

## Human Rights

- 7.1 In addition to peace and security, the protection of human rights is one of the basic purposes of the United Nations. The carnage of the Second World War and the Holocaust was a driving force behind the establishment of the UN and this is evident in the opening statement of the Charter:

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED  
to save succeeding generations from the scourge of war, which  
twice in our lifetime has brought untold sorrow to mankind, and  
to reaffirm faith in fundamental human rights, in the dignity and  
worth of the human person, in the equal rights of men and women  
and of nations large and small ...

- 7.2 The Charter recognises the link between peace and security and the protection of human rights. It assumes that the abuse of human rights is destabilising. This view is confirmed by the experience of the Australian Council for Overseas Aid.

The experience of ACFOA member agencies is that violations of economic, social and cultural rights are inevitably a contributing factor to the underlying causes of conflict. Abuses of civil and political rights associated with, for example, ethnic cleansing have attracted the attention of world media. The strong response of individual citizens throughout the world to conflicts beyond their borders is in large measure a response to these egregious human rights abuses. However, silent and unreported emergencies associated with the systemic, long-term denial of economic, social and cultural rights are just as important causes of instability and conflict. Poverty coupled with repression is a dangerous cocktail.<sup>1</sup>

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<sup>1</sup> ACFOA. Submission No. 101, p. 1093.

While the proximate causes of conflict are often attributed to ethno-nationalism or sectarian strife, it is ultimately long-term economic and social inequality, low levels of human development, corruption, weak democratic institutions and persistent disregard for human rights which are the root causes. Addressing these underlying causes requires a long-term coherent and systemic approach which promotes transparency, good governance and equitable, sustainable development.<sup>2</sup>

- 7.3 The committee agrees that human rights violations - the oppression of minorities (often economically as well as politically), the suppression of dissent and the terrorising of a population - are not only morally reprehensible, but very often have the effect of causing a decline in investment, outflows of refugees and disputes with neighbours. Most of the refugee crises around the world today, and they constitute 22 million people at the present time, are the result of the abuse of human rights.<sup>3</sup>
- 7.4 It is this link between human rights and security that puts the UN human rights treaty system at the centre of UN preventive action to preserve peace and security. Equity in development is a form of preventive diplomacy (addressed in Chapter 6); equally, human rights protection is an important preventive measure. As argued in Chapters 3 and 5, preventive action is much less expensive than the peacekeeping required after war has broken out. The human rights treaty system seeks to prevent the abuse of human rights, to encourage governments actively to protect human rights and to act as an early warning system for the international community on those places that might develop as sources of conflict. To achieve these ends the human rights covenants and conventions, explicitly defining international human rights standards, have been negotiated and the treaty bodies, designed to monitor compliance, have been established. 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.

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2 ACFOA. Submission No. 101, p. 1093.

3 Australia is particularly aware of the effect of the abuse of human rights in relation to the influx of asylum seekers from Afghanistan and Iraq at present.

## The Commission on Human Rights (CHR)

- 7.5 The Commission on Human Rights was established on 16 February 1946 by the Economic and Social Council. The Council sought from the Commission 'ways and means for the effective implementation of human rights and fundamental freedoms'.<sup>4</sup> Its early work, between 1946 and 1966, involved the negotiation of the covenants.
- 7.6 The Commission on Human Rights meets annually in Geneva for a period of approximately six weeks to consider its agenda for the year and to assess the human rights situation around the world. Resolutions are passed during the meeting of the CHR which reflect the opinion of the international community on these matters. Many of the resolutions have been controversial, notably the annual motions that seek resolutions on the human rights situation in China or on Kashmir; some were, for many years, 'traditional' such as the resolutions on apartheid in South Africa or on the Middle East. Other serious situations are not mentioned. These resolutions are persuasive only, without having any legal or binding effect, but, despite their selectivity, the fierce lobbying that occurs to prevent particular resolutions being passed suggests that they have great moral impact.
- 7.7 Amnesty International was critical of the UN for what it called the politicisation of the Commission on Human Rights, where block voting and obstruction by powerful states prevented effective action against serious violations of human rights.

Amnesty International is concerned at the failure of the Commission to take any concrete action on severe and continuing human rights abuses in several countries, even though the Commission has been well informed of the situations in these regions. ... one example being Chechnya where, despite Commission resolutions in 2000, there has been no international action to call the Russian Federation to account for abuses perpetrated.<sup>5</sup>

- 7.8 **The committee agrees that this situation seriously undermines the credibility of the human rights system** and urges the Australian Government to press other states to ratify human rights conventions, to participate fully in the treaty body system and to take consistent stands on votes within the Commission against all serious violations of human rights.

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4 ECOSOC Resolution 9(11) 1946.

5 Amnesty International. Submission No. 114, p. 1445.

## **Ad Hoc Procedures**

7.9 After 1966, apart from the development of the treaty body system, the Commission also established *ad hoc* procedures for the implementation of its mandate. These are procedures to examine individual situations brought to the notice of the Commission. The procedures began as a result of a letter of complaint to the Chairman of the Commission on apartheid in South Africa. This issue, along with the question of the 'protection of the civilian population of the Arab territories occupied by Israel'<sup>6</sup> became a test case. It contradicted an initial statement of the Commission that 'The Commission recognises that it has no power to take any action in regard to any complaints concerning human rights'.<sup>7</sup> Therefore, in 1967, there was considerable debate as to whether this was a legitimate role for the Commission, but this was resolved in the affirmative by resolution 2(XXIII) which established an *Ad Hoc* Working Group of Experts of

eminent jurists and prison officials to be appointed by the Chairman of the Commission to :

- Investigate the charges of torture and ill treatment of prisoners, detainees or persons in police custody in South Africa;
- Receive communications and hear witnesses and use such modalities of procedure as it may deem appropriate;
- Recommend action to be taken in concrete cases;
- Report to the Commission on Human Rights at the earliest possible time.<sup>8</sup>

7.10 Over time, the *ad hoc* procedures have become a more common feature of the system; however they remain, as the name suggests, irregular, selective, dependent on the willingness of any state to raise a matter and, therefore, by no means a comprehensive assessment of the state of human rights around the world. They are also fundamentally negative in approach.

7.11 However, the *ad hoc* procedures have recently produced more positive outcomes in the development of technical assistance programs whereby the Commission offers assistance to states for the development of judicial and other institutions and machinery for the protection of human rights. Of particular interest has been the emphasis on the development of national institutions, such as the Human Rights and Equal Opportunity Commission in Australia. Brian Burdekin, the former Human Rights

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6 Pace, John. Submission No. 120, p. 1571.

7 Report to the Economic and Social Council on the First Session of the Commission, 27 January to 10 February 1947, Chapter V, p. 22.

8 Pace, John. Submission No. 120, pp. 1570-1571.

Commissioner in Australia, has been instrumental in the promotion of national institutions as a way of improving human rights at the national level. They are underpinned by the Paris Principles, which are guidelines to ensure independence of action for these institutions. It has been a remarkably successful initiative.

Australia's approach to human rights in foreign policy (articulated in the 1997 White Paper "In the National Interest") accords priority to practical efforts that can directly improve human rights situations including: development cooperation programs; assisting in establishing human rights machinery; encouraging bilateral, regional and multilateral discussion of human rights issues; and working to develop and strengthen the effectiveness of regional and international human rights institutions and instruments.<sup>9</sup>

## The Role of the Human Rights Commissioner

7.12 Coordination of the system has been improved since the World Conference on Human Rights in Vienna in 1993. The position of the High Commissioner for Human Rights was established to focus and integrate the various activities that had evolved within the Commission. The first commissioner was Mr Jose Ayala-Lasso, a diplomat from Ecuador. The current commissioner is Mrs Mary Robinson, formerly President of the Republic of Ireland.

7.13 At its inception seven years ago, the staffing and financial support for this office was poor and the bureaucratic systems was cumbersome, because they were inherited from a much older body. Funding has been increased and this has been welcomed by the Australian Government.

[T]he Government has welcomed the increased allocation of funding to the Office of the High Commissioner for Human Rights to enable it to play its pivotal role as the coordination point for all the treaty bodies. However, increased funding needs to come from the core United Nations budget.<sup>10</sup>

7.14 However, while some change has occurred under the current Commissioner, problems remain.

The management systems themselves are antiquated. In part it is almost like the proverbial vicious cycle. There is very little devolution of decision making. It is necessary to get multiple

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9 DFAT. Submission No. 107, p. 1294.

10 Attorney-General's Department. Submission No. 87, p. 870.

approvals for even the most mundane decisions. That stymies the operation of the office. However, a lack of devolution is understandable if there is little confidence in the quality of the people who are making decisions at the lower levels. ... I would not want to be thought to be saying that everybody there is ineffective, because that is not the case.<sup>11</sup>

## The Human Rights Treaty System

### The International Bill of Rights

- 7.15 The Universal Declaration of Human Rights was drafted and agreed at the very beginning of the UN. In 1948, of the then 58 members of the UN, 48 voted for the Declaration; no state voted against it.<sup>12</sup> The Universal Declaration is a statement of principle outlining in broad terms the nature of human rights.
- 7.16 Two specific treaties developed out of the Universal Declaration. They are the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. These three documents form what is known as the International Bill of Rights.
- 7.17 The *International Covenant on Civil and Political Rights (ICCPR)* was adopted unanimously by the General Assembly in 1966 after almost twenty years of discussion and debate. However, it did not come into force until 1976 when sufficient states had ratified it. Two protocols have been developed as optional additions to the covenant: 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.
- 7.18 The *International Covenant on Economic, Social and Cultural Rights (ICESCR)* was adopted unanimously by the General Assembly in 1966. It also came into force in 1976 when 35 states had ratified it. The fact that there are two separate covenants is a result of disagreements between the East and West as to the nature of human rights and how they might be defined and weighted.<sup>13</sup>

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11 Sidoti, Chris. Transcript, 22 March 2001, p. 545.

12 There were 8 abstentions and two states absent for the vote.

13 For a discussion of the development of the covenants, see Pace, John. Submission No. 120, pp. 1565-1568.

- 7.19 In addition to the two covenants, a number of other conventions have specified particular areas where abuse of human rights is of most concern. These conventions represent a more detailed articulation of rights already outlined in the covenants. There are conventions that spell out in more detail:
- the elimination of discrimination or abuse in the area of race (the *International Convention on the Elimination of All Forms of Racial Discrimination, ICERD*, adopted 1965; and
  - the rights of women (the *Convention on the Elimination of All Forms of Discrimination against Women, CEDAW*, adopted 1979);
  - the right to be free of torture (the *Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Punishment, CAT*, adopted 1984)
  - the rights of children (the *Convention on the Rights of the Child, CRC*, adopted 1989).
- 7.20 A number of other treaties deal with matters of human rights, but they are not strictly within the UN system monitored by the Commission. 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.
- 7.21 All of the member states of the UN consult painstakingly on the text of the treaties. Because this consultation involves so many parties, it can, and does, take decades to arrive at a consensus. A number of additional conventions are under discussion; for example, a draft convention on the rights of indigenous people, and a draft convention on the right to development.

## Monitoring

- 7.22 The provisions of the Covenants are part of international customary law. They are considered to be legally binding on the signatories, but they are not legally enforceable.<sup>14</sup> Instead, they are monitored by the treaty body system established by the states parties to the covenants. The human rights treaty system of the UN then 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.

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14 The fundamental difference between the UN's New York based security system and its human rights system, based in Geneva, is that the latter focuses on promotion and protection rather than enforcement. DFAT. Submission No. 107, p. 1293.

Unless an abuse of human rights constitutes a threat to international peace and security, the primary means by which the UN protects human rights are to publicly identify abuses and to assist states in developing and implementing domestic mechanisms for their protection. The fundamental responsibility for protection of the human rights of an individual or group rests with the state of which they are a citizen or citizens. Even those UN mechanisms which give an individual a standing in international forums, like the provisions under some human rights treaties which allow individuals to present complaints against a state to a committee, can only yield views as to whether that individuals' rights have been violated. These can have powerful suasive, but no legal, force.<sup>15</sup>

- 7.23 The six major treaties, the two covenants and the four conventions, are monitored by committees established in the text of each treaty<sup>16</sup> to consider periodic reports from governments, which have signed the particular treaty. The committees in turn make comments on the compliance of the states concerned with a view to assisting the state to improve its protection of the rights of its citizens.
- 7.24 For example, the ICCPR and the two optional protocols are monitored by the Human Rights Committee. This committee is set up by Article 28 of the Covenant. It is composed of 18 independent experts of 'recognized competence in the field of human rights and of high moral character'. Consideration is also given to persons having legal experience.<sup>17</sup> As is the case with all the committees, the members of the committee are elected by secret ballot by the states that are parties to the covenant. A very high quorum of two thirds is required for the purpose of elections and candidates must receive an absolute majority to be elected. They must be nationals of the member states that are signatories to the covenant. They are nominated by their state, but put forward by the Secretary-General in alphabetical order. They serve for four years. Some committees pay an honorarium to members, others do not.
- 7.25 As in other UN bodies, the committees are required to appoint people on the basis of geographic distribution; however, this does not apply to the Human Rights Committee, whose membership is heavily weighted in favour of Western Europe.

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15 DFAT. Submission No. 107, pp. 1293-4.

16 The ICESCR does not specify a monitoring committee in its text. It was added at a later date by the Economic and Social Council. See Pace, John. Transcript, 5 July 2000, p. 150.

17 Text of the ICCPR quoted from Pace, John. Transcript, 5 July 2000, p. 150.



Today there are eight out of 18 members of this committee that come from the western group, leaving 10 seats for the remaining four groups that make up the United Nations planet.<sup>18</sup>

Table 7.1 The Human Rights Treaty Bodies

Treaty	Entry into force*	Countries party to the treaty	Articles specifying monitoring process	Monitoring committee	Reporting period	Number of members on the committee
	<i>(No of parties required)</i>	<i>March 2001</i>				<i>Length of tenure</i>
ICCPR	1976 (35)	148	Articles 28-45	The Human Rights Committee	Every 5 years	18 for 4 year terms
ICESCR	1976 (35)	143		The CESCR Committee <sup>19</sup>	Every 5 years	18 for 4 year terms
CERD	1969 (27)	157	Articles 8-15	The CERD Committee	Every 2 years	18 for 4 year terms
CEDAW	1971 (20)	167	Articles 17-22	The CEDAW Committee	Every 4 years	23 for 4 year terms
CAT	1987 (20)	123	Articles 17-22	The CAT Committee	Every 4 years	10 for 4 year terms
CRC	1989 (20)	192	Articles 43-45	The CRC Committee	Every 5 years	10 for 4 year terms

\*A treaty is adopted by vote of the General Assembly, but it does not enter into force until a specified number of countries have ratified it. For example, in the case of the ICCPR, 35 countries had to ratify the treaty before it was said to have entered into force. A treaty is not operational until it has entered into force.

## Reform of the Treaty Bodies

### Criticisms and Weaknesses

7.26 One criticism, frequently voiced in the inquiry, was that any international attempt to promote, protect and improve human rights is futile. A number of submissions to the inquiry, while agreeing with the proposition that there is a link between human rights violations and conflict, were sceptical about the capacity of the United Nations to effect change in this area. They pointed to failures of compliance with human rights treaties by 'China, Russia, Somalia, Sudan, Serbia, Afghanistan, Zimbabwe'. The

18 Pace, John. Transcript, 5 July 2000, p. 151.

19 The Committee on Economic, Social and Cultural Rights was not set up in the Covenant; it was added on at a later date by the Economic and Social Council. See Pace, John. Transcript, 5 July 2000, p. 150.

solution to this non-compliance, it was argued, was to cut funds to the human rights system until compliance was improved.

[O]n a results based system of budgeting, it would be an area where a drastic reduction of funds and effort would apply. ... Australia should await developments in Europe on Russia's commitment to the obligations under the global international human rights instruments before supporting any further activities by the UN ...<sup>20</sup>

7.27 On preventive diplomacy, it was argued:

Many attempts have been made to achieve preventative diplomacy. The German Foreign Ministers treaty with the USSR pre World War 2 had different meanings to each signatory. Likewise Neville Chamberlains treaty with Hitler enabled him to proclaim 'Peace in our time'. The Keating Suharto Security Pact could be put in the same category.<sup>21</sup>

7.28 These arguments presumed that:

- States within the system were not open to international pressure or influence, moral or physical;
- Therefore, compliance was a matter of internal choice for states and that states such as China, Russia or rogue states such as Somalia would continue to choose to ignore the treaties even if they had signed them;
- preventive diplomacy, defined as the Chamberlain approach to Hitler or the Keating approach to Suharto, was a weakness which undermined Australia's ability to protect its national interests; and
- Sanctions, as presently constituted, were ineffective.<sup>22</sup>

7.29 The committee does not accept all of the assumptions in these arguments. While understanding that perfect peace and harmony is unlikely to be achieved within the world in the foreseeable future, the committee believes that the human rights treaty system is capable of influencing states, that the compliance system can be strengthened, and that sanctions can be targeted more effectively. The committee does not accept that appeasement is a definition of preventive diplomacy.<sup>23</sup>

7.30 The committee is of the view that the human rights system of the UN should continue. As argued throughout this report, the committee believes

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20 National Party Queensland. Submission No. 106, p. 1216.

21 National Party Queensland. Submission No. 106, p. 1217.

22 National Party Queensland. Submission No. 106, pp. 1216-1219.

23 See Chapter 6 for a discussion of preventive action.

that international governance is a real and urgent need and that it is a challenge that should be met rather than ignored.

- 7.31 Nevertheless, the human rights treaty system is clearly in crisis. It is a crisis based on rapidly increasing workload and insufficient resources to meet that demand. For example:
- There is a logjam of reports to be considered.
  - There is a lack of financial support to the treaty system.
  - There are too few staff to support the committees in the preparation of their papers and the analysis of states' reports.
  - There is too little time available to consider reports.
  - There is duplication in the presentation of reports to the various committees which, because of the nature of the system, have overlapping areas of interest, and yet require separate reports at different times.

### The Backlog in Reporting

- 7.32 The committees work for approximately three to four months of the year to receive reports submitted to them and to discuss with states' representatives the issues raised in the reports. The committee was told by Dr Pace, who worked with the Human Rights Commission for over 30 years, that not all states reported and that it was fortunate that they did not as the system could not cope with the volume as it was.

If they were [all] to report, it would be logjam. ... If you have 150 member states and you have them reporting on a roster of, say, 50 or 60 a year, if you give two and a half minutes to each country - which is ridiculous; you need two days minimum - then you cannot do it.<sup>24</sup>

[I]t is not too much to say that the system, established to oversee state compliance, depends for its continued functioning on a high level of state default.<sup>25</sup>

- 7.33 Nevertheless, the overdue reports have the effect of undermining the integrity of the system. States are reminded of their reporting obligations by letter from the Secretary-General and the Chairmen of the respective committees. Default is also listed in the annual reports of the committees, but little has changed over the years. The percentage of late reports has

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24 Pace, John. Transcript, 5 July 2000, p. 162.

25 Alston, Philip and Crawford, James. *The Future of UN Human Rights Treaty Monitoring*. 2000. Cambridge University Press, Cambridge, p. 6.

remained fairly constant at approximately two-thirds overdue for some years.<sup>26</sup>

Table 7.2 The Backlog in Reporting

Treaty	Number of Parties			Parties with overdue reports			Total overdue reports	
	1993	1998	2001	1993	1998	2001	1998	2001
CERD	119	151	157	65	124	134	390	431
ICESCR	115	138	143	64	97	119	134	201
ICCPR	132	140	148	112	97	94	145	149
CEDAW	118	162	167	78	134	125	245	249
CAT	71	110	123	36	72	89	105	141
CRC	126	191	192	59	124	128	141	150

Source Philip Alston and James Crawford (eds.) *The Future of UN Human Rights Treaty Monitoring*, p. 5.

## Financial Resources

7.34 In the biennium 1998-1999, the human rights program of the UN was funded at US\$40,832,600 for human rights and US\$125,271,600 for all human rights and humanitarian affairs.<sup>27</sup> It is funded out of the core budget of the UN, so that any additional funding is, to some extent, a matter of the priorities that the organisation wishes to place on human rights. Additional voluntary contributions are possible and are made in support of some human rights functions.<sup>28</sup> Dr Pace told the committee that funding for the program had doubled over recent years from 0.4 per cent of the whole UN budget to more than one per cent. Given that the Charter indicates that the protection of human rights is equated with the preservation of peace and security as the twin pillars of UN objectives, this is a very poor proportion of the funding. Even with the increase in the funding, this percentage [one per cent] was still judged to be insufficient to fulfil its purposes.

It is no exaggeration to say that the treaty bodies are the most important institutions in the human rights sector. It can be argued that they are the backbone of the implementation of the international treaty system. ... [T]hey have not received the

26 See Table 7.2 below.

27 This figure includes protection of and assistance to refugees, Palestinian refugees and humanitarian assistance, see New Zealand Ministry of Foreign Affairs and Trade/Manatu Aorere. *United Nations Handbook 1999*. Wellington, p. 338.

28 DFAT. Transcript, 22 March 2001, p. 451.

support that they need and deserve. ... The United Nations has never been known to be generous in its budget to the human rights program.<sup>29</sup>

A lack of resources within the treaty bodies means that it can take three years for a report to be considered.<sup>30</sup>

- 7.35 The lack of financial resources leads to a lack of translation and interpreting services,<sup>31</sup> the cancellation of sessions, limitations on the availability of modern technology - databases and computer and internet equipment.<sup>32</sup>

### Personnel Resources

- 7.36 As a means of expediting the process, reports are filtered through a working group or a rapporteur appointed by the committee to consider particular reports before they come to the committee itself for formal examination. However, support staff are also very limited.

For instance, if I am not mistaken, until recently the Committee on Economic, Social and Cultural Rights had one full time support staff. ... The Civil and Political Rights Committee are a bit bigger because they have the Optional Protocol that brings a lot of mail. They have maybe three or four staff. Then there is the CERD which has about one and a half. The [Rights of the] child committee has about has ... about two or three and the CAT has about three.<sup>33</sup>

### Procedural reform

- 7.37 Inconsistency and overlap between treaties are two problems. For example, the country reports on the ICCPR and the reports on some of the subsidiary treaties cover similar ground and yet they report at different times, multiplying the work of states' parties. For all countries this can be a burden, but for poorer countries it can be prohibitive.

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29 Pace, John. Transcript, 5 July 2000, pp. 152, 159.

30 Bouwhuis, Stephen. Submission No. 100, p. 1058.

31 The production of summary records is now confined to two languages (English and French) and the translation into the second language is generally significantly delayed. See Exhibit No. 56, Economic and Social Council, *Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments* E/CN.4/1997/74, p. 6.

32 Alston, Philip and Crawford, James. *The Future of UN Human Rights Treaty Monitoring*. 2000. Cambridge University Press, Cambridge, p. 7.

33 Pace, John. Transcript, 5 July 2000, p. 163.

- 7.38 The Government raised a number of procedural issues during the course of the inquiry. In March and April 2000,<sup>34</sup> the ICERD Committee reported on the Government's periodic report under the *Convention for the Elimination of all forms of Racial Discrimination*. The report praised Australia for:
- the 'comprehensiveness of its written report and oral presentation';
  - the 'attendance of a high ranking delegation';
  - the 'constructive responses of [the delegation's] members to the questions asked'.
- 7.39 The ICERD report also noted with 'appreciation the many measures adopted by the State party during the period under review (1992-1998) in the area of racial discrimination, including those adopted to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody'. And it welcomed 'the numerous legislative measures, institutional arrangements, programmes and policies that focus on racial discrimination'. In particular, it acknowledged the 'significant efforts ... to achieve reconciliation' and the 'measures taken to facilitate family reunion and to improve counselling and family support services for the victims [of separations]'. Finally, the ICERD committee acknowledged the efforts being made to increase spending on health, housing, employment and education programmes for indigenous Australians.<sup>35</sup>
- 7.40 However, within the ICERD Committee report, there were adverse comments about impact of mandatory sentencing laws and the Wik legislation. In its reaction to the report, the Government criticised the committees' 'over-emphasis on non-governmental submissions' and an 'uncritical acceptance of the claims of domestic political lobbies', that they were 'pursuing political agendas rather than fulfilling their expert objectives', that the report on the ICERD was 'blatantly political and partisan' and that the comments on the refugees convention was 'a subject well outside its mandate'.<sup>36</sup>
- 7.41 As a result, on 30 March 2000, the Minister for Foreign Affairs announced a review of the treaty committee system as it affects Australia. The objective was to review Australia's interaction with the UN treaty committees.<sup>37</sup> At a public hearing on 19 May in Canberra, the committee
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34 The summary record was published on 22 March 2000, the final report was published on 19 April 2000.

35 Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia. 19/04/2000. CERD/C/304/Add.101.

36 The Hon Alexander Downer, MP, Minister for Foreign Affairs. Media Release 'Government to Review UN Treaty Committees', 30 March 2000.

37 DFAT. Submission No. 107, p. 1294.

requested a private briefing on the review and a copy of its terms of reference. Neither was forthcoming. The committee was disappointed that it was not given at least a private briefing, especially as the Government was aware of this inquiry. Some committee members believe strongly that, if the Government wanted to review Australia's interaction with the human rights treaty bodies, there should have been a full and open inquiry.

7.42 On 29 August 2000, the Minister for Foreign Affairs, Mr Downer, the Minister for Immigration and Multicultural Affairs, Mr Ruddock and the Attorney-General, Mr Williams, reported on the review by way of press statement. The findings of the review were that the UN human rights treaty system needed a complete overhaul, especially:

(i) as regards the treaty committee system

- to ensure adequate recognition of the primary role of democratically elected governments and the subordinate role of non-government organisations (NGOs)
- to ensure that committees and individual members work within their mandates;
- to improve coordination between committees; and
- to address the current inadequate secretariat resources for research and analysis to support committees' work.<sup>38</sup>

7.43 Some members believed that, while the role of elected governments remained paramount, the role of NGOs is one that is increasingly recognised in world bodies.

7.44 The Government's response to the findings of the review was to work with other states to enhance the effectiveness of the treaty system in general and to improve Australia's interaction with the UN human rights treaty committees. It was claimed in evidence that the 'package of measures' announced as the means to achieve this was largely negative and punitive. The measures included:

- a more selective and economical approach to reporting and representation;
- restrictions on visits by treaty committees and CHR mechanisms;
- a rejection of requests from treaty committees to delay removals from Australia of unsuccessful asylum seekers; and
- a refusal to sign the Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.<sup>39</sup>

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38 The Hon Alexander Downer, MP, the Hon Daryl Williams, AM QC MP, the Hon Philip Ruddock, MP. Joint News Release 'Improving the Effectiveness of United Nations Committees', 29 August 2000.

7.45 Both the former Human Rights Commissioner, Mr Chris Sidoti, and the Professor of International Law from the Australian National University, Professor Hilary Charlesworth, were critical of the initial approach. Professor Charlesworth was critical of the lack of consultation on the review. She was also of the view that the democratic nature of a particular government should not exempt it from international scrutiny on human rights and that the role of NGOs in the treaty body process was crucial.

The thrust of the press release was that the treaty bodies not only needed reform but that they needed reform because they are criticising Australia a bit too much. ... There was this implication that somehow criticism of democratically elected governments verged on the improper. ... I think non-government organisations ... play a crucial role in bringing to light issues that even democratically elected governments might want swept under the carpet.<sup>40</sup>

7.46 Mr Sidoti believed that the actions taken appeared to 'align Australia with hardline states with appalling human rights records' and he regarded the reaction of the government as displaying 'defensive hypersensitivity'.

[T]here has not been a single issue on which Australia has received criticism from a treaty committee that has not previously been the subject of criticism by the Australian Human Rights Commission and by human rights bodies within Australia. The committees have not gone off on frolics of their own, fabricating issues to embarrass Australia, ... but rather have simply reflected the already repeatedly established views of existing bodies on those issues of human rights concern.<sup>41</sup>

7.47 Mr Sidoti did note that in open and democratic countries like Australia the greater availability of information did allow for greater scrutiny by the treaty bodies; however he believed that international NGOs were still able to supply considerable information on the most closed societies.

7.48 It is clear, however, that the international scrutiny of human rights is incomplete because a number of countries have not ratified treaties or they have placed reservations on particular articles of the treaties. The system relies on the willingness on the part of each state to offer itself to international scrutiny. Mr Sidoti noted that 'some of the worst offenders are the least likely to have ratified the treaties. So they never actually

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39 The Hon Alexander Downer, MP, the Hon Daryl Williams, AM QC MP, the Hon Philip Ruddock, MP. Joint News Release 'Improving the Effectiveness of United Nations Committees', 29 August 2000.

40 Charlesworth, Hilary. Transcript, 21 March 2001, p. 430.

41 Sidoti, Chris. Transcript, 22 March 2001, p. 537.



come before the committees to be questioned'.<sup>42</sup> Mr Philip Alston, a member and later Chairman of the Committee on Economic, Social and Cultural Rights, stated in his report on the reform of the treaty body system that:

Large-scale non-reporting makes a mockery of the reporting system as a whole. It leads to a situation in which many States are effectively rewarded for violating their obligations while others are penalised for complying (in the sense of subjecting themselves to scrutiny by the treaty bodies.)<sup>43</sup>

- 7.49 The committee believes that it is this unwillingness on the part of states where violations are rife that behoves more open countries like Australia to demonstrate that openness and scrutiny is both tolerated and tolerable. Some members believed that, in its reaction to the treaty body criticism in March 2000, Australia did not do this.

One of the reasons why Australia historically has had a good reputation in the UN human rights circles is that we are seen as having been more honest than most. Australian representatives, on behalf of our government, repeatedly have been prepared to talk about our shortcomings. The best way to ensure fair treatment by treaty committees ... is to ensure that our country report is honest, balanced and represents a range of views about particular issues ...<sup>44</sup>

## The Agenda for Reform

- 7.50 Reform of the treaty bodies has been on the agenda of the United Nations for over a decade. Mr Philip Alston prepared his first report on the *Long-term approaches to enhancing the effectiveness of the United Nations human rights treaty bodies* in 1989. His recommendations, modified to reflect changes in the processes of the committees, were brought forward at the World Conference on Human Rights in Vienna in 1993 and again in 1997 in a final report from the Secretary-General to the Commission on Human Rights. Over this period some changes have been achieved, but the major problems of backlog and resourcing remain.
- 7.51 Some suggestions made by the Alston report on treaty body reform include:

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42 Sidoti, Chris. Transcript, 22 March 2001, p. 548. Approximately 30 per cent of states have not yet ratified the international covenants and 50 per cent have not ratified the Convention on Torture. Many of these are small states of less than a one million people.

43 Exhibit No. 56, Economic and Social Council, *Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments* E/CN.4/1997/74, p. 15.

44 Sidoti, Chris. Transcript, 22 March 2001, p. 547.

- A drive on the part of the UN to universalise the ratification of the six treaties;
- An easing of the reporting requirements,<sup>45</sup> including:
  - ⇒ Oral reports in exceptional cases where states lack resources to make written reports;
  - ⇒ Funding of advisory services to assist with the initial reports from new states parties and with regional and sub-regional training of officials involved in reporting;
  - ⇒ The elimination of the reporting requirements in favour of detailed questions to which answers must be given;
  - ⇒ The preparation of a single report to satisfy several different, but overlapping, requirements;
  - ⇒ The examination of a situation in the absence of a report;
  - ⇒ A 50 page limit on the length of States' reports;
- More timely preparation of summary records:
  - ⇒ Wider access through the electronic provision of databases of information related to the treaty bodies;
- Improvement in the quality of concluding observations in terms of clarity, degree of detail, level of accuracy and specificity.<sup>46</sup>

7.52 Many of the issues raised by the Alston report have been pressed by Australian Governments for some time. The Attorney-General's department informed the committee of a number of initiatives it had taken in relation to reporting for which it was responsible. These included *inter alia*: the combining of reports,<sup>47</sup> reforms in the use of interim measure requests, the expedition of the committee's consideration of communications and the reform of the rules governing confidentiality of parties' submissions.<sup>48</sup>

7.53 In April 2001, the Australian Government announced positive initiatives to relieve the administrative burden on the committees. These included:

- Australia will host a Ministerial meeting in 2001 at the time of the United Nations General Assembly to stimulate political momentum for reform.

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45 It should be noted that many of these suggested changes will require changes to the reporting requirements as stated in the texts of the treaties.

46 Exhibit No. 56, Economic and Social Council, *Effective Functioning of Bodies Established Pursuant to United Nations Human Rights Instruments* E/CN.4/1997/74, pp. 35-37.

47 Perhaps more a legacy of overdue reports than sensible policy.

48 Attorney-General's Department. Submission No. 87, pp. 870-1.

- Australia will host a series of three workshops to look at practical ways of addressing key reform issues. This includes streamlining the operations of the committees, improving the interface between UN committees, countries and non-government organisations and developing more effective treaty body architecture for a stronger and more responsive system. We will put forward a number of practical, achievable measures to do this, which we will explore with others at the workshops.
- Australia will seek election to the Commission on Human Rights for the period 2003-2005. If successful, this will increase Australia's influence on the major international human rights body. We will also more actively identify Australian candidates for positions on treaty bodies.
- We will continue to press for additional resources for the Office of the High Commissioner for Human Rights, including the treaty bodies, from the UN core budget. We will also work with the Office of the High Commissioner for Human Rights and States Parties to explore means, within limited resources, of strengthening support for the treaty committees.
- Australia will continue to encourage countries in our region to sign and ratify the six core human rights instruments. We will continue to provide practical and effective technical assistance to help States in our region comply with reporting obligations.<sup>49</sup>

## The Effectiveness of the System

7.54 There has been considerable debate in Australia about the legitimacy and effectiveness of the UN in protecting human rights. Many submissions argued against the role of the UN in human rights because they resented the intrusion of the monitoring committees into the domestic, political affairs of the country or they believed that the raising of alleged violations of rights by Australians in such international forums was in some way disloyal or divisive. Other submissions objected to what they termed the promotion of minority issues through international forums. Finally, the selective focus of the UN when judging human rights was seen to undermine its legitimacy.<sup>50</sup> For example:

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49 The Hon Alexander Downer, MP, the Hon Daryl Williams, AM QC MP, the Hon Philip Ruddock, MP. Joint News Release 'Australian Initiative to Improve the Effectiveness of the UN Treaty Committees', 5 April 2001.

50 For comment specifically opposing or critical of the human rights treaty system see Submission Nos. 1, 11, 12, 26, 28, 30, 33, 34, 35, 37, 39, 40, 41, 43, 44, 45, 52, 60, 61, 62, 72, 74, 76, 80, 81, 89, 92, 105, and 106.

The processes of the UN in regard to Human Rights, Rights of the Child, Environment, Feminism, Family attitudes are shameful. The UN in these areas has been misused to push the agendas of splinter groups, minority groups, misfits and the like, and for this reason alone, one could argue strongly that the UN should be abandoned. ... I do not wish to suggest that Australia should go to this extreme, but I strongly believe Australia must take a firm strong stand in these areas. We must not allow our representatives to give Australia's support to the outrageous ravings of these minority groups.<sup>51</sup>

- 7.55 A number of these submissions overestimated the power and coherence of the entity known as the United Nations and failed to recognise the continuing, central power of the nation state within the UN or the legitimacy of international law.<sup>52</sup> To this extent the committee believes that these arguments were based on rather weak premises. Many of the problems facing the UN human rights system stem from its paucity of powers and resources. Moreover, these submissions implied that the recognition of minority rights was anti-democratic. They interpreted democracy as majority rule, but they did not accept a concept of democracy as majority rule and minority rights. In the committee's view, majorities can achieve their rights by dint of their numbers and the protection of the rights of the minorities within a society is essential for both harmony and justice.<sup>53</sup>
- 7.56 The alternative arguments put to the committee appeared more cogent. They submitted that international law dealing with human rights was an important part of the drive for greater peace and security; that nation states within the international system established by the United Nations freely agreed to the terms of the human rights treaties; that the states themselves operated the monitoring system; and that the most developed and stable countries within the system had a responsibility to demonstrate the effectiveness of scrutiny as a means of maintaining everyone's rights. They also argued that the system suffered from too little power and resources.

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51 James, W B. Submission No. 89, p. 894.

52 The question of sovereignty is canvassed extensively in Chapter 1 of this report. To reiterate: it seems to the committee that states quite legitimately surrender aspects of their sovereignty in order to attain greater efficiency or in the interests of the greater good. This has always happened between the individual and government generally, but clearly it occurs between local and state government, between state and federal government and between national and international government. The question is always whether the sovereignty (local, state, national or international) that is applied is appropriate to the particular aspect of government.

53 As argued in paragraph 7. 3 of this chapter, it is the oppression of the rights of individuals and minorities that so often destabilises.

On becoming a party to the major human rights treaties, a State undertakes an obligation to submit periodic reports to the relevant treaty body on the measures it has adopted to give effect to the human rights recognised in the treaty. Through their consideration of reports, the formulation of general comments and the identification of areas where States would benefit from technical assistance, the treaty bodies have contributed to the elaboration of human rights law.<sup>54</sup>

The capacity of the United Nations to protect human rights depends largely on the will and support of Member States. There can be myriad international conventions and other legal instruments, but fundamentally international law depends on the support, adherence and respect of states. It is the esteem in which international law is held and the way that it is practised which underpin the capacity of the United Nations to protect human rights.<sup>55</sup>

If Australia is to strengthen its relations with the UN we will need to be prepared to also accept criticisms of our domestic policies where they infringe human rights, just as other nations should accept such criticisms. Australia cannot be a law unto itself if we are to maintain our standing as a responsible nation in the international community.<sup>56</sup>

## Conclusion

7.57 The committee affirms the central importance of the protection of human rights to international peace and security. It accepts that the rights defined in the International Bill of Rights are universal and, therefore, legitimately the subject of international scrutiny. Therefore the human rights treaty body system should continue. The inquiry made clear, however, that there were very great weaknesses in the current UN arrangements for the protection of human rights. The committee believes that the treaty body system is in urgent need of reform and that reform must take the form of procedural improvement that will make the treaty bodies more efficient and effective. This must be underpinned by a considerable improvement in the resources allocated from the core budget of the UN to the Human Rights system and an increase in the personnel supporting the human rights committees. Australia, as a democratic country committed to open

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54 Attorney-General's Department. Submission No. 87, p. 869.

55 UNICEF. Submission No. 84, p. 829.

56 Medical Association for the Prevention of War (Australia). Submission No. 90, p. 943.

debate, should demonstrate by example its belief in the validity/legitimacy of the international scrutiny of human rights by encouraging other member states to ratify the conventions and participate fully in the processes of the Human Rights Commission; by supporting financially the Commission and its committees; and, in particular, by accepting as legitimate the right of the committees to criticise all governments within the system. Of course it is also the right of governments to reject such criticisms.

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**Recommendation 9**

**The committee recommends that the Australian Government:**

- **Encourage member states to provide significantly increased funding appropriate to the needs of the treaty body system in order to ensure its effective and efficient working; and**
- **Pursue reform of the UN Human Rights Treaty Body system positively and constructively with all states within the UN.**