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Joint Standing Committee on Foreign Affairs, Defence and Trade
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Dear Sir / Madam

Inquiry into Human Rights Mechanisms and the Asia-Pacific — submission

The National Children's and Youth Law Centre thanks the Joint Standing Committee on Foreign Affairs, Defence and Trade ("**Committee**") for the opportunity to contribute to its Inquiry into human rights mechanisms and the Asia-Pacific through this written submission. We have considered the arguments and recommendations made by other submissions to this Inquiry and submit that consideration should be given to the support and development of Child Rights programmes as a practical and principled strategy for building support for more effective human rights mechanisms in the Asia-Pacific region.

Our submission to the Inquiry is attached.

Yours sincerely

James McDougall
Director

Submission

Human Rights Mechanisms and the Asia-Pacific

February 2009

James McDougall, Director
National Children's and Youth Law Centre

“In the Asia-Pacific region, there is some resentment about the concept of human rights. Some of our leaders are fond of decrying them as a western or alien concept at odds with our values.

Human rights are universal in nature. They are about fairness and decency. At its simplest, it is treating others as one would wish to be treated.

Interestingly, it is not the downtrodden, the oppressed or the marginalised who make the criticism. It is those of us who are part of established power structures that query the applicability of these rights.

At the same time, I do not advocate the implementation of these rights without regard to context. To do so would be arrogant, insensitive and counterproductive. It will always be a question of ascertaining how the balance is to be struck. The surrounding circumstances will always play a part in how rights are applied. Because they are not applied in a vacuum, but in factual situations where a plethora of factors come into play and have to be considered. The challenge for all of us is finding that balance and giving effect to the particular rights simultaneously.”

Ratu Joni Madraiwiwii
Former Judge of the High Court of Fiji
Former Fiji Human Rights Commissioner
Former Vice-President of the Republic of the Fiji Islands

Taken from the Keynote Address
at the Eleventh Annual Meeting
of the Asia Pacific Forum of National Human Rights Institutions, Suva, 31 July 2006

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*OHCHR Pacific Regional Office; UNDP Pacific Regional Centre; UNFPA Pacific;
UNIFEM Pacific Regional Office; UNICEF Pacific (Suva-Fiji).*

1. The National Children's & Youth Law Centre

- 1.1 The National Children's and Youth Law Centre ("NCYLC") promotes the rights of Australian children and young people. It seeks to increase their access to justice and improve their status as participants in Australian society. Since its inception in 1993, NCYLC has made over 180 public submissions on law and policy affecting children and young people and has responded to more than 150,000 enquiries by children and young people throughout Australia.
- 1.2 In recent years NCYLC has also been developing its profile as a regional centre for excellence in building awareness, understanding and expertise in child rights. It has provided advice to programmes and projects in Asia and the Pacific (including China, Thailand, Fiji and Papua New Guinea).
- 1.3 NCYLC also co-convenes with UNICEF Australia the Child Rights Taskforce, a coalition of national organisations committed to the development of child rights and responsible for the preparation and presentation of the NGO Report to the United Nations ("UN") Child Rights Committee on Australia's implementation of the UN Convention on the Rights of the Child ("CROC").
- 1.4 We apologise for the delay in making this submission and respectfully request that it is given consideration. We would welcome the opportunity to expand on any aspect at the Committee's convenience.

2. Overview

- 2.1 NCYLC submits that consideration should be given to the support and development of child rights programmes as a practical and principled strategy for building support for more effective human rights mechanisms in the Asia-Pacific region.
- 2.2 Child rights have been an accepted area of development work in the Asia-Pacific for many years. CROC has been ratified by all countries in the region. By focussing on child rights and building on existing programmes that are already underway in the region, the Australian Government can make a practical contribution to the development of a framework for human rights dialogue and build a viable and credible foundation on which to base regional mechanisms for the prevention and redress of human rights violations in the Asia-Pacific.
- 2.3 The submissions already made to this Inquiry have identified a range of issues (such as diversity, credibility, lack of support for human rights advocacy and the portrayal of some human rights advocacy as imperialism in disguise) that offer challenges to the efficacy of Australia's role in the development of a regional human rights mechanism for the Asia-Pacific. We also note the egregious human rights violations to children that have occurred in the region (referred to in many of the submissions) including commercial exploitation, use of child soldiers, forced labour and enslavement and institutional and unconscionable violence and abuse of children.
- 2.4 However, none of the submissions have explicitly made the link between the support and development of child rights programmes and work underway in the Asia-Pacific region and reducing or removing the hurdles to developing protection of human rights. It is this specific link that NCYLC wishes to highlight.
- 2.5 We note that this is consistent with our own support for the evaluation, strengthening and development of mechanisms to promote child rights and prevent and redress human rights violations against children in Australia and in the region.

3. Why Focus on Child Rights?

- 3.1 CROC is the most widely accepted and ratified human rights instrument in history. CROC has been ratified by all countries in the Asia-Pacific region.
- 3.2 One of the challenges in developing a human rights mechanism for the Asia-Pacific region is the region's diversity. The Asia Pacific is not a single entity for political or other purposes. This makes achieving consensus and political support a challenge. Nor can we ignore the perception that human rights advocacy is no more than thinly disguised Western Imperialism – as a result of the legacy of colonialism within the Asia-Pacific region.
- 3.3 By taking an incremental or 'evolutionary' approach to the protection of human rights in the region, starting with child rights (an area of human rights with comparatively wide support and acceptance within the region) and ensuring that programmes work on community development principles, support will be more soundly based.
- 3.4 Significant Child Rights programme work is already underway in the Asia-Pacific region. These programmes are not always characterised as child rights work and sometimes fail to make adequate reference to the comprehensive policy framework provided by the relevant international human rights principles and treaties.
- 3.5 However, the work is often undertaken as part of programmes funded by the Australian Government or by Australian based development agencies (both commercial and NGO). Often it is already undertaken in collaboration with local agencies (government or NGO) and international agencies that work in the countries concerned. Often the work already crosses national borders.
- 3.6 The work that has and is being done includes:
 - The development of youth justice systems;
 - The development of child protection systems;
 - The development of education systems and programmes - particularly those that support the universality of the right to education;
 - The development of health systems and programmes - particularly those that address infant mortality, the impact of HIV/AIDS on children and of preventable diseases on children;
 - Programmes to reduce the exploitation of children in labour;
 - Programmes to reduce the exploitation of children through trafficking;

- Programmes to reduce the sexual exploitation of children; and
- Programmes to build the participation of children in civil society.

3.7 Supporting and developing the work that is already on foot allows the Australian Government to direct its resources into programmes that are most likely to build on existing community and political support. These programmes are more likely to succeed and produce results in the short and longer term. This in turn builds credibility. Clear benefits to communities generate legitimacy and can be used to build momentum for a human rights framework and dialogue. For the Australian Government it allows for clearer links between resources provided and the outcomes achieved.

3.8 There are many other areas of child rights development in the Pacific that can be built on this foundation. There is considerable international support for further child rights programmes in the Asia-Pacific. These include Children's Parliaments, integrating the Convention and other human rights materials into school curriculums, children's participation in schools through student councils, and community forums to integrate child rights into existing cultural practices and challenge cultural practices that harm children (such as child marriage).

3.9 At the same time supporting programmes developed in collaboration with local, national and regional communities in the Asia-Pacific region addresses the accusation of imperialism. If we can support and influence the development of local programmes, the programmes will be more sustainable and more politically palatable.

3.10 Adopting an international human rights framework can still involve cultural change. The Child Rights based approach to programming endorsed by NCYLC (and by organisations such as the International Save the Children Alliance and UNICEF) is part of a comprehensive international human rights framework. A Child Rights approach aims to create an environment which is respectful of children's rights and is based on a commitment to the fulfilment of children's human rights.

3.11 We can and do play a supportive, collaborative and encouraging role giving legitimacy to the work already underway. To develop a human rights culture and framework within the region a community development approach should be used. Capacity building and a clear focus on long term sustainability will assist in the development of mechanisms that build political or cultural respect for the protection of human rights.

- 3.12 Children and young people are often the victims of human rights violations occurring in the Asia-Pacific region but they can also play a key role in building a future that provides for the protection and enjoyment of human rights for all.

4. Comments on the Recommendations of other Submissions

- 4.1 The submission of the Centre for International Governance and Justice at the Australian National University urges the Committee to think more broadly about ways Australia can support human rights in the region through interventions already on foot in countries such as Timor Leste, Bougainville and the Solomon Islands. As discussed above, greater support for child rights would be one way that this could occur.
- 4.2 The submission also suggested that the Australian Government could broaden its view of human rights mechanisms to include civil society organisations. NCYLC supports this suggestion and notes that it is particularly relevant in the context of child rights. Often the growth of civil society and its organisations occurs around addressing issues of child protection and development.
- 4.3 Law and Justice Development, building governance and indeed an isolated focus on the development of human rights institutions, although worthy objectives, do not necessarily build community support and respect for human rights. Similarly, isolated educational activities that do not in a practical sense demonstrate the benefits to a community of a concept (whether it is human rights or respect for the rule of law or greater transparency in government decision making) are less likely to build a civil society that also supports these concepts.
- 4.4 We support the Centre's suggestion that "*building democracy and human rights institutions ... should be looked at separately*". However, we would add that there should be an integrated approach that also links clearly with a distinct community development approach. This approach can focus on the real practical benefits to local communities of developing respect for human rights. Further, we would argue that child rights programmes provide some of the most powerful evidence of such benefits. This will also make it easier to address these conceptual issues at a national level, between governments, parliaments and politicians.
- 4.5 This is also consistent with the recommendations in submission 15 from the Human Rights Law Resource Centre. Child rights can form an integral part of an approach that links benefits to local communities with national and regional advocacy and collaboration that support human rights and link with the development and implementation of regional and international human rights instruments.

- 4.6 We support the recommendation of the Centre for International Governance and Justice and that of Professor Byrnes (UNSW) that AusAID should adopt a human rights based framework for the development assistance program and we add that child rights should form a significant part of that framework.
- 4.7 We also support the recommendation that the Australian Government fund and assist the preparation of both state and shadow human rights committee reports, through partnerships between Australian and other civil society groups and at a state level.
- 4.8 NCYLC has already taken steps to build this activity. We anticipate that a range of Australian NGOs would be keen to assist in skills development for reporting to international human rights treaty bodies such as the UN Child Rights Committee.
- 4.9 We support the Sydney Centre for International Law's call for "emphasis on encouraging the ratification of existing human rights instruments" and suggest that CROC can be used as an example of the positive benefits of such an approach – in providing benefits at a local and community level, in drawing international attention to regional child rights issues and in building regional support for initiatives.
- 4.10 We are not as pessimistic about the development of a regional human rights approach as the Sydney Centre but suggest that greater regional awareness and support can be built on existing programmes that use a human rights approach (including child rights programmes).
- 4.11 We support the approach advocated by World Vision Australia that uses specific human rights initiatives that seek to develop capacity in local communities to address particular issues. The examples used by World Vision – violence against children in Pacific communities and trafficking in Asia and increasingly in the Pacific – are good examples of child rights issues that can be used to develop awareness and collaboration around the strengths of human rights approaches.
- 4.12 By ensuring programmes and initiatives include and are increasingly run by civil society (rather than exclusively by governments and development agencies) the benefits are entrenched and civil society is given legitimacy and made more sustainable.

5. Comments on the Australian Council for International Development Submission

5.1 In broad terms we support the objective identified in the ACFID submission and recognise the value of a particular focus – in this case, ensuring access to primary education. This represents a significant specific child rights goal and one of particularly crucial importance – “as access to primary education is crucial for personal development and empowerment in any country”.

5.2 The focus on primary education also offers an opportunity for a country such as Australia. We have reached significant levels of compliance in the implementation of this right and have developed considerable technical and professional expertise that would be of particular value to other countries in the region.

5.3 However, any strategy that would involve Australia committing to ensuring access to primary education in the region must recognise that for this goal to be achievable and sustainable it must be accompanied by a significant commitment by each and every national government in the region to fund and resource the provision of quality primary education to its children on an ongoing basis.

5.4 A broader commitment to the development and protection of child rights in the region would enable Australia to build on existing priorities and play a more strategic and responsive role to the issues identified collaboratively and locally by its partnerships with governments, civil society and the development sector. This could include access to primary education but could also include other child rights programme initiatives.

5.5 We support ACFID's call for a greater commitment to human rights education in the region. This could be part of a greater commitment by the Federal Government to human rights education in an Australian domestic setting as well!

6. Comments on the Asian Forum for Human Rights and Development Submission

6.1 This submission demonstrates that there is already considerable dialogue on child rights occurring in the region. To some extent, Australia needs to consider whether and how to join this dialogue – particularly as it is not currently a member of ASEAN. NCYLC would argue that we have much to contribute – but in a spirit of mutual learning and acknowledgement that each country in the region has to do more to protect children – including Australia. A shared commitment to the implementation of the Convention on the Rights of the Child would be a good starting point.

7. NCYLC's Recommendations

- 7.1 Specific and separate attention should be given to the promotion of child rights in Australia's foreign affairs and development policy and in the programmes and projects, funding and resources that we provide overseas - particularly in the Asia-Pacific region.
- 7.2 The Australian Government should give greater focus to the support and development of child rights programmes. This should build on the work that is already underway in the Asia-Pacific region. This would involve evaluating those programmes and deciding how best to direct Australia's resources to their most efficient use in terms of the long term development of human rights in the region. It also requires a more explicit and specific focus on child rights as part of the existing international human rights framework.
- 7.3 A coordinated human rights approach should be used which:
- is based on community development principles;
 - promotes respect for cultural and indigenous values within the context of an international human rights framework;
 - enhances understandings of local political and cultural issues;
 - encourages collaborations across the region;
 - engages governments, civil society and international development partners;
 - and
 - uses the context of reporting, monitoring and support towards the further development of international and regional human rights mechanisms.

We thank you again for this opportunity to provide these comments. If you require further information regarding this submission or elaboration of our views, please contact the Director James McDougall on 02 9385 9588 or director@ncylc.org.au.