

## Joint Standing Committee on Foreign Affairs, Defence and Trade

# Inquiry into Human Rights Mechanisms and the Asia-Pacific

## Submission by World Vision Australia

20 November 2008

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World Vision is a Christian humanitarian organisation working to create lasting change in the lives of children, families and communities living in poverty. In Australia, World Vision is the country's largest charitable group. With the support of more than 400,000 Australians, World Vision helps over 12.4 million people every year. The organisation implements humanitarian relief, long-term community development projects and advocacy that addresses the causes of poverty and helps people move towards self-sufficiency.

## Introduction

World Vision Australia (WVA) encourages the Australian Government to be proactive in facilitating the observance and promotion of human rights in Asia and in the Pacific.<sup>1</sup> WVA suggests that this generally take the form of facilitation and support for specific human rights initiatives rather than visibly leading a push for comprehensive human rights mechanisms. WVA considers that while the full spectrum of human rights – civil, political, social, economic and cultural, must ultimately be addressed in their entirety, a practical and pragmatic way to achieve this is to take two distinct approaches. The first approach is to facilitate regional cooperation and practical national responses to pursuing rights issues that are responsive to collaborative action. The second approach is to foster the development of civil society to provide the foundation for the comprehensive fulfilment of all human rights in the longer term.

Given the very distinct characteristics of the two regions, these approaches may be taken quite differently in each place.

This response addresses the Joint Standing Committee's identified focus on regional mechanisms. It uses responses to human trafficking as an example. The important role of civil society in promoting and protecting human rights is also emphasised as an additional factor in the effective promotion of human rights. The Committee's Inquiry focus on the UN human rights system is not addressed in detail. WVA is supportive of the Australian Government's renewed commitment to the UN system in general and to the human rights system in particular, under the revised processes of the Human Rights Council. The value of international human rights treaties as a common frame of reference for all states and their intrinsic worth as the basic statement of the dignity of every person is assumed.

## Roles of regional mechanisms

### Asia

World Vision's experience is that responding to human rights issues by using persuasive approaches, combined with state-to-state collaboration and influence can be effective at achieving genuine progress in human rights in Asia. An overarching human rights mechanism for Asia is desirable in principle, however limited consistency in the adoption and observance of human rights treaties and norms in Asia creates the risk that an Asia regional body established at this time would be likely to have a flawed foundation and limited mandate.

A human rights based approach that emphasises influence and inter-state cooperation through a human rights based mechanism is proving effective in responding to the issue of human trafficking in the Greater Mekong Subregion (GMS). World Vision is very active in supporting the GMS governments and populations in their coordinated efforts to eradicate human trafficking in the region. The response takes an explicitly human rights approach to the issue, building on the architecture of key international treaties. The treaties are put into effect through a number of mechanisms, notably the *Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT)* and an increasingly coordinated array of bilateral treaties and national legislation and plans of action. In

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<sup>1</sup> Defined as the Pacific Islands Forum member states plus the Western colonies and dependencies of the south west Pacific.

placing the rights of victims as the priority of the COMMIT process, there is increasing evidence that the rights and dignity of victims is being upheld.

Civil society played a central role in the establishment of COMMIT and is still active in its implementation, as discussed later in this submission.

COMMIT has tremendous potential to provide a comprehensive framework for the prevention, protection and prosecution activities of its members and has made good progress. However the potential of this young agreement is yet to be fully realised, as the example of the Ranong case in the box below shows. Progress in strengthening the legislative frameworks, bilateral arrangements and internal capacity in each country is uneven, and external support for COMMIT's work will need to continue. COMMIT is well funded by other donors, however there remains a valuable role for Australia to seek greater political engagement to ensure that these next steps are taken. Three potential future directions exist: The first is to expand COMMIT to encompass other countries in South East Asia and possibly beyond, particularly to South Asia by coordinating with the South Asian Association for Regional Cooperation (SAARC). Second is to review and reinvigorate the SAARC to expand its mandate from its current narrow focus on sex trafficking as well as strengthening its implementation. Third is to replicate a similar mechanism in line with respective region's specificity.

Australia has a particular legitimacy in responding to trafficking due to its involvement as a destination of trafficked persons. Australia's leadership and diplomatic support in terms of financial contribution and technical assistance to foster or strengthen regional mechanisms like COMMIT, SAARC and its own initiative, the Bali Process would further strengthen Australia's position as a leader on the issue and in the region and contribute to substantively addressing the issue.

### **The Ranong Case**

In April 2008, a refrigerated truck illegally transporting 120 Myanmar people from the Thai port of Ranong to Pukhet was stopped by Thai authorities. 54 of the 120 Myanmar migrants suffocated to death when the airconditioning broke down, and 66 survived. The immediate handling of the survivors was to fine and (in the absence of other facilities) detain them in immigration detention centres as illegal migrants. This was contrary to the victim-centred approach that the COMMIT process advocates.

Agreements between the two countries in line with the COMMIT process were in place, although not fully implemented. If given full effect these agreements would have provided the basis for ensuring that the rights and wishes of the survivors were fulfilled, with suitable accommodation, care and eventual repatriation being provided. While the later negotiations between the two countries in terms of victim repatriation, support and prosecution of the perpetrators and legal process for compensation is noteworthy, this case indicates that while the development of frameworks and processes are critical first steps, they have to be followed by implementation.

It is further to the credit of the two countries that opted to engage civil society in brokering negotiations between the Thai and Myanmar governments and in supporting the victims. World Vision was instrumental in this and in ensuring the rights of the victims in line with international standards. UNICEF, Save the Children UK and the International Office of Migration also assisted with the repatriation process. WVA was invited to moderate the negotiation process.

- *Information from WVA Senior trafficking Advisor Dr Susu Thatun, who played the moderating role*

In dealing with issues like human trafficking that transcend national borders in Asia, the Australian government needs to invest more in its financial and diplomatic support to ensure systematic progress towards the comprehensive realisation of rights. In addition, the government needs to ensure its own compliance with relevant international human rights treaties.

### Recommendations

World Vision Australia recommends that the Australian Government

1. Provides diplomatic support to the COMMIT process and its member States to ensure its effective implementation at all levels.
2. Facilitates the expansion of human rights based human trafficking initiatives through the expansion of COMMIT or its replication in south Asia.
3. Ratifies and implements legislation to enact the *International Convention on the Protection on the Rights of all Migrant Workers and Members of their Families* and ILO Convention No. 143 (the *Migrant Workers Convention*).
4. Supports Asian-led initiatives to establish regional human rights based responses to other issues.

### The Pacific

For the Pacific the partnership approach established under the 2008 *Port Moresby Declaration* provides an existing appropriate approach to engagement with the countries of the region. WVA commends the Australian government for the change in approach that the Declaration represents and suggests that it could be an effective means of promoting human rights in the Pacific. Various issues may be responsive to a targeted approach such as is described for Asia above, including human trafficking.<sup>2</sup> As with Asia, this approach is more likely to be well received than any suggestion of a 'Canberra-driven' Pacific human rights agenda.

The international human rights system is in essence concerned with holding States accountable for their responsibility to ensure that people under their influence live full and dignified lives. In the Pacific there is a range of strongly held customary practices and systems that perform similar roles. In promoting human rights in the Pacific these existing practices must be respected and may be an appropriate channel through which rights can be met at local levels. This is not to say that all customary practice is consistent with human rights, nor that many practices labelled as 'custom' actually are. Nevertheless there is likely to be value in such an approach.

Especially in Melanesia, the status of women and children, particularly with regard to violence against women and children, could be a focal point for multicountry action. Study by World Vision indicates that violence against children is prevalent in the Melanesian states and is bound up in customary

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<sup>2</sup> There are emerging signs that as anti trafficking initiatives in South East Asia take effect, those involved (including in the commercial sexual exploitation of children) are seeking new territories in which to work, including the Pacific. Trafficking and sexual exploitation are already present to some degree in Melanesia. World Vision is planning to investigate this issue further.

practice and the challenges of modern society.<sup>3</sup> Similar issues are behind the violence inflicted on women and the general low status of women in politics and economic activity and are reflected in the attitudes of police.<sup>4</sup> Such an issue, though essentially domestic, could be responsive to targeted local interventions and capacity building and a regional compact-style agreement to create a 'peer pressure' component of a response, founded both on shared Melanesian social and customary characteristics and human rights treaties, notably the *Convention on the Rights of the Child* and the *Convention on the Elimination of Discrimination Against Women*. Australian support for such a process, that invests in strengthening implementation of the human rights instruments in these countries by identifying supporting customary factors, may be effective.

There may be an opportunity to promote a regional human rights body under the auspices of the Pacific Islands Forum, particularly if it has a mandate to build the capacity of Pacific Island states to report under the 'Universal Periodic Reporting' human rights reporting system. As with Asia, such an initiative must be led by the Pacific countries themselves.

### Recommendations

World Vision Australia recommends that the Australian Government

5. Pursues the promotion of human rights in the Pacific through its existing partnership approach.
6. Encourages the development of a multicountry initiative in Melanesia to eliminate violence against women and children.
7. Investigates the emerging issue of human trafficking in the Pacific.
8. Encourages and supports any Pacific-led initiative to establish a regional human rights mechanism.

### Civil society

A diverse and active civil society is essential for the fulfilment of human rights and is itself an expression of human rights. Civil society organisations, among them World Vision, were active in promoting a rights based approach to trafficking in the GMS which ultimately led to the establishment of COMMIT in 2004. They have also been integral to ensuring that it is implemented effectively, as deliverers of essential responses, especially around prevention of trafficking and the protection of victims, as in the Ranong example above. This includes some unusual actions such as World Vision's training of Myanmar police officers in child rights. Similarly in the Pacific region, civil society organisations are the primary defenders of the rights of women and other vulnerable groups.

Weak governance to a large extent can be exacerbated by an under-developed civil society. Active and engaged citizens are essential to ensure the accountability of their elected parliaments.

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<sup>3</sup> Dorning, Gow & Kaucz *Strongim pikinini, strongim laef b'long family: enabling children to reach their full potential*, World Vision, 2005.

<sup>4</sup> The murder of Anna Benny in connection to allegations of sorcery in PNG's Eastern Highlands province in 2005, and the limited investigations of police into the event, is a prominent example of a widespread situation. <http://asiapacific.amnesty.org/library/Index/ENGASA340052006?open&of=ENG-2AS>

Australia's leadership in engaging with civil society sends a message to the rest of the region that civil society plays a valuable role in safeguarding institutions and promoting the interests of the community. In this regard initiatives such as AusAID's *Democratic Governance* and *Building Demand for Better Governance* are extremely valuable, and must be implemented so as to ensure the development of a wide range of active and engaged citizen groups. World Vision's experience in Papua New Guinea, described in the box below, is indicative of the potential for an engaged citizenry to claim improved rights and development outcomes. Greater engagement with NGOs working on both domestic and cross border human rights issues, either through technical partnership or increased funding, would have enormous influence on how NGOs, and hence civil society, are viewed by governments in both Asia and the Pacific.

#### **Begasin Bugati: Success through organised and active citizenship**

The *Begasin Bugati* project was an AusAID funded initiative that sought to achieve a linked series of outcomes across a number of sectors including water supply, health and livelihood development in Madang Province, PNG. Though not part of the original plan, a project adaptation to make use of existing unused 'Ward Development Committees' as a pathway for engagement between communities and government was crucial to the success of the project and to achieving improved development and rights outcomes.

"...this presented an opportunity to partner more closely with Ward Development Committees, and improve community management capacity and cohesion in unexpected ways. For World Vision, it was the link to both government agencies and the Ward Development Committees that was the ultimate success for the BBRDP. ... Building on the existing Ward Development Committee structure was an important progression. But at the same time, it was through the resourcing and equipping of government staff to carry out capacity building programs – by accessing provincially developed training materials and ensuring that every activity had an element of teaching, training or capacity building – that the program had the most effect. It is the reinforcing of the government's role, rather than underestimating its potential or undermining it, that provides a positive and sustainable way forward.

...Strengthening civil society is part of the sustainability chain, but this can only occur with focused programs of capacity building which build on tangible outcomes. For BBRDP, success finally came through solutions that built on existing structures, leadership and participation. With this in mind, 'effective' development should be defined by the community, encouraged by the NGO and allowed to happen by the donor."

Source: Jonathan Treagust and David Sweeting "Defining success – Begasin Bugati" in *Annual Program Review: Responses to Poverty in 2007*, World Vision Australia, pp 27-31

#### **Recommendations**

World Vision Australia recommends that the Australian Government

10. Prioritises the development of a wide variety of civil society organisations across its development initiatives in Asia and the Pacific.