



**Australian Council for Overseas Aid
SUBMISSION TO
THE HUMAN RIGHTS SUB-COMMITTEE,
THE JOINT STANDING COMMITTEE ON FOREIGN
AFFAIRS, DEFENCE AND TRADE**

PARLIAMENTARY INQUIRY INTO

**The Link between Aid
and
Human Rights**

March 2001

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ACFOA is the co-ordinating body for over 95 Australian non government organisations working in the field of overseas aid and development

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ACFOA BELIEVES THAT THE QUALITY AND EFFECTIVENESS OF THE AID PROGRAM WILL BE GREATLY ENHANCED IF AUSAID EMBRACES A FULLY DEVELOPED HUMAN RIGHTS FRAMEWORK FOR FORMULATING ITS POVERTY REDUCTION STRATEGIES. THESE STRATEGIES SHOULD IDENTIFY CLEAR OBJECTIVES LINKED TO KEY TARGETS BASED ON INTERNATIONAL HUMAN RIGHTS OBLIGATIONS AND INTERNATIONAL TARGETS. EVALUATIONS OF THE QUALITY AND EFFECTIVENESS OF THE AID PROGRAM’S CONTRIBUTION TO THE REALISATION OF HUMAN RIGHTS CAN THEN BE UNDERTAKEN IN A MORE SYSTEMATIC WAY.19

A MORE EXPLICIT RIGHTS BASED APPROACH WOULD HELP TO ENSURE THAT THE AID PROGRAM IS:20

- TARGETED AT PEOPLE LIVING IN POVERTY;20
- PROMOTES PARTNERSHIPS WITH RECIPIENT GOVERNMENTS AND COMMUNITIES;20
- IS RESPONSIVE TO AND RESPECT THE PRIORITIES OF THE STAKEHOLDERS IN THE RECIPIENT COUNTRY; AND20
- IS ACCOUNTABLE TO RECIPIENTS AND ACCORDING TO INTERNATIONAL HUMAN RIGHTS PRINCIPLES.20

THIS APPROACH IS CONSISTENT WITH ALL THE PRINCIPLES THAT UNDERPINS THE GOVERNMENT'S CURRENT POLICY AND COMBINED WOULD ENSURE THAT AUSTRALIA'S AID PROGRAM DELIVERS AN EFFECTIVE CONTRIBUTION TO BUILDING SUSTAINABLE DEVELOPMENT. WITHOUT A RIGHTS BASED APPROACH THERE IS ALSO THE CONTINUING RISK THAT NEGATIVE HUMAN RIGHTS IMPACTS WILL NOT BE IDENTIFIED AND OVERLOOKED. IT IS IMPORTANT THEREFORE THAT HUMAN RIGHTS BE UNDERSTOOD AS INTEGRAL TO AUSTRALIA’S POVERTY REDUCTION STRATEGIES AND NOT SIMPLY A SEPARATE COMPONENT OF AUSTRALIA’S DEVELOPMENT PROGRAM OR JUST A PART OF A GOOD GOVERNANCE AGENDA.....20

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Executive Summary

Development cooperation must be seen, explicitly, to be part of Australia's commitment to human rights, both civil and political, and economic, social and cultural rights. Aid can and must help to promote both sets of rights. The promotion of human rights is fundamental to achieving the goal of sustainable reduction in poverty. The central premise of this submission is that to achieve that goal the Australian Government needs to move away from an assumption that all aid advances human rights to a more explicit human rights approach to development.

A rights based approach to development needs to be embedded in program design and management procedures to ensure that aid is used to enhance human rights. Aid activities should be referenced and measured against human rights instruments. This will help to focus attention on aid program options that best advance the objective of the Australian Aid Program to reduce poverty and achieve sustainable development. A rights based approach to development which includes authentic participatory processes will assist in achieving more sustainable reduction in poverty. An explicit rights based approach to providing emergency relief has enabled the international non government organisation (NGO) community to develop clear minimum standards and assessment procedures for the provision of this assistance as the first step in promoting the recovery of displaced and vulnerable groups and the restoration of their human rights. These standards, known as the Sphere Humanitarian Charter and Minimum Standards in Disaster Response, are just one example of the practical benefits of applying a more explicit link between aid and human rights.

The Australian Council for Overseas Aid (ACFOA) advocates the following guidelines as the basis of a more comprehensive human rights based approach to development:

- focus on people living in poverty, the marginalised and vulnerable groups such as women, children, minorities and indigenous peoples;
- adopt a participatory and inclusive approach to developing country strategies, program design, monitoring and evaluation which includes all stakeholders including civil society organisations and affected communities;
- translate human rights into development objectives;
- analyse development issues from a human rights perspective and identify systemic barriers to human development and the realisation of all human rights;
- recognise the interdependence of human rights and broaden the range of activities to address civil, political, economic, social and cultural rights;
- promote transparency and accountability and the rule of law to strengthen the capacity of people living in poverty to claim and enforce their rights.

The United Nations Development Programme (UNDP), United Nations Children's Fund (UNICEF), United Nations Development Fund for Women (UNIFEM) and a number of national governments, notably the United Kingdom and Sweden have adopted an explicitly human rights approach to their development programs. ACFOA

commends these examples to the Australian Parliament and to the Australian Government as models of how a more explicit human rights based approach to development may be articulated and implemented.

The globalisation of human rights entails both the concrete implementation of rights through rights accountability of development actors and the empowerment of civil society to enable people to be active agents of social change within their own communities. A strong civil society able to participate in setting national and local priorities and to claim their social, economic and cultural rights is indispensable to the process of development. International assistance that strengthens civil society, in particular through the participation of poor people in determining development priorities, is fundamental to the rights based approach to development. There has been some progress in the area but AusAID needs to be more consistent about its engagement in genuine dialogue with civil society and not just partner governments in developing countries.

The role and place of international rather than national forces and institutions has assumed a prominent place in the debate about human rights and sustainable development. While this should not obscure the primary responsibility of national governments for development and the observance of human rights, donor countries and international finance institutions bear a responsibility to develop and implement their development activities within the framework of international human rights law.

The obligations of donor countries to promote and protect human rights through international cooperation is enshrined in the UN Charter, the Universal Declaration of Human Rights, the Declaration on the Right to Development and other key international human rights treaties. These treaty obligations have been supplemented by internationally agreed targets, actions and strategies at a series of international conferences to which Australia has made an active contribution.

Summary of Recommendations

Overall Planning and Approach of the Australian Aid Program

Recommendation 1

ACFOA recommends that the Australian Government:

- 1.1 Recognise more explicitly the integral relationship between human rights, as defined in the body of international human rights law, and sustainable development;
- 1.2 Incorporate a rights based approach in the development of strategies for poverty reduction and sustainable development within the framework of internationally agreed targets;
- 1.3 Give high priority to the authentic participation of civil society in the development of poverty reduction strategies;
- 1.4 Develop a human rights framework, supported by quality assessment criteria, to inform the design, implementation and evaluation of program and projects;
- 1.5 Adopt a reform agenda for multilateral and regional financial institutions which implements structures and procedures that increase transparency and accountability, particularly to focus on the authentic participation of civil society and communities affected by projects funded by these institutions.

Implementing an Explicit Rights Based Approach to Development

Recommendation 2

ACFOA recommends that the Australian Government through AusAID:

- 2.1 Undertake a short study tour, conducted by a high level delegation, to the UK, Sweden and UNDP headquarters and to other organisations as appropriate, to examine best practice models of implementing human rights approach to development;
- 2.2 Review the existing Guidelines on Human Rights for AusAID staff with a view to developing a comprehensive framework to guide the implementation of a human rights approach to development;
- 2.3 Commission a team with expertise in both human rights and development practice to assess the current program and advise on the practical implementation of the human rights approach and training needs for staff. The review team should publish a discussion paper for consultation with

stakeholders, in Australia and recipient countries, and publish the final report.

- 2.4 Upgrade the existing human rights section within AusAID to a specialist human rights unit with responsibility to integrate a rights based approach to development into AusAID programs; provide expert human rights advice to AusAID country program staff and provide policy advice to Government on a rights based approach to multilateral programs.
- 2.5 Contribute financial support to the joint UNDP/United Nations Commission on Human Rights (UNCHR) Human Rights Strengthening project (HURIST) which provides expert advice on the integration of a human rights perspective to development cooperation.

Good Governance

Recommendation 3

ACFOA recommends that the good governance agenda be clearly focused so that people living in poverty are at the centre of economic and political reform to ensure that the principal aim of good governance programs is to develop more transparent and accountable public sectors so that people living in poverty have access to adequate social services.

ACFOA recommends that the Australian Government broaden the civil and political rights component of AusAID's good governance agenda to include more technical and financial assistance to:

- 3.1 Support the development of National Action Plans on human rights throughout the region using Australia's first National Action Plan as a model.
- 3.2 Provide capacity building for legal drafting of domestic laws which implement the international law obligations of national governments to which they are a party or are considering ratification, especially in relation to the ICCPR, ICESCR, CEDAW, CERD, CAT and CROC and associated protocols.
- 3.3 Develop independent judicial systems, staffed by professionally trained judicial officers adequately remunerated and capable of providing fair trial in civil and criminal matters.
- 3.4 Support functioning electoral commissions underpinned by electoral laws that respect the principle of universal suffrage and provide for periodic elections.
- 3.5 Support independent, well-resourced public prosecutors who operate consistently with the UN Guidelines on the Role of Prosecutors.

- 3.6 Provide well trained and resourced law enforcement systems which operates consistently with the Code of Conduct of Law Enforcement Officials and other related UN standards
- 3.7 Support humane correctional services aimed at rehabilitation of adults and juvenile that meet UN minimum standards and guidelines for adult and juvenile detention standards.
- 3.8 Support access to legal representation, including publicly funded aid, to ensure the right to fair trial and effective review of criminal and administrative detention.
- 3.9 Support the establishment of national ombudsmen's offices.

Human Rights Small Grants Scheme

Recommendation 4

ACFOA recommends that the Australian Government through AusAID and DFAT:

- 4.1 Undertake a review of the Human Rights Small Grants Scheme. A reference group which includes an NGO representative should be established to design the terms of the review, oversee the review process and take responsibility for publication of a final report and recommendations to Government.
- 4.2 Increase funding to the Human Rights Small Grants Scheme to meet the genuine need and interest in the Scheme.
- 4.3 Publish the Guidelines for the Human Rights Small Grants Scheme on the AusAID and DFAT websites with hard copies distributed to key non government organisations for distribution to their in-country partners. A list of contact points for each country should be published as part of the Guidelines.
- 4.4 Provide a small proportion of the funds from the Human Rights Small Grants Scheme to support NGO participation in international forums such as the UN Commission on Human Rights.

National Human Rights Institutions

Recommendation 5

ACFOA recommends that the Australian Government:

- 5.1 Maintain existing funding to the Asia Pacific Forum Secretariat for an additional three years to support the Forum's transition to self-funding status and to ensure there is no loss of capacity in the Secretariat.

- 5.2 Allocate funds for a full time permanent international human rights law adviser to service the Advisory Council of Jurists.
- 5.3 Increase funds to support NGO participation in the Asia Pacific Forum and to attend the annual meeting of the Forum and regional workshops.
- 5.4 Maintain the existing financial commitment to the global National Human Rights Institutions (NHRI) program through the OHCHR Voluntary Trust Fund.

Centre for Democratic Institutions

Recommendation 6

ACFOA recommends that the Australian Government:

- 6.1 Examine options through the CDI for the funding of training workshops either, in Australia or in-country, for NGO networks already focused on human rights and development in order to strengthen the understanding, application and ongoing support of a rights based approach to development. For example, support NGO networks and associations in the Pacific (PIANGO) Indonesia (INFID) and East Timor (East Timor NGO Forum).

Centre for Human Rights Dialogue and Conflict Resolution

Recommendation 7

ACFOA recommends that the Australian Government:

- 7.1 Fund an independent Centre for Human Rights Dialogue and Conflict Resolution at a level of \$5 million over five years.

Office of the High Commissioner for Human Rights

ACFOA recommends that the Australian Government investigate the funding needs of the Office of the High Commissioner for Human Rights (OHCHR) with a view to:

Recommendation 8

- 8.1 Provide specific funds to support the activities of the OHCHR in the field and particularly in the Asia-Pacific region, Africa and Latin America including specific funding to support activities to protect the rights of particularly vulnerable groups;

- 8.2 Contribute to specific funds to support technical assistance for the development of national plans of action for human rights and legislative reform to ensure consistency with international human rights standards.
- 8.3 Actively support the provision of funding to OHCHR to improve its capacity to conduct effective planning and preparation for field missions in the context of peacekeeping operations.

Quality in a Rights Based Approach

Recommendation 9

ACFOA recommends that the Australian Government through AusAID:

- 9.1 Cooperate actively with the NGO community in Australia to ensure that a rights based approach to development, including the authentic participation of civil society, is incorporated into quality assessment guidelines and indicators for the Australian Aid Program.

1. Introduction

The Australian Council for Overseas Aid (ACFOA) is a peak body representing 95 non government organisations in the field of overseas development cooperation. ACFOA members include aid agencies, human rights groups, environmental organisations, church groups and other civil society organisations concerned with international development issues. The common purpose of member agencies is to promote sustainable human development so that all peoples can live a life of dignity and enjoy to the fullest extent their civil, political, economic, social and cultural rights.

The current global interest in the relationship between human rights and development emerged during the 1990s and is now influencing the development policy and programming of a number of major donors. Against this background, the Inquiry is a timely examination of the quality of the Australian Aid Program and ACFOA welcomes the opportunity to address the issue from a human rights perspective.

ACFOA believes that rights accountability should be the framework of development assistance policy. State and non-state actors engaged in overseas development have an obligation to be accountable for their activities, this includes donor governments, multilateral finance institutions, corporations and non government agencies. The challenge is to operationalise human rights principles at all levels of development programming. The challenge for the Australian Government is to integrate rights accountability into its approach to development issues and apply these principles consistently to all forms of bilateral and multilateral assistance.

This submission sets out ACFOA's view of the relationship between human rights and aid and its implications for Australia's Aid Program. The submission begins with some background material on the convergence of human rights and sustainable development and the rights based approach to development. This material will situate the Inquiry in the broader context of current international developments on the topic of the link between human rights and aid and provides the framework for ACFOA's approach to the inquiry.

2. The Convergence of Human Rights and Sustainable Development

2.1. Background

In 2000 the *Human Development Report* took up the theme of 'human rights and human development'.¹ The *Human Development Report*, published by the United Nations Development Program, provides a global assessment of human wellbeing in the Human Development Index. The relationship between human rights and human development provided the conceptual framework for the report which presents a strong argument for an integrated approach to development drawing upon the principles of international human rights and the strategies of human development to advance human dignity and well being.

The theme of the Report represents a significant shift in thinking in the overseas development industry about the importance of the relationship between human rights and sustainable development and the role of overseas aid. ACFOA commends the Report to the Committee as a useful explanation of the link between human rights and human development and the role of development cooperation in achieving the implementation of minimum human rights standards.

Human rights and international development have evolved along separate but parallel paths. Despite different histories and philosophical frameworks these fields of work share common values and a common vision. That common vision is of a social order in which all peoples can live in dignity on a basis of equality, free from want or fear.

At the end of the Second World War the international community established the United Nations with the primary purpose of achieving the maintenance of international peace and security. The UN Charter enjoins member states to work together for the promotion and protection of human rights as essential to the pursuit of international peace and security.²

The UN Commission on Human Rights was established under the Charter to draft the first international statement of human rights principles. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights (the UDHR). The Preamble to the UDHR expresses a common aspiration that everyone should live in liberty, free from want and fear. The UDHR sets out a comprehensive list of civil, political, social, economic and cultural rights which as a whole reflect an integrated vision of human development and a common standard of achievement for all peoples. The principles of the UDHR reflect the philosophy that human rights are derived from the inherent dignity of the human person and recognise that human rights are inalienable, universal, interdependent and indivisible.

But despite this impressive start, efforts to translate the UDHR into legally binding obligations were undermined by the ideological divisions between western liberal

¹ <http://www.undp.org/hdro/>.

² *Articles 1, Article 55 and Article 56.*

democracies and the former socialist states. In this Cold War period, western liberal democracies emphasised the civil and political freedoms and socialist and developing countries prioritised economic and social development. As a consequence, UN members promulgated two separate Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. These instruments elaborate the general principles of the Declaration into more specific rights and together with the UDHR, comprise the International Bill of Rights. The artificial distinction between civil and political rights on the one hand, and economic, social and cultural rights on the other, institutionalised a separation in the monitoring of the implementation of human rights obligations. Until the 1990s this philosophical and institutional separation has served to obscure the interdependent and indivisible nature of human rights and the relationship between human rights and human development.

An extensive body of international human rights law and policy has continued to evolve over the last three decades. A series of binding treaties elaborate in more detail the rights set out in the International Bill of Rights which deal with particular harms such as slavery, genocide, torture and racial discrimination and the rights of vulnerable groups—women, children and refugees. In addition, there is a plethora of international guidelines and standards, declarations and resolutions that, while not binding, reflect an international consensus on human rights standards. Australia is a party to 19 human rights treaties and has been an active participant in the development of standards and guidelines on a wide range of human rights issues.

2.2 Convergence in the Post Cold War Environment

The UN formally recognised the relationship between human rights and development in 1986 when the General Assembly adopted the Declaration on the Right to Development. The Declaration is a product of the debate on the development of a new international economic order prevalent at the time and has gained renewed prominence as the process of globalisation yields uneven and often detrimental impacts on poor communities.

Article 1.1 of the Declaration defines the right to development:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human the rights and fundamental freedoms can be fully realised.

The Working Group on the Right to Development have explained the right to development in the following terms:

...multidimensional, integrated, dynamic and progressive. Its realization involves the full observance of economic, social, cultural, civil and political rights. It further embraces the different concepts of development of all development sectors, namely sustainable development, human development and the concept of indivisibility, interdependence and universality of all human rights... Realization of the right to development is the responsibility of all actors in development, within the international community, within

States at both the national and international levels, within the agencies of the United Nations system.³

The Declaration recognises development as a human centred, participatory process and links human development to the realisation of international human rights obligations. During the 1990s this conception of development was reaffirmed in the proceedings of several international conferences.

The World Conference on Human Rights held in Vienna in 1993 played a major role in refocusing donors on people as the primary beneficiaries of development assistance and that states and donors must be held accountable for the respect, protection and fulfilment of human rights. In the Vienna Declaration the international community reaffirmed that:

- civil and political and social, economic and cultural rights are indivisible;
- the right to development is an inalienable human right;
- the denial of civil, political, economic, social and cultural rights is a major obstacle to development and;
- the international community has a responsibility, as individual States and collectively, to cooperate to ensure development based on respect and observance of all human rights.⁴

In 1994 the International Conference on Population and Development in Cairo adopted a human rights perspective on major programs on population and development. The 1995 World Conference on Women in Beijing addressed the issue of the elimination of discrimination against women in the achievement of equality within the wider agenda of development. Similarly, in 1995 the World Summit for Social Development held in Copenhagen, Heads of States and governments committed themselves ‘to a vision for social development’ based on ‘human dignity, human rights and equality’. At the Copenhagen plus 5 conference held in Geneva in 2000 world leaders articulated their commitment to international cooperation to ‘promote all human rights, which are universal, indivisible, interdependent and interrelated’.⁵

These conferences ‘as well as initiatives adopted by various international agencies and donor countries contributed towards developing a global consensus on integrating human rights with programs of development’.⁶

ACFOA refers the Committee to the UNDP, UNICEF, UNIFEM and a number of national governments, notably the United Kingdom and Sweden which have adopted an explicitly human rights approach to their development program. ACFOA commends these examples to the Australian Government as models of how a human rights approach to development cooperation might be implemented.

³ UN Working Group on the Right to Development (October 1995) quoted in *Integrating Human Rights with Sustainable Human Development* (1998).

⁴ This responsibility is enshrined in the principles of the Charter of the UN, the Universal Declaration of Human Rights and specific human rights treaties.

⁵ *The Right to Development, Report of the Independent Expert on the Right to Development*, Dr Arjun Sengupta., 11 September 2000, E/CN.4/2000/WG.18 CRP.1, p. 14.

⁶ *Ibid* p.14

2.3 Rights Based Approach to Development

In 1998 the UN Secretary-General launched the new rights based approach to development that was intended to help States and development agencies to redirect their development thinking:

A rights based approach to development describes situations not simply in terms of human needs, or of developmental requirements, but in terms of society's obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance when needed (UN 1998: paras 173-4).

The UNDP adopted a new policy on integrating human rights with sustainable human development in response to the World Conference on Human Rights and calls by the Secretary-General to integrate human rights into all areas of the UN system as part of UN reform.⁷ The UNDP has summarised the value of a rights based approach in the following terms:

Through the systematic application of human rights principles during all phases of program development and implementation ways must be found to empower people to make decisions about issues that affect their lives, rather than treating them as passive objects of decisions made on their behalf by bureaucrats. This recognises that all people are inherently holders of rights. At the same time, obstacles on a government level which need to be tackled simultaneously if development efforts might be successful will be identified. The integration of human rights through the application of human rights principles will become the 'natural' breach between, for example, institution-building programs and participatory community development. This is particularly relevant at local government level in relation to basic social services delivery.

Other UN agencies and major donors have explicitly adopted a rights based approach to development programming and the mainstreaming of human rights is being actively pursued by the Office of the High Commissioner for Human Rights.⁸

2.4. The Framework and the Principles

The human rights approach to development sees poverty as a violation of human rights and places elimination of poverty as the primary goal of development assistance.

A fundamental human freedom is the freedom from want. Poverty is a human rights violation, and freedom from poverty is an integral and inalienable human right.⁹

The concept of poverty is a broad one which encompasses not merely a lack of income but also a lack of opportunity and access to the benefits of development such as clean water, sanitation, health care and basic education and productive employment. It is the poorest communities, the marginalised and vulnerable groups in developing (and developed) countries who are most at risk of violation of their civil, political, economic

⁷ *Integrating Human Rights with Sustainable Human Development* (1998).

⁸ See the Report of the High Commissioner for Human Rights, ECOSOC, 25 June 1999 E/1999/ECN/21.

⁹ UNDP <http://magnet.undp.org/Docs/policy5.html>.

and cultural rights. Taking this as a starting point the human rights approach to development draws upon the body of international human rights law¹⁰ as a framework to identify development objectives and focuses its activities on people living in poverty.

This body of principle represents a comprehensive and internationally accepted definition of human dignity and the elements required for a life of well-being. It enshrines the promotion and protection of human rights as a primary responsibility of States and the international community. From this perspective Australia's Aid Program arises from the duties that flow from our obligation under international law to take part in international cooperation to achieve the realisation of human rights.

An analysis of international human rights standards reveal certain guiding principles that affect not just the scope of the Aid Program but the process by which development strategies are formulated and implemented. The human rights based approach is based on the recognition of:

- the inherent dignity of the human person;
- the principle of equality and non-discrimination;
- the indivisibility and interdependence of civil, political, economic, social and cultural rights;
- the accountability of the state and non-state actors to rights holders; and
- the right to participate in public affairs.

These principles have direct implications for the way in which strategies to achieve sustainable development are developed.

ACFOA advocates the following guidelines as the basis of a more comprehensive human rights based approach to development:

- focus on people living in poverty, the marginalised and vulnerable groups such as women, children, minorities and indigenous peoples;
- adopt a participatory and inclusive approach to developing country strategies, program design, monitoring and evaluation which includes all stakeholders including civil society organisations and affected communities;
- translate human rights into development objectives;
- analyse development issues from a human rights perspective and identify systemic barriers to human development and the realisation of all human rights;

¹⁰ For the purposes of this submission we use the phrase 'international human rights law' to encompass not just the traditional core human rights treaties but also the body of international labour law developed through the International Labour Organisation and the body of refugee law developed through the UN High Commission for Refugees. In addition there are numerous declarations, rules and standards developed through UN specialised agencies such as UNESCO and WHO that reflect international consensus on a wide range of subject matter that are relevant to development cooperation.

- recognise the interdependence of human rights and broaden the range of activities to address civil, political, economic, social and cultural rights;
- promote transparency and accountability and the rule of law to strengthen the capacity of people living in poverty to claim and enforce their rights.

2.5 Focus on People Living in Poverty

The eradication of poverty is now being articulated as the central aim of the development strategies by the major aid donors including the World Bank and Asian Development Bank. So too has Australia moved in that direction. In 1997 the Simons Committee of Review recommended that the Aid Program should adopt a single clear objective. In the Government's response, *Better Aid for a Better Future*, Australia adopted poverty reduction as a key aim of its development program expressed in the following terms:

to advance Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development.

Health, education, infrastructure, rural development and governance are the five priority sectoral programs of Australia's Aid Program.

ACFOA welcomed *Better Aid for a Better Future* as a step toward focusing Australia's efforts on addressing the needs of the most vulnerable and marginalised sectors of the population. But identifying poverty reduction as the primary objective does not automatically translate into a focus on people living in poverty. A rights based approach focuses on people living in poverty, vulnerable communities and the marginalised by placing their rights at the centre of political, economic and social policy. On balance, the current program still emphasises macro-economic growth without necessarily increasing the opportunities for poor communities to develop self-sustaining economic activities and access to social services. Markets alone cannot achieve the equitable distribution of the benefits of development nor do they necessarily provide the levers for establishing the rule of law that is consistent with international standards.

In 1996 the Development Assistance Committee of the OECD proposed a global development partnership to achieve some clearly specified goals such as:

- the reduction by one half of the proportion of people living in extreme poverty by 2015;
- universal primary education in all countries by 2012;
- the reduction by two-thirds in mortality rates for infants and children under age five, and
- the reduction by three-fourths in maternal mortality by 2015.

These goals have been supplemented by the agreements of the international community at the world conferences referred to above. There is a significant body of international policy which should guide the development of our national poverty reduction strategy. The explicit adoption of internationally agreed targets as part of the framework for poverty reduction would contribute to consistency and coherence in the Australian Aid

Program. It would also provide measurable benchmarks against which the public could evaluate progress and the effectiveness of its development assistance.

2.6 Indivisibility and Interdependence

Crucial to the human rights perspective is an understanding of the interdependent and indivisible nature of human rights.¹¹ But there is still a tendency in the Australian Aid Program to see economic and social rights in terms of basic needs—the need of clean water to drink, uncontaminated and nutritional food, sanitation, shelter and livelihoods that enable families to raise health and educated children. Whereas the realisation of civil and political rights is put in terms of putting economic endeavour and growth hand in hand with accountable government and the rule of law. This approach misses the fundamental point that people-centred development that is equitable and sustainable depends upon governments and donors respecting the obligation to cooperate in support of the respect, protection and fulfilment of human rights.

The indivisibility of human rights means that civil and political rights (including for example, freedom of speech and association, due process of law, independent judiciary, genuine periodic elections, etc.) are inseparable elements of development and development assistance¹². But there is a tendency to address these issues at the institutional level without paying equal attention to the States obligation to guarantee the civil and political rights of individuals and groups. This issue is discussed further under 'Good Governance and Human Rights'.

The tendency to see economic and social issues only in terms of needs is in part due to a misunderstanding on the nature of this category of rights. Economic, social and cultural issues have been addressed in human rights law and policy since the mid 1970s. But these rights have tended to be marginalised in human rights discourse because in international law these rights are programmatic in nature which means that they are to be realised progressively depending upon the country's level development.¹³ These rights are frequently misunderstood as being aspirational in nature and to have no binding effect. In fact States parties to the International Covenant on Economic, Social and Cultural

¹¹ *Article 6 of the Declaration on the Right to Development* calls upon States to give equal attention to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

¹² *Article 6.3 of the Declaration on the Right to Development* recognises the historic lack of attention paid to civil and political rights in development assistance. This provision provides that States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights.

¹³ *Article 2 of the International Covenant on Economic, Social and Cultural Rights* relevantly provides:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, and with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Rights are under an immediate obligation to discharge their duties to the maximum extent possible and in a non-discriminatory manner.¹⁴ This category of rights is undergoing a rapid evolution and increasing definition which is drawing upon the development field as a source of substantive measurement and the methodologies for the implementation of these rights.

The scope and content of these rights are elaborated by the UN Committee on Economic, Social and Cultural Rights, the treaty body responsible for monitoring the implementation of the Covenant. Many of the General Comments of the Human Rights Committee are also relevant. The General Comments of the Committees are an authoritative source of interpretative guidance on the provisions of the Covenants and flesh out the content of particular provisions. There are comprehensive comments, for example, on the right to health, the right to education and to adequate food¹⁵ In addition, the Limburg Principles and the Maastricht Guidelines were developed to aid the implementation of Covenant obligations.¹⁶

2.7 Participation Rights

Respect for human rights, democratisation and successful implementation of the rule of law can only be achieved and sustained through the building of an informed and active civil society. The tendency of AusAID to subsume support for civil society organisations and for participatory development as a subset of the broad good governance agenda overlooks the reality that equitable development can only come through equitable distribution of power and resources.

A fundamental political right is the right to participate in public affairs.¹⁷ The rights based approach to development prioritises or at least places equal weight on the bottom up processes as it does to improving institutional mechanisms. The participation of vulnerable communities and civil society organisations should be a priority in the formulation of coherent poverty reduction strategies of major donors and in the design, implementation and evaluation of specific programs and projects.

¹⁴ *Article 2.2* states that:

The State's Parties to the present Covenant undertakes to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

¹⁵ For example, General Comment 11, The right to adequate food space on *Article 11*, Committee on Economic, Social and Cultural Rights, 20th Session, Geneva 26 April –14 May 1999, E/C.12/1999/5 12 May 1999; General Comment 14, The right to the highest attainable standard of health *Article 12*, Committee on Economic, Social and Cultural Rights, 22nd Session, Geneva, 25 April –12 May, 2000 E/C.12/2000/4 14 July, 2000.

¹⁶ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, E/CN.4/1987/17.

¹⁷ *Article 25* of the *International Covenant on Civil and Political Rights*.

2.8 AusAID Human Rights Guidelines

In 1998 the Minister for Foreign Affairs and Trade outlined six guiding principles designed to support human rights in the Aid Program.¹⁸ The current AusAID Human Rights Guidelines were developed to provide practical guidance to desk officers in addressing human rights issues and were a step forward in implementing the 'Downer Principles'.

However, in the current form the Guidelines are not an adequate framework for advancing the integration of human rights and development in Australia's Aid Program. The Guidelines refer to the international human rights law as the source of human rights principles and standards but there is little explanation of the nature, scope or content of human rights obligations or participatory process of implementing a rights approach. Nor is there any discussion of the application of human rights principles to the regional or multilateral programs that support the major financial institutions. The question of transparency, accountability and methodologies to avoid negative human rights impacts is left completely unaddressed.

In truth, the Guidelines reflect the current approach which treats human rights as an optional add on that is entirely at the discretion of country program directors. The tendency is to see human rights in terms of specific projects which support the rule of law, the administration of justice, national human rights institutions or human rights NGOs. While the value of these initiatives are acknowledged, it is not the same as a rights based approach which requires a more explicit and comprehensive linkage between aid and human rights principles.

ACFOA recommends that the current Guidelines be reviewed as part of the process of developing a comprehensive human rights framework. Just as Australia promotes transparency and accountability through its good governance program so to should Australia's Aid Program be guided by these principles. A revised set of human rights guidelines has the potential to apply these principles in a practical way to the Aid Program and enable the Parliament, the Government and the public to evaluate AusAID's progress in meeting Australia's human rights goals.

2.9 Conclusion

In conclusion, there is still a long way to go in Australia's Aid Program before a comprehensive rights perspective can be said to have been integrated into Australia's donor policy and programming. This does not mean that Australia's Aid Program is not contributing positively to improvements in well-being but this is not the same as a right based approach. The current approach leaves the linkage between human rights and aid weak and obscure which results in a lack of accountability from a human rights perspective. This situation makes the task of the Committee a difficult one.

ACFOA believes that the quality and effectiveness of the Aid Program will be greatly enhanced if AusAID embraces a fully developed human rights framework for formulating its poverty reduction strategies. These strategies should identify clear

¹⁸ Eighth *Annual Report* to Parliament on Australia's Development Cooperation Program, 1998.

objectives linked to key targets based on international human rights obligations and international targets. Evaluations of the quality and effectiveness of the Aid Program's contribution to the realisation of human rights can then be undertaken in a more systematic way.

A more explicit rights based approach would help to ensure that the Aid Program is:

- targeted at people living in poverty;
- promotes partnerships with recipient governments and communities;
- is responsive to and respect the priorities of the stakeholders in the recipient country; and
- is accountable to recipients and according to international human rights principles.

This approach is consistent with all the principles that underpins the Government's current policy and combined would ensure that Australia's Aid Program delivers an effective contribution to building sustainable development. Without a rights based approach there is also the continuing risk that negative human rights impacts will not be identified and overlooked. It is important therefore that human rights be understood as integral to Australia's poverty reduction strategies and not simply a separate component of Australia's development program or just a part of a good governance agenda.

Overall Planning and Approach of the Australian Aid Program

Recommendation 1

ACFOA recommends that the Australian Government:

- 1.1 Recognise more explicitly the integral relationship between human rights, as defined in the body of international human rights law, and sustainable development;**
- 1.2 Incorporate a rights based approach in the development of strategies for poverty reduction and sustainable development within the framework of internationally agreed targets;**
- 1.3 Give high priority to the authentic participation of civil society in the development of poverty reduction strategies;**
- 1.4 Develop a human rights framework, supported by quality assessment criteria, to inform the design, implementation and evaluation of program and projects;**
- 1.5 Adopt a reform agenda for multilateral and regional financial institutions which implements structures and procedures that increase transparency and accountability, particularly to focus on the authentic participation of civil society and communities affected by projects funded by these institutions.**

Implementing an Explicit Rights Based Approach to Development

Recommendation 2

ACFOA recommends that the Australian Government through AusAID:

- 2.1 Undertake a short study tour, conducted by a high level delegation, to the UK, Sweden and UNDP headquarters and to other organisations as appropriate, to examine best practice models of implementing human rights approach to development;
- 2.2 Review the existing Guidelines on Human Rights for AusAID staff with a view to developing a comprehensive framework to guide the implementation of a human rights approach to development;
- 2.3 Commission a team with expertise in both human rights and development practice to assess the current program and advise on the practical implementation of the human rights approach and training needs for staff. The review team should publish a discussion paper for consultation with stakeholders, in Australia and recipient countries, and publish the final report.
- 2.4 Upgrade the existing human rights section within AusAID to a specialist human rights unit with responsibility to integrate a rights based approach to development into AusAID programs; provide expert human rights advice to AusAID country program staff and provide policy advice to Government on a rights based approach to multilateral programs.
- 2.5 Contribute financial support to the joint UNDP/United Nations Commission on Human Rights (UNCHR) Human Rights Strengthening project (HURIST) which provides expert advice on the integration of a human rights perspective to development cooperation.

3. Good Governance

'Good governance' has become an increasingly important part of Australia's Aid Program and is now one of AusAID five major sectoral programs. In 2000-01, direct assistance to help improve governance in developing countries represented 15 per cent of overall ODA expenditure. This trend reflects a shift towards building institutional frameworks that will support sustainable long term development efforts. This aspect of the Aid Program's work has been further emphasised by the release in December 2000 of the Government's policy document on overseas aid and good governance, *Good Governance: Guiding Principles for Implementation*.

The 'good governance' agenda has been significantly influenced by the impact of the Asian financial crisis which highlighted the weakness of many government institutions to manage the impacts of economic downturn. In Indonesia the crisis focused public attention on corruption within the political, military and economic elite and highlighted the lack of legitimacy of the Suharto regime.

As Indonesia has recently illustrated, the failure to build inclusive and participatory means of governance and the denial of civil and political rights manifests itself in civil unrest and demands for democratisation. The lesson of the Asian financial crisis was not only that the rule of law needs to be implemented in the economic and corporate sphere but that the civil and political rights of people must be guaranteed. Elsewhere in the region, in countries such as Burma, lack of respect for free speech and the right to association has a direct impact on the process of development and impoverished communities face violations of economic and social rights daily.

We recognise that efforts to eliminate corruption is an important tool which supports economic and social rights but regard this as a necessary but not sufficient precondition to the observance of human rights. In the long term, respect for the rule of law, democratisation and observance of human rights obligations can only be sustained if it is built upon a foundation of a strong civil society. In turn the existence and long term survival of strong civil society organisations depends upon respect for the civil and political freedoms of private individuals and groups to assert their rights, express their views and participate fully in the economic, political, social and cultural life of the country. A legally enforceable guarantee of the freedom of association and assembly, free speech and participation in public affairs are all critical to the process of stopping corruption and institutionalising 'good governance', denial of these civil rights will undermine the development efforts of donor countries.

Similarly, accountable and transparent political institutions and a professional public sector with the resources to implement government policy is an important aim of the current agenda and essential to sustainable development. But ACFOA is concerned that the emphasis of the current 'good governance' agenda is in fact disproportionately focused on enabling economic growth through the private sector with a diminution of the role of the state. The current focus on fiscal and monetary policy and meeting the conditionality of multilateral finance institutions reflects a view that the role of aid is to complement private investment as the main engine of economic growth. We do not dispute this. However, it must be accepted that private sector interests are not inherently in accord with the national interests of a developing country. Moreover, markets alone cannot deliver the guarantees of rights protection which are the responsibility of

governments. Reliance on large private investors, especially large multinational corporations, may weaken rather than strengthen the States capacity to formulate and implement economic and social policy capable of delivering an adequate standard of living to poor communities. In some cases private corporations directly benefit from the lack of rights protections and are actively involved in human rights abuses.

The human rights framework does not impose a particular model of economic development but it does reinforce that there are certain internationally agreed and legally binding minimum standards in relation to civil, political economic, social and cultural rights. These standards provide a framework for identifying the key objectives of macroeconomic policy and public sector reform. It ensures that these strategies are focused on meeting the economic and social rights of the poorest communities and especially women who comprise the bulk of the poor. To benefit and ensure the participation of people living in poverty macro-economic frameworks must use resources productively, avoid environmental degradation and strengthens domestic employment and income generating activity especially of the poor. ACFOA argues that support for enabling the private sector must be complemented by support for national governments to directly address poverty elimination and develop mechanisms necessary to implement the redistribution of wealth in an equitable manner. The capacity to implement economic, social and cultural rights within a framework that meets international human rights obligations should be seen as part of the good governance agenda.

Secondly, ACFOA supports measures aimed at increasing transparency and accountability in government and advocates that the implementation of legal guarantee of the civil and political economic, social and cultural rights of people in recipient countries should be a key aim of the Australian 'good governance' agenda.

The goals of transparency and accountability apply to non-state actors in the process of development. ACFOA therefore strongly supports the regulation of transnational corporations to ensure that they are operating in a manner which is consistent with the observance of human rights and environmental standards. In a submission to the Parliamentary Committee on Corporations and Securities ACFOA advocated support for the Corporate Code of Conduct Bill 2000 which imposes standards on the conduct of Australian corporations operating overseas. Public pressure for enforceable standards on transnational corporations is growing globally and similar legislation is under consideration in the USA, the EU and other parts of the world. To date the corporate sectors approach to these issues has emphasised the use of voluntary codes to raise standards. But there is little evidence that self-regulation has ensured adequate corporate standards. The necessity for greater regulation of the activities of Australian transnational corporations has been highlighted in recent months by reported environmental destruction and human rights concerns associated with the Esmerelda mine in Romania, BHP's Ok Tedi mine in Papua New Guinea, Rio Tinto's Freeport mine in West Papua and reported human rights abuses at Rio Tinto's Kelian mine in Kalimantan.

ACFOA recommends that the Australian Government take a more comprehensive approach to the issues of good governance by extending its activities to incorporate a greater focus on the protection of civil and political rights and include legal protections of economic social and cultural rights and supporting measures aimed at regulating the activities of transnational corporations to ensure their compliance with human rights standards.

Good Governance

Recommendation 3

ACFOA recommends that the good governance agenda be clearly focused so that people living in poverty are at the centre of economic and political reform to ensure that the principal aim of good governance programs is to develop more transparent and accountable public sectors so that people living in poverty have access to adequate social services.

ACFOA recommends that the Australian Government broaden the civil and political rights component of AusAID's good governance agenda to include more technical and financial assistance to:

- 3.1 Support the development of National Action Plans on human rights throughout the region using Australia's first National Action Plan as a model.
- 3.2 Provide capacity building for legal drafting of domestic laws which implement the international law obligations of national governments to which they are a party or are considering ratification, especially in relation to the ICCPR, ICESCR, CEDAW, CERD, CAT and CROC and associated protocols.
- 3.3 Develop independent judicial systems, staffed by professionally trained judicial officers adequately remunerated and capable of providing fair trial in civil and criminal matters.
- 3.4 Support functioning electoral commissions underpinned by electoral laws that respect the principle of universal suffrage and provide for periodic elections.
- 3.5 Support independent, well-resourced public prosecutors who operate consistently with the UN Guidelines on the Role of Prosecutors.
- 3.6 Provide well trained and resourced law enforcement systems which operates consistently with the Code of Conduct of Law Enforcement Officials and other related UN standards
- 3.7 Support humane correctional services aimed at rehabilitation of adults and juvenile that meet UN minimum standards and guidelines for adult and juvenile detention standards.
- 3.8 Support access to legal representation, including publicly funded aid, to ensure the right to fair trial and effective review of criminal and administrative detention.
- 3.9 Support the establishment of national ombudsmen's offices.

4. The Human Rights Program

In December 1998 the Foreign Affairs Minister recognised the importance of international human rights standards to Australia's foreign policy and international development cooperation program. ACFOA welcomes the Government's a commitment to human rights in the Aid Program in 2000-2001 through:

- funding Human Rights Small Grants Scheme;
- contributing to the National Human Rights Institutions Initiative; and
- funding the Centre for Democratic Institutions.

4.1 Human Rights Small Grants Scheme

According to published guidelines the Human Rights Small Grants Scheme has the benefit of targeting small scale practical initiatives. The increase in funds from \$500,000 to \$800,000 in the 2000-2001 was a welcome addition for support for in-country locally controlled activities aimed at defending human rights.

ACFOA understands that applications for the Scheme have increased steadily over the last three years with approximately 50 in 1998-1999, 66 in 1999-2000 and 79 in the current round for 2000-2001. AusAID has provided a list of projects funded for 1998-99 and 1999-2000.

ACFOA has anecdotal information that during the year 2000 DFAT and AusAID received a record number of inquiries about the Scheme. This was due, in part to inquiries being directed to DFAT and AusAID in Canberra rather than overseas posts. However, ACFOA believes that the number of inquiries demonstrated the very high level of interest that exists in the Scheme. It is clear that the Scheme has considerable potential for expansion, especially but not exclusively, in the Asia Pacific Region. But it is difficult to assess the volume of potential demand because of the lack of transparency surrounding the Scheme.

The Scheme is administered and coordinated jointly by DFAT and AusAID but the source of applications is generated in-country through the Australian posts. While this has the benefit of facilitating direct contact with relevant human rights defenders in-country, ACFOA believes that the knowledge of potential recipient local groups is relatively low compared to the real level of demand. It is unclear to ACFOA how the in country process works to identify potential recipients and how their entry to the Scheme is facilitated. It is reasonable to assume that the level of awareness of the Scheme varies between countries depending upon whether an AusAID officer is located at the post and/or the extent to which that officer is commitment and able to foster interest in the Scheme.

A profile of funded projects has been provided to ACFOA which indicates that Australia is supporting a number of worthwhile projects but an analysis of the efficacy of the Scheme is difficult to provide because of the lack of detail in the publicly available data on funded projects. Consequently, no conclusions can be drawn about the value of the Scheme because the quality of local projects is unknown. In principle ACFOA supports

the Scheme and has recommended in its Federal Budget Submission that funding to the Scheme be increased from \$800,000 to \$1 million but that a limit of \$50,000 for individual projects be maintained.

Human Rights Small Grants Scheme

Recommendation 4

ACFOA recommends that the Australian Government through AusAID and DFAT:

- 4.1 Undertake a review of the Human Rights Small Grants Scheme. A reference group which includes an NGO representative should be established to design the terms of the review, oversee the review process and take responsibility for publication of a final report and recommendations to Government.**
- 4.2 Increase funding to the Human Rights Small Grants Scheme to meet the genuine need and interest in the Scheme.**
- 4.3 Publish the Guidelines for the Human Rights Small Grants Scheme on the AusAID and DFAT websites with hard copies distributed to key non government organisations for distribution to their in-country partners. A list of contact points for each country should be published as part of the Guidelines.**
- 4.4 Provide a small proportion of the funds from the Human Rights Small Grants Scheme to support NGO participation in international forums such as the UN Commission on Human Rights.**

4.2 National Human Rights Institutions

ACFOA regards the NHRI's program as an important contribution in the Asia Pacific Region to building long term sustainable institutions for the promotion and protection of human rights. Australian funding to the Office of the High Commissioner for Human Rights Voluntary Trust Fund for the global NHRI program has been in the order of \$1.3 million. An additional \$225,000 has been contributed to supporting the Secretariat to the Asia Pacific Forum located in the Australian Human Rights and Equal Opportunity Commission (HREOC). The HREOC has contributed significant staffing and resources to the Secretariat over and above the direct funding and continues to host the Secretariat.

Building strong national institutions that are sustainable in the long-term requires a long-term commitment, a clear agenda and the resources and resolve to ensure that certain key criteria are met consistently over time. Weak national institutions will only serve to undermine human rights protection in the region by giving national governments the opportunity to window dress poor human rights records with a superficial commitment to addressing human rights issues. The Forum members vary widely in capacity and expertise so it is vital that they have an institutional mechanism which have the capacity to support them.

ACFOA understands that funding to the Secretariat of the Asia-Pacific Forum is due to end in June 2001. The Forum is proceeding to incorporate as an independent institution and aiming to become a self-sustaining entity. But, as pointed out in our submission to the Federal Budget, ACFOA is concerned that the Forum may suffer a serious set back if the planned cessation of AusAID funds takes place as scheduled. Australia's objective of building strong NHRIs in the region will be undermined unless a fully functioning Secretariat can continue to support the Forum and its activities.

In light of the importance of the Forum, ACFOA has therefore supported the proposal that AusAID additional funds in order of \$50,000 for a consultancy project to develop a business plan for the Forum and to explore possible funding source from major donors. However, a renewed funding commitment is essential to prevent a possible collapse of the organisation and to provide continuity in operations during the transitional phase. At the time of writing this proposal was still under consideration and it is unclear whether the Government will provide tri-annual funding to enable the Forum to manage the transition phase.

Transparency and accountability of the Forum itself is important to foster democratic participation in the debate on regional human rights issues and the performance of national institutions and the government which establish them. This can only be guaranteed by facilitating the participation of non government organisations in the annual Forum meeting, regional workshops and other relevant meetings. The participation of non government organisations can be strengthened and reinforced by including a wider range of NGO representatives in the annual meeting of the Forum, and in particular by including them as speakers on particular topics, participants in panels and workshops.

ACFOA was pleased to see that there were more opportunities for direct NGO involvement in the proceedings of the annual meeting held in August 2000 and strongly encourages the Forum to continue this practice and expand upon this precedent. Early distribution of the annual meeting agenda will assist NGOs to prepare in advance their input to the proceedings. Recognition of the role of NGOs should be given explicit recognition in the constitution of the Forum based on consultation with NGO participants.

The creation of the Advisory Council of Jurists is a recent innovation with potential to promote human rights observance in the region by provide jurisprudential support on a regional basis. The Council was established to provide international human rights law advice on issues of regional significance and common interest to Forum members. Advisory opinions on the death penalty and child pornography on the Internet have already been provided. Forum members refer issues to the Council during the annual meeting.

National institutions should be encouraged to consult with their domestic non government organisations about which issues can be usefully addressed to the Council. This would draw upon the experience and expertise of human rights organisations in the Asia Pacific region who are frequently dealing with issues of a regional rather than entirely domestic nature. Examples include violence against women, trafficking of women and children, child labour and the treatment of asylum seekers.

National institutions should be given a broad mandate to deal with civil and political rights and economic social and cultural rights at both an individual and systemic level. ACFOA was pleased to see that the role of national institutions in the promotion and protection of economic, social and cultural rights was a major theme at the Forum's 2000 annual meeting. NGOs promoted the idea that the national institutions should have the capacity to assess the impact of globalisation and trade liberalisation on the ability of their national governments to fulfil their human rights obligations, in particular in relation to economic and social rights.

Australia should amend domestic legislation to expand the mandate of the Human Rights and Equal Opportunity Commission to provide for powers to investigate complaints of alleged violations of rights protected by the International Covenant on Economic, Social and Cultural Rights. Alternatively, explicit powers to investigate systemic violations IESCR treaty obligations should be considered. This would set a positive example in the region and provide a sound basis from which Australia can begin to contribute to the jurisprudence on economic, social and cultural rights.

ACFOA supports, in principle, the planned Workshop to be held by the Secretariat in July 2001 on economic, social and cultural rights. The involvement and participation of relevant non government organisations is important to the success of the workshop and to the development of understanding of the nature scope and content of economic, social and cultural rights.

Australia has an interest and an obligation to continue to support the building of transparent and accountable human rights institutions in the Asia Pacific Region that are effective mechanisms for human rights protection. The Secretariat must have adequate resources:

- to meet the education and training needs of the Commissioners and their staff to ensure that personnel have the relevant skills and knowledge to discharge their responsibilities;
- provide/arrange relevant technical assistance for drafting domestic laws that ensure newly established national institutions are constituted by statute which guarantees independence from government and meet the basic criteria of the Paris Principles; and
- monitor the development of each institution on an ongoing basis and provide advice and support when needed. This should include when necessary the commissioning of independent evaluations and the publishing of progress reports on the performance of national institutions and their effectiveness as a mechanism for the promotion and protection of human rights.

National Human Rights Institutions

Recommendation 5

ACFOA recommends that the Australian Government:

- 5.1 **Maintain existing funding to the Asia Pacific Forum Secretariat for an additional three years to support the Forum's transition to self-funding status and to ensure there is no loss of capacity in the Secretariat.**
- 5.2 **Allocate funds for a full time permanent international human rights law adviser to service the Advisory Council of Jurists.**
- 5.3 **Increase funds to support NGO participation in the Asia Pacific Forum and to attend the annual meeting of the Forum and regional workshops.**
- 5.4 **Maintain the existing financial commitment to the global National Human Rights Institutions (NHRI) program through the OHCHR Voluntary Trust Fund.**

4.3 Centre for Democratic Institutions

The Centre for Democratic Institutions has made an important contribution to the development of good governance and human rights standards through its international training and seminar programs.

ACFOA has been contracted to deliver two policy development and advocacy programs to Indonesian NGO leaders over the past two years. The training programs have included lectures and workshops on policy development, management strategies, good governance, international human rights standards and have emphasised the potential effectiveness of constructive policy dialogue between civil society and government.

The Indonesian participants have generally rated the training programs highly valuable while providing useful critical evaluation. Based on their evaluations and ACFOA's own observations, there is the potential for to provide programs with better follow up for participants in cooperation with the CDI and AusAID. Training programs to date have been held in Australia and follow up work with the Indonesian participants has been limited. There is the potential for further grounding in international human rights law and the application of a human rights approach to the development challenges they face, through more intensive human rights training in either Australia or Indonesia and through substantive and more personalised follow up in the participant's community.

CDI could also fund specific training workshops either in Australia or in-country for NGOs already focused on human rights and development. These focused training programs could be run for such groups as The Asia Pacific Facilitating Team, the board of PIANGO, the Executive of INFID or the newly developing East Timor NGO Forum to advance their understanding of the relation between human rights and aid.

Centre for Democratic Institutions

Recommendation 6

ACFOA recommends that the Australian Government:

- 6.1 Examine options through the CDI for the funding of training workshops either, in Australia or in-country, for NGO networks already focused on human rights and development in order to strengthen the understanding, application and ongoing support of a rights based approach to development. For example, support NGO networks and associations in the Pacific (PIANGO) Indonesia (INFID) and East Timor (East Timor NGO Forum).

4.4 Centre for Human Rights Dialogue and Conflict Resolution

Since 1993 ACFOA has consistently advocated the establishment of an independent Centre for Human Rights Dialogue and Conflict Resolution. The mandate of the Centre would recognise the links between human rights abuse and unresolved political and social conflict in the region. The Centre would meet the need for applied research, policy development and the provision of specialist information on human rights and conflict resolution the Asia Pacific Region.

While the Centre for Democratic Institutions is carrying out important work in promoting transparency, good governance and democracy, its mandate is not a substitute for the proposed Centre for Human Rights Dialogue and Conflict Resolution. The establishment of democratic institutions is a necessary but not sufficient precondition to peace, stability and sustainable development in the region.

Centre for Human Rights Dialogue and Conflict Resolution

Recommendation 7

ACFOA recommends that the Australian Government:

- 7.1 Fund an independent Centre for Human Rights Dialogue and Conflict Resolution at a level of \$5 million over five years.

4.5 Strengthening the Promotion and Protection of Human Rights through the United Nations

In August this year the Government publicly announced its reform agenda for the UN treaty monitoring bodies. A major area of concern included the lack of sufficient professional legal staff to adequately support the work of the various human rights committees. This in turn undermines the quality of the analysis and legal reasoning produced by those bodies. However, to date the Government has declined to support

the request by High Commissioner for Human Rights for contribution to fund the OHCHR Plan of Action. While ACFOA supports, in principle, the notion that the UN human rights program should be fully funded from the UN general budget it is unlikely that the UN 5th Committee will agree to increase funds to the OHCHR. Australia's contribution to the OHCHR of \$225,000 annually is directed to supporting the National Human Rights Institutions and is insufficient as a contribution to the OHCHR given the extensive range of important human rights work performed by the Office.

There has been a substantial increase in the volume of work expected of and undertaken by OHCHR, including expansion of human rights protection activities in the field, the creation of new mandates, more treaty ratifications and an increasing number of requests from governments for technical cooperation. While demand for resources has grown, there has been no commensurate increase in funds from the regular budget of the United Nations. That figure stands at \$21,476,600, while OHCHR estimates that it will require \$75,305,609 for 2001.

On 28 November 2000 the Office of the United Nations High Commissioner for Human Rights (OHCHR) is launched its Annual Appeal, asking for \$54 million in voluntary contributions to help fund its activities for 2001. According to the OHCHR the additional voluntary contributions needed amount to \$53,829,009. This is the second Annual Appeal launched by OHCHR. In 2000 the Office has received \$37,876,931 out of the \$54 million it asked for in the Annual Appeal 2000.

The growing tasks and responsibilities of the Office are reflected in the increasing amount of voluntary contribution over the last ten years: In 1995, the Office received \$15,043,117 in contributions, in 1997 \$24,590,363 and in 2000 \$37,876,931 as of 28 November. Since 1994, 87 Governments have made financial contributions. Small or large, the Appeal emphasizes, these contributions are invaluable as they demonstrate support for the Office. The Australian Government can demonstrate its support for the OHCHR by providing voluntary contributions to the Plan of Action. This would enhance Australia's credibility and *bona fides* as a country genuinely interested in strengthening the system of human rights protection.

4.6 OHCHR Field Operations

An increasingly important aspect of human rights protection and promotion are human rights field operations. The field presence of the OHCHR helps ensure that human rights standards are implemented and realised at country level, both in law and practice. According to OHCHR its offices in Burundi, the Democratic Republic of Congo, Colombia, Cambodia, Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia make significant contributions to peace-making and peace-building in those countries. OHCHR has estimated that activities in 2001 will require \$14.6 million.

4.7 Technical Cooperation

OHCHR reports that requests from governments for OHCHR to assist with *technical cooperation* and advisory service are growing in number. The technical cooperation programs of the Office include national plans of action for human rights, legislative reforms that help national laws conform with international human rights standards,

administration of justice, parliaments, the military and the police etc. In the year 2001 donors are asked to contribute \$ 10.5 million to help realise these projects.

4.8 Special Needs

OHCHR also report that the need to assist special groups whose enjoyment of human rights is likely to be jeopardised through lack of funds. It has set up mechanisms and procedures to protect the rights of minorities, indigenous peoples, trafficking of women and children and victims of HIV/AIDS but to support these activities, an amount of \$ 1.8 million is required from voluntary contributions.

Office of the High Commissioner for Human Rights

ACFOA recommends that the Australian Government investigate the funding needs of the Office of the High Commissioner for Human Rights (OHCHR) with a view to:

Recommendation 8

- 8.1 Provide specific funds to support the activities of the OHCHR in the field and particularly in the Asia-Pacific region, Africa and Latin America including specific funding to support activities to protect the rights of particularly vulnerable groups;**
- 8.2 Contribute to specific funds to support technical assistance for the development of national plans of action for human rights and legislative reform to ensure consistency with international human rights standards.**
- 8.3 Actively support the provision of funding to OHCHR to improve its capacity to conduct effective planning and preparation for field missions in the context of peacekeeping operations.**

5. NGO Cooperation with Government for a Quality Rights Based Approach

To date much of the literature on the human rights approach to development has been concerned with the policy framework and programming by donor governments and UN agencies. This approach focuses on the obligations of national governments and the international community. The Human Rights Council has published a practical manual on how to implement a human rights approach for institutional donors. ACFOA commends this document to the Committee.

The NGO community is itself in the process of addressing how a rights based approach to development is more explicitly and meaningfully made operational in the design, appraisal and management of aid and development programs.

5.1 ACFOA Code of Conduct

The ACFOA Code of Conduct sets out for NGOs an explicit framework for standards in program practice and public communication in relation to human rights:

- Section 1.2 of the Code:

Organisations which are signatories to this Code aim to build creative and trusting relationships with the people of the developing countries and to meet program standards which...respect and foster internationally recognised human rights, both socio-economic and civil-political;

- Section 3.1 of the Code:

In all its activities and particularly its communications to the public, an organisation shall accord due respect to the dignity, values, history, religion and culture of the people with whom it works consistent with the principles of basic human rights.

5.2 Sphere Humanitarian Charter and Minimum Standards in Disaster Response

In relation to the provision of humanitarian relief to refugees, displaced people and vulnerable communities the international NGO community has taken the initiative to develop and adopt minimum standards which are explicitly based on human rights instruments and international law. Clear standards are provided on how needs are assessed and programs are designed, implemented and monitored with respect to the human rights of people affected by disasters and emergencies.

Specific minimum standards and indicators are set out in five areas:

- Water Supply and Sanitation;
- Nutrition;
- Food Aid;

- Shelter and Site Planning; and
- Health Services.

Importantly, for each group of minimum standards there are assessment, implementation and monitoring standards that ensure the active participation of people affected by disasters and emergencies consistent with their rights under international law. The implementation of these standards involving an extensive program of training is changing the understanding and approach of relief workers and development practitioners in a way that is enhancing the focus and quality of the aid work undertaken. ACFOA acknowledges the valuable support of AusAID in assisting with the resources needed to provide training for the implementation of these standards.

In short, it is now recognised by the international NGO community that intervening in the lives of vulnerable people in a disaster situation to provide just for immediate needs is an inadequate response. People affected by a disaster have rights. The right to impartial and quality assistance, the right to have some say and control over activities which affect their lives, the right under international law not to be returned to a country where their lives may be under threat, and the right to life with dignity under human rights conventions and international humanitarian law. The Sphere Project is an example where a rights based approach not only leads to very clear and specific immediate benefits for vulnerable communities in emergency situations but is enhancing the longer term quality and sustainability of aid interventions of this nature through more effective participatory processes.

By adopting the international human rights framework for policy development and applying these principles to program practice NGOs are striving to:

- ensure they are acting consistent with human rights principles;
- inform themselves on a range of causes of poverty and target their assistance to address these issues;
- recognise the relationship between civil and political rights and economic, social and cultural rights;
- expand their range of activity to a more holistic approach; and
- strengthen the communities with which they work by empowering them to set development priorities.

For some organisations the coherent recognition of rights principles will give explicit endorsement to many aspects of their existing practice and highlight areas of activity or particular groups which have hitherto been ignored. For others the human rights approach may mean a significant cultural change within the organisation and a rethinking about their attitudes to development cooperation and their approach to programming, monitoring and evaluation.

As has been recognised in various reviews of the Australian Aid Program, including the most recent Simons Committee of Review, the partnership and community linkages of NGOs, together with their independence from governments, allows the Australian Government through AusAID to contribute to the development and strengthening of civil society in recipient countries and to support small scale community based activities which engender long term commitment by recipient communities to these projects. (refer Simons Review page 266). Building upon recent cooperation in the application of a rights

based approach to humanitarian relief (the Sphere Project), ACFOA believes that there is scope for further significant cooperation between AusAID and the Australian NGO community in developing and applying a rights based approach to development across the Aid Program that builds on this experience and linkages with civil society networks in other countries.

A rights based approach to development needs to be embedded in program design and management procedures to ensure that aid is used to enhance human rights. Aid activities should be referenced and measured against human rights instruments. This will help to focus attention on aid program options that best advance the objective of the Australian Aid Program to reduce poverty and achieve sustainable development. A rights based approach to development which includes authentic participatory processes will assist in achieving a more sustainable reduction in poverty.

Quality in a Rights Based Approach

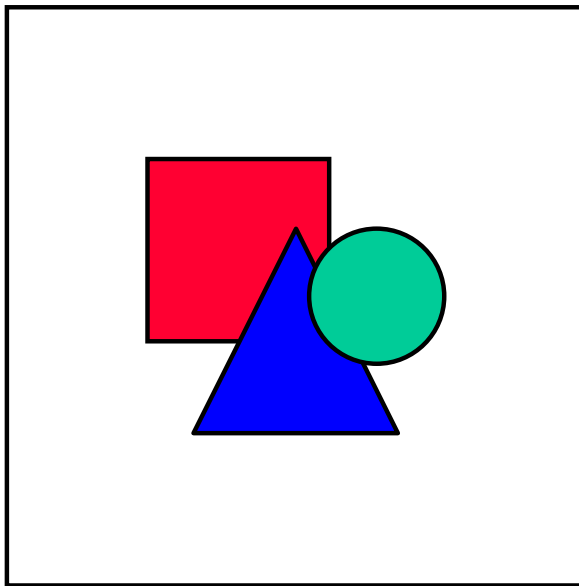
Recommendation 9

ACFOA recommends that the Australian Government through AusAID:

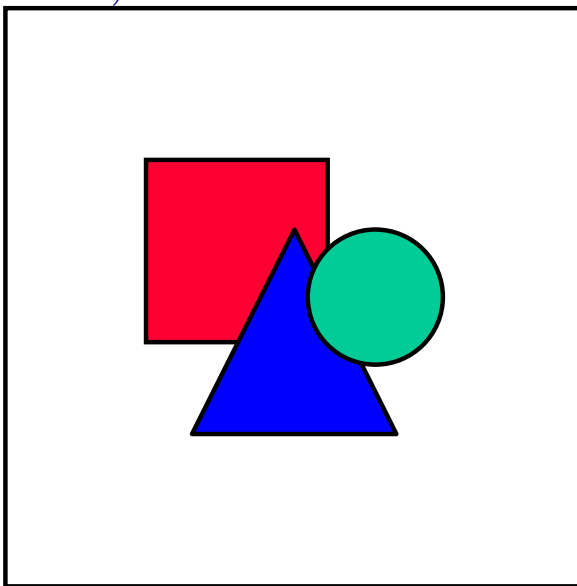
- 9.1 Cooperate actively with the NGO community in Australia to ensure that a rights based approach to development, including the authentic participation of civil society, is incorporated into quality assessment guidelines and indicators for the Australian Aid Program.**

Appendix 1

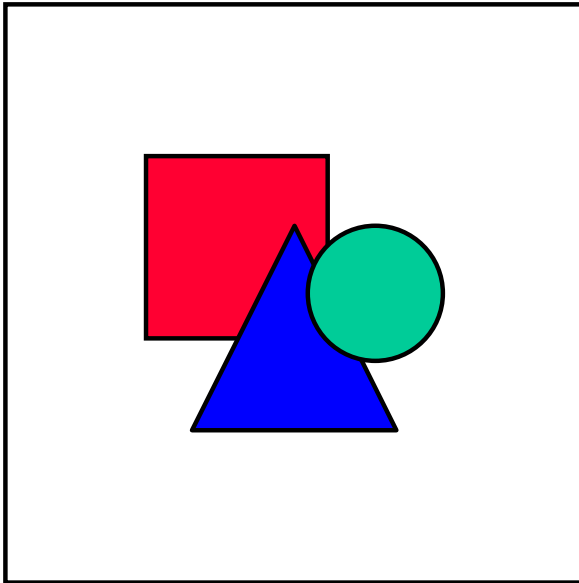
List of World Conferences



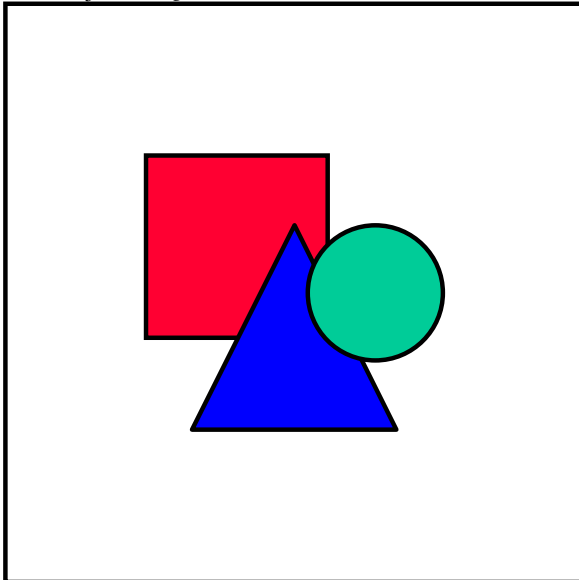
2001: [World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance](#) (31 August -7 September, South Africa)



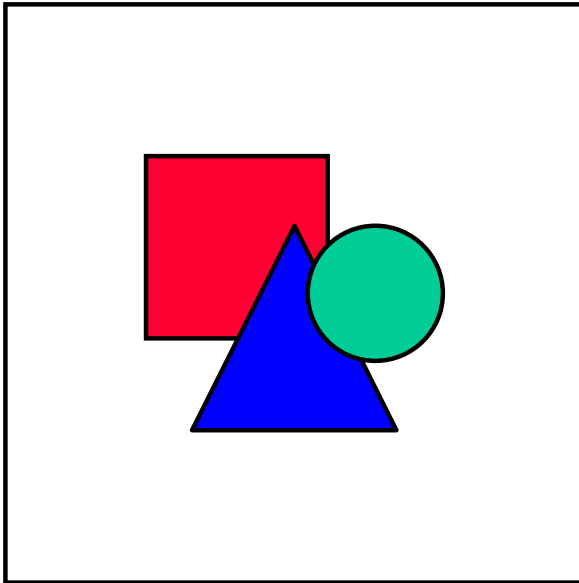
2000: [World Summit for Social Development and Beyond: Achieving Social Development for All in a Globalized World](#) (26-30 June), Geneva, Switzerland. Special Session of the General Assembly.



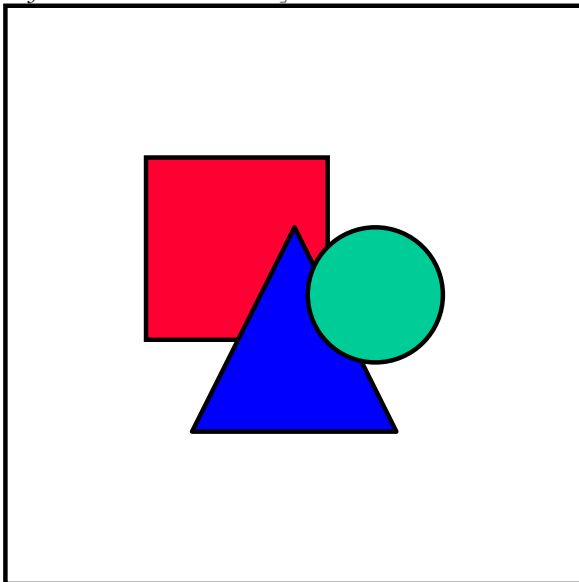
1997: [Earth Summit](#) (23-27 June, New York , USA) [*link to the website of the United Nations Department for Policy Coordination and Sustainable Development*]



1996: [World Food Summit](#) (13-17 November, Rome, Italy) [*link to the website of the Food and Agriculture Organization of the United Nations (FAO)*]

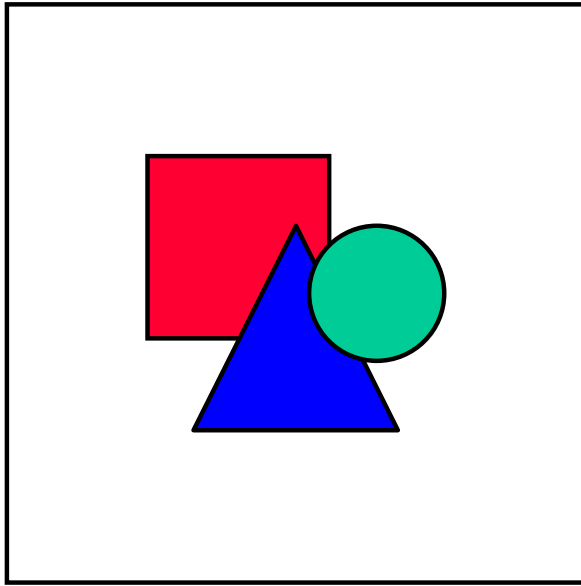


1996:[Habitat II](#) (5-16 February, Istanbul, Turkey) [*link to the website of the United Nations Centre for Human Settlements*]

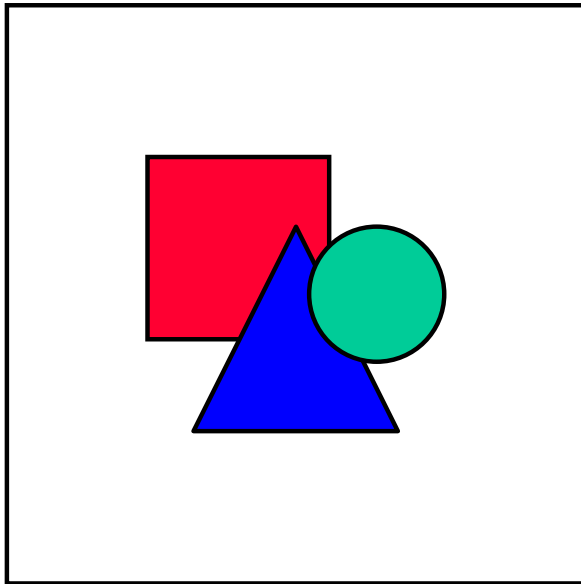


1995:[Fourth World Conference on Women](#) (4-15 September, Beijing, China) [*link to Gopher Menu*]

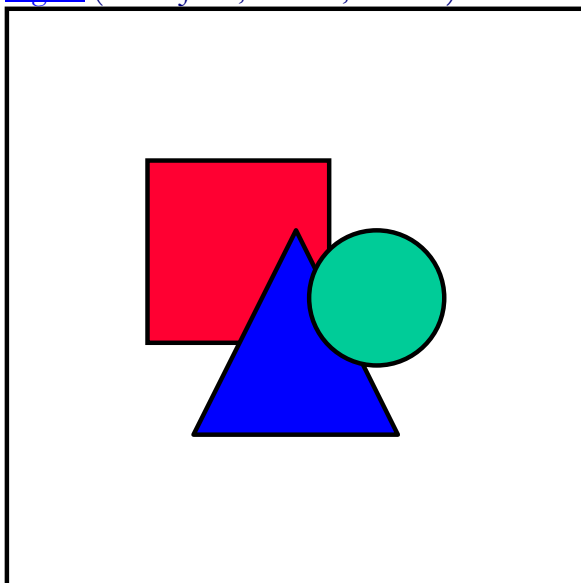
1995: [World Summit for Social Development](#)(6-12 March, Copenhagen, Denmark)



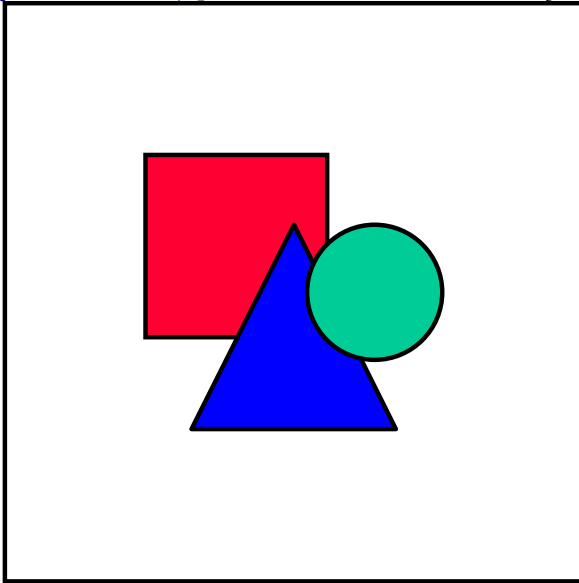
1994: [International Conference on Population and Development](#) (5-13 September, Cairo, Egypt)



1993: [World Conference on Human Rights](#) (14-25 June, Vienna, Austria)



1992: [United Nations Conference on Environment and Development](#) (3-14 June, Rio de Janeiro, Brazil) [*link to the United Nations Conference on Environment and Development Collection*]



1990: [World Summit for Children](#) (29-30 September, New York, United States)

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