



Submission No 36

Inquiry into Human Rights and Good Governance Education in the Asia Pacific Region

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Human Rights Sub-Committee; Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into human rights and good governance education

**Questions raised by the HUMAN RIGHTS sub-committee
29 May 2003**

1. ALHR is not immediately supportive of a proposal to establish a National Centre for Human Rights Education. - We are not aware of the detail of the proposal, but note the following concerns which the proposal or any subsequent discussion would need to address.

First, such a proposal appears to raise real questions about the role of the Human Rights and Equal Opportunity Commission. Secondly, no self-proclaimed national centre' should be supported without strong support from the relevant sectors and a range of stakeholders, including human rights NGOs; primary, secondary and tertiary education institutions and unions, State and Territory Governments, community service peak bodies, State and Territory discrimination bodies, and the Human Rights and Equal Opportunity Commission. Thirdly we do not believe that, even with this support, the idea of such an institution should be promoted without serious consideration having been given to its long term financial viability and real effectiveness.

2. A principal concern for the Australian Human Rights Project is to properly understand the perceived need in the relevant sectors and among stakeholders. From this will come a considered proposal which will have been developed in consultation with and with the support of those stakeholders. Any proposal will have been developed with explicit analysis of effectiveness and viability, by reference to literature, research and experience.
3. We agree with the sentiments of the UN in its mid-term review. No, not enough is being done by the Federal Government either to engage with the few NGOs currently undertaking human rights education, or to promote the conduct by NGOs of human rights education. The Government's financial and logistic commitment to the Decade has been

inadequate to achieve real collaboration. The Government's view of the relationship between NGOs and government generally does not encourage collaboration; this is as true in relation to human rights education as any other endeavour.

4. A national policy consultation could be useful depending on the methodology and the real intended outcomes. Reference to 'hosting' implies a conference, and we would not support a national conference as an effective means of consultation. An inquiry by the Human Rights and Equal Opportunity Commission is an option.

The question asked of us does not specify the subject matter of any such 'consultation'. If it is 'human rights education' then a goal might be agreement on goals, strategies and responsibilities for human rights education in Australia; this is an exercise that might better have been done at the outset of the Decade.

5. Anecdote and impression among players in the field indicate the level of knowledge of human rights and governance issues in Australia is low. An overview of available educational materials reflects a low level of resources committed to education in the area. An intended outcome of the Australian Human Rights Project is to give a better estimate of the level of knowledge in Australia.
6. see below for response
7. see below for response
8. see below for response
9. No, we are unaware of any at this stage.
10. Yes, we do. We are aware of the special knowledge that the Asia Pacific Forum has in this area.
11. Explicit engagement with cultural and social diversity is necessary in any effective human rights training. This is best done through the training being planned developed in the regional context, delivered by or with regional trainers, and focussed on regional issues as a means of exploring and illustrating the universal principles. Imported solutions, generic courses, and external trainers with little regional knowledge, are a waste of resources.
12. The question is premised on there being an inaccessible level of complexity in human rights. ALHR does not accept that this is so. Human rights education has for many years in other countries successfully conveyed human rights in simple, accessible but meaningful ways. Principles of good governance can be also conveyed in such ways.

The question refers to 'better incorporation' in 'basic education projects'; we do not know enough of what this refers to to be able to answer. It appears to be the threshold of a very substantial discussion about human rights education project and/or curriculum design, begging educational design questions of target audience, intended outcomes, available resources etc.

Simon Rice
President
ALHR

Responses to questions 6-8

There are a number of issues I would like to address relating to human rights education in Australian law schools (para 6); the broader public service (para 7) and in the work place (para 8), in light of my current work lecturing at the University of New South Wales, writing and research on corporate accountability for human rights in Australia and an education program I am collating on Corporate Compliance and Human Rights. The program will form the basis for a Continuing Legal Education Program in October 2003. It is thereafter intended to form the basis of an undergraduate course combining commercial law and human rights and the basis for a research centre on 'Corporations and Human Rights' that would be accessible to students and people working within the public and private sectors.

I strongly agree with Mr Rice's comments that virtually every field of law has human rights implications. That human rights are being enforced against corporations through almost every field of law is indicative of how human rights are combining with the mainstream. Corporations, for example are increasingly being called to account for alleged human rights violations in their overseas operations by way of foreign tort claims, trade practices, contract and international human rights claims. Such claims entail aspects of:

- Tort Law;
- Trade Practices Law;
- Contract Law;
- Equity
- Public and Private International law
- Corporate Law, including corporate governance;
- Practice and Procedure; and
- Evidence

How human rights might be enforced against corporations by way of tort, trade practices, contract and equity is indicative of how human rights might be incorporated into the mainstream legal disciplines. It is not necessary to make human rights a compulsory subject in Australian law schools, if it is otherwise possible, to incorporate human rights with the core subjects. In my view it is preferable to combine human rights with mainstream legal disciplines to encourage students and legal practitioners, to realise how human rights are inextricably linked with every field of law. Indeed, entwining human rights with the mainstream legal disciplines will create a broader based understanding of human rights in practice.

Multiparty, human rights related claims against corporations such as BHP Billiton, are illustrative of how human rights combines with corporate, tort, trade practices, contract, equity, civil litigation and principles of public and private international law in practice. Combining human rights in practice, is further illustrated by a number of high profile claims against

corporations such as Unocal, Shell, Nike, BP, Coke and Gap in the United States, and similar such claims against the British Army, the British Geological Society, Cape plc, Thor Chemicals and Rio Tinto in the United Kingdom.

To give an example of one of those cases, which I have worked, is the case against Unocal. Unocal is an American oil company that is being sued by Burmese villagers in the United States for the commission of alleged torts in violation of international law in Burma. The alleged torts and violations of international law include false imprisonment, assault, wrongful death, intentional infliction of emotional distress, negligence causing physical harm, negligent hiring or negligent supervision; and torture, rape, murder, forced and slave labour. Enforcing human rights against transnational corporations such as Unocal and Unocal's French and Burmese partners Total and MOGE, requires the determination of principles of private international law and the application of principles of practice and procedure relating to court's jurisdiction, the status of foreign corporations and choices of law in tort and contract. The claim also entails equitable principles, relating to Unocal's alleged unjust enrichment through the alleged violation of human rights.

Similarly the Ok Tedi claim against BHP in Australia required the Supreme Court of Victoria, to consider the human rights of people living along the Ok Tedi and Fly Rivers in Papua New Guinea. The case also demonstrates how human rights combine with torts, corporate law, and principles of public and private international law, which should be taught as part of those subjects at law school. The *Dagi* claim against BHP was a foreign tort claim that involved principles of private international law, practice and procedure and aspects of the Corporations law relating to concepts and perspectives on corporate groups and corporate responsibility for civil wrongs. The purported responsibility of Australia corporations for human rights also raises questions about directors' duties, members' rights and remedies and equitable principles relating to unjust enrichment.

Human rights might also be enforceable under the *Trade Practices Act*. Indeed numerous Australian corporations have made representations to the effect that they comply with human rights, particularly businesses operating in Tibet, China and all throughout South-East Asia. There is some concern that such representations are misleading and deceptive, exposing businesses to a human rights claim through the *Trade Practices Act*. The human rights implications under the *Trade Practices Act* is apparent from a case against Nike, in which Nike is being sued in the United States for misleading and deceptive conduct with respect to human rights in its Vietnamese factories.

I am currently undertaking research at the University of New South Wales on Australian corporations, which includes transnational corporations with businesses active in the region, and their purported human rights responsibilities. In particular I am looking at corporations' human rights risks from a foreign tort and trade practices perspective. The trade practices perspective relates to corporations which have made human rights related representations that are misleading and deceptive. I am also exploring how human rights might be enforced against transnational

corporations in Australia, using principles of private international law and practice and procedure. And on a more constructive note, how corporations might otherwise comply with human rights in Australia and in their overseas operations drawing on the Corporations law, corporate governance and compliance.

I am using my writing and research as a tool to consult with Australian corporations on their human rights risks; which I have also incorporated into the courses I lecture at the University of New South Wales on 'Principles of Public International Law' and 'Issues in International Law'. I am also collating a Continuing Legal Education Course, on Corporate Compliance and Human Rights, which might also demonstrate how human rights can be mainstreamed across legal disciplines including Corporate Law, Tort law, Trade Practices law, Practice and Procedure and principles of Public and Private International law. The course is primarily aimed at lawyers practicing in New South Wales and students undertaking a Masters of law at the University of New South Wales. However, it might also provide the necessary training program for the broader public and private sectors, particularly for businesses active in the region.

For a detailed analysis of how 'virtually every field of law in Australia has human rights implications' see "Commercial Law and Human Rights" edited by Stephen Bottomley and David Kinley; which contains chapters on 'Corporations and Human Rights', 'Human Rights and Transnational Litigation', 'Corporate Governance and Sexual Harassment', 'Intellectual Property and Human Rights', 'The Right to Food, Health and Intellectual Property in the Era of 'Biogopolies', 'Administrative Law, Commerce and Human Rights', "Labour Law and Human Rights" and 'Native Title in Commercial Practice – A Question of Human Rights Risks of Risk Management'

Sophie McMurray
Member
ALHR