

Becoming an active participant in one's recovery requires feeling the terrible pain of loss and anger, not just once, but over and over again. Such mourning and anger will be a constant companion in the process of recovery.

This may explain why there is often resistance, even blindness, to small improvements. To recognise improvements involves recognition of what has gone; to feel enthusiasm about any change is also to face how much one has lost; to feel the arousal of hope is to open one's heart to the risk of further bitter disappointment; to accept responsibility for one's own recovery is to give up waiting for justice to be dealt to those who are truly responsible for the damage caused. If health professionals suggest that recovery may only be achieved by the sufferer accepting responsibility this implies that those who are truly responsible need not be held accountable.

Health professionals are attempting to facilitate change in their clients. To change, all of us must drop our defensive protective habits, defense mechanisms, the assumption of passivity and the refusal to take responsibility for our actions. However, these mechanisms come into operation for the very purpose of defense, and when the need for protection and defence is very great, as it is in those who survive severe trauma, they are not only deeply entrenched but very important. They help the traumatised person tolerate an existence which may otherwise be intolerable, and they will only be parted with as the person feels they can tolerate life without them. Health professionals need to be aware of these defensive behaviours and respect them for their function and importance. ■

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How our human rights record shape up

Supreme Court Judge MARCUS EINFELD argues that although Australia has undertaken some important human rights reforms in the last 50 years, there is still room for improvement.

There can be no doubt that since the inception of the United Nations, there has been a very significant advance in the enunciation and adoption of human rights as fundamental tenets of the social life and political government of civilised humankind.

Today it is recognised that human rights are not some narrow, theoretical or idealistic entitlements to be advocated only by 'bleeding hearts' and 'do gooders'. They are not merely the avenue for asserting the claims of individuals against the state, or for opposing laws which operate unjustly against a few, or for protecting only peripheral minorities. Taken together, human rights principles form a code of behaviour for individuals, communities and states, designed to promote harmonious, just and peaceful conditions essential to the peace and welfare of modern life.

It must of course be acknowledged that Australia has played a major and vocal role in the development of international human rights norms in these last 50 years. As a middle power with a respected human rights record, Australia was looked to and listened to by the international community on human rights issues.

We should still be leading the way. However, Australia is now the only sophisticated western democracy without a bill or charter of rights, as we have not brought into domestic law the International Convention on Civil and Political Rights and a myriad of other human rights instruments passed by the United Nations, even though all of them have been signed and ratified by Australia. For this and other reasons we are in serious danger of forgetting this charge.

Commemorating the 50th anniversary of the Universal Declaration of Human Rights last year was one thing. It is quite another to ensure that our governments and people take continuous proper note of and honour these rights. And as of late our commitment is looking decidedly hollow and the world is taking notice. Among many other areas, we are failing with children and young people, especially our juvenile justice problems, and youth unemployment, reception of migrants and refugees, race and women's issues, treatment of people with disabilities and impairments, and with the unemployed especially the young unemployed.

The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment came about as the response of the international community to the increasing incidence of abhorrent acts of torture, cruelty and human degradation taking place worldwide. The Convention was therefore



adopted by the General Assembly of the United Nations on 10 December 1984, and was signed by Australia exactly one year later.

In Australia, the ratification of a treaty by Parliament does not automatically render it a legal tool against the inhumane acts it was conceived to prevent. It is necessary to have specific domestic legislation embodying a treaty brought into force in order for it to become enforceable as Australia domestic law. In this case we did so in 1988, at least in relation to some of the provisions of the Convention. Fortunately that law would only rarely be called upon in Australia, but that does not mean that our country is immune to such practices, nor is it innocent of partaking in incidences of cruel, inhuman or degrading punishment and treatment.

I well recall my 1988 confrontation, as President of the Human Rights Commission, with Queensland Premier Jo Bjelke Petersen over the so-called Black Hole cells at Boggo Road Gaol. Here cells with neither windows nor light were reopened after many years of closure to house Aborigines hanging around Expo. I went into the cells. When the door was closed behind me, you could not even see your own hands. And the air was controlled by the prison officers who regularly either turned up the heat or made it freezing cold so that the prisoners suffered awful agony. I have seen other prisons around Australia – Townsville is one that comes immediately to mind – where prisoners, especially Aborigines, are kept in tiny cages surrounded on all sides including the top with wire, where there is not enough room to swing a balloon.

In fact many countries' human rights scoreboards of violations through torture and other inhumane practices

are not good. I congratulate STARTTS on its great record of giving help, solace and treatment to many of the victims of torture who have come to this country in recent years.

Australia's actions in pursuit of the cessation of horrors against human beings must not only be verbally and even militarily visited upon guilty regimes. We must not only offer Australia and its resources as a refuge and home for as many as possible of those individuals or groups who are no longer welcome or are in grave danger in their own countries. We must also embrace permanent preparations to send to areas of conflict food, tents, clothing, blankets, and medication, and the dispatching of practical expertise, such as medical and engineering teams, tent erectors, bore drillers, nurses, teachers, doctors, truck and bus drivers and the like, to the neighbours of war ravaged countries whose forcibly displaced citizens they have taken in. In large measure, these are people who themselves do not want to flee, but would prefer to return to rebuild their lives in the places they know as home.

The ultimate options for refugees are always either third country resettlement or repatriation after a period of safe haven. When repatriation is the preferred option, as in the case of the Kosovar refugees, giving the people temporary protection close to their homes is to be preferred, with the international community having the obligation to ensure that all services needed for their protection, health and wellbeing are supplied. Education and recreation for the children is essential.

When more distant movement, such as to Australia, is necessary because the places close to home are dangerous, overcrowded and increasingly disease-prone, there

is an obligation on the receiving country to be generous, not heartless and mean-minded. We must give as much, not as little, as possible. Let us resolve in future to be firmly Australian — meaning generous spirited and kind.

Human rights are, as their most famous declaration says, universal. They are for all of humankind. No one person is more of a human being than another.

The education which our society and our parents and teachers have enabled us to have, the technological and scientific advances of this century, and the freedoms which Australia enjoys, as well as the obligations it has taken on, impose on our generation much greater responsibilities than on those who have gone before us. We must avoid casting the blame for failures of personal obligation onto others, especially governments who, after all, spring from and, I regret to say, tend to mirror the people who elect them. Instead, we must actually reverse the opinion polls to persuade our politicians to take the moral high ground, not satisfied with short term popularity.

All of us must look to what we ourselves do and can do, either as individuals or together with others. We must all try to make a contribution to the survival and advancement of humanity, and not merely concentrate on our personal pleasures and immediate goals. We must pursue fairness and honourable conduct, not only materialism, as the norm of our society. Above all, integrity, unselfishness and decency towards others must take pride of place at the top of our personal agendas for life. There are no greater causes than assuring human dignity and protecting the soul of the nation. ■

This is an edited version of a speech given by the Honourable Justice Marcus Einfeld AO QC at the International Day in Support of Victims of Torture, 26 June, at Bondi Pavilion.