environmental markets, social justice interests ought not to be weighed against economic productivity and environmental sustainability. They stand alongside and independent of, these values and are important in themselves.

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Addressing the Digital Divide: Should Universal Access to Broadband be Considered a Human Right?

Carolyn Dalton and Emma Keir

Sue Linton, *Quorrobolong Scene, Framed Oil, 23 x 59cm.* Courtesy of the artist.

Governments worldwide are pouring resources into upgrading internet infrastructure, citing it as the answer to economic, social and cultural development. In an increasingly convergent communications landscape, people are accessing the internet at home, at work, on mobile devices as well as computers, and for entertainment as well as work and study. Digital technologies are seen as the vehicle required for success in every aspect of nationhood in the twenty first century, enabling communities to develop their full potential in key areas including education, health, communication and the arts. The internet has quietly moved in a very short space of time from being a helpful tool to an integral component of everyday life for many people.

Governments worldwide are investing in broadband

In 2009, the Australian government announced a $43 billion investment in the National Broadband Network to provide all Australians with access to high speed internet, declaring that 'high-speed broadband is essential for Australia's economy, future growth and international competitiveness'.[1] In the same year in the United States, Congress announced a National Broadband Plan to give every American access to broadband, with the purpose of improving 'consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes'.[2]

In the United Kingdom, the government's 'Digital Britain' report in 2009 confirmed the government's commitment to pursue a knowledge based economy based around modern communications infrastructure, with a Universal Broadband Service at two Megabits per second by 2012.[3] The New Zealand government has similar priorities, also announcing in 2009 the delivery of ultra-fast broadband to 75 percent of New Zealanders within six years, stating that 'broadband is a vital component of New Zealand's economic growth, productivity improvements and the government's wider strategy to increase New Zealand's global competitiveness'.[4]

Guarantees of universal service

Some would argue that access to broadband in 2010 is comparable with the minimum expectations of access to basic telephony services set out by governments to newly privatised telecommunications companies in the early 1990s. For example, in Australia, Telstra's

...the quality of infrastructure available to people will affect the degree to which they engage in digital technology and can disadvantage those who have slower connections. In an increasingly global digital economy, for companies to compete internationally they are going to need to have access to the latest technology.

Universal Service Obligation (USO) has required it to ensure that certain telecommunications services are reasonably accessible to all people in Australia on an equitable basis, no matter where they live or conduct business.[5]

The New Zealand government undertook a review of its equivalent Telecommunications Service Obligations (TSO) in 2006, suggesting that 'the Local Service TSO needs to be updated to reflect increasing expectations for telecommunications access services and to ensure the wider population can benefit from technology enhancements'.[6]

The impact of the digital divide

Recent Nielsen findings indicate that among the nine countries surveyed,[7] while Australia has the fourth highest percentage of people on 'super fast speeds' (above 8 Mb), it also has the second highest percentage of people on slow to medium speeds (2 Mb or lower).[8] As a result, in Australia (also in countries such as Italy and Brazil) there are noticeable usage differences between those spending the least time online from home computers (people on 'slow' connections) and those spending the most time (the 'fast' connectors). This suggests that the quality of infrastructure available to people will affect the degree to which they engage in digital technology and can disadvantage those who have slower connections. In an increasingly global digital economy, for companies to compete internationally they are going to need to have access to the latest technology.

Similarly, connectivity is essential for communities and individuals to avail themselves of the social, economic and health benefits provided by the internet. In recent years we have seen the enormous growth of social networking sites such as Facebook, YouTube, Twitter and MySpace, which began as fora for social interaction. They have evolved very quickly into an important form of communication and have been linked to revolutionary global events such as the 2011 Egyptian uprising.[9] In disasters such as the Japanese earthquake and tsunami in February 2011, online tools such as Google's 'people finders' have become an integral way for people to locate missing family and friends.[10] Recently the Australian National University released a study noting that '[i]ncreased use of the Internet is leading to a more politically engaged and socially inclusive society'.[11]

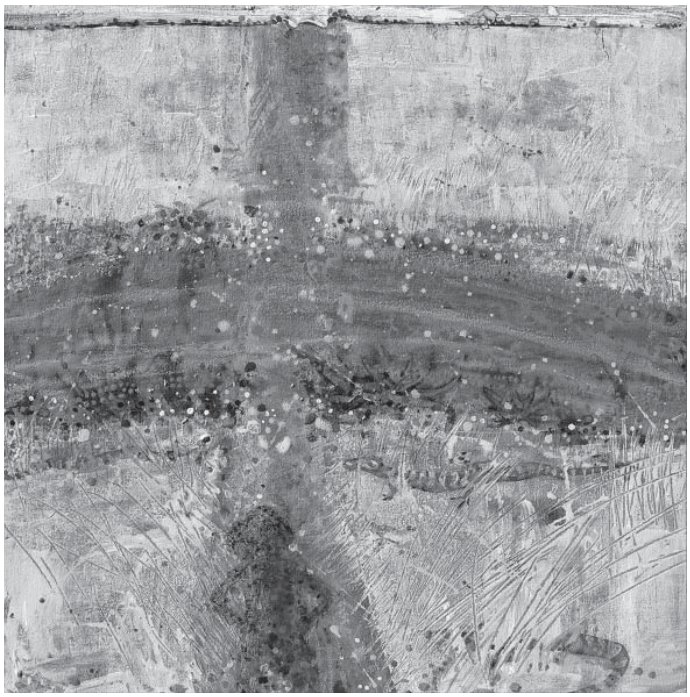
Despite guarantees of universal access to telecommunications such as those in Australia and New Zealand, and increased investments in broadband services, a significant digital divide remains. In Australia in 2009, up to 70% of the urban population had access to broadband while only 50% of those in rural areas had broadband access.[12] Worldwide it is estimated that only around six per cent of the world's population has broadband access available to them.[13]

It is clear that some governments are concerned about the digital divide and are making efforts to bridge the gap wherever possible. Australia's Northern Territory Minister for Information, Communication and Technology Policy, Karl Hampton recently announced new or upgraded internet services and training for 40 remote communities across the Northern Territory. He said that for remote communities of the Territory, access to the internet is even more essential, as it can bring huge benefits in health, education and commerce. Territorians live in some of the most remote places on earth, but technology and training allows for better health, education job prospects for people in the bush.[14]

Should access to broadband be considered a human right?

In the context of massive government investments in technology, and the myriad social, economic, artistic and health benefits of access to new technologies, the question is already being asked: could access to broadband be seen as a basic human right? Should all people be entitled to the same opportunity to access the benefits that information technology can offer in terms of economic, social and cultural interaction with the world? It could be argued in the future, that to comply with Article 1 of the *International Covenant on Civil and Political Rights*, that is, 'to be able to freely pursue one's economic, social and cultural development' in the digital age, people will need access to internet technology, and that without access to broadband people are at a disadvantage.[15] It is possible that the consequences of not providing universal access to broadband technologies will become increasingly severe as the internet becomes even more closely linked with economic performance, potentially further widening the gap between rich and poor.

To date, despite the rationale for large public investments in broadband infrastructure, governments have been generally focused on the economic and social policy aspects of broadband access. Further, any 'right' to access the internet is increasingly recognised as needing to be balanced with other economic rights on the internet, such as the rights of copyright owners to protect their intellectual property investments online. There have been discussions in many countries about whether the internet accounts of repeat



Carol McCormack, *Cameron's Corner - residents and visitors,* 2008, Acrylic on Canvas, 51 x 51cm. Courtesy of the artist.

In the context of massive government investments in technology, and the myriad social, economic, artistic and health benefits of access to new technologies, the question is already being asked: could access to broadband be seen as a basic human right? Should all people be entitled to the same opportunity to access the benefits that information technology can offer in terms of economic, social and cultural interaction with the world?

copyright infringers should be terminated as a consequence of those infringements. For example, the New Zealand government has recently passed legislation which will implement a 'three strikes' policy by which copyright infringers can be prosecuted for digital copyright offences. It paves the way for further legislation to require internet service providers to suspend and potentially cancel the internet access of repeat infringers.[16] Similarly, the Federal Court in Australia has recently found that an internet service provider would be required to terminate the internet account of a repeat infringer in certain circumstances.[17] The future will certainly see governments worldwide recognising the social, economic and cultural benefits of access to broadband. It is also clear that any 'right' to access broadband will be accompanied by the responsibility to exercise that right appropriately. It is likely that governments and courts will continue to protect the economic rights of others and any global right of internet access would not excuse otherwise unlawful conduct.

The far reaching application of broadband in people's lives may mean that broadband policy should be considered through a 'human rights lens', to recognise the important role it increasingly plays in the development of people, communities and countries. As policy debates in this area become more nuanced, perhaps there is a need to draw a distinction between the right for a person to have broadband infrastructure available to them, as distinct from an overall right to maintain a connection to that service in all circumstances?

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Human Rights Stories From the Highlands to the Islands - in Papua New Guinea

Micheil Paton and Mark Evenhuis

Photogrpah by Mark Evanhuis.

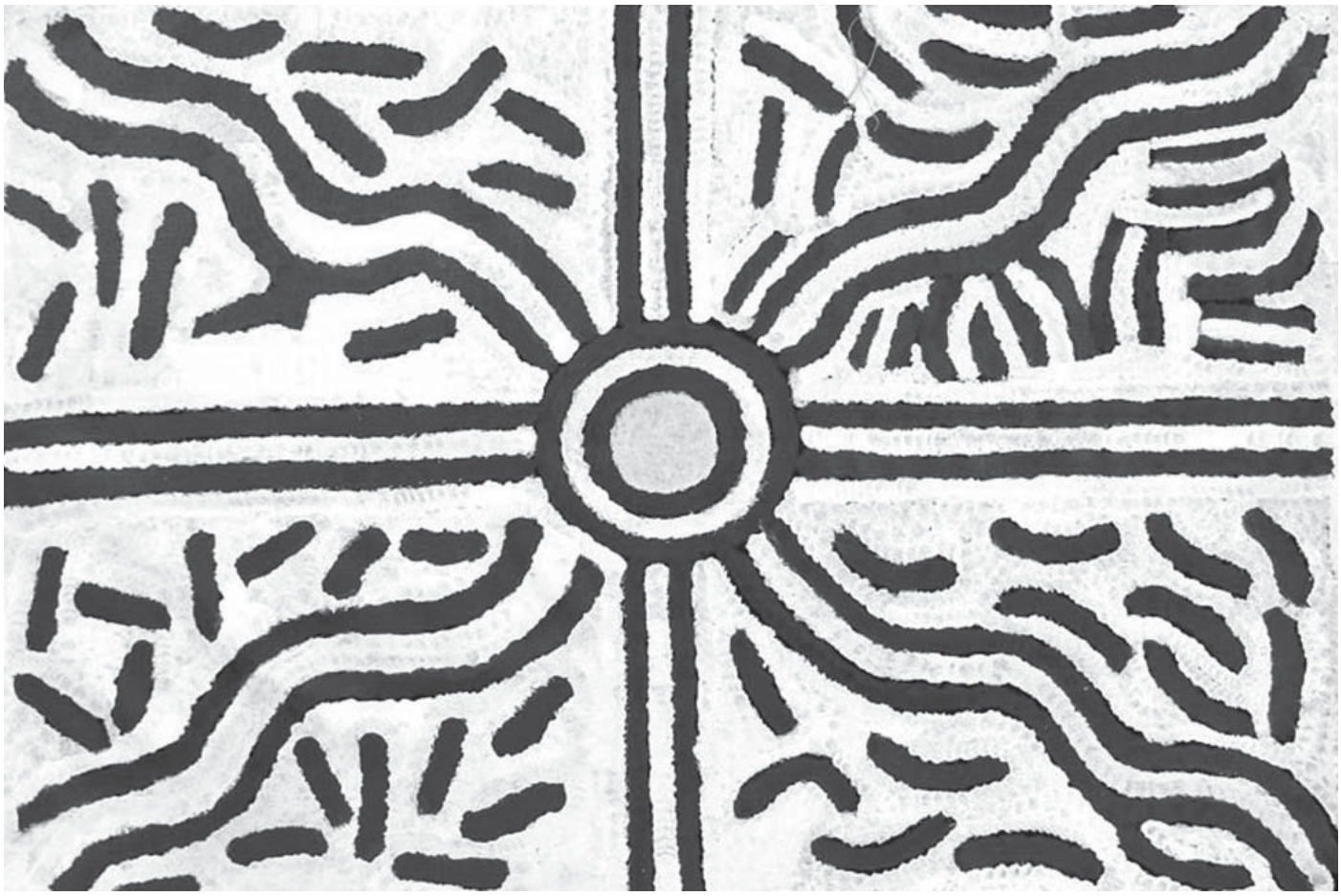
As two Australian lawyers volunteering in Papua New Guinea (PNG), we have come face to face with many human rights issues in rural communities. In this article we describe some of the human rights concerns that we have encountered, through the stories of two different interactions with young Papuan New Guineans from rural communities. The first story, by Micheil, concerns children's rights while the second story by Mark concerns youth incarceration.

Micheil's Story of Lalai.

Lalai[1] is quietly spoken and prefers to look at the floor rather than make eye contact with the strangers in the office where she now finds herself. It is late on a Friday afternoon and my colleagues and I have been preparing to close the Child Protection Centre and leave for the weekend but Lalai's story is compelling and we realise that she is exactly the kind of child that our new Centre was intended to protect. We sit together, trying to work out how to use our meagre resources and our handful of contacts to assist her.

The details of Lalai's story are slowly revealed to us. She is 15 years old. She was born in a small rural village on the edge of the Eastern Highlands Province. Getting to town means walking for about an hour, waiting an indeterminate period for a bus, and then travelling another two hours on the bus. There is no school in her village and in any event her mother would not have been able to pay school fees, which are commonly charged in government schools throughout PNG. Her mother makes only a little money selling vegetables at a roadside market and her father left home when she was very young. He was believed to be involved in criminal activities in another Province.

When Lalai was five years old, her mother decided that Lalai would



Lindsay Bird Mpetyane, *Arrkernk (Bloodwood Seed), 90 x 60cm, Acrylic on linen.* Courtesy of the artist and Mbantua Gallery and Cultural Museum.

At Supang's first court appearance, he says he pleaded guilty because he felt as though he had no other choice. The presiding magistrate sentenced him to two years imprisonment under criminal laws only intended for adults.

have better opportunities in life if she went to live in town. Lalai's story of dislocation from her rural community is not uncommon. Her mother contacted a cousin living in Goroka and sent Lalai to live with her family there. Consequently, Lalai became a member of one of PNG's most vulnerable groups of children – those informally adopted by distant relatives. Lalai's adoptive parents do not treat her in the same way as they do their own biological children. She is regularly required to do more of the housework and receives a smaller portion of food than others. However, her adoptive parents do pay her school fees, and ensure she attends school, as they had promised.

As Lalai grew older, her difficulties within the adopted family became greater. She came to resent the discrimination she faced on a daily basis and had increasingly aggressive fights with her adoptive brothers. Her adoptive mother responded by hitting her and verbally abusing her on a regular basis. Worst of all, when other family members were out of the house, her adoptive father began to sexually abuse her. One day Lalai overheard her adoptive parents discussing a K5,000 payment and she feared they had secretly paid "bride price" to purchase her as the second wife of her adoptive father. This was too much for her to bear; she ran away from home and ultimately arrived at the door of our office in Goroka.

The Child Protection Centre was established in Goroka as a way of implementing the new *Lukautim Pikinini (Child Protection) Act* in Eastern Highlands Province. Introduced into the National Parliament in 2003, the *Lukautim Pikinini Act* finally came into force in February 2010. It confers on all children in PNG rights contained in the United Nations Convention on the Rights of the Child, a convention which the Government of PNG ratified in 1993. In particular, the Act focuses on preventing and responding to violence, abuse, neglect and exploitation of children. Child Protection Officers are empowered to take pre-emptive action to ensure children are kept safe from harm, and to support parents and other family members to care properly for children. New

Pikinini Courts have powers to remove children from abusive homes, to subject families to supervision by Child Protection Officers, and to require family members to access counselling or other support services.

This legislation was considered particularly necessary in PNG as it is a predominantly young country, where almost half the population is under the age of 18 years.[2] Alarmingly, a very high proportion of these children are at high risk of harm from adults in their daily lives. For example, a perplexing 75% of children experience some form of family violence.[3] Within the broader community, around half of PNG's children feel unsafe in their communities at night and about half of the population of female children find themselves at risk of sexual exploitation, often perpetrated by community bigmen[4] 'including police, pastors and teachers'.[5] It was, therefore, not surprising to learn that Lalai's adoptive father was also a senior police officer.

When we asked Lalai where she would like to live, she held back tears and asked if she could return to live with her biological mother in the remote village. Everybody in the room knew that if Lalai returned to her biological mother, the adoptive parents would demand a huge sum in "compensation" for the money they had spent feeding, clothing and educating her for ten years. It was equally clear that her biological mother would not be able to afford to pay, and would instead be forced to send Lalai back to her adoptive parents. With no formal fostering system yet in place, where could we safely house Lalai?

Lalai's story illustrates some of the complex social, financial and cultural issues that commonly feature in child protection cases in the highlands of PNG. Cases involving children living in remote communities present particular challenges. For example, there are only two court houses in the Province (one in each of the two urban centres) so most children have limited access to the newly established 'Pikinini Courts'. Counselling and other family support services outside urban areas are very limited and *ad hoc*. The rugged terrain enables many perpetrators of abuse to avoid prosecution by simply heading into the bush and hiding from authorities. Consequently, the suffering of children in remote and rural areas is more likely to go unheard and unseen.

In 2010, the Child Protection Centre in Goroka had only one staff member, yet the Centre was expected to serve the needs of some 250,000 children in the Province, about 80% of whom live in rural villages. The Centre had no vehicle for staff to visit children notified as being at risk of harm, and no telephone or email communications. In addition, the many provisions of the *Lukautim Pikinini Act* were a daunting prospect for local staff to comprehend and implement. The Centre requested an Australian volunteer to build the capacity of the local staff to protect vulnerable children under the new law.

That role has involved unravelling the sections of the Act and assisting local staff to develop procedures and deal with individual child protection cases in the best interests of the child. In addition, it has involved conducting training for prospective Child Protection Officers from each of the Districts in the Province, potentially extending the protection of the law to many more children from remote areas than would otherwise be possible.

The provision of sufficient funding is always an issue in helping address these sorts of child protection issues. Fortunately, some child protection funding has been allocated in the 2011 Provincial Government budget. (Previously, all funding had come from international NGOs.) The local funding has enabled the recruitment of case workers specifically dedicated to respond to individual reports of child abuse, so that the Provincial Child Protection Officer would have more time for administrative and other tasks. Already there has been a sharp increase in the number of cases that can be handled by the Child Protection Centre, and the case workers are able to travel out to more remote areas, where previously there was no officer authorised to monitor children's safety.

However, many challenges remain. For example, no alternative long-term accommodation was found for Lalai and she continues to live with her adoptive parents with some limited oversight by a Child Protection Officer. It is hoped that in future the Child Protection Centre will be better able to respond to abuse of children. For this to happen, the PNG government will need to properly resource the child protection system and creatively utilise traditional customs to establish a functioning foster system.

Mark's story of youth imprisonment.

Outside the open and unattended prison gates of Kavieng Corrective Services in New Ireland Province, shirtless prisoners in red lap laps cut grass with long machetes. My workmate, Fabian and I say "morning" to them and walk to the dilapidated prison administration building where we find the Juvenile Warden waiting for us. As he escorts us to the juvenile section of the prison, in a friendly gesture, he holds my hand until he unlocks the gate to the juvenile cell-block.

Despite PNG being Australia's closest neighbour, its prisons are a far cry from the retina scans, box visits, and clinical environs that are common place within Australian penal institutions. While PNG detainees often have more freedom than their counterparts in Australia, the conditions of their detention are typically abject. At the time of this visit, 16 children shared a tiny two room cell block and had nothing to sleep on but bare concrete. Due to overcrowding, several other children share cells with adults and are, thereby, exposed to real risks of physical and sexual violence from their adult cellmates. Many of these children are from rural and isolated communities.

Part of my role is to monitor the conditions and welfare of juveniles within the prison system; (Community Based Corrections is the government department largely responsible for supervising and rehabilitating probationers and parolees in the community). Today, Fabian and I have come to the Kavieng Goal to interview the children detained there after we heard anecdotally that many of them were serving long sentences for petty offences.

When the detained boys come out to meet us, they are dead silent and keep their eyes low to the ground. We soon discover that while some of the boys are serving sentences for serious crimes, many others would arguably be better dealt with outside the prison system.
One of the young men we meet is Supang - a 15 year old from a rural village on the east coast of New Ireland Province.

Supang murmurs in nervous tok pisin (an English Creole language spoken throughout PNG) that he is serving a two year prison sentence for breaking a toilet bowl at an oil palm plantation. He maintains that he is innocent but was falsely accused after he was absent from his village on the day of the crime. He says that same day, security guards took him to the nearest police station where he was interrogated and beaten by police with a fan belt. He was then held in a police cell with adults for several days until he was remanded to Kavieng Prison. His family did not have enough money to bail him out of gaol.

At Supang's first court appearance, he says he pleaded guilty because he felt as though he had no other choice. The presiding magistrate sentenced him to two years imprisonment under criminal laws only intended for adults. It is rare for his family to visit as they cannot afford

the bus fare to come up the highway to see him.

Unfortunately, Supang's treatment represents an all too common response to youth offenders in PNG, where crime involving young people is popularly associated with the rise of 'raskolism'.[6] In reality, most youth crimes are minor, property or drug related offences (possession of marijuana or homebrew). However, even when accused of such minor offences, juveniles like Supang often receive excessively harsh treatment from police, courts and prisons because of the misconception that they are 'raskols preying on the community'.[7]

Within the criminal justice system, children in conflict with the law regularly endure serious abuse from police and prison officers (including beatings amounting to torture) and are often detained for unnecessarily prolonged periods in deplorable conditions without adequate food.[8] Sadly, PNG's leadership appears to lack awareness or political will to seriously address such abuses When questioned about police violence against children, Grand Chief Sir Michael Somare said 'although there were some instances, he had seen the same things and worse in Australia'.[9]

Within remote and rural settings, many young people live far from the closest police station. Their most likely contact with the law is through community or auxiliary police. These officers, drawn from local communities, were introduced across PNG to supplement low police numbers – they receive much less pay and training than regular police and 'have been especially blamed for violence and other illegal acts'.[10]

Juvenile Justice Reforms

In response to concerns about the treatment of young offenders, the PNG National Parliament passed the *Juvenile Courts Act 1991*. This Act attempted to incorporate the *UN Standard Minimum Rules for the Administration of Juvenile Justice* into its criminal justice system and established separate Juvenile Courts for children facing less serious charges as well as Juvenile Court Officers (under the supervision of Community Based Corrections) to advocate for individual juveniles.

Since its implementation, this law has been bolstered by the introduction of juvenile justice policies and protocols, largely championed by UNICEF and AusAID, which promote diverting children out of the traditional justice system and into the community where restorative justice based mediation can occur.

In New Ireland, a Juvenile Court in Kavieng has been established and Volunteer Juvenile Court Officers have been trained. It is still early days, but since the establishment of the Court, children like Supang are no longer being sent to prison and detention conditions have improved. However, the remaining challenge is to improve how juveniles are treated by police, especially in remote areas far from New Ireland's two urban centres where the actions of community and auxiliary police often go unchecked.

In the case of Supang, ideally, a community police officer would have released him on hearing his side of the story or given him a warning – however, many police across PNG are yet to be trained in juvenile justice reforms. Supang's matter could also have been referred to a Village Court - these localised and semi-formal dispute resolution forums are the most common venue in which Papua New Guineans resolve community based disputes and breaches of the peace. These customary courts have the jurisdiction to deal with petty matters such as damage to property or public drunkenness' but cannot imprison juveniles. Unfortunately, these courts remain an untapped resource for the promotion of juvenile justice within urban and remote communities.

Supang might also have benefited from the advocacy of a Volunteer Juvenile Court Officer had one been available. Fortunately some are now being trained to work with juveniles in both urban and rural settings. However, in order to carry out their duties, these volunteers will require ongoing support including financial assistance with transport and communication, as well as supervision and continuing training, support which Community Based Corrections finds very difficult to provide. It remains to be seen whether these volunteers can provide a sustainable solution to the problems faced by children in conflict with the law, especially for children in relatively isolated areas.

Finally, while money from the resources boom flows into government, only time will tell whether PNG's top leadership has the political will to use this money to fund projects which effectively protect the rights of juveniles, like Supang, from harm within the justice system.

Conclusion

The problems children face in all parts of PNG are significant. However, children in more isolated areas are especially vulnerable to harm as they have reduced access to already limited child-welfare-orientated services.

However, the Lukautim Pikinini and Juvenile Justice Reforms appear to be making some inroads into the realisation of human rights for PNG's children. Such reforms not only enhance the lives of young people, but also engender an understanding, valuing and upholding of human rights in the wider community. However, to succeed, such initiatives require the will of local communities, governments and NGOs to sustain them.

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Mark Evenhuis is also an Australian Youth Ambassador for Development in Papua New Guinea. He works with the Department of Community Based Corrections in Kavieng.

Endnotes

1 Not her real name.

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4 Big men are leaders or men of status within the community.

5 UNICEF Papua New Guinea, 'The 2009 Child Protection Situational Analysis', May 2009, p.8.

6 UNICEF, *PNG Children in Conflict with the Law: An Assessment of the Juvenile Justice System*, 2001, p. 5.

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8 UN Special Rapporteur on Torture, *UN Special Rapporteur on Torture presents preliminary findings on his Mission to PNG*, 26 May 2010, www.un.org.au/UN-Special-Rapporteur-on-Torture-presents-preliminary-findings-on-his-Mission-to-PNG-news197.aspx

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In Conversation with Boris Dittrich - Human Rights Watch

Julie MacKenzie

Boris Dittrich is the Advocacy Director of the Lesbian, Gay, Bisexual, and Transgender Rights Program at Human Rights Watch, one of the world's leading independent organisations dedicated to defending and protecting human rights. Before joining Human Rights Watch in 2007, he was a lawyer and judge in the Netherlands, and later a member of the Dutch national parliament. Boris Dittrich initiated the same-sex marriage bill that made the Netherlands the first country in the world to legalise civil marriage for gays and lesbians. He also co-organised the launch of the Yogyakarta Principles, principles on the application of international human rights law in relation to sexual orientation and gender identity, at the United Nations in New York in 2007. Boris Dittrich visited Australia in March 2011 and participated in a roundtable organised by the Australian Human Rights Centre in the Faculty of Law at the University of New South Wales. Julie MacKenzie interviewed Boris Dittrich for the HRD.

JM: You've been involved in law and justice in a range of different capacities: as a lawyer, a judge, a parliamentarian, and now as an advocate. I'm interested in your views on the different kinds of impacts you can have in these roles.

BD: Well, my reason to become a lawyer after finishing law school was because I wanted to help people, because I wanted to fight for human rights but through a law career. After eight years I realised that I was really believing in my client and their point of view but it was the judge who decided, and sometimes I felt the judge didn't read or understand the case, so I felt frustrated. So when I became a judge I thought, 'well, now I am the one who is deciding'. But then I discovered that a judge is bound by the law – and some of the laws I didn't agree with – and that's why I became a member of parliament and a lawmaker. I loved drafting laws and taking initiatives to sponsor bills but after twelve and a half years I thought to myself that outside this decision-making body there is a whole world and so many people to influence: politicians as well as the general public. That's when I became a human rights defender for Human Rights Watch. So there are completely different ways of having an impact in order to achieve a goal you have in creating a just society.

JM: Moving to your current role as the Advocacy Director of the Lesbian, Gay, Bisexual, and Transgender Rights Program at Human Rights Watch – what do you think are the priorities in LGBT advocacy at the moment?

BD: That's a difficult question. You cannot answer your question comprehensively because the world is so different – there are completely different issues in Western European countries to other areas in the world. But generally I would say decriminalisation of homosexual conduct: trying to persuade those 85 countries in the world where homosexuality is criminalised to change their laws and policies. But in specific African and Caribbean countries our priority is not even to decriminalise homosexuality because ninety- five per cent of the population is against homosexuality, and all politicians are. Decriminalisation will never happen because we need to have a movement within parliament to support it, and to have a majority, and that will never happen. So our priority for instance in Cameroon is to stop the arrests. We don't care about what's in the law books so long as people are not arrested and are allowed the space to be themselves. Transgender rights are also very important because most atrocities in the world based on sexual orientation and gender identity are committed against transgender sex workers. For instance, in Honduras about 65 were murdered in the last two years, and except in one case the police haven't arrested anyone.

Another priority would be to inform closed societies about homosexuality, because in most African countries where it's criminalised people don't know about homosexuality. People feel ashamed to talk about sexuality – let alone homosexuality – so there are all sorts of rumours: that gays are recruiting young people at school, that they are paying young people to have sex. Fortunately through the internet people can access information, but to have facts about sexual conduct – that there is a variety of human conduct and it's in the nature of somebody and not a choice – I think that's important.

JM: You mentioned at the roundtable here at the Australian Human Rights Centre that when you are advocating for LGBT rights in non-Western countries politicians sometimes respond that these rights are western concepts and reflect western values that are not appropriate in other cultural contexts. How do you respond to these arguments?

BD: Well, one response is to refer to the *Universal Declaration of Human Rights*,[1] and the speech of [United Nations Secretary General] Ban Ki Moon[2] to argue that rights are universal – not for specific groups but for everybody. But there you are appealing to a line of thinking. So another strategy is to always talk to members of parliament in those countries along with representatives from their own community. I never do it alone. When I have been alone I've been told, 'we don't have any homosexuals here; there are no problems here'. But when I have someone sitting next me saying 'hey I'm the Executive Director of Alternatives Cameruon[3] and I represent hundred of gay men in this city', they cannot respond in this way. There is also a huge gap between politicians and civil society in these countries, and it's very difficult for ordinary people to have contact with their representatives, so I always like to play an intermediary role of introducing people to their decision-makers.

JM: To move to the Yogyakarta principles[4] – can you tell me about the process involved in developing these?

BD: At the end of 2006, a group of lawyers came together in Yogyakarta (Indonesia) and decided to codify all existing human rights and translate them to rights regarding sexual orientation and gender identity. In the Yogyakarta principles there is nothing new: all the principles derived from currently existing international treaties. So, for example, the right to freedom of expression, to freedom of association, the right to privacy, the right not to be discriminated against are all translated and codified by the Yogyakarta principles as rights extending to sexual orientation and gender identity. Why? To make visible the gap between the rights that lesbian, gay, bi-sexual and transgender people should have and the actual situation on the ground. Some critics argue that the Yogyakarta principles have never been ratified by the UN, but that is not the case – all the principles derive from existing human rights, but have been brought together in one document highlighting their application to sexual orientation and gender identity.

JM: On what level are the Yogyakarta principles intended to make an impact – at the level of government, advocacy, human rights litigation...?

BD: That's a good question. Each principle has some kind of guideline for a government to change its laws and policies so they are directed at the governments, but they are also directed to national human rights committees, NGOs and other key players in the field. We noticed that the principles take a very legalistic approach, so with a group of NGOs we made an Activist's Guide to the Yogyakarta principles.[5] In the Activist's Guide we have put 25 examples of groups all over the world who have used the Yogyakarta principles to achieve something. These are positive examples from all over the world, and these are human stories of activists; how they were inspired by the Yogyakarta principles and what they did to achieve a certain goal. So this Activist's Guide is very important, and we have a specific website where groups from all over the world can add their examples, so it's a growing document.

JM: You played a key role in putting same-sex marriage on the agenda in the Netherlands and also worldwide. You've talked previously about the antagonism from within the gay and lesbian community that sometimes confronts advocates of same-sex marriage. The argument is sometimes made that access to the conservative institution of marriage should not be a priority for gays and lesbians – instead we should be thinking about and creating different models for relationships. Do you have any sympathy with these kinds of arguments?

BD: Well, yes, I have a lot of sympathy because I am a believer that there should be an array of relationships recognised by the state, and people should be able to choose the level of protection or the rights and obligations they want to have. Marriage is indeed a very old institution – so my idea is that you could choose how it fits you and your relationship. I'm also open to not limiting it to a relationship of two persons – it could also be three or four or whatever, because actually that shouldn't be a concern to the state – it's all about how people want to shape their lives and how the law should recognise certain relationships. But that's a very difficult discussion. I started it in the Netherlands, but when I left parliament nobody really picked it up. Now in the Netherlands we have the choice between marriage, or a civil union – we call it registered partnerships – which are also open to people of different sexes, or no recognition. I actually believe there are a whole range of shades in between that should be able to be recognised by the law but they are not. So I have sympathy for those who say 'we don't like marriage,' but at the same time it's a freedom of choice issue: don't deny others the possibility to do so.

And I must say that in the last ten years I've been at so many marriages and I see how important it is symbolically, maybe not even for those who get married, but for their relatives. These people are all of a sudden able to say, 'the law says this ok' – it's a stamp of approval that you belong and are equal to others. That symbolic connotation is very important, and I didn't realise when I was working on recognition of same-sex marriage that it would have such an impact. In the Netherlands the Christian Democrats, who opposed the recognition of same-sex marriage when it was introduced and are now in government, were asked by a smaller Christian party to repeal the law and the leadership said, 'listen, we've seen these marriages taking place for ten years and we have to acknowledge that we were led by fear ten years ago and we support this. So we are not going to repeal this, this is part of our society'. That was wonderful – people who were against it are now on board and say so publicly. And in opinion polls 90 to 95 per cent of the Dutch population are in favour of same-sex marriage, so it's really not an issue anymore.

And for those who argued that if gays were allowed to get married there'd be a devaluation of the institution of marriage, that no one would want to get married anymore, the funny thing is that after same-sex marriage was allowed, more straight couples got married than in the years before. Marriage actually became more popular, more mainstream, following the legalisation of same-sex marriage.

JM: Boris Dittrich, thank you very much for your time.

Julie MacKenzie has a PhD in Gender and Cultural studies from the University of Sydney. She is completing a JD at UNSW and is the Managing Student Editor of this edition of the Human Rights Defender.

Endnotes
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Nora Petyarre Club, *Yerramp (Honey Ant) Dreaming*. Acrylic on canvas, 45 x 30cm. Courtesy of the artist and Mbantua Gallery and Cultural Museum.

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