

Promotion and Protection of Human Rights in the Middle East

Australia believes that the implementation of international human rights standards is the best available safeguard for the rights and freedoms of individuals, and that the challenge is how to encourage change in deep-seated cultural attitudes that may be at variance with those standards.¹

- 7.1 Amnesty International's annual report of 2001 documented human rights issues of concern to the organisation worldwide during the year 2000. It also outlined the activities that Amnesty International (AI) had undertaken during the year to promote human rights and to campaign against specific human rights abuses. The report contained a summary of human rights violations for the Middle East and North Africa regions, ranging from extrajudicial executions to widespread use of torture and unfair trials, harassment and intimidation of human rights defenders. AI reported that freedom of expression and association continues to be curtailed and that the climate of impunity remains, so that victims of human rights abuse must continue to wait for justice.²
- 7.2 Each year, the US State Department publishes 'country reports' on human rights practices around the world. For the Middle East region up to the end of year 2000, the report on the occupied territories of the West Bank and Gaza, for example, described the overall human rights record of the Israeli authorities as 'poor':

Israeli security forces committed numerous serious human rights abuses during the year. Security forces killed 307 Palestinians and

1 DFAT, Submission, p. 973.

2 Amnesty International, *Annual Report 2001*, website: www.amnesty.org/index.html (at 19 June 2001).

four foreign nationals and injured at least 11,300 Palestinians and other persons during the year. Israeli security forces targeted for killing a number of Palestinians whom the Israeli Government stated had attacked or were planning future attacks on Israeli settlements or military targets. Since the violence began [in September 2000] Israeli security units often used excessive force against Palestinian demonstrators.³

- 7.3 The same report made similar criticisms of the human rights record in areas controlled by the Palestinian Authority (PA).

The UN Human Rights Framework

- 7.4 The Committee's recent report on Australia's role in reform of the UN included a chapter on the international human rights system. The treaty system established by the UN seeks to prevent the abuse of human rights, to encourage governments to protect human rights and to act as an early warning system for the international community on potential sources of disagreement on human rights practices. To achieve these ends, specific human rights covenants and conventions which define international standards have been negotiated, and six treaty bodies have been established to monitor compliance. The Commission on Human Rights (UNCHR) was established in February 1946, and its early work involved the negotiation of the human rights covenants:

The process of definition, of negotiating agreed international standards, and of encouraging ratification of treaties occupied much of the early years of the Human Rights Commission. The compliance system has grown up haphazardly behind it.⁴

- 7.5 The Office of the High Commissioner for Human Rights was established following the 1993 World Conference on Human Rights, which was held in Vienna. The main purpose in establishing the Office was to coordinate and integrate the various activities which had evolved since the commencement of UNCHR.
- 7.6 The international human rights treaty system and its administrative mechanisms were discussed in detail in two previous Committee reports—the report on UN reform, previously cited, and an earlier one

3 US Department of State, *Country Reports on Human Rights Practices - 2000* (Occupied Territories), February 2001, published at: www.state.gov/g/drl/rls/hrrpt/2000/nea/ (29 June 2001).

4 JSCFADT, *Australia's Role in United Nations Reform*, June 2001, p. 134.

relating to regional human rights dialogue.⁵ The *Universal Declaration of Human Rights* of 1948 gave rise to two specific treaties, which are the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The three documents together form what is known as the International Bill of Rights.

- 7.7 Two protocols have been developed as optional additions to the ICCPR: the First Optional Protocol entitles individuals to make complaints to the monitoring committee, and the Second Optional Protocol is aimed at abolition of the death penalty.
- 7.8 A number of Conventions have been established to articulate in more detail specific rights outlined in the two major Covenants:
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted in 1965;
 - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979;
 - Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment (CAT), adopted in 1984; and
 - Convention on the Rights of the Child (CROC), adopted in 1989.
- 7.9 Although a number of other treaties deal with matters of human rights, they are not strictly within the UN system monitored by the UNCHR. These include the Geneva Conventions, the Convention Relating to the Status of Refugees, the Slavery Convention and numerous ILO conventions protecting the rights of workers. Further conventions are under discussion; for example, draft conventions on the rights of indigenous people and on the right to development.
- 7.10 Some treaties allow reservations to be made. A reservation is a declaration by which a state purports to exclude or alter the legal effect of some provisions of the treaty in its application to that particular state. Certain Middle Eastern states, for example, have made reservations to CEDAW. Amnesty International Australia (AIA) argued that such reservations significantly undermine the object and purpose of the Convention, since they imply that women's rights to freedom from

5 JSCFADT, op. cit., and *Improving, but...: Australia's Regional Dialogue on Human Rights*, June 1998, Chapter 6.

discrimination are not inherent, but contingent upon other factors such as religious, tribal, familial or cultural prerogatives.⁶

Terms in common use

- 7.11 There are a number of commonly-used terms which relate to the UN treaty system, and international law generally. In essence, the term 'treaty' is a written agreement between states, and includes international instruments such as charters, conventions, covenants, protocols, pacts and exchanges of notes.⁷
- 7.12 A 'signatory' is a state which has signed an agreement. A 'state party' means a state which has consented to be bound by a treaty which is in force. 'Ratified' means that signature has been confirmed by a relevant national representative body such as a parliament and signifies the intention to be bound by the provisions of a treaty. The term 'in force' means that the required number of signatory state parties have amended their domestic legislation and are therefore bound by the provisions of the treaty.⁸
- 7.13 'Accession' is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification.⁹

Treaty monitoring committees

- 7.14 States which are parties to the major human rights treaties are required to produce reports to the relevant treaty committees on their compliance with treaty obligations. The six treaty committees which have been established under the UN human rights framework are shown in the following table:

6 AIA, Submission, pp. 1899-1901. Recent Australian media articles on cultural and other interpretations of human rights have included P Bone, *The Age*, 'No Honour in Barbarism', 25 January 2001 and T M Franck, *Australian Financial Review*, 'Without Exception', 16 February 2001.

7 JSCFADT, *Improving, but ... :Australia's regional dialogue on human rights*, June 1998, p. 96, citing Senate Legal and Constitutional References Committee.

8 DFAT, Exhibit 35.

9 UN international law website: www.untreaty.un.org/English/guide.asp#accession (at 25 June 2001).

Table 7.1 UN Human Rights Treaty Bodies

Treaty	Entry into Force (No of parties required)	Monitoring Committee	Reporting Period
International Covenant on Civil and Political Rights (ICCPR)	1976 (35)	UNCHR	Every five years
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1976 (35)	CESCR Committee	Every five years
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1969 (27)	CERD Committee	Every two years
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1971 (20)	CEDAW Committee	Every four years
Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment (CAT)	1987 (20)	CAT Committee	Every four years
Convention on the Rights of the Child (CROC)	1989 (20)	CROC Committee	Every five years

Source JSCFADT, *Australia's Role in United Nations Reform*, June 2001, p. 141.

7.15 While the provisions of the human rights treaties are part of international customary law, and legally binding on state parties, they are not legally enforceable:

The human rights treaty system of the UN is ... a self-regulating system; governments set the rules, governments agree to abide by the rules and governments establish a system for monitoring the rules. The role of the state remains paramount.¹⁰

7.16 The urgent need for reform of the UN treaty bodies in response to criticisms and weaknesses was discussed at length in the Committee's UN report previously cited. Backlogs in the formal reporting obligations to the relevant monitoring committees, and the need for a considerable increase in the resources allocated to human rights administration from the core budget of the UN, were just two of the major shortcomings identified in the Committee's report. The Committee recommended that Australia should demonstrate its belief in the validity/legitimacy of international scrutiny of human rights by encouraging other member states to ratify the conventions and to participate fully in the workings of the UNCHR.¹¹

¹⁰ JSCFADT, *Australia's Role in United Nations Reform*, op. cit., p.139.

¹¹ *ibid*, pp. 153-54.

- 7.17 While not specific to the Middle East, the Committee's UN report nevertheless states important principles for the promotion and protection of human rights in that region as part of the wider global community.
- 7.18 Not one of the countries in the region has ratified all of the major international human rights instruments. Seven Middle East countries have ratified the two major UN covenants—ICCPR and ICESCR—and a number of others have ratified some of the other international human rights instruments.
- 7.19 The only instrument to which Oman has acceded is CROC, which was effected on 9 December 1996. Yemen hosted a UN Inter-Sessional Workshop in Sana'a in February 2000 on economic, social and cultural rights, and the right to development. The UN designated the year 2001 as the International Year for Dialogue Among Civilisations, an initiative of Iran's President Seyed Mohammad Khatami.¹²
- 7.20 Appendix H shows details of the ratification status of the six major human rights treaties in the Middle East, with relevant dates.¹³

The International Criminal Court

- 7.21 In support of strengthening the machinery which underpins the UN's human rights system, Australia has been a strong advocate for adoption of the statute to establish an International Criminal Court (ICC) and has been actively encouraging other Member States to become signatories to the statute. Jordan decided as long ago as October 1998 to sign the statute, which is known as 'The Rome Statute'.¹⁴ Australia currently chairs the 'Like-minded Countries' group of 60 nations committed to the establishment of the ICC.
- 7.22 Notwithstanding the generally supportive stance of the international community, several prominent nations have expressed reservations. The US and Israel have signed the Statute, but are unlikely to ratify it, while China has refused to be a signatory.

12 Embassy of the Islamic Republic of Iran, Submission, p. 445.

13 DFAT, Exhibit 35.

14 The Statute (*The Statute of the International Criminal Court*) prescribes the manner in which the ICC will operate. It details the establishment and composition of the Court, its jurisdiction, and the principles of law that will govern proceedings. The ICC will come into existence once 60 states have ratified the Statute (32 have already done so). When established, the ICC will be an independent, standing court with appropriate powers of investigation and prosecution.

- 7.23 In its recent report on UN reform, the Committee commended the Australian Government's contribution to the development of the ICC and recommended that Australia ratify the Rome Statute as soon as possible. The Committee further recommended that the Australian Government pursue with reluctant member states clarification of outstanding issues of concern to them, as well as use its good offices to persuade member states to ratify the Statute.¹⁵
- 7.24 In addition to Jordan, the following Middle Eastern states have signed, but not yet ratified the Rome Statute—Bahrain, Iran, Israel, Kuwait, Oman, Syria, the UAE and Yemen. At the time of writing, Australia had the same status of signatory only, and the Committee considers that Australia should ratify the Rome Statute as soon as possible.

Recommendation 28

- 7.25 **As recommended in the Committee's recent majority report on United Nations reform, the Committee urges the Australian Government to ratify as soon as possible the Rome Statute, to establish the International Criminal Court.**

Australia's Surveillance of Human Rights Practices

- 7.26 DFAT monitors the human rights situation in the Middle East by using Australia's diplomatic missions there, in addition to drawing on information provided through a number of other channels. These channels include NGOs, academic institutions and the wider community, and particular note is taken of the regular country reports of the US State Department and leading NGOs such as Amnesty International.
- 7.27 It is the Australian Government's stated policy to take up individual human rights cases when it is satisfied there are valid grounds for an inquiry.¹⁶ Australia was one of a few countries which continued to have a representative at Shiraz during the trial in Iran of 13 Jews and four Muslims accused of espionage. The trial was conducted in a closed court,

15 JSCFADT, *op. cit.*, pp. 157-160. In that report (p. 173), the Committee documented a number of perceived weaknesses in the Statute; for example, the ICC's reliance on State cooperation to exercise its jurisdiction and to enforce judicial decisions, and the potential for 'rogue' states to deny the jurisdiction of the Court.

16 DFAT, Submission, p. 973.

and there were concerns about the validity of some of the confessions used in evidence. Ten of the 13 Jews were convicted, as were two of the four Muslims. Sentences ranged from two to 13 years' imprisonment.¹⁷

- 7.28 The US State Department's most recent report on Iran criticised the strong influence exerted over the judiciary by government and religious forces, and described the trial procedures in Shiraz as unfair and in violation of numerous internationally-recognised standards of due process.¹⁸ Foreign Minister Downer made five representations at ministerial level dealing with Australia's concerns about the trial.
- 7.29 As DFAT stated in evidence, Australia remains concerned about continuing human rights abuses in the region, in particular the wide-ranging use of the death penalty, torture and ill-treatment of prisoners, 'disappearances', the treatment of women, the lack of religious freedom and curtailment of freedom of expression. These concerns are pursued bilaterally and, in the case of Iran, there has been progress towards an agreement between the two governments to establish a formal dialogue on human rights issues.¹⁹
- 7.30 As well, senior level visits from the region provide the opportunity for Australia to raise human rights issues with key decision-makers; for example, the visit in April last year by the Governor of Riyadh, Prince Salman bin Abdul Aziz, when the issue of the treatment of women in Saudi Arabia was discussed at some length. DFAT informed the Committee that, although such discussions are not public, human rights issues are nevertheless pursued vigorously by these means.²⁰
- 7.31 The progress in discussions with Iran could be a useful indicator to similar developments which Australia could pursue with other regional governments.

Recommendation 29

- 7.32 **The Committee recommends that the Australian Government pursue bilateral discussions with governments in the Middle East, with a view to establishing formal dialogue mechanisms on human rights matters similar to the arrangements which have been discussed with Iran.**

17 DFAT, Transcript, pp. 6, 11 and 350.

18 US Department of State, *Country Reports on Human Rights Practices - 2000* (Iran), February 2001.

19 DFAT, Submission, pp. 973-74.

20 DFAT, Transcript, p. 11.

Multilateral initiatives

- 7.33 Multilaterally, Australia has co-sponsored resolutions in the Third Committee of the UN General Assembly and the UNCHR on the human rights situation in Iran and Iraq and on Israeli settlements in the occupied Arab territories. Australia has also co-sponsored resolutions on CEDAW as well as the Convention on the Elimination of All Forms of Discrimination Based on Religion or Belief. Through regional UN meetings and programs, Australia has promoted the establishment of national human rights institutions by providing legal technical assistance to countries seeking to establish an environment in which the human rights of citizens can be protected more effectively.
- 7.34 DFAT did acknowledge, however, that the Government's focus had been applied primarily to Australia's immediate region, in the form of participation at the Asia Pacific Forum of National Human Rights Institutions. Some Middle East countries attend as observers at meetings of the Forum, thereby gaining useful exposure to international human rights mechanisms and agreed international standards. Australia provides funding for the Forum Secretariat.²¹
- 7.35 Iran is the only Middle Eastern state to have shown evidence of establishing an independent national human rights organisation, the Islamic Human Rights Commission. In the occupied Arab territories, there is what is called the Palestinian Independent Commission on Citizens' Rights, while in Jordan there is a Royal Human Rights Commission. As DFAT stated in evidence:
- While these institutions may not fit within the ambit of the UN-endorsed 'Paris Principles' (which outline the role, composition, status and functions of national human rights instruments) in that they must be independent and pluralistic, their establishment and subsequent activity may prove to have been positive developments in the strengthening of human rights.²²
- 7.36 The Australian Council for Overseas Aid (ACFOA) and Australian People for Health, Education and Development Abroad (APHEDA) strongly recommended that Australia give greater support to the development of human rights organisations in the Middle East by undertaking a specific program with a focus on that region.²³

21 DFAT, Submission, p. 974 and Transcript, p. 12.

22 DFAT, Submission, p. 974.

23 ACFOA, Submission, p. 1599; APHEDA, Submission, p. 1528.

- 7.37 The Committee agrees with this view and considers that such developments should be encouraged further, since they would assist in raising the profile of human rights practices and the promotion of a human rights culture in the Middle East region. One of the avenues within which such a program might be pursued effectively is the Human Rights Strengthening project, HURIST. This UN initiative began in 1999 as a joint endeavour of the High Commissioner for Human Rights and the United Nations Development Program. It is designed to enhance opportunities for developing national capacity for promotion and protection of human rights in the planning of sustainable development.²⁴

Recommendation 30

- 7.38 **The Committee recommends that the Australian Government increase its commitment to the development of national human rights organisations in the Middle East by providing technical and other assistance to multilateral programs such as the UN Human Rights Strengthening project (HURIST), and by promoting such initiatives in bilateral dialogue with countries of the region.**

Views of Australian NGOs and Community Groups

- 7.39 A wide range of NGOs and community groups presented evidence to the Committee on the human rights situation in the Middle East. Many of them made suggestions on how Australia should respond. Although the focus for concern by various community organisations often depended on the viewpoint of the particular community organisation, evidence to the Committee from the NGOs generally expressed such concerns in the context of the entire region, based on reputable reports from international monitoring agencies such as AI, the US State Department and Human Rights Watch (HRW).
- 7.40 The submission from ACFOA made the link between human rights abuses throughout the region and failure to resolve the Arab-Israeli conflict:

24 The HURIST program was developed to promote human rights at global, regional and sub-regional levels. The aims, objectives and achievements of the program have been reported in various UN General Assembly and Economic and Social Council documents since 1999. During the year 2000, for example, HURIST activities were reported in Yemen and Jordan.

... [T]he resolution of the Arab-Israeli conflict and the humanitarian crisis in Iraq, linked as they are to peace and security throughout the Middle East, remain in jeopardy while fundamental human rights are denied.²⁵

- 7.41 In relation to the human rights record of both the PA and the Israeli Government in the occupied territories, ACFOA drew the Committee's attention to authoritative, documented reports of ongoing violations through torture, ill-treatment of prisoners, administrative detentions and restrictions on freedom of movement and expression. Further evidence from ACFOA emphasised its view that Australia has a moral responsibility to continue to pursue respect for human rights:

Australia's proud human rights tradition at the international level imposes on it a strong moral obligation to continue to push for respect for human rights in the [Middle East] region, in particular by supporting United Nations bodies which have responsibility in this area.²⁶

- 7.42 Evidence from AIA had a primary focus on two fundamental human rights—the right to freedom from arbitrary detention and torture, and the right of women to freedom from discrimination and persecution. These two basic freedoms were selected by AIA because they illustrate how states in the Middle East respond to political dissent and demonstrate how issues of local culture and practice can be invoked as reasons to disregard the universality and indivisibility of human rights. AIA highlighted the difference between human rights theory and practice by reminding the Committee that, despite the increasing ratification of international human rights conventions by Middle Eastern states, abuse of human rights in the region remains rife. Moreover, AIA maintained that the full extent of human rights abuse is difficult to confirm, given the only limited access that monitoring organisations have to detainees, for example.²⁷
- 7.43 AIA's submission also highlighted concerns regarding continuing torture of detainees (in prisons, police and army camps, as well as detention centres). Rape is a form of torture which can occur even outside places of detention, and continuing discrimination against and persecution of women in a number of Middle East states has been widely reported by the international monitoring agencies.

25 ACFOA, Submission, p. 1551.

26 ACFOA, Transcript, p. 379. See also website reports from the Israeli Centre for Human Rights in the Occupied Territories (B'Tselem), www.btselem.org (at 25 June 2001).

27 AIA, Submission, p. 1895.

- 7.44 The practice of torture and other inhuman or degrading practices is one consequence of justice systems that are unaccountable and which fail to guarantee minimum international standards of justice and fair trials. In recommending that Australia urge all states in the Middle East to improve their human rights practices, AIA also recommended in its submission that the Australian Government elevate human rights concerns to a higher priority in developing Australia's foreign relations with the Middle East.²⁸
- 7.45 The Australian Arabic Council (AAC) reminded the Committee that it is easy to forget the steady erosion of human rights in the region under the pressures exerted by continual setbacks to the peace process. Echoing the views expressed in some other submissions from community groups, the AAC urged Australia to take a more strategic view of its overseas aid program by linking development assistance to improvements in human rights practices.²⁹

The Palestinian Refugees

- 7.46 The world tends to focus on a few refugee tragedies at a time—for example, East Timorese escaping violence; ethnic Albanians driven from Kosovo; and other humanitarian disasters in succession. However, the refugee crisis is broader and more persistent than the daily headlines might suggest. World-wide, the UN counts more than 11 million people as refugees—people forced from their countries to escape war or persecution due to race, nationality, religion, or political opinion. Another 17 million or more are displaced within their own countries.
- 7.47 Palestinians are the largest group of refugees in the world, reaching an official 3.8 million last year. A third of these refugees still live in camps constructed after the 1948 Arab-Israeli War.³⁰
- 7.48 As a humanitarian issue, the scale of the Palestinian refugee problem is enormous. The issue of the Palestinian refugees in the context of the Middle East conflict was discussed at some length in Chapters 2 and 3.
- 7.49 The Committee agrees with the consistent view expressed in submissions that, without a comprehensive settlement of the Palestinian refugee

28 AIA, Submission, pp. 1901-02 and Transcript, p. 393.

29 AAC, Submission, p. 1833.

30 'Plight of the Refugees', published as a supplement to *National Geographic*, December 1999.

situation (including resolution of the 'right of return'), there is little chance of achieving a long-term regional peace.³¹

The role of UNRWA

- 7.50 In response to the refugee crisis created by the 1948-49 war, the UN established a specialised agency, the Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which was originally envisaged as a temporary organisation. Under UNRWA's operational definition, Palestinian refugees are persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost their homes and means of livelihood as a result of the 1948-49 Arab-Israeli conflict, and who took refuge in Jordan, Lebanon, the Syrian Arab Republic, the Jordanian-ruled West Bank or the Egyptian-administered Gaza Strip.³²
- 7.51 The majority of refugees live in purpose-built camps, which for the most part are over-crowded and squalid, with totally inadequate basic services such as sanitation and roads. UNRWA is responsible for health and rehabilitation services, education and training, sanitation, building control and, in some areas, water and electricity. Its services are available to all persons who meet the operational definition, who are registered with the Agency and who need assistance. UNRWA's definition of a refugee also covers the descendants of persons who became refugees in 1948.
- 7.52 US academic, Donna E Arzt wrote in 1997 that a little over half of all Palestinians throughout the world were registered with UNRWA. In January 1996, UNRWA had a total registry of 3,246,044 refugees, approximately 33 per cent of whom still resided in the 59 official camps located in Jordan, the West Bank, Gaza, Syria and Lebanon. The number of registered refugees living in camps as a percentage of the total registered refugees was at that time highest in Gaza (55 per cent) and lowest in Jordan (19.3 per cent).³³ The number of registered Palestine refugees grew from 914,000 in 1950 to more than 3.6 million in 1999, and continues to rise due to natural population growth.
- 7.53 Ten of the 59 camps were established in the aftermath of the 1967 war in order to accommodate a new wave of displaced persons, both refugees and non-refugees. Refugees who do not live in the camps reside in and

31 For example, this view was succinctly expressed by ACFOA: Submission, p. 1575 and Transcript, p. 378.

32 The official UNRWA website is located at www.un.org/unrwa/index.html.

33 Donna E Arzt, *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict*, Council on Foreign Relations, New York, 1997, pp. 36-37.

around the cities and towns of the host countries, and in Gaza and the West Bank.

- 7.54 Most of UNRWA's facilities such as schools and health centres are located inside the camps, although a number are sited nearby. All of UNRWA's services are available to both camp and non-camp refugees who are registered with UNRWA.
- 7.55 In recent years, UNRWA's funding support has been under severe strain due to a relative decline in financial contributions from donor countries and, simultaneously, pressure for humanitarian and emergency relief for a wider group of Palestinians in the wake of the 'Al-Aqsa' uprising in the West Bank and Gaza.³⁴

Australia's response

- 7.56 In evidence, ACFOA and others reminded the Committee of the plight of Palestinian refugees and displaced persons who fall outside the UNRWA definition, and who therefore are not eligible for any assistance from that agency. Particular note was taken of the most vulnerable groups, who are unregistered refugees living in camps in Lebanon and Gaza where poverty and unemployment are extremely high. The Arab Australian Action Network (AAAN) and APHEDA highlighted the overall size of the Palestinian refugee problem, its post-1948 and post-1967 dimensions, and in particular the dismal prospects for refugees in Lebanon who have no civil rights and are denied access to many forms of employment.³⁵
- 7.57 UNRWA's website reports that all 12 of the official refugee camps in Lebanon suffer from serious problems—no proper infrastructure, overcrowding, poverty and unemployment. Lebanon has the highest percentage of Palestinian refugees who are living in abject poverty and who are registered with the Agency's 'Special Hardship' program:
- Palestine refugees in Lebanon face specific difficulties. They do not have social and civil rights, and have a very limited access to public health or educational facilities. The majority rely entirely on UNRWA as the sole provider of education, health, relief and social services. Considered as foreigners, Palestine refugees are prohibited by law from working in more than 70 trades and

34 See UNRWA website: www.un.org/unrwa/finances/note.html (at 27 June 2001); APHEDA, Submission, pp. 1530-32. In a press briefing on 6 December 2000, the Commissioner-General of UNRWA, Mr P Hansen, revealed that only US\$38 million had been received against UNRWA's 'very modest and meagre' annual budget of US\$311 million.

35 ACFOA, Transcript, p. 385; AAAN, Submission, pp. 311-14; APHEDA, Transcript, p. 241.

professions. This has led to a very high rate of unemployment amongst the refugee population.³⁶

- 7.58 A number of indigenous and international NGOs are active in the Lebanon camps and their environs. These include Al-Najda, Beit Atfal Al-Soumoud, Save the Children, Al-Quds, and the Al-Wazir foundation. The services they provide include cash assistance to orphans, kindergarten facilities, training centres and rehabilitation services.
- 7.59 Australia's aid program to the Middle East, and its primary focus on humanitarian and other assistance to Palestinian refugees, is discussed in detail in Chapter 10. The Committee has recommended in that Chapter that the Australian Government urge the international community to reverse the decline in financial donations to UNRWA.

The Human Rights Situation in Iran and Jordan

- 7.60 While a catalogue of human rights practices and violations for each country in the Middle East is readily obtained from the reports of major international monitoring organisations, direct evidence to the Committee's inquiry did not provide a comprehensive coverage of human rights practices across the entire region. In the next section, the Committee has given particular attention to two members of the regional community—Iran and Jordan—which, to some extent, illustrate the diversity of human rights problems in the Middle East.

Developments in Iran

- 7.61 The Islamic Republic of Iran was established in 1979 after a populist revolution toppled the Pahlavi monarchy. The constitution ratified after the revolution established a theocratic republic and declared its purpose as the founding of institutions and a society based on Islamic principles. The government is dominated by a Shi'a Muslim clergy. The Head of State, Ayatollah Ali Khamenei, is the Supreme Leader of the Islamic Revolution, with direct control of the armed forces, the internal security services, and the judiciary.

36 Official UNRWA website, www.un.org/unrwa/refugees/lebanon/rashidieh.html. Rashidieh Camp, for example, was heavily affected by the conflict between 1982 and 1987, which resulted in the total or partial destruction of nearly 600 shelters and the displacement of over 5,000 refugees. With 24,009 registered refugees in the camp, the single health centre handles on average 122 patients each day.

7.62 All legislation passed by the popularly-elected 290-seat Islamic Consultative Assembly (Majles) is reviewed for adherence to Islamic and constitutional principles by a Council of Guardians. The six clerical members of the Council are appointed by the Supreme Leader and the six lay jurists are appointed by the head of the judiciary and approved by the Majles.³⁷

Social and political reform in Iran

7.63 The re-election of President Seyed Mohammad Khatami for a second four-year term in a landslide victory on 8 June 2001 was welcomed by Arab leaders in the Middle East as a sign of improving prospects for regional cooperation. The vote was viewed around the world as demonstrating a strong mandate for continuation of social, cultural and political reforms in Iran which have been resisted by the powerful clerical establishment.

7.64 The issue for the future seems to be not whether Iran will embrace lasting reform, but rather how the change process will unfold. However, some commentators have warned that Iran lacks the secure economic and social foundations it needs for a smooth transition, after decades of mismanagement and the inevitable social consequences. Layered onto these pressures are the significant strains produced by huge population increases during the 1980s, which have resulted in greater expectations now that the 18 million Iranians born in that period represent some 25 per cent of the population.³⁸

7.65 Ironically, it is in Iran—largely reviled in the past by others in the region for its Islamic fundamentalism and espousal of revolution since 1979—where parliamentary democracy in practical terms is beginning to take root. The election of the moderate cleric, Mohammad Khatami as President in 1997, followed by his reformist supporters' majority in the Majles, have given strong encouragement to the view that these events (reinforced by Khatami's re-election in 2001) have symbolised a fundamental desire for change.³⁹

7.66 In his evidence, Professor Saikal made similar observations:

There is a more liberal climate in Iran for expression of opinion, for debate of major issues and development of opposition to the clerics from within. ... As long as the Iranian population

37 US Department of State, www.hrw.org/mideast/ 'Country Reports on Human Rights Practices (Iran)', February 2001.

38 AFP newswire, 10 and 11 June 2001 (story nos. 3224 and 3902); *The Economist*, 'Khatami faces a treacherous second term', 9 June 2001, p. 49.

39 *Jane's International Defense Review*, November 2000, p. 29.

continues to provide the overwhelming support that they have to the process of reform, it is not going to be easy for the factional opponents of Khatami to reverse the course of reform. ...

I think there are two possibilities. One is that the present process will continue and will take longer. It will be tedious and painful, for both the Iranians and the outside world for some time, until the moderates or the reformists succeed in taking over more instrumentalities of state power, particularly gaining influence within the armed and security forces and within the judiciary. Or, alternatively, a number of their factional opponents will realise that they are fighting a futile battle and some of them may decide to defect to the side of the reformists.⁴⁰

'Dialogue Among Civilisations'

- 7.67 Australia is following with interest an initiative by President Khatami for a 'Dialogue Among Civilisations', which promotes an understanding of Iranian society and Islam in the international arena. During the Committee's inquiry, the Ambassador of the Islamic Republic of Iran made a written submission and forwarded a copy of a collection of essays and papers written by President Khatami, entitled *Islam, Dialogue and Civil Society*, published in 2000 by the Australian National University.⁴¹
- 7.68 The Ambassador's submission highlighted social, political and 'generational' changes at work in Iran, as well as the President's broadly-based reform program:
- ... socially and politically, a great civil movement in Iran that seems irreversible is under way. ... President Khatami's drive to enhance Islamic civil society and the rule of law, with the principles of dialogue and cooperation, has now gathered more pace than ever before.⁴²
- 7.69 The ANU publication sets out the President's call for collective effort to strengthen friendly relations and cooperation among nations, to remove threats to peace, to promote and encourage universal respect for human rights and fundamental freedoms for all, and to foster international cooperation in resolving issues relating to economic, social, cultural and humanitarian problems. In the same context, the Ambassador's

40 A Saikal, Centre for Arab and Islamic Studies, ANU, Transcript, p. 617.

41 Exhibit 3: Mohammad Khatami, *Islam, Dialogue and Civil Society*, published by the Centre for Arab and Islamic Studies, ANU, Canberra 2000.

42 HE Dr Gholamali Khoshroo, Submission, p. 443.

submission to the Committee made the observation that, in the field of human rights, it would appear that the international community is gradually embracing a more cooperative approach based on constructive engagement and understanding, rather than exclusion and conflict:

Pluralism, acceptance of diversity and dialogue among cultures and civilisations in this pivotal area of international affairs, will undoubtedly enhance the universality of human rights instruments, making them more readily acceptable and implementable globally. The successful seminar on this subject convened last year by the UN High Commissioner for Human Rights on the proposal of Iran as chairman of the Organisation of the Islamic Conference, constitutes a major and valuable first step in this regard.⁴³

Slow progress on human rights

- 7.70 Despite popular support for the President's reform agenda, opposition to the implementation of his programs remains entrenched. According to reports from AI and HRW, the heart of Iran's human rights problem is the judiciary, which is not sufficiently independent.⁴⁴
- 7.71 In its reports, HRW has noted the pivotal role of the Council of Guardians in vetting the 'fitness for office' of prospective candidates for elective office, including the recent presidential elections. The Middle East and North Africa Division of HRW expressed concern that such a process ensured that elections in Iran have been largely limited to competition among those supporting the clerical leadership.⁴⁵

Human rights initiatives

- 7.72 On a more positive note, Iran hosted the Sixth UN Asia Pacific Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in Tehran in 1998. At that meeting, participating countries managed to overcome fundamental differences in perspectives and agreed on a modest framework for human rights capacity-building in the Asia Pacific. This framework gave emphasis to national institutions, human rights education and the development of national human rights action plans.

43 HE Dr Gholamali Khoshroo, *op. cit.*, p. 448.

44 HRW, 'Election Marred by Human Rights Attacks', www.hrw.org/mideast/ (at 27 June 2001).

45 *ibid.*

- 7.73 Iran is the only nation in the region which has established anything like a recognised national human rights commission, although the Islamic Human Rights Commission of Iran does not meet the requirements of the Paris Principles, referred to in paragraph 7.35 above.

Other concerns

- 7.74 Repression of the right to dissent and of the independence of the press in Iran continues to cause international concern. The independent print media, the major engine of the reform movement, has been subjected to sustained attack. Since April 2000, more than 35 independent newspapers and magazines have been extinguished in Iran, usually by order of the judiciary. These closures did not comply with Iran's press laws, which require formal charges to be lodged before action is taken. The closures also contravened Iran's obligations as a state party to ICCPR. Dozens of leading journalists and activists for reform have been detained and imprisoned in recent years, the most prominent case being the sentencing by the Tehran Press Court of the investigative journalist, Akbar Ganji, editor of *Fath* newspaper.⁴⁶
- 7.75 Five people, including one woman, were hanged publicly in Tehran in March 2001, having been executed less than four weeks after their arrest on drug trafficking charges. The executions focused the attention of human rights groups on Iran's strict adherence to Sharia law and on the situation of 800 other convicted drug traffickers awaiting execution whose cases would be re-examined, according to contemporary media reports.⁴⁷
- 7.76 It is Australia's policy to oppose the use of the death penalty.

Developments in Jordan

- 7.77 AI's report for the period to December 2000 presented the following overview of human rights violations in Jordan:

Hundreds of people, including prisoners of conscience, were arrested for political reasons. Trials of most of those charged with political offences continued to be heard before a State Security Court where procedures did not meet international fair trial standards. Reports continued of torture or ill-treatment of

46 *The Economist*, 14 April 2001, p. 45; HRW, *World Report 2001 (Iran)*, 'Muzzling the Press' (Section IV) and 'Silencing Critics' (Section V).

47 AFP newswire, 'Five, including a woman, hanged in public', 20 March 2001.

detainees by members of the security services. There were reports of the refoulement (forcible return) of asylum-seekers at risk of serious human rights violations. At least 10 people were executed and at least 12 people were sentenced to death. Four people were unlawfully killed by public security police. There were at least 21 cases of family killings (also known as 'honour' killings).⁴⁸

- 7.78 In March 2000, a Royal Human Rights Commission headed by Queen Rania was established. There is little information available as yet about the workings of the Commission.

'Honour' killings

- 7.79 Jordan's upper house in the National Assembly voted in December 2000 to repeal Article 340 of the Penal Code which exempts from penalty (or provides lenient sentences for) males who injure or murder female relatives on grounds of adultery or accusation of bringing the family honour into disrepute. The Jordanian lower house twice failed to pass the repeal legislation, despite the fact that Jordan ratified the ICCPR and CEDAW in 1975 and 1992 respectively.⁴⁹

Democratic processes in Jordan

- 7.80 The dynastic nature of political leaderships in various parts of the Middle East was commented upon briefly in Chapter 5. A recent article in *The Economist* drew attention to the stabilising effect of patriarchal succession in countries such as Jordan:

Patriarchal rule has its advantages. Countries such as Jordan and Kuwait, whose borders are the product of imperialist cartography, draw a sense of identity from their royal families. The forward-looking rulers of Oman, Qatar and Bahrain have been able to push through radical reforms, precisely because their positions are respected. ... Family rule has even brought stability of a kind to Syria and Iraq, each of which endured decades of coups before succumbing to what appear to be hereditary dictatorships.⁵⁰

- 7.81 Jordan is arguably one of the most democratic countries in the region, with relatively free and fair parliamentary elections, legalised political parties and a program for democratic reform. Yet, despite these and other positive indicators, repressive practices persist. More than 1,700 people
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48 AI, *Annual Report 2001*, 'Jordan', www.amnesty.org/ (at 28 June 2001).

49 HRW, 'Jordanian Parliament Supports Impunity for Honour Killings', 27 January 2000.

50 'Middle Eastern Dynasties', *The Economist*, 2 June 2001, p. 46.

were arrested for political reasons during 2000, and many were held in prolonged incommunicado detention by the General Intelligence Department, according to AI. Some were later released without charge and others were brought to trial.⁵¹ Writing in 1999, Quintan Wiktorowicz concluded:

As in other Middle East countries, democratic reform in Jordan was initiated from above as a tactical strategy to maintain social control in the face of severe economic crisis. Political change was driven by a stability imperative, not by a benevolent desire for enhanced political participation. As a result, the regime attempts to limit political participation to a narrow, relatively stable political space comprised predominantly of formal political institutions such as parties, elections, and Parliament. Political activism outside this space is discouraged, by regulative and repressive state practices. ... Jordan now enjoys far greater freedom than its Arab counterparts, but it suffers from many of the limits of democracy common in the region.⁵²

Treatment of Women in the Middle East

7.82 As previously discussed in this Chapter, the status and rights of women continue to be key issues in many countries of the Middle East, despite ratification of, or signature to CEDAW by various Middle Eastern countries.⁵³ International human rights agencies have consistently reported severe forms of institutional and societal discrimination in nearly every aspect of women's lives, particularly in the form of unequal personal status laws and the lack of legal redress in cases of domestic violence:

Despite some positive initiatives, tens of millions of women throughout the region continue to be denied full equality, a fact that was reflected in high rates of illiteracy and maternal mortality and low rates of political participation, and was justified in terms of religion, culture and tradition.⁵⁴

51 AI, loc. cit.

52 Quintan Wiktorowicz, 'The Limits of Democracy in the Middle East: The Case of Jordan', *Middle Eastern Journal*, Vol. 53, No. 4, Autumn 1999.

53 See ratification status schedule in Appendix H.

54 HRW, *World Report 2001*, 'Middle East and Northern Africa Overview', www.hrw.org/wr2k1/mideast/index.html (at 27 June 2001).

- 7.83 The Committee unreservedly condemns the widespread violation of the rights of women and other vulnerable groups in the Middle East, and does not accept the proposition that particular religious or cultural beliefs can be used to discriminate against sectors of the population. Passages can be found in the Bible and the Qur'an, for example, which have been used by advocates for differential treatment of human rights to justify discriminatory interpretations of the universal human rights principles.⁵⁵
- 7.84 Some positive indicators have been noted, however. In Iran, women have provided very strong support for the reformist movement and in fact there were two women candidates in the recent presidential elections. In Saudi Arabia, only a handful of women have access to professional employment, although that situation is increasingly being recognised as wasteful as well as discriminatory, as DFAT explained:

A society which is keen to bring itself into the WTO, as willing to accede to the CEDAW, is aware that there is an issue out there of gender which needs to be addressed. We are seeing an internal debate, a debate within closed doors, about what sort of society they wish to be. This can only be to the benefit of women's rights.⁵⁶

Australia's Opportunities to Promote Human Rights

- 7.85 Many contributors to the Committee's inquiry stressed the opportunity for Australia to use its good offices and international human rights reputation to promote the advancement of human rights, including women's rights, in dialogue with countries of the Middle East. AusAID, through NGOs, continues to give emphasis to specific development projects in the region which work towards the empowerment of women within society.⁵⁷

Aid and human rights

- 7.86 AIA synthesised the views of most of the NGOs and community groups in suggesting that Australia should elevate human rights concerns to a higher priority in foreign policy decision-making and should urge all governments in the Middle East to institute major changes to their human rights practices.⁵⁸ Linked with this approach was consistent support from
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55 P Bone and T M Franck, *op. cit.*

56 Transcript, p. 370.

57 AusAID, Transcript, p. 21.

58 AIA, Submission, pp. 1901-02.

NGOs and community groups for sustained effort to ensure Australia's aid program reinforces the promotion and protection of human rights in the region.

- 7.87 The Committee noted the Statement to Parliament made in 1998 by the Foreign Minister in relation to Australia's overseas aid program. That Statement endorsed a strong focus on human rights, and outlined a framework for supporting human rights through the aid program. The following principles were enunciated in the Statement:
- High priority would be given to human rights, with equal emphasis on civil/political rights and economic/social/cultural rights;
 - Activities would continue to address specific rights directly;
 - Emphasis would be given to practical and achievable outcomes;
 - Activities would be developed primarily through consultation with partner countries on human rights initiatives;
 - Considerable care would be applied to the use of 'sanctions' associated with human rights concerns; and
 - AusAID would continue to work closely with other arms of government on issues relating to governance and human rights.⁵⁹
- 7.88 These and other issues were pursued during a public seminar conducted by the Committee in July 2001 which examined the links between aid and human rights. A report on the seminar is expected to be released in September this year.⁶⁰
- 7.89 Human rights concerns should be given greater emphasis in promoting Australia's foreign policy strategies with all dialogue partners. In bilateral discussions, Middle Eastern countries should be made aware of practices and policies which Australia considers to be contrary to the spirit or intention of international human rights standards. Expression of these concerns should include discussion of the undermining effect of reservations to the major international human rights agreements and the relevant optional protocols—especially the two Optional Protocols to the ICCPR. The first Optional Protocol entitles individuals to make complaints to the monitoring committee concerning violations of their

59 Hon Alexander Downer MP, *Eighth Annual Statement to Parliament on Australia's Development Cooperation Program*, December 1998, pp. 6-7.

60 On 14 September 2000, the Minister for Foreign Affairs referred to the Committee an inquiry into Australia's efforts to advance human rights of developing nations through the use of foreign aid.

civil and political rights. The Second Optional Protocol is aimed at the abolition of the death penalty.

Recommendation 31

- 7.90 The Committee recommends that the Australian Government enhance the priority given to human rights concerns in formulating foreign policy with Middle East states, including active pursuit of ratification of the international human rights treaties and the relevant optional protocols—especially the two Optional Protocols to the International Covenant on Civil and Political Rights. The first Optional Protocol entitles individuals to make complaints to the monitoring committee concerning violations of their civil and political rights. The Second Optional Protocol is aimed at the abolition of the death penalty.**

Responsibilities of Australian Businesses

- 7.91 AIA presented the Committee with a copy of a framework document entitled *Just Business: a human rights framework for Australian companies*, which had been launched by Amnesty International at the Australian Stock Exchange in mid-2000.
- 7.92 The document is designed to educate Australian businesses about observance of the international human rights environment which, in AIA's view, should govern the overseas operations of Australian companies. Emphasis is given in the document to persuading Australian businesses of the need to ensure that overseas trading partners are not associated with policies or practices that contravene international human rights standards.⁶¹
- 7.93 The Committee welcomes the initiative undertaken by AIA, and supports the broad intent of the framework document.

61 AIA, Transcript, p. 394 and Exhibit 19.2.