



HUMAN RIGHTS: FROM RHETORIC TO REALITY

PROFESSOR HILARY CHARLESWORTH HAS BEEN A KEY FIGURE IN IMPROVING PROTECTION OF HUMAN RIGHTS IN AUSTRALIA AND ABROAD

International human rights standards, which have been developed over the past 60 years, can provide an important safety net to prevent abuse of official power. However, human rights standards are only effective if they are translated into national legal systems.

Through extensive ARC-funded research, The Australian National University's Professor Hilary Charlesworth has identified factors that encourage the adoption of global human rights standards in local situations, as well as factors that undermine this process. Her groundbreaking work has influenced government policy and improved protection of human rights in Australia and overseas.

ABSTRACT RIGHTS

International human rights standards, typically contained in treaties, tend to be relatively general in formulation. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, for example, sets out a series of abstract rights, such as the right to life, to freedom of expression and to non-discrimination.

Charlesworth has examined the way in which a number of different national systems have translated these standards. "One aspect of my research focuses on how international human rights law influences the development of legal systems in 'post-conflict' states," she says. "Findings here have identified how local expressions of 'culture' can trump international standards."



IN A NUTSHELL

- ★ **RESEARCH AREA:** Human rights: Local translation of global standards
- ★ **PRIMARY AUTHOR:** Professor Hilary Charlesworth, Director, Centre for International Governance and Justice, The Australian National University
- ★ **KEY OUTCOME AREAS:** Social; Cultural

WOMEN AND NEW GOVERNMENT

According to Charlesworth, this is particularly evident in the way women are treated in new government systems, such as in Timor-Leste, Afghanistan and Iraq. "Women, while often active in independence and self-determination struggles, are typically relegated to a private realm of home and family in new political settlements and their human rights are given low priority," she says.

Charlesworth's research on this issue has assisted international government and non-government institutions in responding to the problems faced by women. Specifically, her work on the limitations of the notion of 'gender mainstreaming' – a concept that international agencies often use to try to improve women's situations, but that has had little impact on the ground – has influenced the global debate on its effectiveness, being referred to in studies in the European Union and the United Nations.

HELPING VANUATU

In 2007, Charlesworth was invited by AusAID to help prepare two delegations from Vanuatu (one official, one NGO) to make presentations to the UN Committee on the Elimination of Discrimination Against Women.

"Vanuatu's legal system falls short of international human rights standards – for example, women are unable to claim child maintenance from a former spouse until they have succeeded in obtaining a criminal conviction for desertion against their former partner," Charlesworth explains. "The preparation of the delegations assisted in identifying the gaps in Vanuatu's laws and bringing pressure on the government to amend them."

The sessions were filmed by the Secretariat of the Pacific Commission and are now used for training governments and NGOs across the Pacific. Charlesworth has also trained Iraqi, Lao, Indonesian and Cambodian government officials in human rights law.

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A 'FAIR GO' AT HOME

Human rights are not only relevant to countries in crisis. Another aspect of Charlesworth's research has looked at the way Australia has dealt with international human rights standards.

"At the national level, successive Australian governments have treated international standards warily, implementing few human rights treaty obligations directly," she says. "The assumption has been that human rights are adequately protected in Australia through the national commitment to a 'fair go'. This assumption has been challenged by Australian laws that clearly breach human rights standards, such as laws depriving prisoners of their right to vote or hindering the access of refugee applicants to the Australian legal system."

In the past four years, the Australian states and territories have taken the lead in translating human rights standards into their legal systems, with Charlesworth playing a key role. When the ACT adopted Australia's first bill of rights, the *ACT Human Rights Act 2004*, she was chair of the government's community consultation on a bill of rights (2002-03) and authored the report that led to the human rights legislation.

RIGHTS BEHIND BARS

This legislation has affected the development and delivery of policy across government. "For example, it has influenced the design of the new ACT prison by ensuring that prisoners have adequate space for exercise and areas for prayer and religious practices, and that child and adult offenders are separated," says Charlesworth.

Victoria has since followed the ACT's lead with the *Victorian Charter of Human Rights and Responsibilities 2006*. The Western Australian and Tasmanian governments have also commissioned reports on whether those states should adopt legislation similar to the ACT. These developments have been directly informed by the research of Charlesworth, who was invited to advise all three state committees.



For further reading

Charlesworth, H. 2005, 'Not Waving but Drowning: Gender Mainstreaming and Human Rights', *Harvard Human Rights Journal*, vol. 18, pp. 1-18.

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