

Joint Standing Committee on Foreign Affairs, Defence and Trade

Human Rights Sub-Committee

INQUIRY INTO THE LINK BETWEEN AID AND HUMAN RIGHTS

Submission

By



**Human Rights and
Opportunity Commission**



National

**Asia Pacific Forum of
Human Rights Institutions**

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1. INTRODUCTION

1.1 Inquiry's Terms of Reference

On 14 September 2000, the Minister for Foreign Affairs and Trade, the Hon. Alexander Downer, MP, asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to inquire and report on Australia's efforts in advancing human rights in developing nations through the use of foreign aid. The Secretary of the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade wrote to the Human Rights and Equal Opportunity Commission (HREOC) on 20 November 2000 inviting the Commission to participate in the inquiry.

This is a joint submission of the Human Rights and Equal Opportunity Commission (HREOC) and the Asia Pacific Forum of National Human Rights Institutions (APF). The nature of these organizations and the relationship between them is described in an Annexure to this submission. Broadly, HREOC's experience is in the development and implementation of activities under bilateral country programs while the APF's experience concerns multilateral regional programs. It is the overwhelming view of both organisations that human rights aid has been an essential ingredient in advancing respect for human rights.

1.2 Human Rights Aid - Definitional Issues

Over the last ten years virtually all major donor agencies have integrated human rights concerns into their programs and policies, though to varying degrees. These programs are not necessarily called 'human rights assistance programs'. For example, many aid agencies use terminology such as 'governance', 'democratic reform' or support for 'the rule of law'. In addressing the terms of reference it is therefore important to note from the outset that it is difficult to gather precise information on the extent to which development assistance is utilised to advance human rights objectives. While it appears that as a proportion of overall aid budgets worldwide, the amount spent by donor agencies on human rights projects continues to grow (even as many aid budgets are in decline), there is no consistent reporting system which separates funding for human rights from other categories of aid.

It can be argued that the term 'human rights aid' can be applied to all development aid since it is given to improve health, education, housing and other subjects of human rights norms. Others, however, argue that given the legal nature of rights, activities that could be defined as 'human rights assistance' should focus on establishing or improving legal guarantees to health, education, freedom from torture etc. In practice many donors have equated human rights assistance with projects that support the rule of law, the administration of justice, national human rights institutions or human rights non-governmental organisations (NGOs).

HREOC and the APF's understanding of Australia's development assistance program is that it aims to advance Australia's national interest by 'assisting developing countries to reduce poverty and achieve sustainable development'.¹ Advancing human rights is one of the numerous approaches used in order to reduce poverty and achieve sustainable economic and social development. To put it another way, development is the main objective and advancing human rights is, in the right circumstances, a means to achieving that objective. On this view it is appropriate for AusAID, Australia's national development assistance agency, to determine where and when assisting in the advancement of human rights is a relevant development assistance tool or device and thus, where and when the expertise of HREOC or the APF is relevant and useful. The approach adopted by Australia, which has human rights revolving around development, is consistent with the approach adopted by many other countries.

Were the advancement of human rights to be an end in itself, a somewhat different approach and a somewhat different administrative mechanism would be necessary. Such a mechanism would locate the promotion and protection of human rights as the goal with development as a desirable but not necessarily central impact.

For the purposes of this submission 'human rights aid' has been taken to mean projects or programs where the stated objective of the aid is expressly related to the protection or promotion of human rights, including building the capacity of institutions that advance or protect human rights. This includes projects related to health, housing, education, justice administration etc but does not include general humanitarian assistance.

2. INQUIRY'S TERMS OF REFERENCE – 1

2.1 Bilateral Country Programs

In relation to the first term of reference of the inquiry, HREOC's experience arises as a result of responding to AusAID's request for expertise, either in assessing possible human rights interventions or in implementing activities aimed directly at promoting and protecting human rights.

The Commission does not automatically respond to requests from AusAID. Whether to involve itself in a bilateral development assistance activity is determined by reference to four principles:

- (i) the activity must be in the Commission's area of specialised expertise;
 - (ii) the activity must return to the Commission adequate funds to meet direct costs and to meet any gap in resources that may result from the involvement of Commission staff;
 - (iii) the activity must allow the Commission to devote sufficient resources to complete the activity to a standard that reflects well on the Commission;
- and

¹ www.ausaid.gov.au.

- (iv) the activity must not place the Commission in a relationship or position contrary to its defined role as an Australian statutory organization.

HREOC understands that bilateral development assistance programs that are intended to advance human rights represent one sort of intervention that AusAID may use to pursue its goal of sustainable economic and social development. Depending on the particular country program strategy, AusAID may choose to work in the governance sector and the human rights sub-sector or to work in other sectors and sub-sectors. Thus, for development assistance program planning purposes, the advancing of human rights has the same status as advancing good agricultural practices or the development of a sound child immunization policy or any of the other innumerable goals which are pursued by Australia's development assistance program.

2.1.1 Human Rights Implications

Most development has human rights implications. When well designed and implemented, health programs promote the right to health, education programs promote the right to education and agriculture programs promote the right to work. Well-designed microcredit programs seem particularly effective in promoting access to a broader range of rights amongst the poor. Thus it is not particularly necessary for a well-designed country program to contain a 'human rights' sub-program or project or for human rights to even be mentioned in the program strategy for the program to achieve the advancement of human rights.

Unfortunately, there are examples of programs that have been successful in the sense that they have assisted economic or social development, but which have had a negative impact on the capacity of certain groups or individuals to exercise their rights. This is not surprising: development is intended to produce change and it is inevitable that some changes will produce some negative effects. Naturally the goal is to minimise the negative effects while maximising the positive effects. Australia's development assistance program generally has considerable experience in analysing and balancing potential positive and negative impacts (perhaps most notably in relation to environmental and gender impacts).

2.1.2 Technical Expertise

In the case of human rights impacts, however, the Commission perceives that Australia's development assistance program lacks sufficient specific human rights expertise and, as a result, the impact of programs outside of the human rights sub-sector on the protection of human rights may not be always fully appreciated.

As a result of both the heavy workload carried by AusAID staff and the lack of substantial technical expertise in the sub-sector, programs that are directly targeted at advancing the promotion and protection of human rights as their primary goal, represent real challenges for Australia's development assistance mechanisms. The work is necessarily long-term, lacks reliable indicators and does not easily lend itself to

traditional assistance methodologies. An organisation that lacks a high level of technical expertise naturally and properly relies on strict administrative mechanisms in order to be confident of achieving the required level of accountability and transparency. Although human rights activities are sometimes not amenable to standardised analytical devices, AusAID – sensibly in the circumstances – insists on applying those devices. Those devices will often show that activities in the human rights sub-sector are, as one would expect, highly risky, controversial and prone to failure.

Moreover, because of the nature of human rights activities, successes when they come are often impossible to demonstrate in an objectively verifiable way. Officials who are held accountable for the successes and failures of their programs may find that human rights activities are naturally less attractive than activities in sectors which are more amenable to standard analytical devices and where there is less risk of failure. As the need for Australian assistance is always greater than the funds available, the attractiveness of interventions in other sectors – where the outcomes are predictably positive and which are uncontroversial – can be well understood.

The difficulties presented by the sector has not prevented Australia from sponsoring human rights programs, and this fact is a credit to the broad vision of AusAID. However the obvious difficulties that these programs present and the lack of specific expertise in the sector may help to explain why so few of Australia's development assistance activities are overtly targeted at advancing human rights. This contrasts with the foreign aid programs of some other countries of similar size and stature, most notably Sweden² and Canada.

2.1.3 Application of HREOC Expertise

Bilaterally, HREOC is currently working under Records of Understanding (ROUs) with AusAID to provide technical expertise to various small development assistance programs involving China, Indonesia, Vietnam and South Africa. While these programs are all quite different from each other, HREOC's involvement in each case rests on the application of the expertise developed by HREOC as a result of its domestic work, to the achievement of the aid program objectives. Fundamentally the programs work towards their objectives through the application of Australia's domestic human rights expertise to other countries. The objectives for these programs are set by AusAID – sometimes in consultation with HREOC – as a part of the overall country program strategy.

As a result of these and previous activities HREOC has developed a modest level of expertise in international technical cooperation in the human rights sub-sector. However, because HREOC has no direct development assistance mandate, it has not sought to develop this expertise beyond what is necessary to satisfy the immediate need of AusAID for technical expertise. Even meeting these rather small-scale needs is often difficult because HREOC cannot devote resources in a way that detracts from its domestic

² When the Swedish International Development Agency recently commissioned a study of the evaluability of democracy and human rights projects the evaluation team was able to identify more than 500 relevant projects.

mandate. Thus Australia's capacity to provide substantial and effective development assistance in the human rights sub-sector is limited: limited by HREOC's inability to devote significant resources to development assistance, limited by the high risk that attaches to such projects, and limited by a lack of substantial expertise in the sub-sector in Australia's national development assistance agency.

On the other hand the combination of HREOC's human rights expertise and AusAID's development cooperation expertise can result in effective development assistance that seems to have a positive impact (given the long-term nature of such assistance and necessarily subjective nature of human rights evaluation it is inadvisable to reach firm conclusions about short term impacts). The relationship between HREOC and AusAID is naturally affected by the differing priorities of professionals working in different disciplines, but, allowing for these professional differences, the relationship between HREOC and AusAID is strong and officials from both organizations have been able to work effectively and efficiently to achieve common goals. HREOC is appreciative of the efforts of AusAID, particularly since 1997 when Governance was made a key aid sector, to incorporate regard for human rights into its bilateral programs.

2.1.4 Effectiveness

HREOC has no doubt that development assistance is an effective device for advancing human rights. In the case of countries that are not able or willing to devote significant resources to human rights, policy dialogue and development assistance are effectively the only way for Australia to achieve an impact. While the policy dialogue plays an important role and may be the necessary precursor to any advances, it is technical assistance that is likely to be of practical substance.

In countries that have already made a commitment to the promotion and protection of human rights, development assistance can strengthen the partner country's effectiveness across the entire spectrum of human rights promotion and protection. Often, for political or for technical reasons, it is more effective to provide such development assistance multilaterally – for instance through the APF or the UN system – but where the circumstances are right, bilateral development assistance which underlies the creation of a relationship between HREOC and a like institution in a developing country can be very effective. The technical level relationship can be particularly effective because it removes much of the 'heat' of human rights. The political overtones that can complicate human rights programs tend to be put aside when Australian professionals in the field are able to deal directly with their counterparts in developing countries.

AusAID, as an executive department of the Australian Government, is often seen as a direct Government authority, while the Commission, as a statutory organization, is seen to be more removed from Government. Thus developing the relationship between the Commission and other similar Commissions can overcome the hesitation of some human rights organizations to accept assistance directly from the agencies of foreign governments.

The Komnas HAM Capacity Building Program demonstrates the value of technical/professional cooperation between like organizations and the value of a gradualist and flexible approach. Initially this program was developed by AusAID and the APF while President Soeharto was still in power. Given the political sensitivities associated with providing development assistance to the Indonesian National Human Rights Commission, it was felt that it would be more effective to initially channel the assistance multilaterally through the APF. Following the transition of Indonesia to more democratic rule, the management of the program was recently transferred from the multilateral forum of the APF to HREOC bilaterally. Under the program Australian experts in fields as diverse as sex discrimination and computerised complaint handling work with their Indonesian counterparts to develop the most appropriate policy and processes for Indonesian circumstances. HREOC believes that the broad and deep relationship that is developing between HREOC and Komnas HAM will serve both organizations and both countries well.

In countries whose support for the promotion and protection of the full range of human rights is somewhat more equivocal or somewhat at odds with western approaches to the issues, the provision of development assistance is far more problematic, but still possible and desirable. Although such programs are inevitably political in nature and require a great deal of patience in implementation, in the right circumstances, they can have a significant impact. Emphasising the technical nature of the assistance – practical solutions to practical problems – and working at the professional rather than the political level can sometimes result in quite surprising advances.

AusAID's Human Right Technical Cooperation Program with China is an example of an innovative program that has slowly but surely become a contributor to the capacity of key Chinese agencies to introduce reform policies and processes that will serve to promote and protect human rights. China has no national human rights agency. The program therefore works directly with the key agencies that have an impact on the capacity of the Chinese people to exercise their rights. The program is effective because it works behind the scenes on technical reform and, partly as a result of its quiet approach, has been able to establish a relationship of trust. It is a mark of the success of this particular program that significant Chinese agencies are now eager to be involved and are beginning to provide their own funding.

While this may be a model for other programs, HREOC well appreciates that such programs are always at risk of not achieving their objectives, or of achieving their objectives over such a long timeframe that in development assistance terms they must be considered to have failed. This means that support for such programs is highly problematic from the point of view of a development assistance agency. A bilateral country program manager would have some difficulty seeing a human rights intervention that has a good chance of failing to produce a development impact as being more desirable than another intervention that will almost certainly produce a development impact.

In addition, a donor agency would find it even more difficult to sustain a human rights project when failures in implementation result in continuing human rights abuses or when despite a program achieving success within its terms of reference, abuses continue in other areas.

3. INQUIRY'S TERMS OF REFERENCE – 2

3.1 Project Aid

The following issues relate mainly to the experience of the APF in implementing and delivering human rights project activities on behalf of AusAID and other donors.

3.1.1 A Strategic Approach

The APF approach to the development and implementation of aid has been to focus on practical projects that improve the capacity of domestic institutions to protect and promote human rights. It seeks to supplement domestic institutional resources by supporting national institutions that have a mandate to protect and promote human rights through the provision of advice, training, equipment, materials, facilities and other standard 'delivery vehicles'. The approach is one that strategically assesses where to best undertake positive steps to assist in the realisation of human rights. In order to make this assessment the APF undertakes a participatory assessment of the needs, capacities, priorities, risks and options. This results in the development of a comprehensive plan detailing a range of integrated human rights assistance projects designed to strengthen institutional capacity in a holistic and coordinated way.

In making a strategic assessment gauging the extent of a beneficiaries domestic commitment to protecting and promoting human rights is obviously crucial. The stronger the domestic commitment then the greater the chance of success. Even when domestic commitment is in doubt, it does not necessarily mean that a donor should not engage. Indeed, in such a situation it can be argued that there is even a greater need for human rights assistance. In these cases a careful judgement must be made about the range of possible interventions. For example the APF has supported a number of reformist institutions in situations where their governments have not been 'human rights friendly'. Governments are not monolithic – and well targeted human rights assistance can lead to human rights reforms that have a direct bearing on the lives of people. This assistance can not only strengthen political commitment to reform, it can also promote such commitment where it is absent.

An example of this approach is the APF's assistance to the Indonesian Human Rights Commission (Komnas HAM). When established in 1993, many commentators felt that the creation of Komnas HAM did not reflect any commitment on behalf of the then Indonesian Government to protect and promote human rights. Rather, it was felt that Komnas HAM had been created as a 'smokescreen' – something that the Indonesian Government could use to deflect international criticisms about human rights abuses. However Komnas HAM soon proved its critics wrong by undertaking a number of

significant investigations into human rights abuses that were highly critical of the then government. By establishing a program of human rights cooperation between Komnas HAM and the APF, funded by AusAID, the Australian government provided much needed support for the Commission during its formative stages.

3.1.2 Beneficiary Involvement

No totally externally conceived program of assistance could ever hope to effect meaningful change or remain sustainable after the departure of the aid provider. An understanding of context, culture and political tradition is vital to the design of successful development aid programs. Without access to this domestic knowledge, international expertise, however sophisticated, will lead to errors. Ultimately, national institutions and organisations must take charge of reform processes in their societies and guide the direction of external assistance for those reforms. Therefore effective participation by beneficiaries in aid programs is a necessary, though not sufficient, condition of their success. Human rights reform efforts that do not have the support of beneficiaries, or for which beneficiaries do not take responsibility, will not be legitimate, effective or sustainable.

For this reason alone, it is essential to ensure the full involvement of beneficiaries in the design and implementation of aid projects. To do so is not simply a matter of principle but also an important practical requirement for successful human rights assistance.

It is the commitment to the involvement of beneficiaries in the design and implementation of aid programs that underpins the ideas of partnership and participation. For the APF the majority of its programs are directed towards national human rights institutions. In these instances the institution itself, which has been granted the mandate and functions by its legislature to protect and promote human rights, is an equal partner. By working with these institutions the APF is able to ‘plug in’ to domestic expertise and local knowledge. It is the utilisation of this knowledge in the design and delivery of human rights aid – the local ‘what, where and when’ – which enhances the success of APF programs.

3.1.3 Donor-Beneficiary Relationship

Working in an often unpredictable and rapidly evolving political and social environment, the relationship between the donor and the beneficiary is crucial to the success of human rights assistance programs. Beneficiaries place a high premium on flexibility in the aid relationship. The extent to which relationships are responsive to changing beneficiary needs is an important factor in success. Donors have often been criticised for delays in delivery, unreasonable bureaucratic requirements, an over-reliance on a ‘project management culture’ devoid of human rights expertise and not sufficiently being attuned to local needs. Beneficiaries value donors who are professional, not overly bureaucratic or formulaic, accessible, transparent and flexible in their approach.

However the building of direct relationships between donors and beneficiaries is becoming increasingly rare. Most donors now use ‘intermediary’ organisations – both commercial and public sector bodies as well as multilateral or regional organisations - for the implementation of their aid projects. In the case of the APF, such an approach builds upon the already existing relationships between it and its member institutions. In the APF’s experience our beneficiaries value this approach on the grounds that the APF can:

- manage institutional bureaucracy
- filter out concerns regarding a donor’s real or perceived ‘political’ motives
- be flexible in adjusting programs to meet the local context
- promote greater domestic ownership
- provide ongoing substantive advice and project management support and
- deliver a high degree of responsiveness to local needs.

One administrative aspect which needs to be highlighted is that human rights aid to the justice sector, and in particular to national human rights institutions, involves engagement with institutions that are independent under the law. Reforms cannot be imposed politically on such institutions and standard donor approaches to advice, funding and even communications are not always appropriate.

3.1.4 Donor Coordination

While there always appears to be a commitment in principle among donors to coordinate their assistance activities, in practice it rarely seems to happen. In many cases, each donor’s need to ensure the visibility of its own projects hampers effective coordination. In addition, on a practical level, there is a lack of information on what projects are underway and which donors are providing assistance. In attempting to develop a coordinated plan of human rights assistance considerable time is spent searching for this basic information.

The APF has worked in situations involving multiple donors who have all had different approaches, models, plans and agendas. The result is the delivery of uncoordinated piecemeal reforms – which often involves duplication of effort and the wasting of scarce resources. To counter such a situation the APF has found that beneficiaries strongly support the development of a strategic and coordinated approach among donors to the delivery of human rights assistance. A recent example of such an approach has occurred in Nepal. In this instance the APF, funded by AusAID, worked with the OHCHR and the Nepalese Human Rights Commission to design a coordinated program of assistance. Such an approach has the advantage of minimising the administrative responsibilities of the beneficiary in preparing regular monitoring reports by ensuring that only one central report needs to be prepared and sent to all participating donors, rather than having to respond to all the differing reporting requirements of the various donors.

3.1.5 Long-Term Commitment

Measuring the success or failure of human rights aid projects is a difficult task. Since human rights assistance is particularly required in often hostile environments, it follows that, in almost all cases, such assistance will not immediately lift performance so that it meets international human rights standards. In this respect, when it comes to measuring effectiveness and success, it is important that evaluations of human rights aid projects take into account both capacity and context.

In difficult country situations, human rights activities will produce advances in the protection and promotion of human rights. Unfortunately there may also be large steps backwards. Transitional periods are always marked by moves forward and backward in the reform process. The delivery of human rights aid is an important component in supporting reform processes and it is important that it ‘stay the course’ to sustain reforms.

Human rights reform is, necessarily, a long-term process. Donors should not look for simple short-term indicators of success. It is not just about setting up or strengthening institutions, but about changing how people think – about recognising the value of rights and their enforcement. The implication is that donors must take a long-term view, support long-term projects and continue their support through inevitable periods of instability.

4. INQUIRY’S TERMS OF REFERENCE – 3

The third and final term of reference for the Inquiry specifically cites the APF. The following information provides an overview of APF activities and their effectiveness. A brief overview of the activities of the OHCHR and the APF’s relationship to the UN is also provided is included as an annexure to this submission.

4.1 APF Activities

In order to meet its objectives, the APF undertakes a wide range of regional activities on human rights. The approach of the APF is to focus on practical outcomes through constructive cooperation and dialogue. The work of the APF can be categorised under three broad areas:

- (i) Strengthening the capacity of individual APF members to better enable them to undertake their national mandates.³
- (ii) Assisting governments to establish their own national institutions in compliance with the minimum criteria contained in the *Paris Principles*.⁴
- (iii) Promoting regional cooperation on human rights issues.⁵

³ Comprehensive programs have been developed for the Indonesian, Nepalese and Sri Lankan Human Rights Commissions. Specific projects have also been implemented with the Indian, Philippines and Fiji Commissions.

⁴ Assistance has been provided to Bangladesh, China, Fiji, Malaysia, Mongolia, Pakistan, Papua New Guinea, South Korea, Sri Lanka and Vietnam.

⁵ In addition to the examples cited in this submission, a wide range of issues have been addressed on a regional basis by the APF. Information on these issues are contained in the Concluding Statements of the Annual Meetings of the APF which are available on the website.

Under these three broad areas the APF Secretariat's operations have concentrated on the development and delivery of technical cooperation projects, information dissemination, and administrative support for the APF.

4.1.1 *Technical Cooperation Projects*

These projects are developed in cooperation with partner institutions or governments. The objectives of technical cooperation are to:

- improve the levels of appropriate skills and knowledge among the staff of national institutions in the region
- enhance national institution structures and procedures in accordance with the *Paris Principles* to facilitate a more effective system to protect and promote human rights
- provide governments in the region wishing to establish a national institution with assistance and information to facilitate the development of a national institution in accordance with the *Paris Principles*.

The Secretariat's approach to developing technical cooperation projects is a very practical one. APF members help and support each other to strengthen human rights observance through the provision of joint training, advice and institutional capacity building programs.

The APF is not a funding agency and has no funds of its own to implement technical cooperation activities. Rather, its role is to develop proposals that can then be taken to potential funding organisations, whether government or private, for consideration. It is important therefore that any proposals for technical cooperation be developed in a comprehensive manner and in formats that meet with the requirements of the funding agency.

Technical cooperation projects developed within the framework of the APF generally fall into two categories - (i) country-based or bilateral projects and (ii) regional projects.

Country-based or bilateral projects are developed between the Secretariat and a particular institution/country. The nature of these projects tend to be medium to long term technical cooperation activities focused on the development and strengthening of national human rights institutions. While each project differs depending on the local needs and context, the APF has developed and implemented programs for:

- human rights law courses
- strategic planning workshops
- training in alternative dispute resolution
- development of computerised complaints processing systems
- training in the investigation of allegations of human rights violations
- the development of legal advocacy skills

- strengthening public affairs and information programs, and
- training community human rights workers.

Regional projects tend to be issue-based and short to medium term. These projects are developed by the APF and focus on identified regional areas of common need or concern. For example the APF has run a number of regional workshops focusing on the transfer of practical skills and knowledge.⁶ In addition to the workshops the APF runs regional training programs. For example the APF is currently developing a regional training program on forensic investigation skills. This project involves the development and implementation of regional training programs to strengthen the capacity of national human rights institutions and law enforcement agencies to effectively investigate serious violations of human rights (such as extrajudicial execution, disappearance, torture or arbitrary detention).

Another important regional initiative is the APF's Advisory Council of Jurists. The Council is a historic advance in the protection and promotion of human rights in the Asia Pacific region. For the first time a permanent international juridical body is in a position to review and assess human rights issues in the region. The Council is comprised of eminent jurists who have held high judicial office or senior academic or human rights appointments. Each member institution of the Forum may nominate one national of its own country to serve on the Council. Each member jurist serves a five-year term, which may be renewed once. Members serve in their personal capacity independent of their governments. Members are not able to delegate their functions to any other person. The Secretariat of the Forum serves as the secretariat to the Council.⁷ The deliberations and recommendations of the Council are available on the APF's website.

4.1.2 Information Dissemination

The APF Secretariat disseminates information on the role and functions of national human rights institutions and the activities of the APF. The objectives in this area are to:

- improve awareness among political and administrative decision-makers and the wider community of the value and importance of national human rights institutions

⁶ The outcomes of the following three workshops are available on the APF's website – *The Role of Media and Public Affairs in the Promotion of Human Rights*, Indonesia, 1998; *National Institutions and Non-Governmental Organisations: Working in Partnership*, Sri Lanka, 1999; *National Institutions and the Rights of Women*, Fiji, 2000.

⁷ The current members of the Council are:

Australia	Sir Ronald Wilson
Fiji	Justice Joni Madraiwiwi
India	Mr F.S. Nariman
Indonesia	Professor J E Sahetapy
New Zealand	Justice Silvia Cartwright
Philippines	Mr Sedfrey Ordonez
Sri Lanka	Mr R K W Goonesekere.

- improve awareness among relevant regional governments and agencies of appropriate functions, powers, structures and legislation for national institutions established in accordance with the *Paris Principles*
- improve awareness among regional national human rights institutions of the legislation, casework, techniques, procedures and outcomes of other national institutions both within and outside the region
- provide information about APF activities to members institutions, governments (inside and outside the region), United Nations agencies, non-government organisations and the general community.

The APF Secretariat has established a comprehensive website and produces a regular newsletter that is distributed throughout the region.

4.1.3 *Evaluation of Effectiveness*

The APF's activities have been evaluated by its member institutions, regional governments, NGOs, the UN and donor agencies. In the performance of bilateral activities the APF undertakes an evaluation of its projects with individual beneficiary agencies. These evaluations have consistently shown a high degree of support for the relevance and usefulness of the APF's activities. In addition, the APF (and AusAID, where they have funded specific APF projects) have received positive evaluations from individual members on the implementation of APF assistance. For example, the Fiji Human Rights Commission recently wrote expressing their gratitude to the APF Secretariat in providing support to the Fiji Commission during the recent attempted coup and to the Australian Government for its continued support of the APF.

Regional governments have also expressed their appreciation for the level of support and professionalism shown by the APF in the delivery of human rights projects.⁸ Regional governments have, in particular, appreciated that the APF's practical approach to improving domestic structures for the promotion and protection of human rights. The increasing creation of national human rights institutions is a direct example and result of this assistance. Since the creation of the APF its membership has doubled and there are another four institutions that are anticipated to be members within 18 months.

NGOs have traditionally been known for their critical views. In relation to the APF, NGOs – speaking through their umbrella organisation, the Asia Pacific Human Rights NGO Facilitating Team (APHR-FT) – have welcomed “the increasing effectiveness the Forum”. Conscious of the important role of NGOs and civil society in the promotion and protection of human rights, the APF has made concerted efforts to ensure that the relationship between national institutions and NGOs is developed in a positive and productive way. To that end the APF held a regional workshop in Kandy, Sri Lanka to explore practical strategies for national institution/NGO partnerships. NGOs, in their report of the workshop, stated that

⁸ The Australian Government, in participating in APF activities, have undertaken their own independent evaluation of the APF's performance and the Government strongly supports the utility of the APF as a regional human rights mechanism.

The Kandy Workshop was an important initiative of the Asia Pacific Forum of National Human Rights Institutions in establishing formal and constructive dialogue with human rights NGOs from the region. Critical to the success of the workshop was the co-operation between the Forum Secretariat and the APhR-FT.⁹

The FT welcomed the workshop as “an initiative that enhanced the Forum's effectiveness, as well as increasing its credibility among groups that suffer human rights abuses. The Workshop was an important step toward strengthening relations and co-operation between national institutions and NGOs in the region”.¹⁰

The UN has been particularly supportive of the APF. Given that the Asia Pacific region is the only region in the World without a government-to-government regional human rights arrangement, the UN views that APF as the most effective regional mechanism for the advancement of human rights. Indeed, the UN High Commissioner for Human Rights has consistently praised the work of the APF and stated that it serves as a model for the work of national institutions in other regions of the world. At a recent meeting of inter-American national institutions held in Mexico in December 2000, the APF was showcased as the most advanced and sophisticated regional arrangement of national human rights institutions.

Finally, donors have undertaken independent evaluations of the performance of the APF. AusAID have sent representatives to major APF activities to make independent assessments of the work of the APF. Continued donor support is probably the best indicator of their assessment. In addition, however, the ROU's entered into between APF and AusAID also require detailed monitoring reports. These reports detail how successful an APF project has been in meeting stringent outcome and performance measures. The APF is pleased to report that in the implementation of AusAID projects it has met all performance targets.

5. CONCLUSIONS

HREOC and the APF believe that human rights assistance, properly provided, can and has had an important impact. Success depends in large measure on the degree to which human rights are integrated into the development process as a whole, on the adoption of a strategic approach and on the establishment of effective and honest partnerships that recognise the authority of beneficiaries.

⁹ www.hr-alliance.org

¹⁰ Id.

Annexure One – Submitting Organisations

Human Rights and Equal Opportunity Commission

The Human Rights and Equal Opportunity Commission (HREOC) was established by an Act of Parliament in 1986.¹¹ HREOC's broad objective is to promote respect for and observance of the human rights of all people in Australia and their access to equal opportunity.

Domestic Functions

The major functions of HREOC are outlined in

- section 11(1) and 46C(1) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth)
- section 20(1) of the *Racial Discrimination Act 1975* (Cth)
- section 48(1) of the *Sex Discrimination Act 1984* (Cth), and
- section 67(1) of the *Disability Discrimination Act 1992* (Cth).

In addition

- sections 27(1), 28(1), 28A(1) of the *Privacy Act 1988* (Cth) confer functions on the Privacy Commissioner, as do several other Commonwealth statutes,
- section 209 of the *Native Title Act 1993* (Cth) confers functions on the Aboriginal and Torres Strait Islander Social Justice Commissioner, and
- section 111A of the *Workplace Relations Act 1996* (Cth) and other general plenary powers confer functions on the Sex Discrimination Commissioner in relation to federal awards and equal pay.

HREOC investigates alleged infringements under the three anti-discrimination laws and privacy legislation and attempts to resolve these matters through conciliation where this is considered appropriate. Where conciliation is unsuccessful or inappropriate, complaints alleging sex, race or disability discrimination may be terminated by HREOC. The complainant may then apply to the Federal Court to have their complaint heard.

Under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) HREOC inquires into acts or practices that may infringe other human rights or that may otherwise be discriminatory. In the event that infringements are identified and/or conciliation is unsuccessful or inappropriate, HREOC may make recommendations and report these to the Attorney-General. These reports must be tabled in Parliament.

HREOC fosters public discussion and undertakes and coordinates research and educational programs to promote human rights and eliminate discrimination. HREOC may advise on legislation relating to human rights and monitor its implementation. It

¹¹ *Human Rights and Equal Opportunity Commission Act 1986* (Cth).

reviews existing and proposed legislation for any inconsistency with human rights or for any discriminatory provision which impairs equality of opportunity or treatment in employment or occupation. It examines any new international instruments relevant to human rights to advise the Federal government on their consistency with other international treaties or existing Australian law. HREOC may also propose laws or recommend action that the Government should take on matters relating to human rights and discrimination.

Further information on HREOC's primary domestic role and functions is available at www.hreoc.gov.au.

International Functions

HREOC has had relatively little contact with Australia's development assistance program, both because of the nature of HREOC's mandate and because Australia's development assistance program has not sponsored many projects specifically aimed at the promotion and protection of human rights and designed so as to make use of HREOC's particular expertise. Nonetheless, HREOC's role of promoting and protecting human rights domestically has led to a modest international role incidental to its mandate.¹² This international role is with respect to four, sometimes related, strands:

- (i) Australia's international obligations as a result of its status as a party to various international instruments;
- (ii) contact with agencies in other countries with responsibilities similar to those of HREOC;
- (iii) as a sponsor and supporter of the Asia Pacific Forum of National Human Rights Institutions, and as a member of that organisation; and
- (iv) in the provision of technical expertise to bilateral development assistance activities intended to advance human rights in other countries.

While the second of these roles may, on occasion, have a development assistance component, it is the last two roles which are most directly relevant to the Terms of Reference of the Inquiry.

Asia Pacific Forum of National Human Rights Institutions

In July 1996 four national human rights institutions of the Asia Pacific region met in Darwin, Australia, together with the Office of the United Nations High Commissioner for Human Rights (OHCHR), a number of regional governments and non-governmental organisations. The four national human rights institutions were from India, Indonesia, Australia and New Zealand. The purpose of the meeting was to discuss improving the effectiveness of existing national human rights institutions through co-operative

¹² HREOC first reported on its international role and activities in *'The International Role of the Australian Human Rights and Equal Opportunity Commission'*, Occasional Paper No 4, January 1997. HREOC's Annual Reports and website provide further details of its international activities.

activities. In addition the Commissions agreed to encourage and provide practical assistance to regional governments to establish national human rights institutions.

To advance these objectives, the national institutions decided to establish a regional network of national institutions, which they called the Asia Pacific Forum of National Human Rights Institutions (APF). The Philippines Human Rights Commission, which was unable to send representatives to attend the meeting in Darwin, joined the APF soon after its formation.

Membership of the APF

Membership of the APF is open to all national human rights institutions within the Asia-Pacific region that are in compliance with the UN General Assembly endorsed 'Principles Relating to the Status of National Institutions' (more commonly known as the *Paris Principles*). APF Members consider that the *Paris Principles* are the minimum standards that a national institution must comply with prior to being admitted as a member of the APF.¹³ There are no other restrictions on membership.

There are currently eight national human rights institutions in the region that are members of the APF: New Zealand (established 1977), Australia (1981), Philippines (1987), India (1993), Indonesia (1993), Sri Lanka (1997), Fiji (1999) and Nepal (2000). Work is well advanced toward the establishment of national institutions (or improving existing institutions to ensure their compliance with the *Paris Principles*) in Bangladesh, Iran, Malaysia, Mongolia, Papua New Guinea, South Korea and Thailand. Other countries in the region are also actively considering the establishment of a national human rights institution, such as Cambodia and Japan.

National institutions that are not established in conformity with the *Paris Principles* are welcome to attend and take part in the APF's activities. However these institutions are not entitled to vote or take part in the APF's decision-making processes.

Governments within the region, whether or not they have established national institutions, can be associated with the APF as observers. Meetings of the APF also provide for observer status to be given to non-regional governments, relevant institutions, UN agencies and NGOs.

¹³ The key criteria in the *Paris Principles* are:

- independence guaranteed by statute or constitution;
- autonomy from government;
- pluralism, including in membership;
- a broad mandate based on universal human rights standards;
- adequate powers of investigation; and
- sufficient resources

See - *Principles Relating to the Status of National Institutions*, Commission on Human Rights resolution 1992/54 of 3 March 1992 and General Assembly resolution 48/134 of 20 December 1993.

Objectives of the APF

The member institutions of the APF determined that its objectives are to:

- respond where possible with personnel and other support to requests from governments in the region for assistance in the establishment and development of national institutions;
- expand mutual support, cooperation and joint activity among member institutions through:
 - (i) information exchanges
 - (ii) training and development for institution members and staff
 - (iii) development of joint positions on issues of common concern
 - (iv) sharing expertise
 - (v) periodical regional meetings
 - (vi) specialist regional seminars on common themes and needs
 - (vii) responding promptly and effectively to requests from other national institutions to investigate violations of the human rights of their nationals present in a country that has a national institution;
- welcome as participants in the APF other independent national institutions which conform with the *Paris Principles*;
- encourage governments and human rights non-government organisations to participate in APF meetings as observers.

Further details on the range of projects and activities undertaken by the APF to advance the above objectives can be found on the APF's website – www.apf.hreoc.gov.au. A selected range of APF activities are highlighted in section 5 of this submission.

Relationship between HREOC and the APF

The relationship between HREOC and the APF is twofold. Firstly, HREOC is one of eight APF members. It therefore collectively participates with other APF members in all APF activities and decision-making. As a founding member of the APF, HREOC has played a leadership role in the APF's establishment and direction. Secondly, HREOC currently is the host institution for the Secretariat of the APF and it provides the Secretariat with all corporate, financial and employment services.

Management and Secretariat

APF members are the primary decision makers of the APF and the annual meetings of the APF act as the main decision making body.¹⁴ A wide range of issues are discussed at annual meetings and the concluding statements and discussion papers of the meetings can be found on the APF's website.

¹⁴ Since the first meeting of the APF in Darwin in 1996 the members of the APF have met in New Delhi in 1997, Jakarta in 1998, Manila in 1999 and the Fifth and most recent Annual Meeting in Rotorua, New Zealand, in August 2000.

APF members have created the position of “Regional Coordinator” of the APF to act as the main avenue for decision-making in-between annual meetings. The Regional Coordinator either makes decisions directly on a range of issues or alternatively refers more important issues to all APF members for their review and decision. The New Zealand Human Rights Commission currently holds the position of Regional Coordinator.

It was the intention of the individual national institutions when they established the APF that it be an ongoing regional organisation – rather than just a series of meetings. The APF is therefore serviced by a Secretariat comprised of three full-time officers and consultant’s engaged on a project-by-project basis. It is the role of the Secretariat to implement the decisions of the APF and to develop and manage the APF’s projects and activities. The Secretariat works in close cooperation with the Regional Coordinator and the OHCHR.

At the establishment of the APF, HREOC agreed to host the Secretariat for an initial period of three years – though this has subsequently been extended at the request of APF members. This responsibility has entailed seconding staff to work in the Secretariat in addition to providing corporate, banking and financial support services.

Finances

As the APF was established with no independent funds – and given the limited resources of its members – it requires donor funding to undertake its project activities. It is important to emphasise that the APF is not a ‘donor’ agency. A request for assistance to the APF made by a member institution or a regional government can only be met if the APF sources funding from a donor for that purpose.

The ‘core’ activities of the Secretariat are funded through HREOC by the Australian Government’s aid agency, AusAID. Currently the APF Secretariat receives an annual contribution from the Australian Government of AUD \$225,000. The current AusAID funding arrangement concludes on 30 June 2001.

While HREOC has been allocated this special funding from the Australian Government to undertake the responsibility of hosting the Secretariat, the amount of this funding does not cover all the running costs of the Secretariat. The initial establishment of the Secretariat and its operation over the first four years has therefore required the assistance and support of HREOC to allow it to become operational. Such a situation is clearly not viable if the APF is to survive as an organisation. The Secretariat needs to expand its financial base in order to achieve the APF’s objectives and continue as an organisation.

In addition to the AusAID funding, the Secretariat receives funding on a project-by-project basis from the OHCHR and other UN agencies, the Australian and New Zealand governments and a small number of miscellaneous private donors. For example, the OHCHR funding enables the attendance and participation of delegates from the APF’s

member institutions, select governments and non-governmental organisations to annual meetings, workshops and other training activities.

Future Directions

The legal structure and governance processes of the APF are currently under review. The member institutions of the APF resolved at its most recent fifth annual meeting that the organisation should become a separate independent legal entity.

Despite its evident value as an emerging regional coalition of member institutions, all of which are tasked with the promotion and protection of human rights in their respective countries under the shared values of the *Paris Principles*, the APF has been seen at the regional level, and especially by potential donors, as an Australian institution. While this perceived dominance is understandable during the initial stages of the APF's development, it has hindered the ability of the APF to gain an appropriate level of regional and international support for its core activities.

The transition of the APF from its current dependent structure to a more independent structure not only opens the way for enhanced funding at a regional and international level but equally importantly, provides the most flexible and workable framework enabling greater participation by all member institutions. A more participatory model is desirable at this stage of the APF's development. For example, the appointment of a chairperson from amongst the APF's members will be an important development in providing a clear identifiable focus for the organisation and in demonstrating its regional nature.

The future of the APF is dependent upon the securing of core operational expenses and sustainable funding. The standing of an organisation seeking such support must be evidenced by a well-considered business plan, a sound legal basis and strong leadership in management and governance. The APF is working to ensure that these factors are in place. Over the next few months a working group of the APF, which includes HREOC as a member, will consider a range of issues and options concerning the management of the APF and they will submit recommendations to all APF members for their consideration and decision.

The transition process from APF core finances, staffing and in-kind support coming from the Australian and New Zealand governments, HREOC and the OHCHR, to one where the APF funding base and management processes reflect a more regional makeup, reflects the rapid growth and success of the APF.

Annexure Two – Global and Multilateral Programs

The APF and its members (including HREOC) have discussed the role of global and multilateral programs and their impact on the observance of human rights – particularly in relation to economic, social and cultural rights.

Given that the APF is a regional organisation, the discussion has not specifically focused on the role of any one donor agency and its relationship to multilateral or global programs. The following comments are not, therefore, specific to AusAID. Rather, they relate to the role of multilateral or global institutions, in particular the International Monetary Fund, and how their activities impact on the observance of human rights. While this approach, by necessity, means that the subject is treated in a general way – the discussion nonetheless highlights a number of issues concerning the need to ensure that global and multilateral aid programs protect and promote human rights rather than contribute to their violation.

The UN, Human Rights and Multilateral Programs

Human Rights are written into the United Nations Charter. They constitute one of the three main objectives of the UN and an obligation for all member States. International co-operation is explicitly envisaged as a method for the promotion of human rights and the UN has the task of coordinating it. In addition, global policy making – in human rights, development and development aid – is also within the province of the United Nations.

The General Assembly of the UN has often affirmed the central role of human rights in the goals of development and the methods of their attainment. Indeed, the proliferation of policy documents in both human rights and development inhibits their mention here. Suffice to note that the interrelationship between human rights and development has been affirmed on numerous occasions.¹⁵

¹⁵ The UN General Assembly in 1957 said that “a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and better standards of living, and the observance of and respect for human rights and fundamental freedoms” *GA resolution 1161 (XII)*. The International Conference on Human Rights, held in Teheran in April/May 1968, said “that the enjoyment of economic and social rights is inherently linked with any meaningful enjoyment of civil and political rights and that there is a profound interconnection between the realisation of human rights and economic development”. In the past decade, a series of thematic UN global conferences has reinforced and elaborated on this issue. The 1990 World Summit for Children, the 1992 Earth Summit, the 1994 World Summit for Social Development, the 1994 Conference on Population and Development, the 1995 World Conference on Women, the 1996 Conference on Human Settlements (Habitat II) and the 1997 World Food Summit all adopted comprehensive action plans which highlighted the political and economic context in which human rights are best advanced. The linkage between human rights and development was dealt with under the agenda item on a New International Economic Order and human rights in the 1970s and on the right to development in the 1980s. Cf. R Ferrero (Special Rapporteur), *The New International Economic Order and the Promotion of Human Rights*, UN Doc. E/CN.4/Sub.2/1983/24/Rev.1; and Analytical compilation of comments and views on the implementation of the Declaration on the Right to Development prepared by the Secretary-General, UN Doc. E/CN.4/AC.39/1988.

This interrelationship is based on the inclusion of human rights in the very definition of development and on the obligation of all parts of the UN system to observe human rights law.¹⁶ The former is easy to identify – for example, ‘*policies aimed at sustainable development imply the integration of human rights in the development process*’.¹⁷ The latter has been made conspicuous by complaints against its non-observance.¹⁸ This is particularly important with respect to the practice of UN financial aid agencies because UN development aid that jeopardises the implementation of human rights obligations can be challenged as a violation of international human rights law.

A review of the whole UN system from the viewpoint of the linkage between human rights and development aid would necessitate an entire book and therefore is out of the scope of this submission. The development aid system is huge, complex and fragmented. There is a multitude of UN organs, agencies, funds, programs, most of which pursue a policy of their own and differ in their sectoral, cross-sectoral, regional or issue orientation. There is virtually no co-ordination at the level of the UN in, to use the UN term, ‘operational activities for development’.¹⁹ Some organs of the UN strive to extend the application of human rights to development aid and some specialist agencies (the ILO, UNDP, WHO, UNESCO) include human rights in their mandates and assistance programs. Other UN agencies, however, such as the IMF, do not explicitly have a human rights mandate.

The challenge of including human rights in the definition of development is to ensure that human rights law is sufficiently ‘operationalised’ so as to be a practical tool for decision makers. This challenge has been recognised by the UN Committee on Economic, Social and Cultural Rights. It is useful to quote the Committee at length on this issue:

¹⁶ This is most clearly seen in the UN Declaration on the Right to Development. The declaration defines development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals". The Declaration affirms, perhaps more strongly than other international human rights instruments, the principle of the indivisibility and interdependence of all human rights ie, it calls for equal attention to be given to the promotion, protection and implementation of economic, civil, cultural, political and social rights. It also stresses the right to non-discrimination in development “without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Although the Declaration does not have legal force, it does elaborate the content of the right as well as the specific obligations for states and governments (both individually and collectively) that flow from the right. Most importantly, the right to development has been reiterated and further elaborated by consensus-at the UN World Conference on Human Rights (Article I (10) of the Vienna Declaration), the International Conference on Population and Development (Principle 3 of the Cairo Programme of Action), World Summit on Social Development (Commitment 1(n) of the Copenhagen Declaration) and the Fourth World Conference on Women (Article 213 of the Beijing Platform of Action). Each of these conferences unanimously (by consensus and not by vote) reaffirmed the right to development as a “universal and inalienable right and an integral part of fundamental human rights”.

¹⁷ Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on problems, policies and progressive measures relating to a more effective realisation of economic, social and cultural rights, resolution 1987/29 of 3 September 1987, preamble.

¹⁸ For example: F Moore Lappe et al, *Aid as Obstacle*, San Francisco, Institute for Food and Development Policy, 1980; T Hayter and C Watson, *Aid: Rhetoric and Reality*, London, Pluto Press, 1985; M Linear, *Zapping the Third World: The Disaster of Development Aid*, London, Pluto Press, 1985.

¹⁹ Cf. Policy review of operational activities for development: Report of the Director-General for Development and International Economic Co-operation, UN Doc. A/41/350 of 27 May 1996.

7. ... [D]evelopment co-operation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights. Many activities undertaken in the name of 'development' have subsequently been recognised as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the Covenant should, wherever possible and appropriate, be given specific and careful consideration.

8. Despite the importance of seeking to integrate human rights concerns into development activities, it is true that proposals for such integration can too easily remain at the level of generality. Thus, in an effort to encourage the operationalisation of the principle contained in Article 22 of the Covenant, the Committee wishes to draw attention to the following specific measures ...

- (a) As a matter of principle, the appropriate United Nations organs and agencies should specifically recognise the intimate relationship which should be established between development activities and efforts to promote respect for human rights in general, and economic, social and cultural rights in particular ...
- (b) Consideration should be given by United Nations agencies to the proposal, made by the Secretary-General in a report of 1979, that a 'human rights impact statement' be required to be prepared in connection with all major development co-operation activities;
- (c) Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenants are duly taken into account. This would apply, for example, in the initial assessment of the priority needs of a particular country, in the identification of particular projects, in project design, in the implementation of the project, and its final evaluation.²⁰

The APF and Economic, Social & Cultural Rights

APF members have recognised that the improved observance of economic, social and cultural rights around the globe and particularly within the Asia Pacific region is a major challenge that demands intensified efforts. Accordingly, the role of national human rights institutions in protecting and promoting economic, social and cultural rights has been accorded significant attention by the APF. The APF addressed this issue at its Third Annual Meeting in September 1998. The special theme for the Meeting was [Human Rights and the economic crisis in the Asia Pacific](#) and a comprehensive background paper on this topic was produced by the APF Secretariat.²¹ The APF called on governments, both in the region and outside, to give explicit effect to their commitment to the indivisibility of human rights, including through their input into the policies and actions of international financial institutions and of international and regional economic forums such as the WTO and APEC.

In 1999 the Fourth Annual Meeting chose to focus on the theme - *National Human Rights Institutions and Economic and Social Rights*. A background paper was prepared by the APF Secretariat in order to assist discussion of the issue. The background paper focused on those human rights in the International Covenant on Economic, Social and Cultural

²⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No.2, Article 22 – International technical assistance measures *UN Doc. E/1990/23, Annex III*.

²¹ A copy of the paper is available at www.apf.hreoc.gov.au.

Rights (ICESCR) which constitute the basic physical elements of the right to an adequate standard of living. This was reflected in the title of paper - [National Human Rights Institutions and Economic and Social Rights](#).²² The keynote speaker at the meeting was the Chairperson of the United Nations Committee on Economic, Social and Cultural Rights – Professor Dan Dan. Discussion at the meeting addressed the role which national human rights institutions have in helping to promote and protect economic and social rights in the context of a public policy environment which is dominated by an economic discourse that gives priority to liberalising markets and promoting free trade.

The special theme for the Fifth Annual Meeting held in New Zealand in 2000 was *National Human Rights Institutions and the Protection and Promotion of Economic, Social and Cultural Rights – International, Regional and National Strategies*. A background paper titled [National Human Rights Institutions and the Protection of Economic, Social and Cultural Rights: International, Regional and National Strategies: "The Business of Human Rights"](#) was prepared by the Secretariat for the meeting.²³ The keynote speakers on this issue were Justice P N Bhagwati, Regional Representative of the United Nations High Commissioner for Human Rights and Deputy Chairperson of the United Nations Human Rights Committee, and Professor Paul Hunt, Rapporteur of the United Nations Committee on Economic, Social and Cultural Rights. The keynote speakers, and the discussion which followed, drew attention to the fact that the ICESCR could be used as a ‘shield’ against the implementation of structural adjustment measures that violate the provisions of the Covenant.

In the final statement of conclusions, Forum Members agreed to explore further means of promoting and protecting economic, social and cultural rights, including, inter alia, by reaffirming their wish to hold a regional workshop in 2001 on the practical measures States, national institutions and NGOs could take to protect and promote economic, social and cultural rights. This workshop is planned to take place in July 2001 in Hong Kong.

A central concern of much of the work of the APF and its members in relation to this topic has been the role of multilateral programs – particularly those implemented by the International Monetary Fund (IMF) – following the impact of the Asian economic crisis in the late 1990s. Simply put, the concern of APF members is that global institutions, such as the IMF, despite being members of the UN ‘family’ of organisations, are not held accountable to the same international human rights standards as are States. The development aid activities of these global institutions and their resultant human rights impacts are not, therefore, scrutinised to the same extent as the activities of Governments.

The International Monetary Fund and Human Rights

The economic crisis which affected Asia was severe. It shook the political foundations of several key countries and gave rise to deep concerns about the social consequences of both the economic collapse itself and the remedial measures promoted by international

²² Id.

²³ Id.

financial institutions.²⁴ The dramatic turn-around of regional economies confounded years of bullish optimism on the part of politicians and economists. It also called into question the orthodoxy which held that the ‘tiger economies’ of Asia represented a paradigm for rapid, sustained economic growth within a framework of political stability and national unity.²⁵

Almost overnight, however, countries that had experienced decades of rapid economic growth were facing falls in GDP of up to 15% and even 20%. According to the World Bank²⁶ some 400 million people were facing acute food shortages; exploding unemployment; sharp price rises for essentials; severe shortages of medical supplies and intense pressures on government spending on key infrastructure areas such as health and housing. These problems were (and in many cases continue to be) more than just an unfortunate consequence of the economic crisis – they should also be seen as a challenge to the observance of human rights.

To a large extent, the concerns being expressed in the wake of the Asian economic crisis reflect those that became associated with the difficulties of structural adjustment policies implemented since the 1970’s.²⁷ This is most clearly seen in reactions to the IMF rescue packages. Even supporters of the need for economic restructuring to accompany the rescue packages warned of the dangers that harsh economic prescriptions pose to social cohesion and political stability.²⁸

The detrimental effects of IMF policies on the living standards of people in countries affected by structural readjustment policies have been so thoroughly documented and commented upon that no description needs to be included here.²⁹ The IMF is regularly singled out because of its disregard for UN human rights policy and law.³⁰ For example, UNICEF has commentated:

²⁴ The magnitude and severity of the crisis should be emphasised. For example, in Indonesia the US\$43 billion (A\$63.87 billion) ‘bailout package’ administered by the IMF was not far short of the total donor assistance to Indonesia over the last 30 years. See Ting, L & Walsh, P, *Not Waving, Drowning*, ACFOA Development Issues No 5, August 1998, Canberra.

²⁵ A central tenet of the orthodoxy surrounding the ‘Asian economic miracle’ was that specific attention to human rights was not necessary because economic development would underwrite future advances. The standard response to expressions of concern about human rights was that real progress was being made in improving standards of living and that, in time, this would enable the countries of the region to turn their attention to the question of civil and political rights as well. The first, and overwhelming, priority was economic growth. Li Shuhe & Peng Lian, “On Market-Preserving Authoritarianism: an Institutional Analysis of Growth Miracles” as cited in Jones, M & Kriesler, P *Globalisation, Human Rights & Civil Society*, Prospect Media, Sydney 1998.

²⁶ ‘World Bank fears global depression’, *The Age*, 17/6/98

²⁷ See for example, Cuny, R *Disasters and Development*, Oxford university Press, 1983.

²⁸ Sachs, J “IMF is a power unto itself”, *The Financial Times*, 11/12/97 and “The Wrong Medicine for Asia”, *The Financial Times*, 3/11/97.

²⁹ Effects of the IMF policies on the realisation of human rights in particular countries have been documented as well. Cf. M Conklin and D Davidson, ‘The IMF and Economic and Social Human Rights: A Case Study of Argentina, 1958-1985’, *Human Rights Quarterly*, 8, No.2, May 1986, pp.227-69.

³⁰ Donnelly, J “Repression and development: the political contingency of human rights trade offs” in Forsythe D (ed) *Human Rights and Development*, Macmillan. London, 1989.

The aggregate tendency of prevailing adjustment policies to have poverty-inducing effects together with the negative influence of specific policies give rise to serious concern about the influence of such policies on the human condition.³¹

The IMF sees its role strictly in terms of safeguarding the international monetary system. There is no mention of human rights in the IMF's policy documents. Human rights issues are subsumed under the Fund's 'political neutrality clause' and are thus excluded from its terms of reference.³²

The aim of the IMF's structural adjustment policies has been to 'eliminate uneconomic, ineffective and wasteful programs'.³³ The main target has been the social sector with corresponding decreases in social expenditure, mainly affecting education and health programs. The negative consequences of structural adjustment on the 'human condition' have resulted in retrogression, rather than development, in the areas of nutrition, education, employment and social welfare. Human rights to food, education, work and social assistance have, in many instances, been severely compromised.

³¹ G A Cornia et al (eds) *Adjustment with a Human Face. Protecting the Vulnerable and Promoting Growth, A Study by UNICEF*, Oxford, Clarendon Press, 1987, Vol.1, p.67.

³² J Gold, 'Political considerations are prohibited by Articles of Agreement', *IMF Survey*, 1993, pp.146-8.

³³ *Protecting the Poor during Periods of Adjustment*, Washington, The World Bank/IMF Development Committee, August 1987, p.31.

Annexure Three - OHCHR Activities

The UN is one of the oldest providers of human rights assistance. Rule of law and justice sector assistance (dating back to the 1950s) has been principally delivered through the UN programme of advisory services and technical assistance in the field of human rights, a program implemented by the Office of the High Commissioner for Human Rights (OHCHR). Other UN agencies and programs are also involved, most notably the United Nations Development Programme (UNDP), the International Labour Organisation (ILO – labour laws and dispute resolution mechanisms), UNICEF (child rights and juvenile justice development), UNESCO (human rights in education), DPKO (the Department of Peacekeeping Operations – justice reform in conflict and post conflict countries), and the Centre for International Crime Prevention (CICP – criminal justice reforms) and others.³⁴

The OHCHR administered *United Nations Programme of Advisory Services and Technical Assistance in the Field of Human Rights* has focused principally on the strengthening of the rule of law, through assistance for constitutional and legislative reform and support for lawyers, judges, prosecutors, police, prisons, parliaments, NGOs, national human rights commissions, and other key actors and institutions. This was initially a small program of limited significance for most of the first forty years of its operation – however the program underwent a dramatic period of growth between 1987 and 1997.³⁵

UNDP, the UN system's largest development co-operation program, has itself become increasingly involved in justice sector development and in human rights assistance since the early 1990s. Judged by the number and size of projects, UNDP was the largest UN provider of such assistance. The program's adoption in January 1998 of a new policy document entitled *Integrating Human Rights with Sustainable Human Development* marked the consolidation of an internal policy review process on the place of human rights in development programming.³⁶ By the end of 1999, various democracy and governance programs were being carried out in several countries, including activities directed at strengthening national human rights institutions; national plans of action; parliaments; electoral systems; courts; police; prisons; NGOs; and a host of other relevant institutions.

³⁴ See United Nations, Office of the High Commissioner for Human Rights, *System Wide Analysis of United Nations Technical Cooperation Activities in Human Rights Related Areas*, Geneva, 1999 (unnumbered doc.).

³⁵ For an overview of these developments, and the history of the program, see Mokhiber, Craig, "The United Nations Programme of Technical Cooperation in the Field of Human Rights", in *Human Rights Monitoring Procedures: A Textbook on Petitioning and Lobbying International Organizations*, (Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 1996, forthcoming); see also, Benomar, Jamal, "Technical Cooperation in the Field of Human Rights, Past and Present, Reflections for Further Development", in *The Universal Declaration of Human Rights*, New York, 1998; and Rishmawi, Mona, "Human Rights in Development: UN Technical Cooperation in the Field of Human Rights", in *40th International Seminar for Diplomats: the Universal Protection of Human Rights: Translating International Commitments into National Action*, (Austrian Federal Ministry for Foreign Affairs, August 1997).

³⁶ United Nations Development Programme, *Integrating Human Rights with Sustainable Human Development*, UNDP New York, 1998.

Relationship between the UN and the APF

The APF works closely with the UN, in particular the OHCHR. This relationship has included joint work on the promotion and establishment of national institutions and a regional human rights arrangement for the Asia Pacific.

The OHCHR has, for several years, been actively involved in promoting the establishment and strengthening of independent, effective national human rights institutions. It was at a UN sponsored meeting of representatives of national institutions in Paris in 1991 that the *Paris Principles* were developed and adopted. The *Paris Principles* have become the foundation and reference point for UN activity in this area. Importantly, however, the establishment of national institutions in conformity with the Paris Principles has also now become the key means of promoting regional human rights cooperation and the establishment of a regional human rights arrangement. This is displayed by the prominent role the APF has played in UN efforts to promote a regional human rights arrangement in the Asia Pacific.

One of the fundamental objectives of the UN is to promote universal respect for, and observance of, human rights and fundamental freedoms. The UN has pursued this objective in the Asia Pacific region through advocating the establishment of a regional arrangement for the promotion and protection of human rights. The General Assembly and the Commission on Human Rights have adopted numerous resolutions in this regard. The World Conference on Human Rights also reaffirmed the fundamental role that regional and sub regional arrangements could play in promoting and protecting human rights.

Pursuant to the relevant resolutions of the General Assembly and the Commission, the OHCHR, within the framework of the programme of technical cooperation and advisory services in the field of human rights, organised in 1982 a seminar in Colombo and, more recently, eight workshops for the Asia Pacific region, in cooperation with the host Governments, in Manila in 1990, Jakarta in 1993, Seoul in 1994, Katmandu in 1996, Amman in 1997, Tehran in 1998, New Delhi in 1999 and Beijing in 2000.

Through these workshops, a consensus has been reached between the States on the need to take a “step-by-step”, “building-blocks” approach concerning the possible establishment of a regional arrangement. One of the central ‘building-blocks’ that has been identified is the establishment and strengthening of national institutions.

The Tehran workshop represented somewhat of a turning point in the UN process with Member States adopting for the first time an agreed set of conclusions. The Member States agreed to the need to develop and strengthen national capacities for the promotion and protection of human rights through regional cooperation and the sharing of experiences. The workshop therefore adopted a framework for regional technical cooperation in the Asia Pacific region containing specific proposals designed to develop, inter alia; national plans of action for the promotion and protection of human rights and the strengthening of national capacities; the promotion and dissemination of human rights

education and information; the establishment of national institutions for the promotion and protection of human rights; and strategies for the realisation of the right to development and economic, social and cultural rights.

The APF believes, and most commentators agree, that out of the four components contained in the framework document, the work on national human rights institutions has been the most prominent and successful in forging regional cooperation.

For example, at the most recent workshop held in Beijing in March of this year, Member States:

Welcome[d] the efforts of States interested in establishing national human rights institutions;

Reaffirm[ed] that the status and responsibilities of national institutions should be consistent with the Principles relating to the status of national institutions welcomed by the United Nations General Assembly (resolution 48/134);

Reaffirm[ed] that national human rights institutions should be established following an appropriate and inclusive process of consultation and be independent, pluralistic and based on universal human rights standards;

Reaffirm[ed] the importance of the role played by national institutions in addressing the violations of and promoting respect for ... human rights ...³⁷

The Concluding Statement also

Acknowledge[d] the importance of Governments undertaking regional, subregional and national activities for the implementation of technical cooperation in the Asian and Pacific Region in accordance with the Framework for Regional Technical Cooperation in partnership with ... national institutions ...³⁸

Finally the Member States at the workshop also agreed that a new framework should be implemented over a 24-month period, subject to review by the next workshop in 2001, in order to further the process of regional cooperation in the field of human rights in the Asia Pacific region. With regard to national institutions the framework proposed that the OHCHR, in cooperation with UN agencies and programs and, as appropriate, with regional, subregional and national partners, should:

At the regional level

- Support the annual meetings of the Asia-Pacific Forum of National Institutions, the agendas of which (in 2000) will highlight the role and mandate of national institutions in combating racism, participation in preparations for the World Conference, and other human rights issues in accordance with previously agreed conclusions;
- In cooperation with regional national institutions, initiate the first phase of a training programme on protection approaches and appropriate follow-up activities;

³⁷ www.unhchr.ch/

³⁸ Id.

At the subregional level

- Provide support to the inter-sessional workshop on the role of national institutions in the protection and promotion of women’s human rights in Fiji and one other workshop on the media and human rights education;
- Co-organize the second national institutions training course on economic, social and cultural rights and related follow-up activities;

At the national level

- In cooperation with main partners in the States and the region, including the Asia-Pacific Forum, continue cooperation for the establishment and strengthening of national institutions, particularly in those States which have requested assistance from OHCHR;
- In its work concerning national institutions, encourage activities for the promotion and protection of the rights of women, children and vulnerable groups;³⁹

As is demonstrated from this framework, the APF plays a central role in the implementation of the majority of these activities. As such, the APF enjoys the confidence of both the UN and the majority of governments in the Asia Pacific region. This relationship is also strongly supported by APF members. At the recent Fifth Annual Meeting of the APF, member institutions

... emphasized the necessity of a coordinated approach to the promotion and protection of human rights in the Asia Pacific region based on the major elements agreed in Beijing in March 2000 and taking particular account of the needs of recently established national institutions and requests from countries considering their establishment. Forum members reaffirmed the importance of cooperation, including with non-government organizations, so that the best possible use is made of the skills, knowledge, experience and resources that are available.⁴⁰

³⁹ Id.

⁴⁰ www.apf.hreoc.gov.au.