

Human rights

Introduction

- 8.1 This chapter traces the development of human rights principles in ASEAN from 1997 to the present and also discusses evidence received concerning aspects of human rights in Indonesia, and Burma.

ASEAN's focus on human rights

- 8.2 In 1997, ASEAN turned its attention towards human rights when it met in Kuala Lumpur. The resulting ASEAN Vision 2020 stated, under the heading *A Community of Caring Societies*:

We see vibrant and open ASEAN societies consistent with their respective national identities, where all people enjoy equitable access to opportunities for total human development regardless of gender, race, religion, language, or social and cultural background.

We envision a socially cohesive and caring ASEAN where hunger, malnutrition, deprivation and poverty are no longer

basic problems, where strong families as the basic units of society tend to their members particularly the children, youth, women and elderly; and where the civil society is empowered and gives special attention to the disadvantaged, disabled and marginalized and where social justice and the rule of law reign.¹

- 8.3 ASEAN's human rights principles were developed further in October 2003 with the declaration of the Bali Concord II. This introduced the three pillars of the ASEAN Community, one of which was the ASEAN Socio-Cultural Community (ASCC). The ASCC Plan of Action stated:

The ASCC reflects ASEAN's social agenda that is focused on poverty eradication and human development. It is linked inextricably with the economic and security pillars of the ASEAN Community. Social inequities can threaten economic development and in turn undermine political regimes. Economic instability can exacerbate poverty, unemployment, hunger, illness and disease. Social instability can emerge from environmental scarcity or the inequitable distribution among stakeholders of the use of environmental assets. Failure to address these critical and persistent social issues can further cause both economic and political dislocations.

- 8.4 The ASCC Plan of Action proceeded to identify four core elements:

- **Building a community of caring societies** to address issues of poverty, equity and human development;
- **Managing the social impact of economic integration** by building a competitive human resource base and adequate systems of social protection;
- **Enhancing environmental sustainability** and sound environmental governance; and
- **Strengthening the foundations of regional social cohesion** towards an ASEAN Community in 2020.²

- 8.5 The submission from the ASU, CPSU, and CEPU highlighted, like the ASCC Plan of Action, the interdependence of 'human development, human security, economic growth in trade, regional and national security.' It commented that unions were able to play a role in protecting human rights.³

1 <<http://www.aseansec.org/2357.htm>> Accessed January 2009.

2 <<http://www.aseansec.org/16833.htm>> Accessed January 2009.

3 ASU, CPSU, CEPU, *Submission No. 17*, pp. 194, 196.

ASEAN human rights body

- 8.6 The ASEAN Charter which came into force in December 2008⁴ progressed human rights principles further through Article 2, Principal 2(i):
- [R]espect fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice.⁵
- 8.7 Furthermore, Article 14 created an ASEAN human rights body. The details of the composition and operation of this body will be ‘in accordance with the terms of reference to be determined by the ASEAN Foreign Ministers Meeting.’⁶ How this body relates to existing human rights bodies in Indonesia, Malaysia, Philippines, and Thailand, has yet to be defined.
- 8.8 Indonesian Solidarity suggested there were two possible alternative roles for the ASEAN human rights body to adopt – the promotion of human rights issues within ASEAN member countries, or the protection of human rights through the investigation of abuses. Indonesian Solidarity told the Committee that it believed the human rights body would address the political issues:
- My understanding is that the human rights body would be more focused on political issues. ... For example, I mean women’s issues, which are still political issues, and trafficking.⁷
- 8.9 Prior to the ASEAN Summit in February 2009, a High Level Panel on an ASEAN Human Rights Body submitted draft terms of reference for an ASEAN human rights body to the ASEAN Foreign Ministers’ Meeting. A statement following the conclusion of the summit stated:
- We noted that the establishment of the [ASEAN Human Rights Body] to promote and protect human rights of ASEAN’s peoples would be one of the most important undertakings to make ASEAN a genuinely people-oriented community. We therefore agreed that this body should be

4 Press Release – *ASEAN Foreign Ministers to Celebrate the Entry into Force of the ASEAN Charter at the ASEAN Secretariat*, ASEAN Secretariat, 9 December 2008, <<http://www.aseansec.org/22106.htm>> Accessed January 2009.

5 *The ASEAN Charter*, Chapter I, p. 7.

6 *The ASEAN Charter*, Chapter IV, p. 19.

7 Mr Eko Wiluyo, *Transcript 6 November 2008*, p. 65.

inaugurated and operationalised by the 15th ASEAN Summit at the end of 2009.⁸

- 8.10 A subsequent Associated Press article, citing a confidential document it had obtained, reported that the human rights body would adhere to ASEAN's 'principles of non-interference in the internal affairs of ASEAN member states and would respect the right of every member state to be free from external interference, subversion and coercion.' The article stated:

The document falls short of key demands voiced by international human rights groups, which say the body will have limited effectiveness unless it can impose sanctions or expel countries that violate their citizens' rights.⁹

Migrant workers

- 8.11 One area of concern identified by Indonesian Solidarity, was the plight of migrant workers. Witnesses commented that there were some 5 million migrant workers in ASEAN¹⁰:

Most of them are in Thailand, and they come from Burma and Singapore; and most of those in Malaysia come from Indonesia and the Philippines. The protection of migrant workers is a concern between ASEAN and European countries.¹¹

- 8.12 Indonesian Solidarity's submission noted that because these workers were not citizens in their country of work they were the most vulnerable to human rights abuses.¹²

- 8.13 In January 2007, at the 12th ASEAN Summit in the Philippines, ASEAN issued a Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Declaration contained commitments by ASEAN member states which included:

Promot[ing] decent, humane, productive, dignified and remunerative employment for migrant workers.

8 *Chairman's Statement of the 14th ASEAN Summit "ASEAN Charter for ASEAN Peoples", Cha-am, 28 February-1 March 2009.* <<http://www.aseansec.org/22329.htm>> Accessed March 2009.

9 Associated Press, *ASEAN human rights body lacks power to punish*, 27 February 2009.

10 Dr John Rawson, *Transcript 6 November 2008*, p. 58.

11 Mr Eko Wiluyo, *Transcript 6 November 2008*, p. 65.

12 Indonesian Solidarity, *Submission No. 31*, p. 428.

Tak[ing] concrete measures to prevent or curb the smuggling and trafficking in persons by, among others, introducing stiffer penalties for those who are involved in these activities.

Facilitat[ing] data-sharing on matters related to migrant workers, for the purpose of enhancing policies and programmes concerning migrant workers in both sending and receiving states.¹³

- 8.14 A workshop on implementing the Declaration was held in the Philippines in March 2009. It aimed to reach 'a common understanding on the key principles governing the rights of migrant workers and the type of instrument on the protection and promotion of the rights of migrant workers to be adopted by ASEAN.' In opening the workshop, it was acknowledged that:

While our commitments under the ASEAN Declaration have recognised universally-accepted rights including those pertaining to migrant workers, children and women, we nevertheless need to take the challenge of defining what protective guarantees are available to migrant workers who are in vulnerable conditions such as those who are undocumented, those who fall prey to trafficking and other forms of exploitation, and those who become irregular migrant workers through no fault of their own.¹⁴

- 8.15 The promotion of core labour standards advocated by the CPSU could be another way to further the rights of migrant workers and workers in general. A mechanism of promoting such standards was identified by the CPSU which told the Committee that the World Bank insisted on core labour standards as a condition for loans. The witness also noted that this was not the case for the Asian Development Bank (ADB) and added that Australia was the fourth largest contributor to the ADB and was on the board:

The World Bank has adopted core labour standards as conditional for the International Finance Corporation providing loans to developing countries and to private sector investment within developing countries. The ADB, of which we are a party, has not done that. One good, practical thing that Australia could do is secure the core labour standards.

13 *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*, 13 January 2007. <<http://www.aseansec.org/19265.htm>> Accessed March 2009.

14 *Workshop on the Scope of Coverage and Rights of Migrant Workers*, Manila, 26 March 2009. <<http://www.aseansec.org/Bulletin-Mar-09.htm>> Accessed March 2009.

These are only four; they are not the broader standards. They are the removal of discrimination in employment, the abolition of forced labour, the abolition of child labour and the right for employees to organise and collectively bargain.¹⁵

ASEAN Social Charter

8.16 The ACTU submission advocated that the new ASEAN human rights body should give attention to the United Nations and International Labour Organisation (ILO) conventions. It also advised the Committee that in support of the drive to embed human rights principles in ASEAN, the ASEAN-based unions had been involved in the development of an ASEAN Social Charter.¹⁶

8.17 The ASEAN Social Charter arose from three meetings 'involving national, regional and global trade union leaders supported by academics, think-tanks and government representatives from the ASEAN region' which discussed the impact of globalisation and regional trade agreements on workers. A consensus emerged that:

... workers in the region were being confronted with a social and economic 'race to the bottom', a phenomenon that has serious implications for wages, job security, decent work and social protection.¹⁷

8.18 The subsequent charter was based on four international documents:

- UN Universal Declaration of Human Rights (1948);
- Copenhagen Declaration and Programme of Action (1995);
- ILO Declaration on Fundamental Principles and Rights at Work (1998); and
- Declaration of ASEAN Bali Concord II – ASCC.

8.19 The ASEAN Social Charter:

Calls on all development orientated governments, socially responsible employers, trade unions and civil society organisations to respect, realise and promote:

- Core ILO Labour Standards;

15 Mr David Carey, *Transcript 2 October 2008*, p. 66.

16 ACTU, *Submission No. 27*, pp. 375, 376.

17 <http://www.asean-socialcharter.net/background_to_the_asean_social_c.htm> Accessed January 2009.

- Employment Stability;
- Health and Safety;
- Wages and Salaries for a Just Living;
- Social Security;
- Human Resource Development.¹⁸

Committee comment

- 8.20 The Committee welcomes the development of the ASEAN Charter and the creation of an ASEAN human rights body. The human rights body will raise the profile of human rights and will create an opportunity to bring human rights issues before ASEAN Ministers. The Charter, however, 'does not authorise the Secretary General or the Secretariat to enforce adherence, but calls for cases of non-compliance to be referred to the ASEAN Summit'.¹⁹ It is thus unclear how, other than through moral suasion, this will advance compliance of ASEAN members countries to the adherence to human rights principles.
- 8.21 Banks such as the Asian Development Bank and the World Bank, on the other hand, are in a position to progress human rights issues by setting conditions for loans. The Committee believes there is merit in Australia using its influence with the Asian Development Bank to have it meet the benchmark set by the World Bank as regards requiring core labour standards as a precondition for loans.
- 8.22 The Committee considers the ASEAN Social Charter, while limited in its coverage is nevertheless a positive development for human rights in the ASEAN region. Other matters of human rights concern in the ASEAN region include the exploitation of children, the sexual exploitation of women, and child trafficking.

18 *Principles and Rights governing the ASEAN Social Charter*, http://www.asean-socialcharter.net/principles_and_rights_governing_.htm Accessed January 2009.

19 *Exhibit No. 1*, p. 24.

Recommendation 7

- 8.23 **The Committee recommends that the Commonwealth Government should use its influence with the Asian Development Bank to ensure that the adherence to core labour standards becomes a precondition for loans.**
- 8.24 The Committee includes a further comment on human rights and core labour standards at the end of Chapter 9.

Human rights issues within Indonesia

- 8.25 Evidence from Indonesian Solidarity focused on:
- human rights in the Indonesian province of Papua; and
 - the plight of village fishermen in the eastern Indonesian island of Roti.

Papua

- 8.26 Indonesian Solidarity suggested that human rights in Papua were important to Australia because abuses could lead to an increase in refugees seeking to enter Australia. This had in the past created tensions between Australia and Indonesia. Australia's strategy, Indonesian Solidarity suggested, should be to prevent situations which could lead to influxes of refugees.
- 8.27 Factors which were reducing human rights in Papua were:
- A build-up of military in Papua – the military had a structure mirroring the government's administration structure. As development occurred and administration structure expanded, more military were drawn into the province. The deployment of troops in Papua was an 'obstacle to the implementation of special autonomy itself or the democratic process in Papua.'²⁰
 - Entrance of intolerant forms of Christianity and Islam into the province; and

20 Mr Eko Wiluyo, *Transcript 6 November 2008*, p. 62.

- Indigenous Papuans losing land to foreign corporations as large scale agricultural projects were created.²¹

8.28 A supplementary submission from Indonesian Solidarity reported on the visit to Papua of the UN Special Representative on Human Rights in 2007:

She heard credible reports of incidents that involve arbitrary detention, torture, harassment through surveillance, interference with the freedom of movement and in defenders' efforts to monitor and investigate human rights violations. She was also informed of cases where human rights defenders were threatened with prosecution by members of the police and the military. It was alleged that when defenders have attempted to register their complaints, this has been denied and the defenders threatened. She is also concerned about complaints that defenders working for the preservation of the environment and the right over land and natural resources frequently receive threats from private actors with powerful economic interests, but are granted no protection by the police. She is particularly disturbed by allegations that when defenders expose abuse of authority or other forms of human rights violations committed by the security apparatus, they are labelled as separatists in order to undermine their credibility.²²

8.29 Indonesian Solidarity did not advocate 'megaphone' diplomacy,²³ but rather that Australia should:

- 'actively back security sector reform pursued by the current Indonesian President that tries to make the military more accountable for human rights abuses';²⁴
- work with local civil society groups such as the Catholic Church which would multiply the effectiveness of aid to the province;²⁵
- provide support for the under resourced Papuan House of Parliament;²⁶ and

21 Dr John Rawson, *Transcript 6 November 2008*, p. 57.

22 Indonesian Solidarity, *Submission No. 40*, pp. 453–4.

23 Dr John Rawson, *Transcript 6 November 2008*, p. 63.

24 Dr John Rawson, *Transcript 6 November 2008*, p. 57.

25 Dr John Rawson, *Transcript 6 November 2008*, p. 60.

26 Dr John Rawson, *Transcript 6 November 2008*, p. 59.

- provide support to the victims of development – ‘the Papuans are the victims of development at the moment. What they need is education, health care and business opportunity so they can benefit from the resources as well as other Indonesian people, otherwise there is going to be more conflict.’²⁷

Roti Island fishermen

- 8.30 Indonesian Solidarity described to the Committee the plight of Roti Island fishermen:

They used to have access to fishing areas that have now been claimed by Australia. Australia has given them very limited access if they use traditional boats – no engine, no radio – for fishing in a limited area, and this exposes them to drowning in storms because they cannot use GPS or an engine to outrun storms. In the 10 years up to 1996 some 140 people from Roti Island have drowned. Others have gone to prison because their boat has, ... been driven by the current into Australian waters, they have been picked up by Customs and the boat sunk. Sometimes these people go to prison while their families starve back on Roti. ... The Australian government is running a small project in Roti to grow seaweed. Surely we could do a lot more in the form of providing these fishermen with an alternative income so they do not have to fish in the waters that we claim.²⁸

Committee comment

- 8.31 The Committee agrees with Indonesian Solidarity in its belief that ‘megaphone diplomacy’ is inappropriate. Australia has a more mature relationship with Indonesia, one which is far more consultative. That is not to say that human rights issues in Papua should be ignored, but that Australia should consult with Indonesia with a view to providing advice and assistance which will be of value to, and be valued by Indonesia.
- 8.32 The Committee believes there is merit in assisting security sector reform in Indonesia, but the nature of such assistance should be determined by Indonesia after consultation with Australia.

27 Dr John Rawson, *Transcript 6 November 2008*, p. 60.

28 Dr John Rawson, *Transcript 6 November 2008*, p. 58.

- 8.33 Turning to the plight of Roti Island fishermen, the Committee notes that the issue of illegal fishing is far more complex. DAFF told the Committee that Indonesia itself suffered from illegal fishing 'mainly from distant water fishing fleets.'²⁹ Roti Island fisherman may be accessing Australian waters primarily because their own waters have been depleted rather than because Australian waters are their traditional fishing area.
- 8.34 The solution is to provide the fishermen with alternative forms of income. The Australian aid provided to the fishermen to grow seaweed fulfils this aim, but also could serve as a springboard to the development of a new industry in the area.

Burma

- 8.35 Several issues were raised by witnesses, including:
- the provision of aid for Burmese refugees in Thailand on the Burma-Thailand border, and following cyclone Nargis;
 - the training provided by the AFP to the Burmese police; and
 - the effectiveness of sanctions against the Burmese regime.

Provision of aid to the Burmese

Burma-Thailand border area

- 8.36 The Centre for Peace and Conflict Studies (CPCS) told the Committee that its submission arose after consultation with the Thai Burma Border Consortium (TBBC) which administered refugee camps on the Thai side of the border with Burma.³⁰ The TBBC was a consortium of international humanitarian non-government organisations which took donations from governments to deliver humanitarian aid, educational materials and other essentials.³¹
- 8.37 In recent times over 3000 villages had been destroyed in eastern Burma:

29 Mr Paul Morris, *Transcript 2 October 2008*, p. 11.

30 Professor Jake Lynch, *Transcript 6 November 2008*, p. 94.

31 Professor Jake Lynch, *Transcript 6 November 2008*, p. 95.

... to make way for plantations or developments used to raise foreign currency by the regime to pay for its vast military. In the past 10 years, the Burmese army has doubled its presence in the border areas, intensifying the pressure on civilians, who are forced to endure slave labour, rape, torture and summary executions.³²

- 8.38 As a result, Burmese had crossed the border into Thailand where 140 000 were accommodated by Thailand in camps administered by the TBBC.
- 8.39 Several factors complicated the issue:
- the region along the border was a poor rural area and social infrastructure such as schools and hospitals was at the premium;
 - the Thai government did not allow Burmese to leave the camps to access local resources;
 - the resettlement of refugees from the camps to third countries had de-skilled the camp population, compromising the ability to operate the internal social infrastructure;
 - many more displaced Burmese were in the area informally and therefore had no legal status – this had created a source of tension and embitterment.³³
- 8.40 The CPCS considered that ‘lecturing the Thais’ was inappropriate, but instead aid should be directed at improving the economy of the region thereby benefiting Thais and Burmese refugees alike. Also, aid could be directed to assisting the provision of screening to enable refugees to live and work in Thailand. The CPCS acknowledged that providing aid to the region could act as a draw factor for Burmese refugees, but stated that this was already happening as countries accepted some of the people from the camps.³⁴
- 8.41 DFAT responded by advising the Committee that Australia had provided humanitarian support to refugees along the Thai-Burma border for over 10 years, and in 2007-08 had provided \$700 000. DFAT agreed with the need to enhance the local economy:

Development partners believe that strengthening the economic self-sufficiency of the refugees through improved

32 CPCS, *Submission No. 6*, p. 70.

33 Professor Jake Lynch, *Transcript 6 November 2008*, p. 99.

34 Professor Jake Lynch, *Transcript 6 November 2008*, pp. 98-9.

access to education and vocational training, the promotion of income-generation schemes and the provision of access to employment and markets beyond the refugee camps is the way forward to address both the humanitarian needs of refugees as well as the security needs of Thailand.³⁵

- 8.42 DFAT added that it did not sanction cross-border assistance because it was not authorised by Burma or Thailand and providing such assistance 'could potentially compromise Australia's humanitarian assistance activities within Burma.'³⁶

Provision of aid following Cyclone Nargis

Australia's response

- 8.43 Burma Campaign Australia (BCA) told the Committee that in the wake of Cyclone Nargis, Australia had provided \$55 million in aid. BCA was concerned, however, with the transparency and accountability of this assistance fearing that funds could be siphoned off by the Burmese regime. It highlighted the performance of the Three Diseases Fund, to which Australia contributed, as being an example of best practice in accountability:³⁷

... it actually publishes the contracts and not the accounts but the initial submission for a project. Then it also publishes narrative accounts and other documentation, which is unusual because most aid agencies never do that.³⁸

- 8.44 The Committee sought a comment from DFAT, which responded that Australia was providing the \$55 million in humanitarian assistance through 'credible aid organisations, ... and international non-government organisations with extensive experience working on the ground in Burma.' It added:

All aid agencies funded by Australia have monitoring systems in place to ensure funds are accounted for and aid is closely monitored. AusAID staff attached to the Australian Embassy in Rangoon also undertake regular field visits to ensure Australian aid is used appropriately.³⁹

35 DFAT, *Submission No. 47*, p. 484.

36 DFAT, *Submission No. 47*, p. 485.

37 Ms Alison Vickery, *Transcript 2 October 2008*, pp. 70-1.

38 Ms Alison Vickery, *Transcript 2 October 2008*, p. 75.

39 DFAT, *Submission No. 47*, p. 485.

ASEAN's response

- 8.45 A submission from World Vision Australia drew the Committee's attention to the contribution of the ASEAN secretariat to the international response to Cyclone Nargis. The Secretariat coordinated the Tripartite Core Group (TCG) which comprised the Burmese Government and UN agencies:

The TCG expanded the humanitarian access provided to humanitarian agencies to operate within the Irrawaddy Delta region, the region most affected by Cyclone Nargis. The TCG also helped to escalate issues which had plagued the immediate humanitarian response and advocate for their swift resolution. For example ASEAN and the UN were able to resolve a discrepancy between the mandated Foreign Exchange Certificate and the US Dollar that had led to a loss of up to 25 per cent of funds being brought into the country for the response through the TCG.⁴⁰

- 8.46 World Vision Australia added that the Post-Nargis Joint Assessment, placed under the TCG, coordinated the inter-agency and inter-governmental response – in World Vision Australia's view this was 'an example of best practice within the humanitarian industry.'⁴¹
- 8.47 A drawback, however, to the effectiveness of the TCG in coordinating the response to Cyclone Nargis was that non-government organisations (NGOs) 'have no direct representation on the TCG and limited direct access to the ASEAN secretariat during the response.' This had resulted in NGOs having limited means to promote issues being faced by aid beneficiaries. World Vision Australia therefore advocated that:

Australia should support enhanced ASEAN consultative mechanisms to facilitate and foster greater cooperation with key NGOs in disaster preparedness, mitigation, emergency response, rehabilitation and reconstruction at both the field and ASEAN secretariat levels. This should be pursued by Australian Government Ministers, Australia's Ambassador to ASEAN, senior government officials and the Australian government representative based in the ASEAN secretariat

40 World Vision Australia, *Submission No. 48*, p. 489.

41 World Vision Australia, *Submission No. 48*, p. 489.

through their ongoing multilateral and bilateral engagement with ASEAN and its member countries.⁴²

- 8.48 One specific way NGOs could be involved, World Vision Australia suggested, was through participation in the 'ASEAN led Regional Forum voluntary field level activities' such as occurred during the disaster relief exercises held in the Philippines in May 2009.⁴³

AFP training of Burmese police

- 8.49 The submission from BCA drew the Committee's attention to training being provided by the AFP to the Burmese police force:

Police from Burma participate in annual senior police officers courses at the [Jakarta Centre for Law Enforcement Cooperation], as well as in regional and Burma-based workshops. In November 2006, three Australian Federal Police trained twenty senior intelligence officers from the Burmese authorities at the Centre. The AFP further maintains a Liaison Office in Rangoon which trains local police.⁴⁴

- 8.50 This assistance BCA stated was tantamount to providing assistance to the Burmese military:

Since 1995 police officers have been under the direct control of the military, with police intelligence and their 'Special Branch' subordinate to regional military command structures. Police training therefore directly serves the military junta.⁴⁵

- 8.51 BCA questioned the effectiveness of this training:

[The Burmese police] are actively involved in population control, and this has been documented by respected organisations such as the International Crisis Group. ... The AFP, by training members of Burma's police force in counterterrorism methods, has created the potential for expertise to be used for political purposes to monitor and surveil ordinary Burmese.⁴⁶

In the different branches in Burma, people do not act independently. You wait for the person above you to tell you

42 World Vision Australia, *Submission No. 48*, pp. 489–90.

43 World Vision Australia, *Submission No. 48*, p. 490.

44 BCA, *Submission No. 18*, p. 212.

45 BCA, *Submission No. 18*, p. 213.

46 Ms Alison Vickery, *Transcript 2 October 2008*, p. 70.

what to do ... It is an incredibly hierarchical society. So, even if the training were not used for some deleterious purpose, what are they going to be able to do with it? How are they actually going to be able to track people-smuggling? And most of the people-smuggling ... is not a big crime. It is usually the local village person helping people move to Thailand or it is people who have come from Thailand ... [who] help people to move, mostly because they want to move because they want to get the hell out of there.

Secondly, with the money laundering—how is someone below a colonel even going to begin to act on money laundering in Burma? They have no power. They just do what they are told by those above. I would say that, in a sense, it is probably just a waste of money.⁴⁷

- 8.52 The AFP acknowledged that it was documented that ‘there are connections between the ruling junta, the military and the Myanmar Police Force.’ It took the view, however, that it was, given narcotic production in Burma as well as other types of criminal activity, important to ‘maintain an effective liaison with the Myanmar Police Force.’ The AFP considered the most effective way to achieve this was:

... through the sponsorship of training, to ensure that the Myanmar Police Force is sufficiently trained and exposed to modern, Western law enforcement practices, standards and procedures to ensure that any work that is done collaboratively with the Myanmar Police Force, not only with the AFP but with other ASEAN police partners in the region, is done to the standards that would give us the best level of confidence that that work is being undertaken in an acceptable manner.⁴⁸

- 8.53 The AFP indicated it was confident it was not providing training to people which would help them evade trafficking and money-laundering investigations or investigations of other criminal activities, and added that such training conformed to AFP-DFAT guidelines.⁴⁹
- 8.54 The Committee sought and received a copy of the AFP-DFAT guidelines which covered training provided to Burmese police

47 Ms Alison Vickery, *Transcript 2 October 2008*, p. 72.

48 Commander Paul Osborne, *Transcript 2 October 2008*, p. 26.

49 Commander Paul Osborne, *Transcript 2 October 2008*, pp. 26–7.

organised, sponsored, or funded by the AFP. The guidelines stipulated that:

- for Burmese police to be involved in such training courses or activities, there had to be a ‘clear benefit to operational cooperation and Australian interests in combating transnational crime or counter-terrorism’;
- the Minister for Foreign Affairs had to approve bilateral training courses conducted in Burma;
- the Minister for Foreign Affairs had to approve the involvement of Burmese police officers above the rank of Police Colonel (equivalent to superintendent) in training courses and activities; and
- no serving member of the Burmese military could participate in the training courses or activities.⁵⁰

8.55 The AFP provided more details of its involvement with the Burmese police:

Burma is the world’s second-biggest producer of heroin and accounts for a large proportion of the heroin entering Australia.

In August 2006, AFP established an ongoing program that allows the AFP to assist the Myanmar Police Force Central Committee for Drug Abuse Control and its operational Anti-Narcotic Taskforces (ANTF) in identifying and dismantling heroin and amphetamine type stimulants refineries. That assistance involves training and some operational support.⁵¹

8.56 The AFP also provided details of successful operations in Burma:

- August 2008 – a joint AFP-ANTF operation in a northern Shan state on the Chinese border uncovered a heroin refinery;
- August 2008 – four joint operations in a southern Shan state resulted in the dismantling of a further heroin refinery and the seizure of a significant amount of heroin and amphetamine precursors;⁵² and

50 DFAT, *Submission No. 47*, p. 488.

51 AFP, *Submission No. 46*, p. 481.

52 800 l cooked opium; 363 kg opium; 1200 kg opium residue; 2200 l heroin precursors; 800 kg ammonium chloride (sufficient to convert 157 kg of raw opium to injectable quality heroin with a street value in Australia of \$58 million); 21 000 tablets of

- 23–26 January 2009—seizure of two consignments of heroin totalling 150 kg (worth \$27 million on the Australian drugs market) and the arrest of a ‘number of Burmese and other foreign nationals ... including a notorious trafficker who is wanted in two international jurisdictions.’ The success resulted from AFP’s capacity building efforts including the provision of computerised analytical software and associated training.⁵³

Effectiveness of sanctions against Burma

- 8.57 BCA told the Committee that it supported the financial sanctions and visa ban imposed on Burmese companies and individuals associated with the regime. The negative effect of trade and investment sanctions were avoided because they did not hurt the poor of Burma.⁵⁴ BCA was concerned, however, that the sanctions were weakly enforced, inaccurate, and that the lists held by countries such as Australia, Canada, and the US did not match:

The only monitoring appears to have been undertaken by ordinary Australian residents informing the Department of Immigration and Citizenship of the presence of individuals on the sanctions lists actually living in Australia. Most of those on the list in Australia came here on student visas. A few individuals on the list, seemingly unknown to the authorities, had become Australian citizens or permanent residents prior to the imposition of the visa ban.

... unfortunately the lists vary, so you will have the American list, the Canadian list and the Australian list. It is typically the grandparents who are members of the regime because of their age. ... In some cases we have grandparents and parents on the list who have grandchildren and children in Australia studying whose names do not appear on the list.⁵⁵

- 8.58 DFAT responded by advising that the lists were ‘consistent, but not identical’:

The scope of the lists differs as each country’s sanctions regime operates under a different legislative framework.

amphetamine type stimulants; 77 500 pseudoephedrine tablets; seven firearms; two hand grenades; 3000 sticks gelignite, and 2900 detonators.

53 AFP, *Submission No. 46*, p. 482.

54 Ms Alison Vickery, *Transcript 2 October 2008*, p. 76.

55 Ms Alison Vickery, *Transcript 2 October 2008*, pp. 69, 73.

Differences also occur as each country's list is updated at a different time. In compiling Australia's revised list (released in October 2008), the Department consulted UK and US authorities through our Embassy in Rangoon.⁵⁶

- 8.59 The Committee also questioned DFAT as to whether Burma could take advantage of the AANZFTA thereby undermining the effectiveness of sanctions.⁵⁷
- 8.60 DFAT responded that Burma's involvement with the FTA had been minimal and that its internal problems meant it was unlikely 'to contemplate exporting' to Australia. DFAT added that Burma, however, was a member of the WTO and that as a 'least developed country', it 'already has and enjoys a duty-free quota free access to the Australian market in terms of the previous policy decisions taken.'⁵⁸

Committee comment

- 8.61 The Committee is satisfied with the response provided by DFAT and the AFP concerning the provision of aid to Burma, and involvement of the AFP with the Burmese police force. Nevertheless, there needs to be constant awareness of the possibility that the Burmese authorities will misuse the Australian assistance provided, and a willingness to withdraw this assistance should such evidence come to light.
- 8.62 Regarding sanctions against the Burmese regime, there again needs to be vigilance to prevent circumvention of sanctions. The Committee welcomes the involvement of organisations such as BCA in identifying sanctions evaders and encourages DFAT to be responsive to the information which may be uncovered.
- 8.63 The continuing detention of the Burmese opposition leader Aung San Suu Kyi continues to be of concern. The Committee notes the statement by the Minister for Foreign Affairs welcoming the 'strong show of support by ASEAN and its constituent members for Aung San Suu Kyi and her immediate and unconditional release.'⁵⁹ The Committee shares the Minister's grave concern over her continuing detention and calls for her immediate and unconditional release.

56 DFAT, *Submission No. 47*, p. 486.

57 *Transcript 16 March 2009*, pp. 6-7.

58 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 7.

59 Hon. Stephen Smith MP, *Ministerial Statement: Aung San Suu Kyi*, 27 May 2009.

