

Recent Developments concerning the Convention on the Rights of the Child

By Imogen White



Associate Professor John Tobin urges the audience to continue advocating for Children's Rights.

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

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

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

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

In the second session, a dynamic panel explored the upcoming review of Australia's implementation of CROC. Ben Schokman, the Director of International Human Rights Advocacy at the Human Rights Law Centre opened this session by discussing Australia's periodic reporting process. He noted that the government's most

recent report to the Committee on the Rights of the Child focuses too heavily on money spent, rather than on progress, priorities, and goals.

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

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

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

Vanessa Zimmerman, Legal Advisor at the UN Special Representative on Business and Human Rights then discussed the UN Guiding Principles on Business and Human Rights. She highlighted how states are not the only bodies responsible for protecting children's rights, and that these this initiative coming out of the UN reflects a promising step on the path to ensuring that businesses adequately respect the rights of children.

Finally, Glenn Bond, the Program Effectiveness Manager at Plan Australia, brought to attention the impact that discrimination against girls and women has on child poverty. He noted how the intersection of gender inequality and the violation of children's rights places girls and young woman at a unique disadvantage. CROC, in its attempt to be gender neutral, is alarmingly silent about the fact that female children are more vulnerable to poverty and neglect.

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