

## Australia's role

- 6.1 Like many nations, Australia is working to meet its human rights responsibilities at the international and domestic levels. Australia has ratified seven of the nine core international human rights treaties: *International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child and Convention on the Rights of Persons with Disabilities.*
- 6.2 The Committee noted RegNet's observation on the:
- ...importance of Australia modelling good behaviour in the region in the sense of ratification and development of new treaties, plus innovative ways to show our compliance with existing treaties and how important that can be in sending a regional message.<sup>1</sup>
- 6.3 At the domestic level, a national human rights consultation was launched in December 2008. The Australian Government tasked the National Human Rights Consultation Committee to undertake an Australia-wide community consultation on protecting and promoting human rights and corresponding responsibilities in Australia. The Consultative Committee received over 35,000 submissions and held 66 community roundtables and three days of public hearings in Canberra. It reported to the Australian Government on 1 October 2009, and made 31 recommendations, including making education the highest priority for improving and promoting

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1 RegNet, *Transcript*, 7 April 2009, p. 52.

human rights in Australia, increasing legislative scrutiny and adopting a human rights Act.<sup>2</sup>

## Australia and the Asia-Pacific

6.4 The HRLRC noted that 'comprehensive engagement' with the Asia-Pacific region is one of the three foreign policy pillars that guide Australia's international relationships.<sup>3</sup> Australia currently engages with the Asia-Pacific region on human rights in two main ways: through bilateral relationships and participation in the multilateral human rights system.<sup>4</sup>

6.5 In its evidence, World Vision described Australia's approach to relationship building in the region as 'generally sound', stating:

The various human rights dialogues and programs in China and Vietnam are a pragmatic way to build strong commitment to human rights in those countries, but of course there is always potential to do more...<sup>5</sup>

6.6 Amnesty observed that Australia's multilateral human rights diplomacy has been 'quite strong, particularly in recent years, with regard to treaty action'. However, it expressed concern that there is a danger that Australia's bilateral human rights dialogue processes could become a formality – an end in itself – rather than effective fora for progressing human rights issues.<sup>6</sup>

6.7 The HRLRC suggested that:

Australia can and should contribute to the promotion of human rights in the region in a collaborative fashion by:

- (a) providing technical and financial support for the ratification of international human rights treaties and associated implementation and reporting requirements;

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2 Source: <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Home>, viewed 1 October 2009.

3 HRLRC, *Submission no. 15*, p. 17.

4 DFAT, *Transcript*, 13 August 2009, p. 3.

5 World Vision, *Transcript*, 7 April 2009, p. 25.

6 Amnesty, *Transcript*, 7 April 2009, p. 12.

- (b) assisting in the establishment and operation of national human rights institutions;
  - (c) recognising and supporting local human rights NGOs within the region; and
  - (d) contributing to regional human rights education.<sup>7</sup>
- 6.8 Evidence suggested that the Pacific, rather than Asia, was a more likely potential sphere of influence for Australia.<sup>8</sup> The HRLRC commented that announcements by the current Australian Government have indicated a new approach in the Pacific; the 'beginning of a new era of co-operation' that involves a 'fundamental change in the way we work with and talk with, not at, our neighbours'.<sup>9</sup>

## Bilateral human rights dialogues

- 6.9 In August 2007, the Australia-China Human Rights Dialogue was established as a high level dialogue on human rights. The DFAT website described the dialogue as '...an important forum for frank exchanges on human rights and for identifying areas where Australia can help China implement international human rights standards, including through technical cooperation'.<sup>10</sup>
- 6.10 The Chinese Embassy website described the most recent 12<sup>th</sup> human rights dialogue between China and Australia, held in Canberra in February 2009, as:
- ...an in-depth exchange of views on a broad range of topics, including human rights protection measures, economic, social and cultural rights, the rights of ethnic minorities, women, children and the disabled and international human rights cooperation. The dialogue proceeded in a positive and candid atmosphere and has been constructive. The two sides agreed to continue dialogue, exchange and cooperation on human rights on the basis of mutual respect, equal treatment and non-intervention in each other's internal affairs.<sup>11</sup>

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7 HRLRC, *Submission no. 15*, p. 27.

8 See, for example, Castan Centre, *Transcript*, 15 April 2009, p. 1.

9 HRLRC, *Submission no. 15*, p. 17.

10 DFAT website: [http://www.dfat.gov.au/geo/china/china\\_brief.html](http://www.dfat.gov.au/geo/china/china_brief.html), viewed 6 October 2009.

11 Amnesty, *Exhibit no. 11*, p. 3.

- 6.11 An important component of this bilateral dialogue has been the China-Australia Human Rights Technical Cooperation Program (HRTC); funded by AusAID (\$2 million per year) and administered by the Australian Human Rights Commission (the Commission).<sup>12</sup>
- 6.12 The HRTC activities focus on legal reform, women's and children's rights, and ethnic and minority rights. They are generally small scale activities of short duration. The Commission acknowledged that 'overall impact is likely to be modest and that substantial change is likely to come slowly'.<sup>13</sup>
- 6.13 However, groups expressed concern about the lack of transparency and accountability of this process. In 2009, the 12<sup>th</sup> Australia-China Human Rights Dialogue took place, but Amnesty, for example, was concerned that the process has 'become more of a formality' than a forum for meaningful dialogue and progress on human rights issues.<sup>14</sup>
- 6.14 There is no requirement for the Department of Foreign Affairs and Trade to report to interest groups the details or outcomes of the dialogues. However, details of activities under the technical cooperation program are outlined on the AusAID website and regular reviews by outside consultations are undertaken and published on the website, including government responses to these reviews.
- 6.15 The 2007 review of the China-Australia HRTC found that:
- ...the HRTC has generally been very effective in fulfilling its objective to work collaboratively with Chinese government agencies and NGOs to implement programs and activities 'to strengthen the administration, promotion and protection of human rights in China'. The HRTC program is strongly supported by both the Chinese and Australian partners. Most activities are achieving their objectives and there are indications of capacity building in some areas. The HRTC program has a wide range of Chinese cooperating organisations. The Managing Contractor has established a strong, cooperative relationship with these organisations based on trust and mutual respect.<sup>15</sup>

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12 DFAT (Supplementary) *Submission no. 35*, p. 7.

13 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 4.

14 Amnesty, *Transcript*, 7 April 2009, p. 12.

15 AusAID website: [http://www.ausaid.gov.au/publications/pdf/hrtc\\_review.pdf](http://www.ausaid.gov.au/publications/pdf/hrtc_review.pdf), p. 41, viewed 6 October 2009.

- 6.16 The Review Team did, however, make a number of recommendations of ways to refine and improve implementation, monitoring, evaluation and reporting, most of which were accepted by the Australian Government.<sup>16</sup>
- 6.17 In response to a question taken on notice, the Commission outlined for the Committee key achievements and outcomes from HRTC activities. Some general outcomes included:
- helping to raise the prominence of human rights issues in public discourse and debate;
  - raising the awareness of Chinese citizens of their rights and the consciousness of officials as to their obligations to protect those rights; and
  - increasing willingness to examine the possibility of developing meaningful complaints mechanisms.<sup>17</sup>
- 6.18 The Committee noted the series of case studies undertaken by the Commission in early 2008, which also revealed specific outcomes in the areas of law and regulation, policy and practices and generating civil society demand for particular services.<sup>18</sup> To select one issue by way of example, the Commission identified a number of developments on addressing domestic violence, including:
- amendments to the *Law on the Protection of Minors*, including new provisions prohibiting domestic violence against minors;
  - guidelines on combating domestic violence setting, which outline Ministerial and agency responsibilities;
  - local regulations on domestic violence across 25 provinces, autonomous regions and provincial level municipalities;
  - creation of specialist legal aid centres for women within the legal aid offices of local justice departments;
  - establishment of anti-domestic violence emergency hotlines and complaint handling centres in provinces across China;<sup>19</sup> and

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16 AusAID website: [http://www.aisaid.gov.au/publications/pdf/hrtc\\_response.pdf](http://www.aisaid.gov.au/publications/pdf/hrtc_response.pdf), viewed 6 October 2009.

17 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, pp. 6-7.

18 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, pp. 7-10.

19 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 8. The Commission noted that in Beijing the use of these facilities has consistently increased, which the Beijing Women's Federation concludes is due to increasing awareness of the service and confidence that they will receive help.

- establishment, by the Centre for Women and Children's Health, of an active screening program to identify domestic violence victims and accompanying referral system to other relevant support services.<sup>20</sup>

6.19 The Commission felt that one of the strengths of the HRTC is that it:

...strongly aligns itself with the human rights priorities of the Chinese Government. The program supports major policy and legislative reforms being pursued by PRC [People's Republic of China] authorities. This alignment helps give HRTC activities momentum and sustainability, and increases the likelihood that activities will contribute to concrete outcomes, by "riding the wave" of existing Government reform initiatives.<sup>21</sup>

6.20 The Committee noted the Commission's advice that these changes are small steps towards greater accountability, the end benefits of which 'may take generations to unfold'.<sup>22</sup>

6.21 Since 2002, Australia and Vietnam have also held a formal human rights dialogue. A Vietnam-Australia Human Rights Technical Program was introduced in 2006; funded by AusAID through the Human Rights Small Grants Scheme and administered by the Commission.<sup>23</sup>

6.22 Australia is the only country in the Asia-Pacific region that has a bilateral human rights dialogue with Vietnam. However, the Vietnam Committee on Human Rights expressed similar concerns to Amnesty's, that the dialogue not be used as an end in itself to addressing human rights problems, and that the process could be made more transparent.<sup>24</sup>

6.23 ACFID recommended that the Australian Government:

Draw on the lessons learned from the Australia-China Human Rights Technical Cooperation Program for application to selected other countries.<sup>25</sup>

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20 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, pp. 7-8 and 10.

21 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 6.

22 Australian Human Rights Commission, (Supplementary) *Submission no. 27*, p. 6.

23 DFAT website: [http://www.dfat.gov.au/geo/vietnam/vietnam\\_brief.html](http://www.dfat.gov.au/geo/vietnam/vietnam_brief.html), viewed 6 October 2009.

24 Vietnam Committee on Human Rights, *Submission no. 32*, p. 3.

25 ACFID, *Submission no. 9*, p. 5.

6.24 The Commission recommended:

That Australia should continue its engagement on human rights in the Asian region, through bilateral dialogues, technical cooperation programs and other exchanges, and consider expanding its programs into other countries in the region.<sup>26</sup>

### **Committee comment**

6.25 The Committee believes that the bilateral dialogue process is a worthwhile process for fostering and strengthening relationships with countries in the Asia-Pacific region. Understanding, mutual respect and trust must feature in bilateral relationships if meaningful progress is to be made on human rights issues in the region.

6.26 The Committee recognises that these dialogues are a formal government to government mechanism. It did however note concerns in the evidence that unaccountable dialogue processes could breed complacency. The Committee feels, slow and steady though progress may be, it is important to keep up the momentum for advancing human rights in cooperation with our bilateral dialogue partners. Establishing the practice of briefing parliament on outcomes of these dialogues on a regular basis is one way in which greater accountability could be injected into the process.

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26 Australian Human Rights Commission, *Submission no. 19*, p. 5.

## Recommendation 1

The Committee recommends that:

- the Australian delegations to its bilateral human rights dialogues with China and Vietnam include parliamentary representation from the Human Rights Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade; and that
- the Department of Foreign Affairs and Trade provide the Human Rights Sub-Committee with an annual briefing on the outcomes of these dialogues, and on any other bilateral human rights dialogues that may later be established with countries in the Asia-Pacific.

## Aid

6.27 The HRLRC noted that:

In relation to aid, the Australian Government's position is that 'development and human rights are interdependent and mutually reinforcing'.<sup>27</sup>

6.28 RegNet recommended that AusAID adopt a human rights-based<sup>28</sup> framework for its development assistance aid.<sup>29</sup> On this theme, World Vision called for the better integration of human rights across AusAID projects. It saw:

...huge potential for human rights to be infused right across every aspect of the organisation's work. Practical rights based

27 HRLRC, *Submission no. 15*, p. 15.

28 A human rights-based approach to development is a framework based on international human rights standards and seeks to analyse inequalities at the root of development problems and redress discriminatory practices and unjust power distribution that impedes development progress. As ACFID outlines, it is as much about *how* development is undertaken as it is about *what* is done. More information about this approach is available in UN OHCHR, 2006, *Frequently asked questions on a human rights-based approach to development cooperation*; ACFID, 2009, *Millennium Development Rights: How human rights-based approaches are achieving the MDGs – Case-studies from the Australian aid and development sector*.

29 RegNet, *Submission no. 3*, p. 2.



development work, that is, work that encourages genuine participation and increases the understanding of rights, is another foundation for the comprehensive realisation of rights in a country. Currently AusAID's human rights response is presented as a collection of small initiatives, and they are not particularly well joined up or integrated into the mainstream program. The organisation's commitment to the Millennium Development Goals provides a great entry point to change this approach.<sup>30</sup>

6.29 ACFID acknowledged that a human rights-based approach is 'not a silver bullet' and that it may tend to gravitate towards a particular human rights priority issue in the region, for example domestic violence or gender empowerment, while work on other objectives such as rule of law may lag.<sup>31</sup> However, it noted that a 2005 report of the Development Assistance Committee of the Organisation for Economic Co-operation and Development indicated that taking a human rights-based approach to development aid is 'a particularly effective way to deliver aid and encourage donor governments to do more'.<sup>32</sup> The Office of the High Commissioner for Human Rights also detailed the benefits of implementing a human rights-based approach in the delivery of development aid in a 2006 paper.<sup>33</sup>

6.30 ACFID expressed concern about AusAID's reform agenda, stating:

It is the broad strategy to carry the agency forward to 2015, and this reform agenda does not refer to the role of human rights in development. This is of real concern to us. A key way Australia can support civil society and encourage other governments to advance human rights is by further entrenching human rights in the international development program. This could include increasing the human rights fund by providing more funds to the existing human rights small grants scheme, but also by supporting more programs with human rights objectives, especially human rights education.<sup>34</sup>

6.31 Effective human rights protection cannot occur in a vacuum. As the Castan Centre noted:

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30 World Vision, *Transcript*, 7 April 2009, p. 27.

31 ACFID, *Transcript*, 7 April 2009, p. 41.

32 ACFID, *Transcript*, 7 April 2009, p. 39.

33 OHCHR, *Frequently asked questions on a human rights-based approach to development cooperation*, 2006. Available at: <http://www.ohchr.org/Documents/Publications/FAQen.pdf>, viewed 23 October 2009.

34 ACFID, *Transcript*, 7 April 2009, pp. 35-36.

...it is important in our view not to segregate human rights from other areas of Australia's international engagements. We do not want to see Australia's human rights commitments 'over here' and everything else that we do 'over there'. It is important to integrate Australia's human rights commitment to its aid program.<sup>35</sup>

- 6.32 The Committee noted that other than in human rights specific projects, there is no requirement for AusAID, managing contractors, or NGOs delivering overseas developing assistance, to give consideration to the human rights impacts of AusAID programs.<sup>36</sup>

### Human Rights Small Grants Scheme

- 6.33 The Human Rights Small Grants Scheme provides small grants to in-country organisations – primarily NGOs in the Asia-Pacific – to undertake activities for the promotion and protection of human rights in a direct and tangible way. The 2008-09 program included:

- providing human rights training and capacity building for leaders and members of Pacific Christian churches;
- strengthening the capacity of Indonesia's Islamic local leaders on gender equality and human rights in Jombang, Lamongan, and Kediri, East Java, plus a focus on strengthening the civil society networks dealing with these issues in Muslim communities;
- raising awareness and promoting the implementation of the Convention on the Rights of Persons with Disabilities in Vanuatu; and
- protecting the rights of children in direct conflict with law enforcement agencies, by working with policy to create a 'good practice' model of detaining, questioning and protecting these children.<sup>37</sup>

- 6.34 ACFID contended that the scheme should be expanded.<sup>38</sup> The Uniting Church agreed, suggesting that:

...the budget for the Human Rights Small Grants Scheme increase from the current just over \$1 million to \$4 million, which would

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35 Castan Centre, *Transcript*, 15 April 2009, p. 2.

36 AusAID's business and contract guidelines make no explicit mention of human rights. For example, see <http://www.aisaid.gov.au/business/contracting.cfm>, viewed 23 October 2009.

37 AusAID website: [http://www.aisaid.gov.au/business/pdf/hrsgs\\_proposals08-09.pdf](http://www.aisaid.gov.au/business/pdf/hrsgs_proposals08-09.pdf), viewed 16 July 2009.

38 ACFID, (Supplementary) *Submission no. 30*, p. 6.

represent 0.1 per cent of the aid budget, believing that is necessary to facilitate civil society groups having more access to that and to support their work within countries in the region. Specifically, there is a need to provide that those on-the-ground organisations are able to make application. We note that there is some AusAID staff time already provided for that function, but it could be expanded.<sup>39</sup>

## Committee comment

- 6.35 The Committee shared the concerns of groups that Australia's development assistance aid dollars and efforts sometimes go to countries in which human rights abuses exist. It noted DFAT's argument that if the provision or level of aid was contingent on a country's human rights record, it 'can jeopardise the welfare of the poorest and most isolated'.<sup>40</sup> In addressing this concern the Australian Government in some cases provides resources and support through international aid agencies rather than directly to governments.
- 6.36 The Committee believes that the Australian Government should be conscious of its human rights obligations in all its regional relationships. It reaffirms its comments and recommendation in its *Inquiry into Australia's relationship with ASEAN* report, that in the area of trade:
- ...human rights, core labour standards, and the environment be pursued in future free trade agreements and, when existing free trade agreements which do not contain such issues are reviewed, these issues should be pursued.<sup>41</sup>

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39 Uniting Church, *Transcript*, 15 April 2009, p. 30.

40 DFAT (Supplementary) *Submission no. 35*, p. 11.

41 JSCFADT, *Inquiry into Australia's Relationship with ASEAN*, June 2009, p. 159, Recommendation 8.

- 6.37 Further, the Committee suggests that development assistance is a natural and logical arena of government operations in which consideration of human rights impacts should be integral to the planning and implementation. While the Committee is pleased to note that foci on gender, poverty and the environment are increasingly becoming part of the consideration process of AusAID projects, it believes that a more integrated approach is needed.

## **Recommendation 2**

**The Committee recommends that AusAID adopt a human rights-based approach to guide the planning and implementation of development aid projects.**

## Supporting the development of regional mechanisms

### Concerns about Australia as a driving force

- 6.38 Evidence to the Committee strongly cautioned against Australia being seen to be driving any initiative for a regional human rights mechanism in the Asia-Pacific. For example, the Castan Centre told the Committee that:

We believe that any move towards the creation of a regional mechanism is going to necessitate serious regional dialogue. We do not think that this will really get off the ground, if it is perceived outside Australia as being led by Australia – for a number of political reasons, I do not think that would work – whereas if it is seen as being led by other countries or perhaps equally led by everybody within the region, that is going to be more successful.<sup>42</sup>

- 6.39 The Castan Centre was concerned that:

...Australia and New Zealand are perceived to be the only Western style states. There is a perception of alienness within the region and it gives states an excuse to either reject the idea outright or simply adopt it at a formal level and not embed it in their legal and social culture.<sup>43</sup>

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42 Castan Centre, *Transcript*, 15 April 2009, p. 1.

43 Castan Centre, *Transcript*, 15 April 2009, p. 6.

6.40 The HRLRC advised the Committee that:

In the course of preparing the centre's submission, we spoke to a number of human rights lawyers and activists with experience working in the Pacific, and the almost universal response to the proposition that Australia might unilaterally develop and promote a particular model of mechanism was that such an approach would not work. This is why our submission, along with numerous others, highlights the importance of stakeholder buy-in, bottom-up approaches and enhanced dialogue.<sup>44</sup>

6.41 However, groups did see a significant supporting role for Australia in promoting human rights in the region.<sup>45</sup> The Uniting Church encouraged:

...the Australian government to seek to use what influence it has as a medium-sized and respected middle power globally and a significant regional power in the Asia-Pacific region to engage other nations with countries in our region to effectively influence them towards protection and respect for basic human rights. We note such influence will vary greatly across the region.<sup>46</sup>

6.42 HRLRC referred to and endorsed a recommendation of the 1998 Committee report *Improving But...Australia's Regional Dialogue on Human Rights*, which was that:

The Australian Government should not adopt a top-down leadership role in the development of a regional human rights mechanism. However, in recognition of the many benefits that would flow from the development of such a mechanism, the Australian Government should be prepared to provide significant financial and technical assistance to Pacific Island government and non-government organisations that wish to develop and promote a regional mechanism.<sup>47</sup>

## Australia's potential involvement

6.43 Amnesty observed that:

As consensus for an Asia-Pacific regional mechanism is unlikely to be achieved in the near future, Australia should concentrate on

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44 HRLRC, *Transcript*, 15 April 2009, p. 19.

45 See, for example, HRLRC, *Transcript*, 15 April 2009, p. 1 and p. 19, Uniting Church, *Transcript*, 15 April 2009, p. 31.

46 Uniting Church, *Transcript*, 15 April 2009, p. 30.

47 HRLRC, *Submission no. 15*, p. 4.

promoting and assisting the development of sub-regional mechanisms for the protection of human rights, such as those emerging in the ASEAN and Pacific Island contexts.<sup>48</sup>

6.44 However, the AHRC argued that it is unlikely that Australia will actually be part of an ASEAN human rights mechanism, stating that:

In terms of geographical proximity, Australia is most closely aligned to the Pacific and to Southeast Asia. But there has been no suggestion of which we are aware, by advocates for mechanisms in either of these regions, that Australia should become a party to any prospective regional charter or convention. Australia is not a member of ASEAN and it could be argued that Australia lacks a “community of interest” or “common affinity” with the ASEAN region...<sup>49</sup>

6.45 The Castan Centre suggested that:

A human rights mechanism joining Australia to South Asia or China also seems politically unlikely. It seems more likely that Australia could join a grouping of Pacific nations. An ambition could be for such a mechanism to one day be united with an ASEAN mechanism. Alternatively, it may be that some ASEAN members will tire of the organisation’s lack of consensus in moving forward on a human rights mechanism, and could be tempted to join in a functioning Pacific mechanism.<sup>50</sup>

6.46 The AHRC countered suggestions about Australia’s potential membership of a Pacific subregional mechanism, stating:

Advocates for a human rights mechanism in the Pacific ... display no desire that Australia should become party to any prospective regional human rights charter for the Pacific.

...Most current dialogue about a regional mechanism for the Pacific proceeds on the basis that Australia and New Zealand would not be invited to join any Pacific Human Rights Mechanism, at least not at first.<sup>51</sup>

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48 Amnesty, *Submission no. 26*, p. 4.

49 AHRC, *Submission no. 4*, p. 8.

50 Castan Centre, *Submission no. 10*, p. 2.

51 AHRC, *Submission no. 4*, p. 8.

- 6.47 The AHRC recommended that Australia support subregional initiatives and encourage them to develop in accordance with the following key principles:
- derives its functions from human rights conventions, treaties or standards which combine universal human rights principles with domestic considerations;
  - comprises independent experts rather than government officials;
  - exercises investigatory and monitoring roles with powers to enforce determinations and award redress;
  - be properly resourced to implement its mandate.<sup>52</sup>
- 6.48 The AHRC saw potential for Australia to be involved in the drafting of a convention for the protection of human rights in the region, which could go on to form the basis for establishing a regional mechanism. It suggested that New Zealand would be a possible partner for such an endeavour.<sup>53</sup>
- 6.49 As discussed previously, a lack of understanding of human rights and perceptions that these rights may be at odds with culture and local values are challenges facing the region. An area of direct assistance in the region to help address these challenges could be the provision of human rights education and training.<sup>54</sup> The UN High Commissioner has described human rights education as '...a vaccine against intolerance, animosity and conflicts between members of different groups in our communities'.<sup>55</sup>
- 6.50 According to the Australian Bahá'í Community:
- ... systematic programs of human rights education are indispensable to the realisation of human rights in the Asia-Pacific region. All citizens need not only to learn about their own rights but to develop respect for the rights of humanity in general.
- ...Education that instils in hearts and minds an awareness of and sensitivity to the human rights of all persons constitutes an essential tool for the promotion and implementation of international human rights standards.<sup>56</sup>
- 6.51 The Castan Centre noted that an area of direct assistance in the region could be the provision of human rights training.<sup>57</sup> ACFID suggested that

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52 AHRC, *Submission no. 4*, p. 16.

53 AHRC, *Submission no. 4*, p. 9.

54 Castan Centre, *Transcript*, 15 April 2009, p. 1.

55 Quoted in HRLRC, *Submission no. 15*, p. 33.

56 Australian Bahá'í Community, *Submission no. 14*, p. 7.

57 Castan Centre, *Transcript*, 15 April 2009, p. 1.

AusAID seek inclusion of human rights education as a cross-cutting topic for its work, and noted that:

Recent research evaluating a human rights education program done in schools in Britain has found that human rights education does empower children and young people, and the wider community as a whole, and it will improve cohesion and communication on human rights.<sup>58</sup>

### Support for existing mechanisms

6.52 The Australia West Papua Association (Sydney) suggested:

As a [Pacific Island Forum] member, Australia should be supporting the Forum financially to set up a mechanism to improve the human rights situation in the Pacific region.<sup>59</sup>

6.53 The APF noted that it has received ongoing financial – approximately 30 per cent of its budget – and political support for its establishment and work from the Australia Government.<sup>60</sup> Groups called for the Australian Government to continue its support of the work of the Asia-Pacific Forum:

- The Uniting Church asked that ‘...the Australian government seek to enhance the role of this body by assisting... national human rights commissions to increase their effectiveness, where such opportunities exist’.<sup>61</sup>
- The Castan Centre recommended that Australia ‘...should strengthen the capacity of [the] APF, as well as the capacities of nascent NHRIs in the region to facilitate their joining to APF’.<sup>62</sup>
- Amnesty suggested that with the increasing number of NHRIs they are assisting – with a staff of only six people – additional financial assistance should be provided.<sup>63</sup>
- The HRLRC saw a role for Australia ‘...in providing financial and technical resources to assist in the development of NHRIs’.<sup>64</sup>

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58 ACFID, *Transcript*, 7 April 2009, p. 36.

59 Australia West Papua Association (Sydney), *Submission no. 24*, p. 4.

60 APF, *Submission no. 21*, p. 15.

61 Uniting Church, *Transcript*, 15 April 2009, p. 30.

62 Castan Centre, *Submission no. 10*, p. 9.

63 Amnesty, *Transcript*, 7 April 2009, p. 11.

64 HRLRC, *Submission no. 15*, p. 31.



6.54 The AHRC commented that:

While we endorse Australian support for the development of regional human rights mechanisms created in accordance with the key principles that we outline, we believe that support should not be provided in the absence of parallel support for facilitating the establishment and strengthening of national human rights institutions.<sup>65</sup>

6.55 The HRLRC asserted that support for NHRIs now is an investment in a future human rights mechanism.<sup>66</sup>

6.56 However, as evidence has indicated, in the region, particularly the Pacific, there are countries that are unlikely to be able to develop sustainable NHRIs and would struggle to meet international obligations under the UN human rights system. Some form of supranational forum may be an option for countries in danger of falling through the gaps in the existing system. This could take the form of an advisory, rather than a formally chartered structure, working strategically with smaller states to better access the different layers of existing human rights mechanisms and address the states' specific human rights concerns and human rights obligations.

## Working on specific issues

6.57 As discussed in previous chapters, working on specific issues – especially those in which Australia have a shared interest – can be a productive and pragmatic approach to address human rights issues in the Asia-Pacific.

6.58 World Vision noted that Australia can, in many respects, be regarded as an outsider when looking to engage in the Asia region.<sup>67</sup> By engaging in cooperative approaches to shared problems Australia can impact on these issues in practical terms and strengthen its human rights credentials in the region.

6.59 UNIFEM maintained that:

...[a worthwhile] approach is to say, 'Australia has these issues like you do.' That basically is the approach that New Zealand takes too: 'We have the same issues, we are on the same journey and we are part of the same enterprise. These are some of the strategies that we have found to be effective. Can we help you and

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65 AHRC, *Transcript*, 18 February 2009, p. 4.

66 HRLRC, *Submission no. 15*, p. 36.

67 World Vision, *Transcript*, 7 April 2009, p. 26.

give you some money to help you? But you will have ownership and design.<sup>68</sup>

6.60 Engagement on issues such as human trafficking, labour and child rights, gender discrimination and domestic violence, is making vital inroads into reshaping the human rights landscape in the region.

6.61 Speaking on promoting child rights, the NCYLC comments also have wider application for building on work already underway on a range of issues. It stated:

Supporting and developing the work that is already [underway] ...allows the Australian Government to direct its resources into programmes that are most likely to build on existing community and political support. These programmes are more likely to succeed and produce results in the short and longer term. This in turn builds credibility. Clear benefits to communities generate legitimacy and can be used to build momentum for a human rights framework and dialogue. For the Australian Government it allows for clearer links between resources provided and the outcomes achieved.<sup>69</sup>

6.62 World Vision saw a role for Australia in combating human trafficking and labour exploitation through bilateral engagement, multilateral forums, multilateral instruments, regional cooperation and increasing policy and funding focus on prevention and protection.<sup>70</sup>

6.63 On labour rights, ACTU argued that:

...there is considerable scope for the Australian Government to further integrate the promotion and protection of fundamental workers' rights in its overseas aid program through AusAID, its commitments to multilateral aid programmes as well as in support of technical cooperation with the International Labour Organisation.<sup>71</sup>

6.64 UNIFEM saw an opportunity for Australia to exhibit leadership on women's issues, stating that:

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68 UNIFEM, *Transcript*, 7 April 2009, p. 9.

69 NCYLC, *Submission no. 25*, p. 7.

70 World Vision, (Supplementary) *Submission no. 29*, p. 1.

71 ACTU, *Submission no. 16*, p. 10.

...the lack of human rights mechanisms within East and South-East Asia and the Pacific is having a dramatic effect on women throughout the region and urges the Australian Government to become a regional leader in relation to the promotion of human rights. Specifically, we urge the Australian Government to encourage the countries within our region that are yet to ratify the Convention on All Forms of Discrimination against Women (CEDAW) to do so, that is Tonga, Nauru and Palau.<sup>72</sup>

## International mechanisms

- 6.65 A regional focus does not mean that support for international mechanisms should wane. The human rights standards and principles that form the basis of the UN system clearly have emblematic and practical application in the Asia-Pacific.
- 6.66 Through AusAID, the Australian Government provides funding to the OHCHR through annual contributions. ACFID noted that the 2008-2009 contribution was \$1.9 million, with \$400,000 earmarked for the Pacific Regional Office and \$100,000 for the National Institutions Unit.<sup>73</sup>
- 6.67 The Australian Bahá'í Community commended Australia's renewed commitment to the UN, noting that:
- ...the Government has made a significant budgetary allocation to fund Australia's engagement with the United Nations. Without sufficient resources the work of United Nations human rights mechanisms will continue to be hampered and we trust that Australia will play its part, as a responsible international citizen, in providing appropriate levels of financial support to the United Nations to enable it to prevent and redress human rights violations. We also suggest that Australia should be a vigorous advocate internationally for an increase in the resources allocated for the promotion and protection of human rights, to reflect their importance to the mandate of the United Nations.<sup>74</sup>
- 6.68 Submitters emphasised the importance of continuing and enhancing Australia's support for the mechanisms under the UN human rights system:

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72 UNIFEM, *Submission no. 1*, p. 2.

73 ACFID, (Supplementary) *Submission no. 30*, p. 4.

74 Australian Bahá'í Community, *Submission no. 14*, p. 3.

- The Uniting Church suggested that Australia should continue to support UN special rapporteurs, providing financial support that 'allows for effective establishment and maintenance' of these positions, which have been adequately resourced in the past.<sup>75</sup>
- The Australian Bahá'í Community suggested increased resources would assist the OHCHR to better face challenges internationally and in the Asia-Pacific.<sup>76</sup>
- World Vision suggested that Australia could provide practical support to small nations in the region, particularly the Pacific nations, to assist in meeting their reporting obligations under the Universal Periodic Review process.<sup>77</sup>
- The HRLRC highlighted the lack of financial and human resources in the Pacific and contended that as part of its commitment to promoting human rights in the region, the Australia Government:

...must ensure adequate resourcing to allow for Pacific governments and civil society to engage in a regional dialogue on human rights and to participate in the international human rights system. This should include, for instance, funding adequate to ensure that programs and policies are accessible in the language and media appropriate for Pacific people.<sup>78</sup>

6.69 DFAT noted that the Commonwealth Joint Office initiative assisting Pacific Island nations to participate in human rights and other discussions at UN bodies, receives funding from Australia.<sup>79</sup>

### Treaty ratification

6.70 It was suggested that Australia could play a role in assisting Pacific nations to address the low rate of ratification of treaties.<sup>80</sup>

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75 Uniting Church, *Transcript*, 15 April 2009, p. 32.

76 Australian Bahá'í Community, *Submission no. 14*, p. 3.

77 World Vision Australia, *Transcript*, 7 April 2009, p. 10.

78 HRLRC, *Submission no. 15*, p. 12.

79 DFAT, *Submission no. 17*, p. 1.

80 See, for example, Castan Centre, *Transcript*, 15 April 2009, p. 1, HRLRC, p. 19 and Amnesty, *Transcript*, 7 April 2009, pp. 11-12.

6.71 The HRLRC argued that:

...working with Pacific island nations on treaty ratification is really important. It is more than just a symbolic gesture from that nation that the human rights of their citizens and people in their territory matter. It is also an ongoing review of that country and an ongoing dialogue with the international system about how human rights are being implemented in their countries...<sup>81</sup>

6.72 The Castan Centre, when discussing a possible role for Australia in promoting the ratification of treaties in the Pacific, suggested:

It would be helpful for Australia to engage directly with those States that have ratified only one of these international treaties, to find out why they have not ratified the other. Specifically, Samoa should be asked why it decided to ratify ICCPR but not ICESCR. ...After links are made with these States, they could be helpful partners in bringing other States that have not ratified either treaty on board.

In the engagement process, Australia should encourage States to ratify the Covenants and other international human rights treaties. This could occur in a manner of soft diplomacy, perhaps through the provision of human rights education and training. Such programs, such as the Indonesia-Australia Specialised Training Program (orchestrated through AusAID), probably played a role in prompting Indonesia to ratify both international Covenants recently. Other States should be encouraged to ratify the Covenants through similar programs.<sup>82</sup>

6.73 The Castan Centre also commented in relation to ratification that:

It is necessary to understand the reasons behind the States' failure to ratify these basic human rights documents [ICCPR and ICESCR], as those reasons are currently unclear.<sup>83</sup>

6.74 However, it suggested that further research into the causes of the low ratification level of treaties in the Pacific may be unnecessary. ACFID opined that:

Unless there is a new angle to research it from. I think there are a lot of issues on the table that Pacific island countries have indicated are holding them back from ratifying some of these

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81 HRLRC, *Transcript*, 15 April 2009, p. 25.

82 Castan Centre, *Submission no. 10*, pp. 5-6.

83 Castan Centre, *Submission no. 10*, p. 5.

human rights treaties. I think it would be very worthwhile to look into those issues that are already on the table before we pursue anything else.<sup>84</sup>

- 6.75 RegNet suggested that working through the Commonwealth system is one way Australia can promote and provide practical support for treaty ratification in the region. It noted in its work on this issue, that the Commonwealth has been working with governments in these countries and have 'managed to achieve quite a lot that the UN has found difficult and indeed, on a bilateral basis, it has been quite difficult to achieve'. For example, a Commonwealth facilitated meeting in 2006 led to treaty ratifications by Papua New Guinea and the Maldives.<sup>85</sup>
- 6.76 The HRLRC proposed that the Australian Government:
- ... develop a program that assists Pacific island countries with ratification of international human rights treaties and associated implementation, monitoring and reporting obligations.<sup>86</sup>

## **Committee comment**

- 6.77 While the ratification of treaties is voluntary, the Committee appreciates that many smaller nations in the Asia-Pacific region may be under considerable external and internal pressure to ratify various United Nations treaties. The Committee is also mindful that nations who are already parties to one or more of the treaties also face the challenge of trying to meet their ongoing international obligations, especially in the case of smaller states with limited resources (financial and expertise) to direct to these activities.
- 6.78 The Committee believes that a targeted approach is needed to improve the level of ratification of core human rights treaties in the Asia-Pacific, and to assist countries in meeting their obligations once they are parties to these important treaties.

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84 ACFID, *Transcript*, 7 April 2009, p. 43.

85 RegNet, *Transcript*, 7 April 2009, p. 56 and 53.

86 HRLRC, *Transcript*, 15 April 2009, p. 20.

### Recommendation 3

The Committee recommends that in responding to the need to make progress in the region on embracing and implementing the universal human rights principles contained in the core human rights treaties, the Australian Government should review its current strategies, consult closely with key regional stakeholders, and consider work already being undertaken on this issue. This should include consideration of:

- human rights education to enhance understanding in the region of the content, benefits and practical local application of these treaties; and
- ongoing support for countries to meet reporting and other participation obligations in the United Nations human rights system.

### Other human rights initiatives

6.79 UNIFEM suggested that:

One of the important ways to promote human rights, particularly in the Pacific region, is through development outcomes. That is why in our submission we have focused on the fact that sometimes it is important to build human rights into what we are already doing, for example, in the aid program and in our discussions with the Asian Development Bank, the World Bank and the IMF and in trade dialogues.<sup>87</sup>

6.80 The Uniting Church argued that:

Australia should continue to support and emphasise multilateral initiatives that promote and defend human rights where it assesses the initiative in question is effective.<sup>88</sup>

6.81 For the Pacific, the Commission suggested:

That the federal government consider expanding its human rights technical assistance programs to countries in the Pacific region to help build capacity of organisations working in the area of human rights.<sup>89</sup>

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87 UNIFEM, *Transcript*, 7 April 2009 p. 4.

88 Uniting Church, *Transcript*, 15 April 2009, p. 31.

89 Australian Human Rights Commission, *Submission no. 19*, p. 5.

6.82 ACFID saw merit in the Human Right Small Grants Scheme's focus on:

...supporting the human rights activities of civil society organisations. Focusing on civil society organisations is an effective way to build the overall capacity of a country on human rights. Vibrant civil society organisations play an important role in holding their governments to account for human rights.<sup>90</sup>

6.83 The Commission recommended:

That, in the absence of NHRIs in Pacific States, resources and training be provided to civil society organisations to assist them to engage with government and communities in the promotion and protection of human rights.<sup>91</sup>

6.84 ACFID proposed an exchange program at the civil society level, stating:

...[we] believe in the efforts of building civil society organisations to hold their own governments to account and to basically push the human rights agenda. We see that there is scope for those two focuses of an exchange program, at the parliamentary level and also at the civil society level.<sup>92</sup>

6.85 The Committee sees merit in supporting the vital work being done by NGOs and civil society groups in the promotion of human rights and the monitoring and prevention of human rights abuses.

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#### **Recommendation 4**

**The Committee recommends that the Australian Government establish a scholarship fund to enable individuals from non-government organisations and civil society groups in Asia and the Pacific, who work in human rights or relevant fields, to attend approved human rights courses in Australia.**

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90 ACFID, (Supplementary) *Submission no. 30*, p. 6.

91 Australian Human Rights Commission, *Submission no. 19*, p. 4.

92 ACFID, *Transcript*, 7 April 2009, p. 37.



## Committee comment

- 6.86 Throughout this inquiry groups have presented the Committee with many suggestions and recommendations for how the Australian Government can contribute to the promotion and protection of human rights in the Asia-Pacific.
- 6.87 The Committee endorses the Australian Government's goal to enhance its engagement in the Asia-Pacific region, generally, and to contribute to addressing the human rights challenges facing the region, specifically. However, it also appreciates that Australia must be sensitive and cooperative in its approach and action on human rights matters.
- 6.88 It was clear, on the balance of evidence received, that to provide any sort of proposal or blueprint on what form a regional mechanism could or should take is premature. Australia does have a significant role to play in providing expertise and financial support, especially with emerging initiatives on subregional human rights mechanisms and to the organisations, such as the APF and the RRRT, currently working to address the gaps in human rights protection in the region.
- 6.89 In engaging in the region on human rights matters and the development of regional or subregional mechanisms, Australia should take its lead from organisations already established in the region, seek to address issues in which Australia has expertise or a shared interest, and infuse human rights standards and its practical application into relationships within the Asia-Pacific region.

## An Asia-Pacific community?

- 6.90 On 4 June 2008, the Australian Government reaffirmed its commitment to strong, close and cooperative relations in the region, outlined its vision for an 'Asia-Pacific Community' by 2020, and announced the Government's appointment of Mr Richard Woolcott as Australia's Special Envoy to engage the capitals of the wider region to discuss the proposal.<sup>93</sup>
- 6.91 A key element of the development of an Asia-Pacific community (APC) would be the strengthening of regional institutions to better enable the region to address collective challenges such as: security; terrorism; natural disasters; disease; enhancing trading regimes; and long-term energy, resource and food security. It was stressed that exploring the option of an

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93 Source: [http://www.asiasociety.org.au/speeches\\_current/s55\\_PM\\_Rudd\\_AD2008.html](http://www.asiasociety.org.au/speeches_current/s55_PM_Rudd_AD2008.html), viewed 18 November 2009.

APc 'does not of itself mean the diminution of any existing regional bodies', stating:

APEC, the ASEAN Regional Forum, the East Asia Summit, ASEAN Plus Three and ASEAN itself will continue to play important roles, and longer-term may continue in their own right or embody the building blocks of an Asia-Pacific Community.<sup>94</sup>

6.92 The Special Envoy engaged with 21 countries in the region and beyond and reported on key findings of the consultations in a concept paper prepared for the Asia-Pacific community conference in December 2009. The consultations revealed the following:

- a high level of interest across the region in the APc proposal, including widespread agreement about the importance of a discussion on how regional architecture can be developed to best suit the region's purposes;
- a strong recognition in the region that our current institutions, as they are currently configured, do not provide a forum for all relevant leaders to discuss the full range of economic, security, environmental and political challenges the region needs to address;
- little appetite for creating new institutions in addition to existing forums, such as ASEAN, ASEAN+3, the EAS, APEC, ARF and others, given the heavy travel schedule and meeting demands that regional leaders face;
- ASEAN's involvement in regional institutions is crucial to fostering habits of cooperation and understanding across the region, and has contributed strongly to the level of peace and stability the region has achieved; and
- a keen interest in further discussion on the Asia-Pacific community proposal, including on the geo-strategic and economic challenges we will face in the twenty-first century and how we might develop our institutions to meet these.<sup>95</sup>

## Committee comment

6.93 The Committee agrees that it is better for countries of the region to work cooperatively in developing architecture to meet the collective challenges

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94 Ibid.

95 Source: <http://apc2009conference.org/site/concept.php>, viewed 18 November 2009.

facing the region. The Committee appreciates that there are significant obstacles to overcome before any wider regional mechanism for the Asia-Pacific could be achieved. However, the Committee strongly believes that this issue is too important to be relegated to the backburner.

- 6.94 In addressing the challenge of human rights, the Committee sees significant merit in taking a targeted and cooperative approach in the region. Evidence to the Committee during the course of this inquiry, and Members' discussions with colleagues and groups in the regions, indicated that there is interest in exploring options for improving how human rights challenges are addressed in the region, and for Australia to play some role.
- 6.95 The Committee is mindful that Australia should not be prescriptive in what human rights approach or mechanism would best suit the region, but it is well placed to foster an opportunity for discussion and progress on a cooperative approach to human rights challenges facing the Asia-Pacific region.

### **Recommendation 5**

**The Committee recommends that the Australian Government appoint a special envoy for Asia-Pacific regional cooperation on human rights, to undertake consultations with countries in Asia and the Pacific, and report to the Government within 12 months. The special envoy should engage in discussion in the region on how Australia can best support regional approaches to the protection and promotion of human rights, and the redress for human rights violations in the Asia-Pacific. The special envoy's responsibilities should be determined by the Minister for Foreign Affairs, but could include:**

- **undertaking high-level political consultations about the establishment of a Pacific subregional human rights mechanism and a wider Asia-Pacific regional mechanism; and**
- **consulting with government officials and key regional non-government stakeholders.**

