

Reflections from IHRL

- Putting the RRR into the Debate

Rights

Range

Remedies (Making Rights Real)

Existing Human Rights Obligations of State Governments

■ Under 6 core human rights treaties:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social, and Cultural Rights
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Elimination of all forms of Racial Discrimination
- Convention on the Elimination of all forms of Discrimination Against Women
- Convention on the Rights of the Child

Range of Rights

- Importance and indivisibility of all forms of rights: civil, political, economic, social and cultural
- Whilst civil and political rights are the choice of rights most commonly found in Western Bills of Rights, ESC rights are also 'justiciable': see eg example of South Africa: impact in areas like housing policies, health care.

Making Rights Real

- International attention to lack of 'enforceable rights' in Australia: eg Human Rights Committee (2000), CERD Committee (2005), CEDAW Committee (2006)
- International law does not mandate a particular form of legal mechanism, but stresses the need for effective protection of human rights and provision of *remedies for breaches*

Impact of a Bill of Rights case-study: counter terrorism measures

Considering scope of preventative detention orders:

---background: wake of London bombing, COAG September 2005 agreement

---ACT: Human Rights Act 2004 in operation; Chief Minister made agreement conditional upon laws conforming with HRts.

Differences of ACT 'PD' Legislation

- Detention of minors (under 18 years) is prohibited
- Legal representative obtains a copy of the application for PD versus order/summary of grounds
- All orders are made by the Supreme Court (and thus subject to judicial review)
- Higher thresholds for the making of PD orders (not only 'reasonably necessary' to prevent terrorist act, but 'least restrictive' measure)
- Inclusion of robust provisions on the use of information obtained via torture
- Specific procedural arrangements to encourage human rights consideration: CPO consults with Human Rights Commissioner, Ombudsman and Public Advocate concerning arrangements for detention
- Requires guidelines about minimum conditions for detention and standards
- Empowers Human Rights Commissioner and Ombudsman to be in contact with a person detained of own volition
- Compulsory human rights training for police officers
- Not providing for automatic monitoring of communications between persons and their legal representatives