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29 June 1999

**THE AUSTRALIAN GOVERNMENT RESPONSE**

**TO**

**THE JOINT STANDING COMMITTEE ON FOREIGN  
AFFAIRS, DEFENCE AND TRADE REPORT**

***"IMPROVING BUT.... AUSTRALIA'S REGIONAL  
DIALOGUE ON HUMAN RIGHTS"***

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# THE AUSTRALIAN GOVERNMENT RESPONSE TO THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE REPORT

*"IMPROVING BUT .... AUSTRALIA'S REGIONAL DIALOGUE ON HUMAN RIGHTS"*

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## **Introduction**

The Australian Government welcomes the opportunity to comment on the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on Australia's regional dialogue on human rights. The Committee's work has generated a valuable debate on questions which lie at the core of so many pressing problems in the region. It has also raised awareness of the range of ways by which the Government seeks to advance the cause of human rights. The Committee has correctly observed that there is a place for quiet diplomacy, at times, just as there are requirements occasionally for a more public stance by government as it promotes and protects human rights.

The Government's emphasis on dialogue and its preference for practical policies that will make a real difference to the lives of individuals means that human rights activities are, by their nature, not always very visible on the domestic scene. Public discussion and scrutiny of its human rights policies and activities is thus particularly welcome. The response to the recommendations demonstrates that the Government is continuing to explore ways of translating its commitment to the principles of the Universal Declaration of Human Rights and the major human rights instruments into practical outcomes, including by improving the effectiveness of its regional dialogue.

### **Recommendation 1**

*The Australian Government give consideration to acceptance of the draft Universal Declaration of Human Responsibilities, provided that the final document is seen to complement the Universal Declaration of Human Rights and not derogate from it.*

The drafting of a Declaration of Human Responsibilities by a group of former heads of government, including Mr Malcolm Fraser, was the result of an ambitious undertaking to identify universally applicable human responsibilities.

It appears that, at least in its present form, the draft Declaration has not attracted the degree of support which would be required to put it before the relevant organs of the United Nations (UN) for possible endorsement by the international community. No member country has submitted the draft Declaration to the UN and unless or until that occurs, the question of formal government acceptance does not arise.

**Recommendation 2**

*The Australian Government establish formal coordination mechanisms between the Department of Foreign Affairs and Trade, AusAID and the new Centre for Democratic Institutions.*

The Australian National University (ANU) is contracted to AusAID to deliver the work of the Centre for Democratic Institutions (CDI). The CDI is working closely with and through AusAID and DFAT (including posts) to carry out its work. There is regular operational contact with officers of DFAT, AusAID and the CDI.

A Consultative Group for the CDI has been appointed. It comprises approximately thirteen members who will provide overall guidance and advice to the CDI on broad policy and strategic directions. The Group, comprising eminent people from academic, business and civil society, will also include senior AusAID and DFAT representatives.

**Recommendation 3**

*The Australian Government develop a Centre for Dialogue and Cooperation to be established outside traditional government and academic structures.*

Current priorities outlined elsewhere in this response take precedence over such a concept and the Government has no present plans to fund a Centre for Dialogue and Cooperation. Government effort in this area has focused on establishing and consolidating the Centre for Democratic Institutions (CDI), which will be working through bodies outside of government and academia in fulfilling its mandate. The CDI's focus includes working with NGOs. For example, it is currently planning joint courses with the Australian Council for Overseas Aid (ACFOA).

**Recommendation 4**

*AusAID increase the emphasis on human rights in the overseas aid program by including the following measures:*

- (a) establishing a human rights policy for AusAID*
- (b) introducing human rights training for AusAID staff; and*
- (c) including the issue of human rights in policy dialogue between AusAID and aid recipients*

(a) The Minister for Foreign Affairs, Mr Downer, in the Eighth Annual Statement to Parliament on Australia's Development Cooperation Program (2 December 1998), outlined the following framework for supporting human rights through Australia's aid program:

"The framework consists of six key principles.

First, human rights are a high priority for the Government. Civil and political rights are ranked equally with economic, social and cultural rights.

Secondly, the aid program will continue to undertake activities that directly address specific economic, social, cultural, civil and political rights. A particular emphasis will be on the creation of durable institutional capacity to promote and protect human rights.

Thirdly, the emphasis is on the practical and the attainable. AusAID, as the Government's aid agency, will pursue practical aid activities in support of human rights. These activities complement and build on high-level dialogue on human rights. Dialogue on human rights and representations about individual human rights cases will normally be carried through diplomatic channels.

Fourthly, the aid program will develop activities primarily as a result of consultations and cooperation with partner countries on human rights initiatives. Regional and multilateral activities will also be undertaken.

Fifthly, considerable care will continue to be applied to the use of aid sanctions associated with human rights concerns. The Government will consider such sanctions on a case-by-case basis. Aid conditionality based on human rights concerns would only be used in extreme circumstances since it can jeopardise the welfare of the poorest and it may be counter-productive.

Sixthly, AusAID will continue to link closely with other arms of the Australian Government on governance and human rights issues. AusAID will also liaise with NGOs and human rights organisations in Australia.

Practical action based on these principles means that the aid program will continue to focus on its objective of assisting developing countries to reduce poverty and achieve sustainable development. These principles will underpin our strong support for civil and political rights throughout our aid work. The aid program will seek to maximise the benefits for human rights in all development assistance activities."

AusAID is currently finalising practical guidance for staff on putting these principles into operation and has consulted with relevant NGOs as part of the process.

(b) AusAID is currently undertaking a program of governance training for the agency. Human rights is a key component of the training program, focusing on issues of particular relevance to AusAID staff and supporting implementation of the six key principles. Training commenced in March 1999. AusAID staff continue to have access to the DFAT human rights course.

(c) Annual High Level Meetings between AusAID and counterpart government organisations, as well as on-going discussions involving aid staff overseas, provide avenues for offering practical assistance to improve human rights conditions on the ground in developing countries. AusAID will continue to take the opportunity provided by these meetings to explore extension of the aid program's portfolio of human rights-related activities with counterpart government organisations, and to indicate the importance the Australian Government attaches to human rights.

The Government's high level policy dialogue with foreign governments on human rights generally, as well as representations about individual human rights cases, are usually carried out through diplomatic channels. This approach will continue. AusAID will continue to work closely with DFAT on practical initiatives to support this dialogue.

### **Recommendation 5**

*AusAID:*

- (a) incorporate relevant international human rights instruments into program design;*
- (b) develop a program of human rights education with aid recipient governments in the region; and*
- (c) invite contribution from NGOs and consultants to assist in developing a policy on conditionality of aid. This policy should be explained to the recipient countries before the grant of aid.*

(a) Considerable work is being done by a number of aid donors to integrate development and human rights thinking. AusAID recognises the need to look carefully at the implications of international human rights instruments for development cooperation and welcomes dialogue with the NGO community on this. A clear understanding of the background to and objectives of these instruments, and of the obligations they create for States parties, is essential.

The Australian aid program's focus on governance has strengthened the integration of human rights in the aid program, through its recognition that governments play a central role in determining the extent to which citizens can realise their human rights. Much of Australia's governance assistance is focused on helping partner governments develop and maintain institutions that are capable, accountable, committed to equity and that understand their human rights obligations. Such activities help build institutions and cultures that are consistent with the enjoyment of human rights.

The aid program will continue to work towards ensuring that all development assistance activities have a positive human rights impact. Human rights considerations are taken into account in project design and implementation. As part of AusAID's regular program of sector reviews, human rights aspects of aid interventions will be assessed. Modifications to design and implementation procedures will be undertaken as necessary to enhance performance in this area. The range of international human rights instruments to which Australia is committed will provide the context for, and inform and guide, aid program involvement in human rights activities. As noted in the response to Recommendation 4, AusAID is finalising practical guidance for staff to assist implementation of this policy. As part of this process, AusAID has consulted human rights organisations and examined relevant information produced by other donors.

(b) Human rights education is an important part of Australia's development assistance in the region. Technical assistance and education in the area of human rights is seen as an important tool for assisting countries to strengthen their capacity to promote and protect human rights.

(c) Australia takes a cautious approach to the issue of conditionality. The primary aim of Australia's aid is to reduce poverty. Human rights abuses are an issue in some of the countries to which Australia provides aid. Some argue the level of aid should depend on respect for human rights and democracy in recipient countries. Conditionality needs to be used very carefully, since it can jeopardise the welfare of the poor and it may be counter-productive. Where serious and sustained human rights violations have occurred, Australia has withdrawn aid in concert with other donors. The Government has suspended bilateral aid to Burma given that country's poor record on human rights, but has continued assistance through non-governmental organisations to help minority peoples who have suffered under the regime. Violations are looked at on a case-by-case basis.

#### **Recommendation 6**

*In respect of human rights dialogue with China:*

- (a) *the Australian Government consider the inclusion of an independent human rights expert in any future Australian delegations to China; and*
- (b) *the Australian Government liaise and coordinate, so far as practicable, with other countries engaged in bilateral dialogue with China on human rights.*

(a) The Australian delegation to the 1998 round of the human rights dialogue in Canberra included an independent expert from the Human Rights and Equal Opportunity Commission, and the Government would be looking to maintain that representation for this year's talks in China. Similarly, the Government would be looking to ensure that its consultations with community groups on China-related human rights issues are maintained in the future.

(b) The Australian Government already liaises and coordinates with a range of other countries that are engaged in bilateral dialogue with China on human rights. Liaison ensures that there is minimal duplication of human rights technical assistance activities, and that the dialogue activities are based on the best available information about the evolving Chinese human rights environment. Effective liaison and coordination will play a major role in the effort to maximise China's engagement with the international community on human rights issues and, through this engagement, to assist on-the-ground change in the promotion and protection of human rights and the rule of law in China.

#### **Recommendation 7**

*The Australian Government examine the possibility of playing a mediating role in respect of initiating dialogue between the Chinese Government and the Dalai Lama.*

The Government encourages dialogue between the Chinese Government and the Dalai Lama on terms acceptable to both sides. It has conveyed that view consistently, most recently during Mr Downer's meeting with Foreign Minister Tang Jiaxuan in Kuala Lumpur on 14 November 1998.

The decision to commence a process of dialogue is, however, one for the parties directly involved to take. Until they reach agreement on such a process, encouragement remains the most productive contribution that others, like Australia, can make.

### **Recommendation 8**

*The Australian Government continue to pursue actively in its dealings with the new Indonesian Government its support for a solution to the difficulties in East Timor that is just, equitable and in the best interests of the people of East Timor.*

Events moved quickly in Indonesia and East Timor during and after the Committee's deliberations. The Prime Minister, Mr Howard, wrote to President Habibie on 23 December 1998 setting out the Government's views on the future of East Timor. The letter stated that in the Government's view, the long term prospects for reconciliation would be best served by the holding of an act of self-determination at some future time, following a substantial period of autonomy. The Government also made clear its support for the release of Xanana Gusmao on the grounds that he has an important role in the negotiations on East Timor's future. This new policy was made known publicly on 12 January 1999.

The Government has continued to work very actively to encourage a solution to the problems of East Timor, including through strong financial, logistical and other support for the UN consultation process, and ongoing dialogue with the Indonesian Government - including the Prime Minister's summit with President Habibie and Indonesian ministers in Bali on 27 April. In its dialogue with Indonesia, the Government has consistently emphasised its overriding interest in seeing a smooth and peaceful transition - whether to autonomy or independence - following the UN consultation. In its contacts both with the East Timorese and the Indonesian government, the Government has also emphasised the importance of a process of reconciliation between various East Timorese factions. It has urged the Indonesian authorities to respect human rights and to take measures that build confidence on the ground in East Timor. Indonesia's responsibility to end violence in East Timor, particularly through bringing the militias under control, has been raised consistently in this context.

The Government recognises that substantial international resources will need to be made available to assist East Timor in its transition process to a new status, whether it be autonomy or independence. The Government has foreshadowed a significant commitment from Australia, including a \$20 million contribution to the UN consultation process and the deployment of 50 Australian police to the UN civilian police force. Mr Downer has also encouraged other members of the international community (for example, EU countries) to respond generously. Assistance to East Timor - both in the short and long term - will continue to be a high priority for the Government for the foreseeable future. This is reflected in the establishment of an Australian Consulate in early June.

Australia supports the establishment of an office of the UN High Commissioner for Human Rights in East Timor. Through its contribution to the Indonesian National Commission of Human Rights, Komnas HAM (see below), which has an office in Dili, it is also helping in practical ways to resolve East Timor's human rights issues.

**Recommendation 9**

*The Australian Government consider the inclusion of conditions relating to political reform and the observance of human rights in future development assistance to Indonesia.*

As noted in the response to Recommendation 5(c), Australia takes a cautious position on conditionality. The Government's approach to development aid is to target aid towards achieving particular reform goals, not make it conditional on achievement of these goals. Australia's development cooperation program funds a range of activities to promote human rights in Indonesia, both directly and indirectly. All of the economic development programs contribute to the realisation of economic and social rights, which are an integral part of human rights. In addition, Australia made an aid commitment of up to \$2 million in technical assistance to support the protection and promotion of civil and political rights in Indonesia. The key activity being funded out of this contribution is a major program of technical assistance to the Indonesian National Commission of Human Rights, Komnas HAM, to strengthen its institutional capacity. The aim is to assist Komnas HAM in fulfilling its official mandate to protect and promote human rights, including following through Indonesia's National Action Plan on Human Rights launched on 25 June 1998.

Other examples of assistance include assistance to Yayasan HAK, a community-based legal aid and human rights monitoring NGO in Dili; to the Dili Diocese Commission on Justice and Peace, for human rights monitoring and advocacy; and to the Indonesian Legal Aid Foundation (LBH) based in Jakarta. Funds for Indonesian NGOs in the broad area of good governance and civil society have also been made available through the Australia Indonesia Institute.

**Recommendation 10**

*Consideration be given by the Australian Government to the possibility of using the human rights initiatives undertaken in Vietnam as a model for use in programs with other countries in the region.*

The initiatives taken in Vietnam, particularly the forging of links between the Human Rights Research Centre at the Ho Chi Minh National Political Academy and the Centre for Asian and Pacific Law at the University of Sydney, have benefited from being non-confrontational, from drawing on non-government expertise and from focusing on institutional capacity building. These principles have broader applicability in the region, although clearly the mode of technical cooperation will differ from one partner country to another.

Partnerships with developing countries form the core of Australia's development cooperation program. Program activities are tailored specifically to the most pressing development needs of each country, via country strategies. These strategies consider Australia's development cooperation program in the broader context of each country's own development efforts and take into account the activities of other donors. The sectoral focus of the aid program (announced in "Better Aid for a Better Future", November 1997), which includes governance as one of five priority sectors, provides a mechanism for adapting approaches used in one country, such as Vietnam, to other countries. This will be done where Australia and the partner country in question agree that it meets the latter's particular development needs.



**Recommendation 11**

*The Australian Government give consideration to including dialogue on human rights issues in its dialogue with Thailand, and in development assistance provided to Thailand.*

While human rights issues have always been an element of the dialogue between Australia and Thailand, they have been given greater priority in recent years and now form an important part of our dialogue. Australia has expressed support for Thailand's increased participation in the international human rights system, welcoming its moves to establish a National Human Rights Commission, its consideration of accession to key human rights instruments and its efforts to develop a coordinated approach to issues. (Pending the formation of a National Commission, a Committee under the direction of former Prime Minister Anand Panyarachun is making policy recommendations to the Government.)

These developments will provide scope for further cooperation with Thailand, including through Australian organisations such as the Centre for Democratic Institutions and the Human Rights and Equal Opportunity Commission. The Government looks forward to expanding the bilateral dialogue and seeking opportunities to work with Thailand to build on its strong political commitment to human rights.

In the governance sector, AusAID funds programs in selected areas to assist the Thai Government to implement its broad agenda on political and bureaucratic reform. This has included an intensive two week training program on public sector reform for senior Thai officials, run by the Public Sector and Merit Protection Commission. Other projects, related to the implementation of Thailand's new constitution, are being actively pursued.

**Recommendation 12**

*The Australian Government raise the issue of inappropriate use of national security laws in its bilateral dialogue with countries in the region, and also at the UN Commission on Human Rights, with a view to the Commission establishing an investigation into such use and the development of guidelines setting out the circumstances in which their use would be justified.*

The Australian Government raises the issue of national security laws in its bilateral dialogue with countries in the region, where we think those laws have been used inappropriately to detain people for the peaceful expression of their political views. For example, the impact of national security laws on the protection of human rights was raised during the Australia-China human rights dialogue in Canberra in August 1998. Australia also made representations to the Chinese Government concerning the arrest, trial and sentencing of China Democracy Party activists in December 1998. Those activists had been convicted of offences endangering state security. Representations are regularly made to other governments (for example, the Governments of Laos and Vietnam) about persons adopted by Amnesty International as prisoners of conscience.

Australia has raised the issue of national security and human rights in multilateral forums, most recently in its statement on human rights questions to the Third Committee of the United Nations General Assembly in New York on 10 November 1998:

"Australia is well aware of the depth of the financial crisis currently afflicting parts of the globe, especially in our own region... In times of economic pressure, it is vital that governments do not overlook basic rights such as freedom of religion and political expression, and that they use national security legislation in an appropriate manner."

At the 55th session of the Commission on Human Rights, in April 1999, the Australian delegation co-sponsored a consensus resolution which deals with the right to freedom of opinion and expression. The resolution covers, inter alia, "the need to ensure that unjustified invocation of national security to restrict the right to freedom of expression and information does not take place" and refers to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as adopted by a group of experts in South Africa on 1 October 1995. The resolution expresses its concern at the number of cases in which violations of the right to freedom of opinion and expression are facilitated and aggravated by several factors, including "too vague a definition of offences against State security".

The Government also notes the existence of a consensus resolution at the Commission on Human Rights which deals with the question of arbitrary detention, including detention imposed inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned.

### **Recommendation 13**

*The Australian Government consider including human rights considerations in the assistance it provides to countries in the region in the wake of the Asian economic crisis.*

Human rights considerations are integral to the assistance the Government provides to countries in the Asia-Pacific region. The economic and accompanying social crises in the region have focused attention on fundamental rights and freedoms and the necessity for effective democracy and good governance to promote their realisation. The Government's emphasis on governance and capacity-building in its regional human rights dialogues, as well as on consultations and cooperation with partner countries in its development cooperation programs in the region, responds to these needs. For example, the Government is providing up to \$675,000 over 3 years to the Human Rights and Equal Opportunity Commission (HREOC) to assist it in providing a secretariat for the Asia-Pacific Forum of National Human Rights Institutions. The Forum aims to build and maintain a strong network between national human rights institutions in the region, and to encourage regional governments, their administrative organs, NGOs and wider civil society to work in cooperation with national human rights institutions.

The Government will continue to give priority to the strengthening of civil society. In recognition of the major social impact of the regional crisis, the Government is currently considering a range of further development cooperation activities in the social sphere, including ones specifically aimed at protecting and promoting human rights in the region.

**Recommendation 14**

*The Australian Government review the human rights implications of Australia's defence co-operation with other countries and establish guidelines which prohibit any defence co-operation which could contribute to the recipient forces internal security function.*

Australia conducts a wide range of defence cooperation activities with the region which are tailored to the needs of the country concerned. These include policy talks and high level visits, combined exercises, personnel attachments and exchanges, study visits, and training programs conducted in Australia and overseas. These activities help build confidence and enhance transparency in defence planning, thereby increasing understanding of each other's strategic perceptions and intentions. Furthermore, combined military exercises, training and operational deployments improve our capacity to operate with other defence forces and promote the development of each country's defence capabilities. This, in turn, reinforces the security of the region as a whole.

The Government takes into account a number of factors when deciding the extent of cooperative defence activities with other countries. Factors include the strategic considerations outlined above, existing bilateral and multilateral commitments, economic considerations, the needs of the country concerned, as well as the country's human rights performance. The same considerations apply to defence exports. In all cases, our cooperative programs are tailored to avoid activities which may give rise to human rights concerns.

Many regional countries, and especially Pacific Island countries, have armed forces that have both internal and external security roles. In certain countries, the defence force and the police force are combined in one security organisation. A blanket prohibition on defence cooperation which could contribute to the recipient force's internal security function would render any kind of defence cooperation with these countries impossible. For example, Australia would be unable to assist the Solomon Islands Defence Force in developing their basic weapons skills because this could possibly contribute to the internal security function.

To a lesser extent, the same is true of the armed forces of many South East Asian countries. As these nations have developed over the past decade, the focus of their security forces has been moving from internal security to external security. However, many South East Asian security forces still have at least a vestigial internal role. Although Defence will continue to focus defence cooperation activities on external security roles, to put a complete stop to any defence cooperation that could possibly contribute to an internal security function would be very restrictive. Many cooperative defence activities involve generic skills and capabilities which could in theory be applied to external or internal security situations. While the Government endeavours to constrain cooperation to areas not likely to lead to human rights abuse, this ultimately comes down to a question of judgement.

The Government believes its current policy on the provision of Defence Cooperation works well in balancing the range of our foreign policy and security interests. Where there are human rights concerns with particular regional countries, the ADF does not provide training or undertake other cooperative activities in skills designed to enhance internal security or counter-insurgency capabilities. For instance, this policy has meant that the Government is currently not planning any exercises with Indonesia's Special Forces except those concerned with counter-hijack training.

**Recommendation 15**

*The Australian Government review the operations of its defence co-operation program with a view to providing assistance to the governments of regional countries in provision of training for the military in international human rights law.*

As noted in relation to Recommendation 14, the Australian Government has taken, and will continue to take, a principled position on human rights issues. The Government will continue to review the human rights implications of all cooperative defence activities with other countries.

Technical assistance programs under defence cooperation agreements include training in international humanitarian law and its implications for defence personnel. Funding is provided for human rights training for the Indonesian defence forces.

As regional countries develop national human rights institutions and other mechanisms for the promotion of human rights, opportunities will emerge for Australia to consider ways of building on these efforts.

**Recommendation 16**

*The Australian Government consider evaluating the capacity of ASEAN and the ARF to play a role in the promotion and protection of human rights in the region, and where appropriate, advocate the assumption of such a role by those institutions.*

Thailand has in the past advocated the establishment of an ASEAN Human Rights Commission, and the Australian Government will take appropriate opportunities to encourage such a development, although it is not of course a member of ASEAN. Ultimately, that step depends on ASEAN consensus and would seem to be a longer term prospect.

Australia attends meetings of the ASEAN Regional Forum (ARF), a body created to promote regional security dialogue and cooperation. The Government will continue to raise human rights issues from time to time in the ARF, when they can be related to regional security and stability. For example, at ARF Ministerial Meetings, the Minister for Foreign Affairs, Mr Downer, has stressed the importance of political reform in Burma and the need for a comprehensive and negotiated settlement between the Government of Burma and opposition groups. Some of the confidence building measures agreed to or being considered by the ARF, such as activities in the area of international humanitarian law and small arms, will also indirectly support the promotion and protection of human rights in the region.

The Government believes that the strengthening of regional co-operation among national human rights institutions will provide an important building block in the eventual establishment of a regional human rights mechanism. The Asia-Pacific Forum of National Human Rights Institutions, established in Darwin in 1996, is making steady progress in this regard. The Forum currently has six members, including the human rights commissions of Indonesia and the Philippines. Thailand, Fiji, the Republic of Korea and Malaysia are actively engaged in the establishment of a human rights commission and the Australian Government has encouraged Burma to establish an independent commission.

**Recommendation 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.*

While fully up to date with its reporting obligations under most human rights (and ILO) treaties, there have been delays in preparing some reports in recent years. The Government is working towards meeting dead-lines in the future, but in doing so it does not want to compromise the high standards it adopts with respect to the preparation of reports. This involves extensive consultations with State and Territory governments as well as discussions with NGOs and other relevant interest groups.

Many other countries have experienced difficulties in meeting reporting deadlines. Indeed the UN has recognised that treaty-reporting obligations place burdens not only on parties to the treaties but also upon the treaty committees, all of which have a considerable backlog of reports to consider. A report on the reform of the treaty body system by the Australian academic (and former Chairman of the Committee on Economic, Social and Cultural Rights) Professor Philip Alston makes several recommendations to render the process more efficient and effective. Australia strongly supports treaty body reform, including reform of the reporting process, and Australian delegations are pursuing this objective in relevant forums.

**Recommendation 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.*

Enacting domestic legislation to combat exploitative child labour in other countries and to control imports of goods allegedly produced by child labour is considered by the Government to be an ineffective means of tackling the problem. This view is based on the fact that these problems occur outside Australia's jurisdiction and the fear that such enactment would work to the detriment of children by driving the problem underground and forcing children into even more harmful situations. This concern is also supported by the conclusion of the ILO Tripartite Working Party on Labour Standards (1995). Import bans specifically targeted towards child labour, under existing Customs regulations, are considered similarly ineffective given the scarcity of accurate and reliable information and evidence.

As noted below, (Recommendation 20) the Government has strongly supported the development by the International Labour Conference of new international labour standards addressing exploitative child labour and has been active in the negotiations on the texts. These instruments were adopted in June 1999.

The Government believes the most effective remedies for exploitative child labour practices must be focused on root causes - primarily poverty and lack of education. This is most effectively achieved through broad based bilateral development assistance complemented by multilateral efforts which the Government will continue to pursue through its overseas aid program. In the meantime, the Government welcomes and supports voluntary corporate and consumer initiatives which endeavour to increase public awareness of exploitative child labour practices.

**Recommendation 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.*

Australian ministers, including the Prime Minister, raise human rights issues where appropriate in relevant bilateral discussions in the margins of the APEC meetings. However the Government does not consider APEC itself to be an appropriate forum in which to raise human rights issues. It has an economic mandate focusing on trade and investment liberalisation, business facilitation, and economic and technical cooperation.

Australia's view is that the ILO is the most appropriate forum for discussion of labour issues, and that the ILO's mandate and authority should not be diluted or duplicated in other forums. The ILO is tripartite in structure (with employer and worker representatives having equal representation and voting rights to government representatives), and thus provides a formal role in an international forum for workers.

The application of core ILO standards is already being comprehensively supervised by the ILO (the ILO actively promotes ratification of its relevant Conventions, and members are asked to report on their implementation). Employer and worker organisations are invited to contribute to this reporting process, which was enshrined by the adoption of a Declaration on Fundamental Principles and Rights at Work and its follow-up in June 1998 by the ILO. The Government strongly supported the adoption of the Declaration, and played an important role in ensuring that countries in the Asian region were able to support the proposed text.

**Recommendation 20**

*The Australian Government review its participation in the International Labour Organisation, with a view to enhancing its support for the Organisation, particularly in its work on child labour.*

The Government already strongly supports the ILO. Mr Peter Reith, the then Minister for Industrial Relations, stated in response to a question without notice in Parliament on 2 May 1996:

"The Government will, of course, retain its membership of the ILO. Australia has been a member of the ILO for many years. We have played a constructive role in the past; we will play a constructive role in the future... [however] against that background, the Government is grappling with a significant problem in respect of the budget."

It was in the light of budgetary constraints that the cutbacks referred to by the ACTU (reflected in paragraph 6.71 of the JSCFADT report) were undertaken. The Government still plays an appropriately active role in the ILO, albeit a lower-key one than was previously the case. Australia pays its assessed contribution to the ILO promptly, which is appreciated by the ILO. Australia's 1999 contribution was assessed at SF 4.87 million (\$A5.8 million paid in January 1999), which compares to SF4.93 million (\$A5.3 million) for 1998. Australia pays 1.46% of the ILO's budget, and is the 12th highest contributor.

Australia meets its ILO constitutional obligations, including reporting regularly on the application and implementation of ratified conventions and unratified instruments; and tabling the texts of new instruments in Parliament together with a report on action proposed to be taken in relation to the new instruments. Also in accordance with the ILO Constitution, the Government funds a delegation of government, employer and worker representatives to attend each session of the annual International Labour Conference in Geneva. At the Conference, the Government has actively participated in the development and adoption of new international labour standards, and will continue to do so. In 1998, government delegates played an important role in obtaining support for a text which was acceptable to all parties for the ILO Declaration on Fundamental Principles and Rights at Work, and its follow-up.

The Minister for Workplace Relations and Small Business attended the 12th ILO Asian Regional Meeting in Bangkok from 9-11 December 1997, together with a delegation of government, employer and worker representatives. The meeting discussed ILO activities for the region for the following three to five years.

With regard to work being carried out by the ILO to develop new international labour standards addressing exploitative child labour, the annual International Labour Conference held a first discussion on the subject in June 1998 and adopted new instruments in June 1999. The Government has strongly supported the development of these new standards and has actively participated in negotiations of the texts.

Since 1992 the ILO has mounted a major offensive against child labour through its International Program on the Elimination of Child Labour (IPEC) by assisting member States in the implementation of national policy and programs to solve child labour problems. Following an earlier payment of US\$50,000 in 1995, the Government, through AusAID, contributed a further \$US50,000 to IPEC, funding a pilot project on bonded child labour in Nepal.

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

The Government takes opportunities to urge regional governments to sign and ratify human rights instruments. For example, in the context of Australia's human rights dialogue with China, the Government has encouraged China to sign and ratify the two international human rights covenants. Australia is also an active participant in the annual UN-sponsored Workshops on Regional Arrangements in the Asia-Pacific which places a strong emphasis on treaty ratification.

The Government encouraged and welcomed Indonesia's publication of its National Action Plan, including its timetable for the signature and ratification of major human rights instruments. Indonesia's existing and projected treaty commitments will generate significant reporting responsibilities, and Australia has recently provided practical assistance in meeting that challenge. Two government-funded organisations, the Australia-Indonesia Institute and the Centre for Democratic Institutions cooperated in conducting a training course on treaty implementation, held in Jakarta in November/December 1998. About thirty Indonesians participated, mostly from ministries with responsibility for the process of drafting reports.

The CDI is planning similar courses in Bangkok, Manila and in the Pacific. These courses will assist countries considering ratification of treaties by providing training on international reporting requirements and domestic implementation obligations.

As part of the current focus on governance as one of five priority sectors of the development cooperation program, Australia stands ready to assist developing countries in their efforts to sign and ratify international human rights instruments. Opportunities for specific activities will be considered in the context of Australia's partnership approach to development cooperation, taking into account the specific needs of each partner country. The program is already funding activities to assist the establishment and development of national human rights institutions in the region and the work of these institutions will provide a stimulus to treaty ratification.

**Recommendation 22**

*The Australian Government review its National Action Plan on human rights with the aims of auditing implementation of the Plan and establishing means by which Australia may assist and encourage other states in the region to draft and implement National Action Plans.*

On 9 December 1998 the Government announced its intention to revise Australia's National Action Plan on Human Rights. This revision has now begun, including the process of consultations. The new Plan is being developed by relevant Commonwealth Government departments and agencies, in consultation with a wide range of interest groups including State and Territory Governments; the Joint Standing Committee on Foreign Affairs, Defence and Trade; and non-governmental organisations.

The Government has encouraged and will continue to encourage other countries to develop National Action Plans, as it believes that such Plans can constitute a natural first step towards national capacity development in the field of human rights, as well as a valuable "check and balance" list for governments. Last year, the UN High Commissioner for Human Rights made available resources for the implementation of a technical cooperation program for interested States in the Asia-Pacific region. Part of the program focuses on national action plans (the program was presented as a menu from which interested countries would be able to choose items of relevance to their needs). Australia will continue to encourage States in the region to make full use of the program, including in relation to the development of National Action Plans. Specific requests from developing countries in the region for assistance in drafting and/or implementing National Action Plans will be considered under Australia's development cooperation program.



### **Recommendation 23**

*The Australian Government both initiate its own proposals and give favourable consideration to outside proposals that accord with the United Nations guidelines and recommendations to mark the United Nations Decade for Human Rights Education and the 50th anniversary of the Universal Declaration of Human Rights.*

A number of special events were arranged to celebrate the fiftieth anniversary of the Universal Declaration of Human Rights. The Human Rights and Equal Opportunity Commission (HREOC) hosted a National Human Rights Conference on 8-10 December in Sydney with the theme "Human Rights, Human Values: What do we think now?". The Conference was addressed by both the Minister for Foreign Affairs and the Attorney-General, as well as other Australian and foreign speakers, including Marzuki Darusman, Chairman of the Indonesian National Commission on Human Rights and Sir Anthony Mason, former Chief Justice of the High Court of Australia.

In his speech, Mr Downer announced a series of government initiatives which will make further substantial contributions to the promotion and protection of human rights. These include guidelines to provide a clear and practical framework for supporting human rights activities through our aid contributions (see response to Recommendation 4); a revision of Australia's National Action Plan on Human Rights (see response to Recommendation 22); and a five-fold increase in the Human Rights Fund for 1998-99 compared with last year. Australia also provided \$50,000 for the Assisting Communities Together (ACT) project developed by the United Nations High Commissioner for Human Rights to mark the occasion.

Australia Post issued a commemorative stamp on 22 October 1998 to mark the Anniversary. Displays of material about the Universal Declaration were featured in the reception areas of the Department of Foreign Affairs and Trade and the Attorney-General's Department during the Anniversary week. DFAT also produced a new edition of its Human Rights Manual. The Manual (first published in 1993) aims to foster a deeper understanding of human rights among government officials, particularly those who handle human rights as a part of their daily responsibilities either in Canberra or at overseas posts. An electronic version of the Manual can be found on the Department's human rights homepage at [www.dfat.gov.au/hr/](http://www.dfat.gov.au/hr/).

The Government welcomes the opportunity provided by the United Nations Decade of Human Rights Education to underline the fundamental importance of human rights education as a valuable tool for protecting and promoting human rights. A contact group of government agencies, including the Human Rights and Equal Opportunity Commission, the Department of Foreign Affairs and Trade, the Attorney-General's Department and the Department of Education, Training and Youth Affairs, and non-governmental organisations, has been considering for some time ways for Australia to respond to the Decade, including through the establishment of a National Committee on Human Rights Education. The idea of a National Committee, to develop a "National Plan of Action" for Australia, was first put forward by the Australian Forum of Human Rights Organisations. The proposal was endorsed by both the Minister for Foreign Affairs and the Attorney-General, and on the occasion of the fiftieth anniversary of the UDHR, the Attorney-General announced the selection of Dr Eric Tan (currently the Managing Director of Medical Corporation Australasia Ltd) as chairman of the National Committee. To assist in launching the Committee, the Government also provided \$10,000 as "seed funding". This funding will give the Committee the support it needs to undertake the promotional work necessary to attract funding from other sources, including the business sector. Dr Tan has been focusing on the membership of the Committee and

institutional linkages in his initial work. As a result, a number of prominent Australians have agreed to serve on the National Committee or as Expert Advisers to it.

Consideration will also be given to proposals to mark the United Nations Decade for Human Rights Education under AusAID's development education and public information program. This program aims to educate Australian school children and build an Australian constituency to promote development cooperation in developing countries.

#### **Recommendation 24**

*The Australian Government ensure that the mandate for the Centre for Democratic Institutions allows for the establishment and maintenance of a focus on human rights generally, and dialogue on human rights in particular.*

The objective of the CDI is to assist the development and strengthening of democratic institutions in developing countries, especially in the Asia-Pacific region. To achieve this objective, the CDI will respond to the needs of developing countries in the field of good governance, and human rights will be addressed within that context. Many of the activities carried out or being planned by the CDI have a specific human rights focus, including a Human Rights Treaty Implementation course conducted in Jakarta and similar courses planned for Bangkok, Manila and in the Pacific.

#### **Recommendation 25**

*The Australian Government give consideration to the appointment of an Ambassador for Human Rights with responsibility, among other things, for the development of policy and programs on the promotion and protection of human rights.*

There are precedents for appointing Ambassadors in particular fields where an operational need has required it. In the human rights arena, the Government is satisfied that existing arrangements are working well. Australia is represented at a senior level at key multilateral meetings and our posts in Geneva and New York devote considerable attention to human rights forums and issues. Diplomatic missions around the world report extensively on human rights issues and make representations as required. Australian Heads of Mission often make use of their high level contacts and their knowledge of the country to discuss issues of particular concern with their host governments. Likewise in Canberra, including in AusAID, senior officers are closely involved in policy formation and program development and have regular liaison with NGOs. The Government does not anticipate a need to alter these arrangements for as long as they continue to work well.

**Recommendation 26**

*The Australian Government review its relationship with non-government organisations involved in human rights, including matters such as the adequacy of funding, and the degree of consultations and participation it offers.*

The Government recognises and strongly supports the role of civil society in the promotion and protection of human rights.

Under current consultative arrangements, DFAT and AusAID officials hold twice yearly consultations with NGOs involved in human rights issues. The consultations last for one and a half days each and approximately 45 NGOs participate, discussing a range of issues with the Government and each other. As part of the consultations held in February 1999, an extra day was provided for additional discussions between NGOs and AusAID officials, to explore options for implementing the six framework principles for human rights in the aid program announced by the Minister for Foreign Affairs on 2 December 1998 (see response to Recommendation 4).

More broadly, AusAID and relevant NGOs consult through the Committee for Development Cooperation on policy and program issues. AusAID is currently developing a Policy Statement that will provide a new framework for the working relationship between the Government and NGOs in the development cooperation field. The aim is to foster a relationship that is as beneficial as possible for both parties and facilitates and promotes the best possible human rights outcomes in developing countries. The policy will reiterate the Government's view of NGOs as valuable development partners, and the importance of NGO participation in the aid program.

A range of contacts between government officials and NGOs, including on the preparation of treaty reports, occur on an ad hoc basis and constitute valued input into government human rights activities.

Other departments also consult NGOs with an interest in human rights questions. The Attorney-General's NGO Forum is a regular meeting allowing information exchange, and discussion of domestic human rights issues and developments, including Australia's treaty reports. The Forum first met in 1996 and subsequently on four other occasions.

On the question of funding, AusAID provides grants and project funding to Australian NGOs that meet the criteria for accreditation with AusAID. Funds are provided for a wide range of activities, implemented by Australian NGOs in partnership with community-based organisations in developing countries. These include activities aimed at promoting human rights and strengthening civil society. The AusAID-NGO Cooperation Program provides accredited NGOs with considerable flexibility to identify development activities for AusAID matching funding. In 1998/99 the Program allocated around \$23 million for Australian NGO activities, while total AusAID funding for Australian, international and indigenous NGOs for the same period is almost \$103 million.

**Recommendation 27**

*The Australian Government convene discussions with NGOs and the corporate sector with a view to establishing agreement on a co-operative approach to the promotion and protection on human rights, including the developing of voluntary codes of conduct for the protection of human rights.*

As noted immediately above, regular discussions between government departments and NGOs permit an exchange of views on the means to promote and protect human rights.

On the question of voluntary codes of conduct, given that they will only be as effective as business and the community are willing to make them, the Government sees its role more in terms of responding to business and community initiatives rather than driving such a process. The Government notes that there is already a forum - the International Labour Affairs Committee (a sub-committee of the National Labour Consultative Council) - for Government, employers and employees to discuss labour issues.