

CHAPTER SIX

RATIFICATION OF UN HUMAN RIGHTS TREATIES IN THE REGION

United Nations framework

6.1 In the field of human rights there are several debates which, however reasonable, can tend to distract from the ultimate goal of achieving respect for the human rights of all people. As has been discussed, debate still continues over whether the universality of human rights can be modified by cultural considerations. Other debates have arisen over the effectiveness of the United Nations itself, the relevance and acceptance of the United Nations treaties, and the impact of those treaties when there are large numbers or significant kinds of reservations attached.

6.2 One commentator has noted that five of the six major human rights treaties are modified by three-quarters or more of UN member states, and there are hundreds of reservations to these treaties which attempt to limit the scope of the ratifying states' obligations. An example of the reservations is that Islamic states may choose to ratify treaties only to the extent that the obligations contained in them are compatible with Islamic law.¹

6.3 This chapter examines the extent and the impact of ratification of UN human rights treaties in the region, within the overall context of the effectiveness of Australia's dialogue. The chapter contains a brief overview of the UN human rights system and the major treaties, before addressing ratification and its implications.

6.4 The UN human rights framework provides for monitoring of the major treaties by six treaty committees.² States which are parties to these treaties are required to produce reports on their compliance with treaty obligations to the committees. This reporting system was intended to be the main means of enforcement of the obligations, but, in some cases, provision is also made for individual complaints to be made of treaty violations.

6.5 The UN Commission on Human Rights (UNCHR) meets annually for six weeks (although it can meet in special session if a majority of members wishes). As well as preparing recommendations and drafting instruments, it has some capacity to respond to human rights violations: the Commission may establish subsidiary bodies and appoint special rapporteurs to investigate and report on human rights issues in particular countries or on particular themes. There is also regular review of broad issues through bodies such as the Third Committee of the General Assembly to which the General Assembly refers social, humanitarian and cultural matters. By such means as these, the UN has developed some capacity to investigate and comment on matters which may traditionally have been regarded as closed to international scrutiny.

1 Bayefsky A, 'The UN and the International Protection of Human Rights', in *Rethinking Human Rights*, op. cit., p. 77.

2 The Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, and the Committee on the Rights of the Child.

Terms in common use

6.6 It is important to define some of those terms which are used commonly when discussing the UN system, and international law generally. A treaty is a written agreement between countries which binds those countries that enter into it. The term 'treaty' also covers such international agreements as charters, conventions, covenants, protocols and pacts and exchanges of notes.³

6.7 Bilateral treaties usually come into force upon signature. However, after a country signs a multilateral treaty there is usually a second step, ratification, that is necessary for the treaty to come into force. Signature of a treaty usually notifies agreement to the content of the agreement, whereas ratification indicates a country's consent to be bound by the treaty.⁴

6.8 Some treaties allow for reservations to be made. A reservation is a declaration by which a state purports to exclude or alter the legal effect of some provisions of the treaty as it applies to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility of not applying certain provisions with which it disagrees. However, reservations must not be incompatible with the object and the purpose of the treaty. They can be made when the treaty is signed, ratified, accepted, approved or acceded to.⁵ If a country wishes to withdraw from a treaty, it may do so, by way of denunciation.⁶

Extent of formal acceptance

6.9 Fewer than one quarter of countries in the region have ratified all the major international human rights instruments. All countries have ratified the Convention on the Rights of the Child (CROC); the majority have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); about one third have ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); and just over one quarter have ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).⁷ The region's record in respect of the formal acceptance of treaties, quite apart from implementation of the treaties, was regarded by witnesses generally as poor.

6.10 This lack of commitment to the international instruments across the region was noted by the Australian Council for Overseas Aid (ACFOA), which asserted that the Asia Pacific has the worst ratification record of any region in the world:

Only ten of 28 countries in the Asia-Pacific have ratified the two major covenants on human rights: the Philippines, Vietnam, Cambodia, Democratic People's Republic of Korea, the Republic of Korea, India, Nepal, Sri Lanka, Australia and New Zealand. ... Ratification of some of the other Conventions such as the Convention

3 Senate Legal and Constitutional References Committee, *Trick or Treaty? Commonwealth Power to Make and Implement Treaties*, November 1995, p. 2.

4 *ibid.*

5 'Glossary of terms relating to Treaty Actions', United Nations Treaty Collection, p. 5.

6 Senate Legal and Constitutional References Committee, *op. cit.*, p. 2.

7 DFAT, Submission p. 854; table at Submission, pp. 859-860. The table is reproduced at Appendix 5 to this report.

on the Rights of the Child is better. It is apparent of course, that despite ratification in some of these countries, there is a considerable way to go in terms of implementing these human rights.⁸

6.11 Countries which have not ratified either of the key covenants—the ICCPR and ICESCR—include Bangladesh, Burma, the Cook Islands, Fiji, Kiribati, Laos, Malaysia, Pakistan, Papua New Guinea, Samoa, Singapore, Tonga, Tuvalu, and Vanuatu.⁹ China has signed the ICESCR and stated that it intends to sign the ICCPR.¹⁰

6.12 The table at Appendix 5 to the report sets out ratification rates in the region. The principal issue with refusals to sign the treaties by countries such as China and Indonesia and others, was that the governments were not prepared to accept the obligations contained in the international treaties. The Asian values debate arises again, here, with Mr Chris Sidoti seeing it as a factor which governments may use for their own domestic political purposes, to distinguish the culture and traditions of their part of the world from the standards set out in international human rights instruments which they wish to reject.¹¹

6.13 In this region, DFAT considered ratification of the key instruments was 'patchy', as was adherence to the instruments. DFAT referred to the UN High Commissioner for Human Rights, Mrs Mary Robinson, who, as a key feature of her activities for 1998, was encouraging countries to sign up to the core treaties. DFAT also aimed to encourage further ratification of those treaties.¹²

The impact of treaties

Ratification

6.14 The practical significance of ratification as an indication of a government's commitment to safeguarding human rights and upholding the international order was spelled out by Amnesty International:

Ratification assures the people of a country that current and future administrations will be subject to a continuing international obligation to guarantee specific and fundamental human rights, no matter who is in power. Ratification helps to strengthen domestic human rights protection by providing standards and benchmarks for national law and practice, engaging the expertise of United Nations monitoring and specialist mechanisms, providing a system of international accountability and, in some instances, an external channel for individual complaints. The ratification of international standards by all member states of the United Nations is an essential bulwark in the

8 ACFOA, Submission, p. 739.

9 Afghanistan has signed, but not ratified CEDAW; other countries which have not ratified CEDAW include Brunei, the Cook Islands, the Democratic People's Republic of Korea, Papua New Guinea, the Philippines and Tonga, DFAT/AusAID, Submission pp. 859-860.

10 Minister for Foreign Affairs, *Media Release*, FA27a, 13 March 1998.

11 HREOC, Transcript, p. 61.

12 DFAT, Transcript, p. 267.

promotion of universality and indivisibility of all human rights ... and the international rules-based order as a whole.¹³

6.15 The implication is that, whatever the signatory's intentions or ultimate success in achieving those standards, the standards have been acknowledged publicly as a goal, and will remain as a public reminder and basis for comparison with the actual record of the state.

6.16 Clearly, while ratification is only the first step in the process towards upholding human rights, it has some significance in itself. The goals contained in the instruments represent more than ideals held up by a minority of developed states. The United Nations Association of Australia (UNAA) stated that the various international human rights instruments developed through the UN system represent benchmarks for the policies and practices of member states of the UN and greater ratification and adherence to these international standards is the first priority:

These standards have been developed from the international deliberations of member states and represent the present consensus. All countries should be encouraged to sign and ratify these instruments to indicate their commitment to achieving the standards contained in them.¹⁴

6.17 While some countries hesitate to sign the treaties because they consider they will not be able to comply with some of the more technical requirements, such as reporting, others are not so inhibited.

Ratification of international human rights instruments marks the beginning of a process, not the end. All too often human rights instruments remain a dead letter, even when solemnly ratified in the eyes of the international community. India, Sri Lanka and Cambodia have each ratified many international instruments, but have failed to protect rights in practice, sacrificing them to internal security needs or allowing the system of law and justice to be corrupted by impunity.¹⁵

...

Australia's efforts to promote the ratification of international instruments will only be effective if Australia is seen internationally as a proponent of the international treaty system and willing to put its international commitments into domestic practice. The past few years have seen a concerted political challenge to the treaty system in Australia.¹⁶

6.18 The need to follow-through after formally accepting the obligations contained in the instruments was spelled out by Dr Ian Barns:

It is not enough to simply participate in international meetings and to sign human rights conventions. Such declarations need to be

13 Amnesty International, Submission, p. 700.

14 United Nations Association of Australia Inc., Submission, p. 183.

15 Amnesty International, Submission, p. 701.

16 *ibid.*

implemented at regional and local levels in ways that can be monitored and governments made accountable. In particular, if Australia is to play a credible and effective role in relation to human rights issues in the region, human rights conventions which we have signed need to be ratified and translated into domestic legislation.¹⁷

Australia's treaty-making process

6.19 This Committee, in its first report on human rights, *A Review of Australia's Efforts to Promote and Protect Human Rights*, noted that Parliament should be able to debate and scrutinise treaties before they are ratified. It recommended that the annual report by DFAT should include a current list of UN human rights treaties and that the Committee's role should include scrutiny of Australia's treaties and treaty based machinery, through the conduct of regular and formal reviews.¹⁸

6.20 In 1995, the Senate Legal and Constitutional References Committee report, *Trick or Treaty? Commonwealth Power to Make and Implement Treaties*, recommended establishment of a Joint Parliamentary Committee on Treaties.¹⁹ In May 1996, the Minister for Foreign Affairs and the Attorney-General, when announcing the government's reforms to the treaty-making process in Australia, proposed the establishment of the Joint Standing Committee on Treaties (the Treaties Committee).²⁰

6.21 The Treaties Committee provides a formal means for the Parliament to examine treaty actions proposed by the government; in addition, the Committee's activities allow for public consultation on the treaty process. The government's initiative in establishing the Treaties Committee is welcomed for the opportunity it presents to Parliament and the Australian public for scrutiny of treaties before they are made binding.

Australia's reporting obligations

6.22 In terms of compliance with treaty obligations, an issue which was mentioned frequently by witnesses was Australia's failure to keep up with its obligations to report to the treaty monitoring committees. The result, it was argued, was that Australia's credibility was seriously undermined. Mr Bill Barker noted that Australia was six years overdue in submitting the third report under the ICCPR; the fourth report is also overdue. Reports under the ICESCR and the CAT are more than three years overdue. The report under the CROC was submitted three years late in December 1995. The third report under the CEDAW was due in 1992, but because of delays, a supplementary report to the second report was designated as the third report, and was considered by the relevant committee in 1997.²¹

6.23 The Office of International Law in the Attorney-General's Department is responsible for preparation of Australia's reports to the UN Human Rights Committee under the ICCPR, to the UN Committee Against Torture under the CAT, and to the UN Committee

17 Barns Dr I and TEAR Australia, Submission, p. 257.

18 Joint Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, 1992, p. 39.

19 Senate Legal and Constitutional References Committee, op. cit., p. 267.

20 Minister for Foreign Affairs and Attorney-General, 'Government announces reform of treaty-making', *Media Release*, FA29, 2 May 1996.

21 Barker, Submission, p. 361.

on the Rights of the Child under the CROC.²² An officer of the Department stated that Australia's tardiness in reporting was partly due to delays in obtaining information from the state, territory and some federal bodies. Another cause for delay was the time taken to verify material and put it in a form suitable for the report.²³

6.24 Another officer stated that, historically, the Attorney-General's Department had no dedicated resources for reporting and this had caused some difficulty. The Department was putting in place new procedures for reporting. It was expected that this, combined with the treaty bodies recent guidelines for much shorter reports, should assist in cutting delays.²⁴ In evidence, DFAT acknowledged the lateness of reports and stated that its goal was to ensure they were completed before the end of 1998.²⁵

6.25 Australia's delays in submitting reports was noted in several submissions, including that of Amnesty International Australia. Amnesty also expressed regret that the government did not provide an opportunity for NGOs to have access to the reporting stage. This has been raised at an NGO forum, where it was also mentioned that the monitoring function was not simply an obligation, but also provided an opportunity for the nation to monitor critically its own performance and review its standards.²⁶

6.26 The dangers of overlooking delays in reporting were adverted to by Ms Elizabeth Evatt. She stated that it was not to the point that Australia's human rights record is 'not so bad'. Countries with good human rights records also manage to report regularly. The treaty committee is able to examine activity and to probe those areas where work needs to be done. Ms Evatt stated that if Australia is proud of its record, it should expose it to the international community. She considered that by our failures, Australia undermines its position in dealing with other countries on their records and said: '... to have credibility and moral authority in regard to human rights, Australia must be sure that it is fulfilling its own obligations'.²⁷

6.27 While he said that Australia's reporting record was worse than almost all comparable democratic industrialised states, Mr Chris Sidoti acknowledged that it is difficult to meet our reporting obligations. The current and previous government had found the same difficulty. He also acknowledged the complexity of the UN reporting system.²⁸

6.28 Mr Sidoti would not allow that Australia could excuse its delays because it was preparing its reports 'properly'; he considered many criticisms could be made of the completed reports. Without a better record, Australia can not offer criticism to poorer countries which refuse to be part of the international treaty system because they admit they cannot meet the reporting obligations. Mr Sidoti noted this was a particular issue in the Pacific, where some small island states will not sign key treaties because they have not the resources to meet the reporting requirements and do not wish to sign and then fail to comply.²⁹

22 Attorney-General's Department, Submission, p. 949.

23 Attorney-General's Department, Transcript, p. 33.

24 *ibid.*

25 DFAT, Transcript, p. 267.

26 Amnesty International, Submission, p. 701.

27 Evatt, Transcript, p. 69.

28 HREOC, Transcript, pp. 57-58.

29 *ibid.*

6.29 Whatever the difficulties posed by the federal system, Australia should comply with its reporting obligations in a more timely manner, not least because delays reduce the credibility of a country which seeks to encourage others to sign up to and comply with international obligations. It may be that more streamlined reports will provide an opportunity to catch up on these obligations, and limit the danger of the process of report compilation becoming a frustrating administrative exercise, rather than a time for genuine review.

6.30 The Committee recommends that:

17. The Australian government review the procedures in place for complying with reporting obligations under international treaties and take steps to ensure that those obligations are met in as timely and complete a manner as possible.

Alternative instruments

6.31 The Australian Human Rights Commissioner was concerned about one aspect of the United Nations agenda. Mr Sidoti accepted that the region needs a regional treaty, but his concern was that unless there is strong adherence to the universal treaties by states in this region, any regional treaty would be a 'lowest common denominator' instrument that would work to undermine international global standards rather than providing a regional means to ensure their implementation. Mr Sidoti considered that one of the 'greatest priorities' in human rights diplomacy for Australia was the continual encouragement of regional states to sign up to the global treaties as quickly as possible.³⁰

6.32 Looking to future directions in human rights activities in the region, Mr Bill Barker had similar reservations:

The adherence of Asia-Pacific countries to the six major international human rights instruments is uneven but is expanding slowly. ... [T]he extent of ratification among Pacific island countries is particularly weak. ... From time to time, there are calls for an Asia-Pacific charter of human rights. In my view, this would not be a good idea. The countries of the Asia-Pacific region are slowly expanding their adherence to UN human rights instruments and this process should be left to continue. To try to develop an Asia-Pacific Charter would introduce an extremely controversial element into regional human rights diplomacy. Many regional governments would probably oppose the idea. It is possible that Australia could be excluded from the process of developing such a draft, as it was from the Asia-Pacific Regional Preparatory Meeting for the 1993 World Conference on Human Rights. And it is doubtful that the standards in any Asia-Pacific charter would equal those of existing international instruments.

6.33 The question arises, if ratification and implementation of the international instruments is poor, why should they be promoted? The answers vary, but they include the universality of the instruments, their capacity to contribute to international peace, and because as a member state of the UN, Australia is obliged to promote them:

30 *ibid.*, p. 61.

There can be little doubt of the "Universal" application of the principles relating to the human rights referred to in the UN Charter, the Universal Declaration of Human Rights and the UN Resolution Declarations or the obligations imposed on all member states to promote and uphold them and to encourage other states to do the same for the purpose of promoting and maintaining international peace.³¹

6.34 The United Nations Association of Australia was quite clear in its view that Australia should maintain its commitment to the existing international human rights instruments as benchmarks for behaviour around the world, and urge countries of the region to ratify those instruments. UNAA also supported strengthening the role and resources of the UN Commission on Human Rights.³²

6.35 The Committee endorses the view that before consideration is given to development of a regional charter of human rights, Australia should encourage to the fullest extent possible those countries in the region that have not entered into the major UN treaties to ratify those documents.

Impact of the major treaties

Children

6.36 Despite the fact that all countries in the region have ratified the CROC, children's rights can be seen to be vulnerable in a number of contexts: child labour; the sexual exploitation of children; and child soldiers. The International Women's Development Agency (IWDA) stated that ratification has not guaranteed the rights of children. In all parts of the region, their full rights are unrecognised explicitly at law. Many children miss out on opportunities for education, where they exist, and are often involved in long hours of labour, often for pitiful return and in unhealthy conditions. By referring to children as always having families, IWDA considers that homeless children are made invisible.³³ At the time of writing, Parliament's Treaties Committee was finalising its report on CROC after an extensive inquiry process.

6.37 With respect to CROC, DFAT's evidence was less pessimistic. It reported that most governments have responded quickly and positively to CROC, so that progress has been made in legislation, social and educational policy and programs as well as co-operation between government and non-government agencies on activities including protection and rehabilitation of children in difficult circumstances.³⁴

6.38 Commitment by countries in the region to CROC is said to reflect the importance which their cultural and religious traditions place on the well-being of children. The strong commitment to CROC provides a common standard from which Australia can work in the region, on the basis of shared values. This includes cross-border problems such as child sex

31 Lambert, Submission, p. 328.

32 UNAA, Submission, p. 187.

33 IWDA, Submission, pp. 788-789.

34 DFAT/AusAID, Submission, p. 854.

tourism. DFAT's view was that CROC, as an agreed, international legal framework and point of reference, made it possible to develop cooperative and complementary processes quickly.³⁵

6.39 The International Labour Organization (ILO) has conducted surveys which showed that 25 per cent of all children between the ages of 5 and 14 were economically active, and, of these, between 33 and 67 per cent of the boys and 27 and 69 per cent of the girls were employed in hazardous work.³⁶

6.40 To counter the growth of child labour in the region, Dr Ian Barns urged the Australian government to continue to give strong support for the development of measures to restrict exploitative child labour, including support for the ILO. Suggested government action included promotion of best practice amongst Australian companies and effective programs to discourage Australian companies that operate in the region from exploiting child labour. The suggestion was also made that social clauses be included in trade relationships.³⁷

6.41 PLAN International Australia suggested measures to be undertaken by the Australian government to alleviate the need for and effect of child labour. These were: legislation to sanction those Australian citizens who punish or abuse children through labour practices in other countries; education programs for Australian companies which undertake work using child labour in other countries, or import goods made by child labour; and increased aid directed to the education and health of children. More aid could be targeted to emergency situations, such as children in bonded labour or slavery.³⁸ PLAN International also urged Australia to sign ILO Convention 138, which stipulates a minimum age for labour, among other things.³⁹

6.42 In terms of sexual exploitation of children, End Child Prostitution Pornography and Trafficking (ECPAT) Australia, referred to the government's failure to fulfil its obligations under CROC and its failure to implement a national action plan. ECPAT complained that proposals for national legislation on child and women trafficking have been stalled and constructive national policy is hampered by inconsistencies in State legislation on child pornography. The result, in ECPAT's view, is a lack of commitment to constructive regional or national dialogue on sexual exploitation of children. For this to be overcome, a well-resourced, strategic national approach with consistent legislation across State jurisdictions is necessary.⁴⁰ ECPAT also recommended specific national legislation to implement CROC, and financial assistance through AusAID for community education and support services for children and families.⁴¹

6.43 Ms Nancy Shelley referred to Australia's legislation which enables prosecution of those Australians who engage in sexual exploitation of children in other countries⁴² and

35 *ibid.*

36 ILO, 1998 Press Releases, 'ILO to seek new Convention aimed at abolishing extreme Forms of Child Labour', ILO/98/20, 25 May 1998.

37 Barns, Dr I and TEAR Australia, Submission, p. 261.

38 PLAN International Australia, Transcript, p. 207 and Submission, pp. 449-450.

39 PLAN International Australia, Transcript, p. 208.

40 ECPAT Australia, Submission, p. 392.

41 *ibid.*, p. 393.

42 *The Crimes (Child Sex Tourism) Amendment Act 1994.*

suggested that the government encourage other governments to introduce legislation along similar lines.⁴³

6.44 Real commitment to CROC in the region was seen as weak by the Australian Forum of Human Rights Organisations (AFHRO), which considered many countries pay lip-service, rather than taking effective action to protect children and their families.⁴⁴ AFHRO suggested that, in line with Australia's commitment to establish a national action plan by the year 2000 and to develop strategies to reduce the number of children in prostitution, the use of children in pornography, and the trafficking of children for sexual purposes, a co-ordinated, multi-disciplinary approach to the prevention of child sexual exploitation would assist Australia with its regional dialogue in this area.⁴⁵

6.45 With respect to children in armed conflict, AFHRO referred to the draft optional protocol to CROC. This aims to raise the permissible age of military induction to 18. AFHRO notes the minimum age of recruitment to the Australian Army and Navy is 17 years. Australia's stance, which is not to raise the age to 18, or to support the optional protocol, is said by AFHRO to seriously compromise the effectiveness of its human rights dialogue.⁴⁶

6.46 The particular vulnerability of refugee children and internally displaced children to recruitment into armed forces was raised by Ms Shelley. In her view, if Australia actively supported the optional protocol to CROC, it would protect children in several countries in the world, and assist governments, some of which are in this region, in their efforts to protect their children.⁴⁷

6.47 The Committee is pleased to note that the ILO, backed by growing support for abolishing extreme forms of child labour, is to seek a new Convention and Recommendation aimed at bringing an immediate end to hazardous, exploitative working practices that are faced by children each day. The ILO Conference in June 1998 will discuss the new Convention and Recommendation and on the basis of this discussion and subsequent comments by member states, the ILO will prepare a report for the 1999 Conference which can decide on the final adoption of new standards. Any final text will not be adopted until 1999.⁴⁸

6.48 The Committee notes the comments by PLAN International Australia, in particular, with regard to establishing mechanisms to improve dialogue on children's rights in the region. PLAN suggested incorporating concern for children's rights into Australia's trade discussions and discussions about participation in conflict.⁴⁹

6.49 The Committee endorses these suggestions for inclusion in trade and other dialogue. However, rather than fragmenting discussion of human rights issues into discussions of children's rights, and other rights, dialogue on children's rights should be included generally as part of human rights dialogue.

43 Shelley, Submission, p. 669.

44 AFHRO, Submission, p. 620.

45 *ibid.*

46 *ibid.*, p. 621.

47 Shelley, Submission, p. 669.

48 ILO, 1998 Press Releases, 'ILO to seek new Convention aimed at abolishing extreme Forms of Child Labour', ILO/98/20, 25 May 1998.

49 PLAN International Australia, Transcript, p. 210.

6.50 The Committee also endorses suggestions made in respect of legislation to cover child labour, and education on child labour issues for Australians whose business involves the import or manufacture of goods made by child labour. There is always concern, however, that abolition of child labour without the introduction of educational, and other support programs, will be a very short term gain for the children and their families whose living depends on the work of children.

6.51 The Committee recommends that:

18. The Australian government examine the possibility of enacting legislation to prohibit the engagement of Australians or Australian companies in exploitative child labour in other countries, and the import into Australia of goods made by exploitative child labour.

Women

6.52 Almost all countries in the region have ratified CEDAW, and DFAT considers that this is partly the result of a call for universal ratification by United Nations Fourth World Conference on Women in Beijing in 1995. Women's issues, including trafficking in women and children, have achieved a higher profile.⁵⁰ Countries which have not ratified CEDAW include Papua New Guinea, Tonga and Tuvalu.⁵¹

6.53 In its submission, the Department of Immigration and Multicultural Affairs (DIMA) expressed concern about the extent of illegal migration and people trafficking in the region. DIMA referred to this as exploitation of people who do not meet the migration criteria of the targeted countries.⁵²

6.54 Despite the high level of ratification of CEDAW, AFHRO was concerned at the serious reservations which some countries had made in respect of some terms. An example of this was Bangladesh's reservations to several terms on the grounds of incompatibility with Shari'a law. This is regarded as substantially diminishing women's rights. AFHRO stated the Asia Pacific NGO Human Rights Congress resolved that the denial of human rights of women continues to be a 'widespread and serious problem' in this region. The problem is manifest in violence against women (privately and publicly), violations connected with the role of women within the family, the ill effects of globalization on women, trafficking of women and girls, large scale displacement of persons, the majority of whom are women, and the number of women who are victims of armed conflict.⁵³

6.55 Australia's stance on women's human rights issues has been criticised (at the 53rd session of UNCHR, and at the 1997 session of the monitoring committee for CEDAW), and AFHRO considered this had implications for the promotion of women's human rights at a regional level.⁵⁴

50 DFAT/AusAID, Submission, pp. 854-855. For DIMA's perspective see Submission, p. 1118.

51 DFAT/AusAID, Submission, pp. 859-860.

52 DIMA, Submission, p. 1121.

53 AFHRO, Submission, p. 622.

54 *ibid.*, p. 623, cites Horin, 'UN alarm at shift in women's policies', *Sydney Morning Herald*, 29 July 1997, quoting the United Nations Committee on CEDAW expressing concern about 'policy changes that apparently slowed down, or reversed Australia's progress in the achievement of gender equality'.

6.56 The Women's International League for Peace and Freedom (WILPF) saw profound difficulties in promoting and protecting women's human rights, largely because 'human' is equated with 'masculine'. WILPF stated that:

... the issue is broader than the ratification of UN HR instruments when considering their impact on women and minority groups. Quite simply, the gendering of concepts such as human rights, security, nation building, the economy and development has created an understanding which has given rise to a world view which negates the full participation of women.⁵⁵

6.57 The 'toll from the denial of women's rights as human rights' was set out by WILPF:

... a woman dies from pregnancy related causes every minute (many in this region);

sex selective abortions or neglect subtracts 60 million girls (the majority in Asia) from the expected populations. This will cause significant distortions in the communities year by year which increase rather than subtract from global problems;

2 million children/women between the ages of 5 and 15 years "are introduced" to the commercial sex market each year (in our region).⁵⁶

6.58 IWDA echoed this call to consider gender aspects of human rights, and quoted:

Human rights law has been drafted and applied to guarantee men protection against those harms they feel will be directed against them. It has failed to take account of women's experiences and to provide even theoretical protection against those acts that are directed at women because they are women.⁵⁷

6.59 The violation of human rights of women in our neighbour, Papua New Guinea, was described by IWDA. They included violence, threats of violence, lack of access to education, health services and appropriate employment. These, and maternal mortality rates of 930 per 100,000 women per year, were seen to undermine the gains of development.⁵⁸

6.60 In summary, IWDA noted with respect to women's human rights a fact which also applies to other rights: conventions alone, even if they are ratified, are not sufficient to protect the rights of women in many countries of the region, but they are important instruments, and the Australian government should pursue every channel to encourage wider ratification and removal of reservations. This includes active implementation of CEDAW's provisions in

55 WILPF, Submission, p. 465.

56 *ibid.*, pp. 465-466.

57 IWDA, Submission, p. 786, quoting Christine Chinkin.

58 *ibid.*, p. 787.

Australia, and support for women's organisations here and in neighbouring countries, to increase the ability of women to work for the implementation of CEDAW.⁵⁹

6.61 The Committee is pleased to note that work is currently being undertaken to develop and adopt an Optional Protocol to CEDAW which would strengthen the treaty by providing a formal complaint mechanism, so that individuals and NGOs could have an official avenue to the CEDAW Committee.⁶⁰

Workers

6.62 The rights of workers are covered mainly by the ILO conventions. However, although in this region the vast majority of countries are members of the ILO, the overall ratification rate of ILO Conventions is low. DFAT reported that there has been little movement in that rate over recent years.⁶¹

6.63 Although all countries in the region have ratified the CROC, ILO Convention 138, which relates to the minimum age for employment, has not been ratified by any country, including Australia. DFAT states that this is due largely to technical difficulties with, and the over-prescriptiveness of, the Convention's provisions.⁶²

6.64 Convention 29, which relates to forced labour, is the most widely ratified Convention, but fewer than half of the countries in the region have ratified conventions relating to other core labour standards, such as freedom of association and equality. Six countries have ratified Convention 87 (freedom of association), although DFAT noted that membership of the ILO incurs the obligation to abide by the principles of freedom of association, regardless of whether the member has ratified that convention.

6.65 Human rights concerns of workers were outlined by Community Aid Abroad (CAA), which attributed many of those concerns to the internationalism of companies. Asia's cheap workforce has provided the competitive advantage which forms the basis of its economic growth. However, workers in Asia may be vulnerable and exploited, thus reducing their capacity to demand fair wages and conditions.⁶³ It needs to be recognised, however, that over the last decade or two, living standards have increased around the region, in line with economic growth.

6.66 CAA considered that common labour abuses include excessively long hours of work and compulsory overtime, low wages, or non-payment of wages, excessive noise in the workplace, overcrowding, use of industrial chemicals without proper precautions, lack of protective measures or machinery, and no sick leave or workers compensation. Women workers face additional violations, including sexual harassment by male supervisors. Children's rights are also under threat.⁶⁴

59 *ibid.*, p. 788.

60 *ibid.*, p. 787.

61 DFAT/AusAID, Submission, p. 855 and see pp. 939-940 for a table of key ILO conventions ratified by countries in the region.

62 DFAT/AusAID, Submission, p. 855.

63 CAA, Submission, p. 972.

64 *ibid.*

6.67 A combination of awareness of environmental and human rights concerns and adverse publicity appears to be leading companies to develop codes of conduct for their operations. For instance, CAA noted in the United States, Levi Strauss will not deal with suppliers which use prison or child labour, or who overwork or coerce workers. In addition, the company will not initiate or renew contracts in countries where there are pervasive violations of human rights—the company will not now do business in Burma or China. In Australia, Myer Grace Bros has a policy of not buying carpets or rugs made by illegal child labour, bonded or slave labour.⁶⁵

6.68 The role of the Australian government, according to CAA, is to see that ILO conventions and the rights they enshrine are respected in Australia and overseas. CAA argues this obligation stretches to Australians and Australian-based companies operating overseas. It urges the government to encourage Australian companies to adopt their own codes of practice, although CAA acknowledges such codes are not always successful. For example, the Nike Code of Conduct does not mention the right of workers to organise and bargain collectively. Codes should be based on ILO standards. CAA suggests the government should encourage industry-wide voluntary codes, such as those introduced by the Australian Mining Industry, provided there is an independent monitoring mechanism.⁶⁶

6.69 CAA recommends that the government participates in forums with representatives and relevant civil organisations on codes of conduct for Australian businesses operating overseas, to ensure that Australian best practice is adhered to overseas. Such codes should include, among other things, respect for the rights of workers to organise and bargain collectively, non-use of forced, bonded or exploitative child labour, and recognition of the right to a safe and healthy workplace.⁶⁷

6.70 The issue of the separation of trade from human rights was raised again in the context of the rights of workers. CAA regretted that the government has not taken a stronger stance on this and it refers to the White Paper statement: 'Linking human rights to trade serves neither Australia's trade nor its human rights interests.'⁶⁸ The lack of research on the effect of trade liberalisation, or the move towards reducing trade barriers, on human rights, was noted by CAA. One of CAA's recommendations was for the government to commission independent research into the impact of trade liberalisation on human rights in Asia and the Pacific, in particular on the human rights of women and children.

6.71 The ILO program to combat child labour and the Australian government's refusal to provide any additional funding to the program were raised by the Australian Council of Trade Unions (ACTU). It is concerned that the government has a policy to withdraw from or downgrade its involvement in multilateral agencies. A list of examples which might indicate such a policy exists was included by the ACTU and covered, for example, withdrawal of its special labour adviser from the ILO, termination of pilot projects with the ILO in Asia and the Pacific, reduction of representation to the annual ILO conference from 12 to 6, and withdrawal from the ILO governing body. The ACTU view was that this action is more difficult to understand when this was one of the few parts of the UN system where Australia

65 *ibid.*, p. 973.

66 *ibid.*, p. 974.

67 *ibid.*, p. 975.

68 *ibid.*

was an accepted member of the Asian grouping rather than the European grouping of governments.⁶⁹

6.72 The ACTU urged the Australian government to re-examine the decision to downgrade its involvement in ILO, take steps to re-establish relations with Asia Pacific ministers of labour and industry, strengthen the delegation to the ILO annual conference, and direct a portion of aid funding through the ILO, particularly targeting areas of strengthening labour administration and campaigns such as child labour.⁷⁰

6.73 The ACTU recommended that the Committee take note of the significant role and contribution of the ILO in Australia's dialogue on human rights in the Asia Pacific, and urge the Australian government to reaffirm its commitment to the ILO. It also recommended the government be encouraged to use the technical cooperation program of the ILO to further encourage commitment to the core labour standards of the ILO and in the context of discussions on the social dimensions of the APEC process, the government take a lead and encourage not only governments, but NGOs, unions and employers to participate.⁷¹

6.74 The possibility of an expanded role for APEC was considered by the ACTU, which drew attention to the growth of a social/human development dimension to the work of APEC and submitted that the role of labour standards should be a key part of that work. The ACTU affirmed suggestions that Australia, would be a good 'honest broker' in any discussion of labour issues in APEC. For APEC to be supported by all countries in the region, in the ACTU's view, it must have community support and provide benefits to all sections of the community. A narrow economic focus that only benefits elites in developed and developing countries would not be fair or sustainable. Australia's capacity to influence human and labour rights will be determined by the role it plays at the bilateral and multilateral level, such as the ILO.⁷²

6.75 The Committee notes the comments made in respect of the need to increase Australia's contribution to the work of APEC (as it relates to human rights), and the ILO (as it relates to child labour, in particular). The Committee is concerned that the rights of children, women and men who work in the region are particularly vulnerable at present, in the wake of the Asian economic crisis. It therefore considers that efforts should be made to ensure that Australia plays the most effective role possible to protect the human rights of those workers.

6.76 The Committee recommends that:

19. The Australian government review the role of APEC in respect of social and human development, and Australia's participation in that role, with a view to raising in that forum the issue of human rights for workers.

69 ACTU, Submission, p. 522.

70 *ibid.*, p. 524.

71 *ibid.*, p. 526.

72 *ibid.*, pp. 516-517.

20. The Australian government review its participation in the International Labour Organization, with a view to enhancing its support for the Organization, particularly in its work on child labour.

Indigenous peoples and minorities

6.77 The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is the major international convention which deals with racism and racial discrimination. Just over half the countries in the region have ratified this convention. DFAT submitted that it has consistently encouraged those countries which have not yet done so, to ratify the convention. Those countries which have not ratified CERD include Burma, Indonesia, Malaysia, and Singapore.⁷³

6.78 A second instrument which affects indigenous people and minorities is the UN Declaration on the Rights of Minorities, although, AFHRO noted that this has no binding status. According to AFHRO, a basic concern for the human rights of indigenous peoples in this region is their lack of recognition among regional countries, so that they are unable to achieve self-determination. They may also be subject to genocide and ethnocide, their right to land has been denied consistently, and they have been driven off their land, with consequent refugee flows, or degradation of indigenous lifestyles through tourism and commercial exploitation such as logging and mining.⁷⁴

6.79 A number of witnesses, including AFHRO, considered that Australia's promotion of human rights in the region had been jeopardised because of perceptions about its commitment to the human rights of its own indigenous people. AFHRO stated that:

... this domestic retreat from international obligations was reflected in the quality of Australian representation on the issue at the international level at the UN Commission on Human Rights. ... In previous years, Australia had been the lead delegation on two of the resolutions ... and co-sponsored all of them. This year, Australia declined to take the lead on anything and failed to co-sponsor the resolution on the permanent forum.⁷⁵

6.80 In referring to the rights of minorities, AFHRO noted that it is their identity as minorities—religious, ethnic—which contributes to the nature of the problems they confront. Examples include minority groups in Singapore where there is an ethnic Chinese majority, and Indonesia, where the minority is Chinese. In countries such as Iran, Pakistan, and Burma, religious marginalisation is a greater issue than ethnic minority status. Self-determination is a major issue for ethnic minorities, and, although states of the region claim to be concerned for the rights of vulnerable groups, these states would restrict the right to self-determination to peoples under 'alien domination or foreign occupation'.⁷⁶

6.81 The perspective of indigenous women was presented by the IWDA. It drew attention to the identification by Pacific women of rights to land which had been available to

73 DFAT/AusAID, Submission, p. 855 and see table at pp. 859-860.

74 AFHRO, Submission, pp. 624-625.

75 *ibid.*, p. 625.

76 *ibid.*, pp. 625-626, quoting the Bangkok Declaration, 1993, at paragraph 13.

indigenous women as a major issue in this region. IWDA urged development of a code for Australian companies operating in other countries. It referred to Papua New Guinea, where women are particularly disadvantaged by mining and logging companies, where most jobs are given to men, many from outside the locality, and more than half the wages are spent on alcohol. Women are subject to more violence and have greater workloads due to environmental deterioration.⁷⁷

6.82 Women often form the larger part of minority groups, including refugees. IWDA referred to estimates that women and children comprise more than three-quarters of the world's refugees. It stated: 'That they are prepared (or forced) to leave their homes indicates that encroachment upon their human rights has become intolerable'.⁷⁸

Refugees

6.83 Australia is a party to the Convention Relating to the Status of Refugees and the Protocol to that convention.⁷⁹ In addition to attempting to honour the obligations contained in the convention, DIMA states that in conjunction with DFAT, it has sought to encourage countries in the region to sign the convention. This is particularly important because of the numbers of people in the region who are refugees and are therefore entitled to protection. Australia is required to give protection to every applicant in Australia who falls within the Convention's definition of 'refugee'.⁸⁰

6.84 Australia's obligations in this regard have been incorporated into domestic legislation: the *Migration Act 1958* and the Migration Regulations (Subclass 866). The result is that DIMA is obliged to determine whether an applicant engages Australia's protection obligations and should be granted a Protection Visa which allows them to remain permanently in Australia.⁸¹

Implications of non-ratification

Causes of failure to ratify and implement treaties

6.85 Before considering the reasons behind failures to ratify, and the significance of these failures, it should be noted that ratification of treaties may not signify a commitment to particular human rights. In her submission, which focused particularly on Indonesia, Ms Kate Burns noted that only Thailand had a worse record than Indonesia in terms of the number of human rights treaties entered. On the other hand, she stated, simply counting up the numbers may demonstrate little. For instance, ratification could be more a function of dependence on Western aid (for example, the Philippines, Cambodia and Vietnam); could have little impact in a country where the government is ineffectual (for example, Cambodia); or be related to the degree to which the country accepts the dominant views of certain Western nations at the United Nations on human rights (here Ms Burns noted that Malaysia,

77 IWDA, Submission, p. 791.

78 *ibid.*

79 DIMA, Submission, p. 1111.

80 *ibid.*, p. 1116.

81 *ibid.*, p. 1118.

which has not signed or ratified many treaties, argues that human rights as articulated in conventions are a manifestation of western imperialism).⁸²

6.86 There is no question that enforcement of human rights obligations is particularly difficult and may explain some failures to ratify and implement treaties. Even among those states which have ratified the three treaties that contain optional provisions for complaints of violations,⁸³ almost 40 percent have not been the subject of one complaint, and these states include Algeria and Somalia.⁸⁴

6.87 With a regard for the value of public scrutiny, the United Nations Association of Australia did not appear to regard enforceability as a major issue in terms of implementation:

Adherence to agreements relies less on means of enforcement than on the climate of world opinion and the international monitoring of behaviour by different states, notably through the UN Commission on Human Rights. UNAA believes the present approach, which stresses the universality and indivisibility of human rights, should be maintained while at the same time there should be ongoing discussions among UN member states about the refinement and development of human rights standards and mechanisms for their observance.⁸⁵

6.88 The reasons for the failure of the international instruments to draw support in the region have been canvassed to some extent. These include the simple fact that, for their own domestic purposes, states may not wish to be bound, or seen to be bound to the obligations in treaties, some states may genuinely not consider particular treaties are relevant, and other states may wish to sign but not consider themselves capable of complying with the requirements. Another reason was put forward in one submission—generally, the instruments create obligations on governments of states, but provide no guidelines for their implementation.⁸⁶

Limits of ratification

6.89 The limits of ratification have been clear for some time:

Signature and ratification of conventions are not the same thing as fidelity to them. As Richard Falk has pointed out, the absence of any real prospect of enforcement makes it feasible for some governments to ratify agreements they cannot keep, while other governments that might observe them are deterred from becoming parties to the conventions by the theoretical possibility of enforcement.⁸⁷

82 Burns, Submission, pp. 80-81.

83 Optional Protocol to the Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

84 Bayefsky A, op. cit., p. 81.

85 United Nations Association of Australia Inc., Submission, p. 183.

86 Lambert, Submission, p. 331.

87 Vincent, RJ, *Human Rights and International Relations*, Cambridge University Press, 1986, p. 99.

6.90 Continuing human rights violations in the region demonstrate that ratification of the UN instruments does not provide a guarantee that human rights will be protected. For example, Sri Lanka and Cambodia have a good record in terms of ratification of the major human rights treaties, but their record in terms of observance of human rights is regarded as poor.

6.91 As has previously been suggested, although ratification is one step in a process, in itself it is still a matter of some significance.

That ratification leads to a decrease in human rights abuses is not at all clear. However, it is apparent that countries do not regard ratification as completely without import; the evidence points to a belief that such ratification leads to a degree of scrutiny into national affairs which would not otherwise exist. The seriousness of the process in which international instruments are drafted and debated is evidence that most countries regard these instruments as imposing real duties and responsibilities. For this reason, and because high rates of ratification effect the universality of rights and lend them greater cogency as a result, ratification of key human rights instruments by our regional neighbours is to be encouraged.⁸⁸

6.92 While ratification of a convention does not necessarily mean that the rights referred to will be protected, non-ratification of a convention does not necessarily mean that these rights will be ignored. DIMA referred to its efforts to encourage more countries to sign the refugee convention. Although ratification was DIMA's objective, the Department also noted that there were countries in the region that have never been a signatory to the convention but which played a major role with refugees and displaced persons. Thailand, in DIMA's view, had hosted more refugees and refugee-like situations than many countries in the region, and often to the complete satisfaction of the United Nations High Commissioner for Refugees. DIMA did concede that UNHCR's engagement with these countries which were not signatories was very important.⁸⁹

Improving ratification and compliance

6.93 There have been profound abuses of human rights in the Asia Pacific region and they continue today. Because there is no regional human rights commission, or regional court, the United Nations human rights instruments and processes assume considerable significance in this region.

6.94 As has already been discussed, the United Nations instruments are criticised as the creation of Western states, with no relevance for many states because they are not based on an understanding of the culture and beliefs of other societies. United Nations processes are sometimes criticised for being unwieldy and preoccupied with consensus, for allowing bias to win over universal application of principle, for being handicapped by lack of funds

88 AFHRO, Submission, p. 619.

89 DIMA, Transcript, pp. 349-350.

and inertia, and for allowing countries to lobby each other to ensure that their bloc votes prevent scrutiny.⁹⁰

6.95 Whatever the flaws that may be perceived in those instruments and processes, they are based on universal values and therefore have some claim on universal relevance and acceptance. The implementation of their objectives presents the region's best opportunity at present to strive towards the protection of human rights and ultimately for the stability of the region.

6.96 However, in striving to achieve greater levels of ratification, it is important not to lose sight of the ultimate goal. As one witness put it, the effectiveness of Australia's dialogue on human rights does not depend on the extent of ratification of the human rights treaties (although the low ratification rate is cause for concern). Rather, it will be measured by the degree to which Australia is able to persuade any partner in a dialogue that sustainable development is more likely when a government protects its people and promotes their human rights.⁹¹

6.97 ACFOA recommended that Australia should make ratification of international instruments the key objective of Australian human rights policy for the region and that AusAID, perhaps through the new Centre for Democratic Institutions, might extend assistance in the form of expertise, grants and education, to those countries in the region that have recently acceded to major human rights conventions, or are considering doing so, to help with treaty reporting obligations.⁹²

6.98 The Committee also supports the recommendations by Amnesty International with respect to the use of Australia's bilateral cooperation programs, and legal and technical assistance, to help strengthen the rule of law and protection of human rights in countries of the region, through ensuring that international standards are incorporated into domestic law and practice.⁹³

6.99 The Committee also agrees that countries should be encouraged to report to the relevant UN bodies on their implementation of international standards (although we will need to put our own house in order before we can expect to have much credibility in this exercise) and to invite United Nations specialist mechanisms to conduct monitoring and provide technical assistance. Amnesty also referred to the possibility of a role for the Centre for Democratic Institutions in this regard.⁹⁴

6.100 The Committee recommends that:

21. The Australian government pursue the ratification of international instruments as a major objective of its human rights policy in the region and, in implementing that policy, provide relevant assistance in

90 See, for instance, Bayefsky A, *op. cit.*, pp. 77-83; and UNAA, Submission, p. 187; and Asian Human Rights Commission, Submission, p. 168.

91 Shelley, Submission, p. 658.

92 ACFOA, Submission, pp. 739-740.

93 Amnesty International, Submission, p. 701.

94 *ibid.*

the form of expertise, grants and education, to those countries that seek to ratify and comply with those instruments.

