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Committee Secretary  
Joint Standing Committee on Treaties  
Department of House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

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Dear Joint Standing Committee on Treaties

**Inquiry into the Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation (Mataram, Lombok, 13 November 2006)**

Thank you for the opportunity to contribute to the Joint Standing Committee on Treaties' inquiry into the Agreement between Australia and the Republic of Indonesia on the Framework for Security Cooperation (Mataram, Lombok, 13 November 2006) (**the Treaty**).

**About the Human Rights Law Resource Centre**

The Human Rights Law Resource Centre Ltd ('HRLRC'), a joint initiative of the Public Interest Law Clearing House (Vic) and Liberty Victoria, is an independent community legal centre.

The HRLRC aims to promote human rights in Victoria and Australia, particularly the human rights of people that are disadvantaged or living in poverty, through the practice of law. It also aims to promote the development of Australian law and policy consistently with international human rights standards, including through casework, litigation, policy analysis, education and advocacy.

Having regard to these aims, this submission considers the relevance of international human rights law to the inquiry into the Treaty (**Inquiry**) and Australia's security cooperation policy and practice in general.

### **Guiding Principles**

The HRLRC considers that a guiding principle of the Treaty should be that the principles and processes applicable to security cooperation between Australia and Indonesia must incorporate, and be consistent and compliant with, Australia's and Indonesia's human rights obligations.

These obligations arise from treaties ratified by both Australia and Indonesia, including the *International Covenant on Civil and Political Rights* ('ICCPR');<sup>1</sup> the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR');<sup>2</sup> the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW');<sup>3</sup> the *Convention on the Elimination of All Forms of Racial Discrimination* ('CERD');<sup>4</sup> the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('CAT');<sup>5</sup> and the *Convention on the Rights of the Child* ('CROC')<sup>6</sup> (together, '**the Human Rights Conventions**'). Human rights obligations also arise from customary international law.

In addition to its accession to the ICCPR and the ICESCR in February 2006, in May 2006 Indonesia was elected to be a member of the new UN Human Rights Council. In light of these ostensible commitments to human rights, and the range of responsibilities and obligations which follow (discussed in respect of Australia below), the HRLRC is deeply concerned that the Treaty contains no preambular recognition of the fundamental importance of the respect for, and observance of, human rights and freedoms. Unequivocal recognition for human rights is contained in the preamble to each of the ICCPR and ICESCR, in addition to the Charter of the United Nations<sup>7</sup> (**UN Charter**), the founding instrument upon which the United Nations is based.

The HRLRC considers that the Treaty should be amended to include preambular recognition that Australia and Indonesia are signatories to the ICCPR and ICESCR and, consistent with each country's obligations under those covenants and the UN Charter, the Treaty will be interpreted so as to promote universal respect for, and observance of, human rights and freedoms.

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<sup>1</sup> Opened for signature 19 December 1966, 999 UNTS 171 (entered into force generally 23 March 1976, for Australia 13 August 1980 and for Indonesia 23 February 2006).

<sup>2</sup> Opened for signature 16 December 1966, 993 UNTS 2 (entered into force generally 3 January 1976, for Australia 10 March 1976 and for Indonesia 23 February 2006).

<sup>3</sup> Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981, for Australia 28 July 1983 and for Indonesia 13 September 1984).

<sup>4</sup> Opened for signature 21 December 1965, 660 UNTS 195 (entered into force generally 4 January 1969, for Australia 30 September 1975 and for Indonesia 25 July 1999).

<sup>5</sup> Opened for signature 10 December 1984, 1465 UNTS 85 (entered into force generally 26 June 1987, for Australia 8 July 1989 and for Indonesia 28 October 1998).

<sup>6</sup> Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force generally 2 September 1990, for Australia 17 December 1990 and for Indonesia 5 September 1990).

<sup>7</sup> Opened for signature 26 June 1945, 1031 UNTS 993 (entered into force generally 24 October 1945)

#### RECOMMENDATION 1:

**The Treaty should include preambular recognition that Australia and Indonesia are signatories to the ICCPR and ICESCR and, consistent with each country's obligations under those covenants and the UN Charter, the Treaty will be interpreted so as to promote universal respect for, and observance of, human rights and freedoms.**

#### Sovereignty and Territorial Integrity

The HRLRC is also concerned at the apparent emphasis placed upon principles of sovereignty and territorial integrity in Article 2 of the Treaty, stated to be 'consistent with the Charter of the United Nations', to the exclusion of other purposes and principles of the United Nations espoused in the UN Charter which emphasise the importance of human rights.

For example, under Article 2 the stated principles of the Treaty include:

2. *Mutual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non interference with the internal affairs of one another;*
3. *The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, including separatism, in the territory of the other Party;*  
...
5. *The Parties shall refrain from the threat or use of force against the territorial integrity or political independence of the other, in accordance with the UN Charter'.*

These principles appear to have been adapted from Article 2 of the UN Charter which states, *inter alia*, that:

1. *The [United Nations] is based on the principle of the sovereign equality of all its Members.*  
...
4. *All Members shall refrain in their international relations from the threat or use of force against the territorial integrity of political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.<sup>8</sup>*

However, the Treaty contains no reference to or recognition of Article 1(3) of the UN Charter, which states that one purpose of the United Nations is:

*'To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, **and in encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex language or religion**<sup>9</sup> [Emphasis added].*

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<sup>8</sup>Charter of the United Nations, art 2(1) and (4)

<sup>9</sup> Charter of the United Nations, art 1(3)

In addition, the preamble to the UN Charter states, *inter alia*, that:

*'We the peoples of the United Nations determined.....to reaffirm faith in fundamental human rights, in dignity and worth of the human person...'*<sup>10</sup>

Notwithstanding, the entire treaty is devoid of any mention whatsoever of human rights. The HRLRC recommends that the Treaty be amended to include, as a fundamental principle and consistent with the UN Charter, that Australia and Indonesia will promote, encourage and respect human rights and fundamental freedoms without distinction as to race, sex, language or religion.

**RECOMMENDATION 2:**

**Article 2 of the Treaty should include as a fundamental principle, consistent with the UN Charter, that Australia and Indonesia will promote, encourage and respect human rights and fundamental freedoms without distinction as to race, sex, language or religion.**

**Indonesia's Human rights Record**

While 2006 saw Indonesia make commendable commitments to the protection and promotion of human rights, unfortunately those new commitments were not accompanied by any immediate improvement in human rights practices.<sup>11</sup>

In its 2006 annual report on Indonesia, Amnesty International observed:

*'...[I]mpunity for serious human rights violations remained a concern. In Papua, cases of torture and arbitrary detention were reported. Across the country, the police used excessive force against demonstrators, and ill-treatment in detention facilities was widespread. At least two people were executed by firing squad and at least ten people were sentenced to death. Freedom of expression remained severely curtailed and at least 18 people were detained for criticizing the government.'*<sup>12</sup>

In addition, Amnesty International reported that:

- over 81 percent of prisoners arrested between January 2003 and April 2005 in Jakarta prisons were tortured or ill treated;
- the request by the UN Special Rapporteur on Torture to conduct a visit in Indonesia was refused for the twelfth consecutive year;
- at least 29 men were convicted of the offence of 'gambling' and two women were cained under local Sharia law; and
- at least 19 prisoners of conscience were sentenced to prison terms during the year and three others sentenced in previous years remained in jail, including peaceful political and independent activists, members of religious minorities, students and journalists.<sup>13</sup>

<sup>10</sup> Charter of the United Nations, preamble

<sup>11</sup> Human Rights Watch Country Summary, Indonesia, January 2007, <http://hrw.org/englishwr2k7/docs/2007/01/11/indone14869.htm>

<sup>12</sup> Amnesty International Report 2006 of the state of the world's human rights, <http://web.amnesty.org/report2006/idn-summary-eng>

<sup>13</sup> Amnesty International Report 2006 of the state of the world's human rights, <http://web.amnesty.org/report2006/idn-summary-eng>

Meanwhile, Human Rights Watch notes in its 2007 Annual Report on Indonesia that:

- the UN Secretary-General reported on justice and reconciliation in Timor Leste, calling the Jakarta ad hoc court 'manifestly deficient' in delivering justice for the victims of human rights violations in East Timor in 1999;
- broadly-worded laws limiting freedom of expression are still used by Indonesian authorities to target outspoken critics;
- disputes over land and forced evictions continue to be a frequent source of conflict; and
- more than 688,000 children are estimated to work as domestic workers, typically between the ages of 12 and 15, and working between 14 and 18 hours a day.<sup>14</sup>

### **Australia's Human Rights Obligations with Respect to Indonesia**

In relation to the substantive rights contained in the Human Rights Conventions to which Australia (and Indonesia) is a signatory, Australia has a range of responsibilities and obligations; namely, obligations to *respect*, *protect* and *fulfil* each human right.<sup>15</sup> The obligation to *respect* requires that Australia refrain from interfering, directly or indirectly, with the enjoyment of human rights. The obligation to *fulfil* requires that Australia take positive steps to promote and support the realisation of human rights and, where necessary, to provide for the realisation of human rights for marginalised or disadvantaged groups. Most relevantly for the purposes of the Inquiry, the obligation to *protect* requires that Australia:

- act to prevent third parties – including other countries, governments, individuals, organisations and enterprises – from violating human rights; and
- refuse to give effect to human rights violations by third parties.

The obligation to *protect* means that Australia will be in breach of its human rights commitments if:

- it provides security cooperation to a foreign country where there are reasonable grounds to believe that to do so may place a person at risk of his or her human rights being violated; or
- it receives security cooperation from a foreign country where there are reasonable grounds to believe that to do so may 'give effect' to a human rights violation by or in that country (eg, by admitting to evidence material obtained in a foreign country in violation of the right to protection from cruel treatment or punishment).

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<sup>14</sup> Human Rights Watch Country Summary, Indonesia, January 2007, <http://hrw.org/englishwr2k7/docs/2007/01/11/indone14869.htm>

<sup>15</sup> See, for example, ICCPR art 2; ICESCR art 2. See also UN Human Rights Committee, *General Comment 31: Nature of the Legal Obligation Imposed on State Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004); UN Committee on Economic, Social and Cultural Rights, *General Comment 15: The Right to Water*, UN Doc E/C.12/2002/11 (2002) [17]-[29].

## The Treaty's Human Rights Safeguards

The HRLRC is concerned that the broad scope of the treaty in respect of defence, law enforcement, counter terrorism and intelligence cooperation in particular does not include sufficient human rights safeguards, and that such safeguards present in related domestic legislation and international agreements are noticeably absent from the Treaty.

For example, the bilateral treaty between Australia and Indonesia governing the provision of mutual assistance (**Mutual Assistance Treaty**) includes:

- mandatory grounds for refusal if a request for mutual assistance:
  - relates to an offence of a political nature;<sup>16</sup>
  - involves the prosecution of a person of an offence for which the offender has been finally acquitted or pardoned or has served the sentence imposed;<sup>17</sup> or
  - involves substantial grounds for believing that the request has been made merely for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political opinions;<sup>18</sup> and
- discretionary grounds of refusal if the request for mutual assistance relates to the prosecution or punishment of a person for an offence in respect of which the death penalty may be imposed or carried out.<sup>19</sup>

In addition, under Section 8 of the *Mutual Assistance Act 1987* (Cth) (**Mutual Assistance Act**), a request to a foreign country for mutual assistance must be refused if, in summary:

- the request relates to the prosecution or punishment of a person for an offence that is a political offence;<sup>20</sup>
- there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political opinions;<sup>21</sup>
- the request relates to the prosecution of a person for an offence for which the person has been acquitted or pardoned, or has already undergone punishment in respect of;<sup>22</sup> or
- the request relates to the prosecution or punishment of a person charged with, or convicted of, an offence in respect of which the death penalty may be imposed, unless the Attorney-General is of the opinion, having regard to the special circumstances of the case, that the assistance requested should be granted.<sup>23</sup>

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<sup>16</sup> Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters [1999] ATS 10, article 4(1)(a)

<sup>17</sup> Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters [1999] ATS 10, article 4(1)(b)

<sup>18</sup> Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters [1999] ATS 10, article 4(1)(d)

<sup>19</sup> Treaty between Australia and the Republic of Indonesia on Mutual Assistance in Criminal Matters [1999] ATS 10, article 4(2)(d)

<sup>20</sup> Mutual Assistance Act 1987 (Cth), s8(1)(a)

<sup>21</sup> Mutual Assistance Act 1987 (Cth), s8(1)(c)

<sup>22</sup> Mutual Assistance Act 1987 (Cth), s8(1)(f)

<sup>23</sup> Mutual Assistance Act 1987 (Cth), s8(1A)

While the HRLRC considers that refusal of requests for mutual assistance in relation to offences for which the death penalty may be carried out under both the Mutual Assistance Act and the Mutual Assistance Treaty should be mandatory rather than discretionary, each of these instruments at least includes human rights as a relevant consideration in granting or refusing a request for mutual assistance.

However, the human rights safeguards contained in the Mutual Assistance Act and the Mutual Assistance Treaty are only invoked when a formal request for mutual assistance is made by Australia or Indonesia. The HRLRC is concerned that the sort of international inter-agency cooperation foreshadowed by the Treaty will 'fall through the gaps' of these already inadequate human rights safeguards, as evidenced by the much publicised and so called 'Bali Nine' case, discussed in detail below.

### **The 'Bali Nine' Case**

The Bali Nine Case represents a paradigm example of the failure of Australia's present intelligence sharing arrangements to protect the fundamental human rights of Australian citizens. All nine members of the Bali Nine were arrested in Bali for alleged involvement in heroin trafficking to Australia. The arrests resulted from action taken by the Indonesian National Police (**INP**) in consequence of intelligence information provided to the INP by members of the Australian Federal Police (**AFP**). Presently, six members of the Bali Nine face execution as a result of their respective convictions for drug trafficking offences.

In *Rush v Commissioner of Police*,<sup>24</sup> four members of the Bali Nine brought an application for preliminary discovery against the AFP in the Federal Court of Australia. The application sought, *inter alia*, discovery of information regarding whether the disclosure of intelligence information by the AFP to the INP put the applicants at risk of the death penalty.

While the application was ultimately rejected by Finn J, His Honour found that the human rights safeguards contained in the Mutual Assistance Act and the Mutual Assistance Treaty did not apply to the informal intelligence sharing that occurred between the AFP and the INP. His Honour also found that the AFP guidelines covering international police to police assistance in death penalty situations in place at the time (**the former AFP Guide**), did not apply to the Bali Nine because the assistance requested related to persons who had not been charged. Under the former AFP Guide, once a person was charged in a foreign country for a crime attracting the death penalty, the AFP required the authorisation of the Attorney-General and/or the Minister for Justice and Customs to be able to hand over intelligence information. However, where a person had not been so charged, the Guide allowed the AFP to continue to supply information as required, provided it met existing policy guidelines, irrespective of whether the investigation may later result in charges being laid which may attract the death penalty.

In the opening paragraph of his reasons for judgment, Finn J commented that:

*'[t]he circumstances revealed in this application for preliminary discovery suggest there is a need for the Minister administering the Australian Federal Police Act 1979 (Cth) ("the AFP Act") and the Commissioner of Police to address the procedures and protocols followed by members of the Australian Federal Police ("AFP") when providing information to the police forces of another country in circumstances which predictably could result in the charging of a*

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<sup>24</sup>Rush v Commissioner of Police [2006] FCA 12

*person with an offence that would expose that person to the risk of the death penalty in that country. Especially is this so where the person concerned is an Australian citizen and the information is provided in the course of a request being made by the AFP for assistance from that other country's police force.'*

Notably, and despite amendment to the AFP Guidelines in August 2006 subsequent to Finn J's decision in *Rush v Commissioner of Police*, the AFP guidelines covering international police-to-police assistance in death penalty situations still allow the sharing of intelligence information in situations prior to a person being charged with an offence that attracts the death penalty.<sup>25</sup>

In a further development which adds to the concerns of the HRLRC, two members of the Bali nine recently challenged the validity of their death penalties in Indonesia's Constitutional Court, arguing that the death penalty contradicts the constitution's guarantee of a right to life. However, in a preliminary hearing on 1 February 2007 Indonesia's Constitutional Court ruled that constitutional rights do not apply to foreign nationals.<sup>26</sup>

### **Impact of the Treaty on the Right to Life**

The HRLRC is concerned that the Treaty's formalisation of intelligence sharing arrangements between Australia and Indonesia may result in breaches of Australia's human rights obligations, particularly in respect of the right to life. This concern is amplified in light of the comments by Indonesia's Constitutional Court that could effectively remove any existing human rights protections for Australian citizens in Indonesia.

Article 6 of the *ICCPR* provides that every person has the inherent right to life, which has been held by the UN Human Rights Committee to impose on State parties that have abolished the death penalty an obligation to protect the right to life in all circumstances and an obligation not to expose a person to the real risk of the application of the death penalty, including by a third country.<sup>27</sup>

In addition to being a State party to the *ICCPR*, Australia has ratified the *Second Optional Protocol to the ICCPR Aiming at the Abolition of the Death Penalty*, which contains a preambular recognition that 'all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life'. The *Second Optional Protocol* requires Australia to take 'all necessary measures to abolish the death penalty within its jurisdiction', which arguably extends to taking all necessary measures within its control (including the refusal to provide intelligence information in matters where the death penalty is a possible or foreseeable outcome) to prevent the imposition of the death penalty by a foreign country.

Having regard to the fundamental nature of the right to life, the desirability of abolishing the death penalty in all jurisdictions, Australia's obligation to take all measures necessary to achieve such abolition, and Indonesia's human rights record, the HRLRC considers that the Treaty should be amended to provide that a request by Indonesia for cooperation will be refused in circumstances where it is reasonably foreseeable that the provision of such information may lead to the charging of a person with an offence that would expose that person to the risk of death penalty, unless the provision of assistance would assist the defence.

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<sup>25</sup> AFP Practical Guide on International Police to Police Assistance in Death Penalty Charge Situations, [http://afp.gov.au/data/assets/pdf\\_file/21096/Guideline\\_for\\_international\\_death\\_penalty\\_situation.pdf](http://afp.gov.au/data/assets/pdf_file/21096/Guideline_for_international_death_penalty_situation.pdf)

<sup>26</sup> 'Rights do not extend to Bali 9, rules court', *The Age*, 2 February 2007, page 7

<sup>27</sup> *Judge v Canada* (HRC 829/98) [10.4].



The HRLRC recommends that the Treaty be amended to include an article that provides for circumstances in which security cooperation may be refused where human rights are threatened. That article should take the form of a broadly worded exclusion which applies to all forms of cooperation contemplated by the agreement.

**RECOMMENDATION 3:**

**That the Treaty be amended to include an article that provides for circumstances in which security cooperation may be refused where the human rights of an individual or individuals are threatened (see Appendix A for sample article).**

**Freedom of Expression and Association**

The HRLRC is concerned that Clause 3 of Article 2 of the Treaty may be specifically aimed at vulnerable communities within Indonesia which have been subjected to human rights abuses in the past, and is in breach of the freedoms of expression<sup>28</sup> and association<sup>29</sup> enshrined in the ICCPR and domestic Australian legislation,<sup>30</sup> and arguably in breach of the implied freedom of political communication which exists under the Australian Constitution.<sup>31</sup>

Clause 3 of Article 2 of the Treaty states:

*'The Parties, consistent with their respective domestic laws and international obligations, shall not in any manner support or participate in activities by any person or entity which constitutes a threat to the stability, sovereignty or territorial integrity of the other Party, including by those who seek to use its territory for encouraging or committing such activities, **including separatism**, in the territory of the other Party.'* [Emphasis added]

State sovereignty is a fundamental principle of international law. Indeed, the United Nations itself is 'based on the principle of the sovereign equality of all its Members'.<sup>32</sup> In addition, the preamble to the Treaty separately reaffirms 'the sovereign equality of the Parties' and the 'commitment to the sovereignty, unity, independence and territorial integrity of both Parties...and non-interference in the internal affairs of one another, consistent with the Charter of the United Nations'. Further, Clause 2 of Article 2 of the Treaty provides that a fundamental principle of the Treaty is '[m]utual respect and support for the sovereignty, territorial integrity, national unity and political independence of each other, and also non-interference in the internal affairs of one another'.

In light of the above, the HRLRC considers that Clause 3 is redundant beyond the specific emphasis placed upon separatism, which is itself offensive to several fundamental human rights principles, including the freedoms of expression and association, and arguably against the fundamental right of self-determination enshrined in Article 1 of the ICCPR and the ICESCR. Indeed, the experience of East Timor is a successful example of the exercise of the right to self-determination via secession.

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<sup>28</sup> *International Covenant on Civil and Political Rights*, Article 19

<sup>29</sup> *International Covenant on Civil and Political Rights*, Article 22

<sup>30</sup> See, for example, Charter of Human Rights and Responsibilities Act 2006 (Vic), ss 15 & 16; Human Rights Act 2004 (ACT), ss 15 and 16.

<sup>31</sup> See, for example, *Lange v Australian Broadcasting Corp* (1997) 189 CLR 520; [145 ALR 96](#) at [104](#); 71 ALJR 818

<sup>32</sup> Charter of the United Nations, Article 2(1)

Clause 3 may also place local Australian authorities in a difficult position of conflict with domestic laws. For example, the provision would arguably preclude Victoria Police from granting a permit for a pro-West Papuan independence rally which may, in turn, be inconsistent with rights under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (**Charter**), in particular freedom of expression<sup>33</sup> and the right to peaceful assembly and freedom of association<sup>34</sup>.

The HRLRC urges Australia to heed the experience of East Timor and delete Clause 3 from the Treaty to ensure that such fundamental human rights are not further eroded.

**RECOMMENDATION 4:**

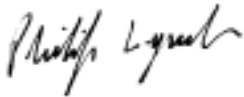
**That Clause 3 of Article 2 of the Treaty is deleted.**

**Conclusions**

In the HRLRC's view, it is imperative that Australia's extradition law and practice contain mechanisms and safeguards to ensure that each of the obligations referred to above is discharged.

Please contact us (03) 9225 6695 if you would like to discuss this submission further.

Yours sincerely



**Philip Lynch**  
Director



**Mat Tinkler**  
Solicitor

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<sup>33</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic), section 15

<sup>34</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic), section 16

## **Appendix A – sample article providing grounds for refusal of cooperation**

### **ARTICLE 11**

#### **REFUSAL OF COOPERATION**

In recognition of the fundamental importance of human rights and in accordance with the Parties' obligations under the UN Charter, and all other international human rights instruments to which they are a signatory, including particularly the International Covenant on Civil and Political Rights, the Parties agree that the areas and forms of cooperation detailed in Article 3 of this Agreement may be refused by either Party where, in the opinion of the requested Party:

1. The provision of cooperation could result in the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, a political offence.
2. There are substantial grounds for believing that a request for cooperation was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality or political or other opinions.
3. The request for cooperation relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent tribunal or authority in the country of the requesting Party, or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence.
4. The provision of cooperation may result in the death penalty being imposed on a person.
5. The provision of cooperation may result in the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in country of the requested Party, would not have constituted an offence against the law of that country.
6. It is appropriate, in all the circumstances of the case, that cooperation should be refused.