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Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
Canberra ACT 2600
Via email: jscfadt@aph.gov.au

20 November 2008

Dear Secretary

We are pleased to make a submission to the Inquiry into Human Rights Mechanisms and the Asia-Pacific.

We note that the terms of reference of this inquiry are to inquire and report on international and regional mechanisms currently in place to prevent and redress human rights violations, with a view to providing options on possible models that may be suitable for the Asia-Pacific region, with a focus on:

- the United Nations human rights system;
- regional mechanisms; and
- roles for parliaments.

Relevant expertise

The Centre for International Governance and Justice (CIGJ) aims to develop regulatory theory in the context of peacekeeping and peacebuilding. Our research projects focus both on empirical questions, such as what works and what fails in peacekeeping and peacebuilding, and also on the role that international law can play in strengthening the development of democracy after conflict.

Current projects include ARC projects ‘Building Democracy and Justice after Conflict’ (<http://cijj.anu.edu.au/democracy/about/index.php>) and ‘Peacebuilding Compared’ (<http://peacebuilding.anu.edu.au/>).

Based on the preliminary findings of these research projects, we would urge the Committee to think more broadly about ways Australia can support human rights in the region through the interventions already on foot in countries such as Timor Leste, Bougainville and the Solomon Islands. For example, peacekeeping, peacebuilding and security sector reform are often presented by Australia as having strong links to promoting and protecting the human rights of the citizens of that state, and to building a human rights culture that will be sustainable once the official Australian presence ceases. There are still substantial opportunities to make those links between human rights and human security more overt, more considered and more credible to the affected communities in these states.

Moreover, our research has led to some insights about human rights institutions and timing in a post-conflict state. In peacebuilding, there are difficult debates about how fast to put electoral democracy in place, for example, about whether to build local government democracy first as a building block for national democracy. The dilemmas are different with human rights institutions. They are always an early priority and always something to put in place as a national institution first. That is because the centralised power of state and non-state security forces always needs early attention in respect of human rights enforcement. Our view is that the Committee should ponder the common tendency to speak of building democracy and human rights institutions in the same breath.

Recommendations

That the Committee consider a broader conception of ‘human rights mechanisms’, such as peacekeeping and peacebuilding operations and other human security interventions in the region

That the Committee considers the benefits of the early adoption of national human rights institutions in a post-conflict environment in the region

Previous inquiries

We would urge the Committee to revisit earlier examinations of human rights issues in the region, including the 2001 inquiry into the Links Between Human Rights and Aid, the 2003 inquiry into Human Rights and Good Governance Education in the Asia Pacific region and the 2006 Inquiry into Australia's aid program in the Pacific.

Many of the concerns and recommendations raised by submissions such as those by ACFOA (now ACFID) and the Asia-Pacific Forum of NHRIs remain valid and were not accepted by the government of the day.¹

For example, many submissions urged that AusAID could more overtly embrace human rights as a framework for Australia's development program, which would complement foreign policy aims such as meeting the Millennium Development Goals in our region. The Australian Government could broaden its view of ‘human rights mechanisms’ to include civil society organisations, and broaden the view of the subject matter of human rights to include interventions based on security such as RAMSI or peacekeeping in Timor Leste as mentioned above, pandemic diseases or high level discussions about climate change.

There was a strong sense from the government submissions and responses to these previous inquiries that human rights work should be limited to education activities, and that improving corporate governance in the region was a more important aim than human rights. These are views that deserve to be reviewed by the current inquiry.

Recommendations

That the Committee review the recommendations and responses from three abovementioned previous inquiries.

That the Committee recommend that AusAID adopts a human rights based framework for the development assistance program

That the Committee consider a further inquiry into strategies for meeting the Millennium Development Goals in our region

¹ AusAID, Government Response to the June 2004 Report on Human Rights and Good Governance Education in the Asia Pacific region, September 2005.

TOR 1: The UN Human Rights System

Ratifications of the key human rights instruments are poor in the Asia Pacific region, especially the Pacific.² For example, many Asian countries have not signed the core treaties, or where they have signed, they have placed reservations on key articles.³ Burma, Bhutan, Brunei, Malaysia and Singapore have the worst ratification records in Asia with only two apiece.

Australia should carefully consider the leadership role it can play in the region when supporting the development of new treaties, or increasing compliance with existing obligations.

Australia can also channel increased development assistance where appropriate to UN agencies working in the Asia Pacific region to improve the perception of the UN as relevant to the protection of human rights at the community level through programs and assistance.

Finally, Australia should resource and assist the preparation of both state and shadow human rights committee reports.

Recommendations

That the Committee recommend the Australian Government should take a leadership role in the ratification and development of new international treaties, plus compliance with existing obligations

That the Committee recommend that the Australian Government should channel increased core funding to the UN agencies working in the region, particularly in the Pacific, PNG and Timor Leste

That the Committee recommend that the Australian Government fund and assist the preparation of both state and shadow human rights committee reports, through Australian civil society partnerships with other civil society groups and at the state level

TOR 2: Current Initiatives for Regional Mechanisms

Pacific Proposal

We note that Pacific island governments were urged to translate commitments in the Pacific Plan into practical action by demonstrating the necessary political will to develop a regional human rights mechanism through the auspices of the Pacific Islands Forum and in co-operation with civil society. Further, we note that a representative working group of participants and other key civil society stakeholders in the region were charged with drafting and submitting a proposal on a potential regional human rights mechanism, which is due to be presented at the Pacific Island leaders' meeting in August 2009.⁴ Australia should offer its strongest support to this initiative.

A strong recommendation from previous inquiries was to increase resources to the Asia Pacific Forum of National Human Rights Institutions (APF of NHRIs), as well as other training bodies such as the Centre for Democratic Institutions and the Diplomacy Training Project. A previous proposal by ACFID was for Australia to host a regional human rights centre in Darwin that could serve as a

² See official UN table of treaty ratifications for Pacific Island Countries from 2007 (http://pacific.ohchr.org/docs/Compilation-Chapter%203.2_Ratification9core_May29.xls)

³ http://www.forum-asia.org/news/press_releases/fa/pdfs/Annex%20V%20-%20status%20of%20ratification%20by%20Asian%20gvmts.pdf

⁴ See further: Andrea Durbach and Catherine Renshaw, in collaboration with the Asia Pacific Forum of National Human Rights Institutions, are involved in a project entitled "Building Human Rights in the Region through Horizontal Transnational Networks: the Role of the Asia Pacific Forum of National Human Rights Institutions" (LP0776639), details at <http://www.ahrcentre.org/content/Activites/APFproject.html>.

training and research centre for civil society organisations in the region, complementing the government-level work of the CDI and the training of advocates by DTP.

Recommendations

That the Committee recommend to the Australian Government to offer full support to the development of a Pacific human rights mechanism

That the Committee recommend to the Australian Government that it should increase resources to the Asia Pacific Forum of National Human Rights Institutions (APF of NHRIs), as well as other training bodies such as the Centre for Democratic Institutions and the Diplomacy Training Project.

That the Committee recommend to the Australian Government that it should fund a regional human rights centre

The ASEAN Charter

ASEAN, founded in 1967, consists of members Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Article 14 of the ASEAN Charter calls for the creation of an ASEAN human rights body (AHRB) which will protect and promote human rights and fundamental freedoms. ASEAN Leaders signed the Charter on the 20th of November 2007.

The ASEAN Charter has now been fully ratified by all ten ASEAN Member States. The final ASEAN Member State, Indonesia, ratified the Charter this month which assures the entry into force of the ASEAN agreement before the end of 2008. Of this group, only four countries – Indonesia, Malaysia, Thailand and the Philippines – have established national human rights institutions.

In June 2007 the four national human rights institutions signed a [Declaration of Cooperation](#), in which they agreed to work together on five areas of shared concern:

- suppression of terrorism while respecting human rights
- people trafficking
- protection of the human rights of migrants and migrant workers
- implementing of economic, social and cultural rights and the right to development
- human rights education.

This would serve as a basis for the establishment of the AHRB. Australia should play as constructive role as possible in supporting these developments, through the APF of NHRIs.

The Committee should note that there have been three major criticisms of the Charter, from a human rights perspective. The process followed thus far to establish an ASEAN Charter has been largely opaque and non-participatory in terms of civil society involvement. The references that are made to human rights are considered too vague and not linked to the major UN treaties. Finally, the principles of non-interference and decision by consensus retain their pre-eminence in the ASEAN Charter text, which have prevented meaningful progress on the promotion and protection of human rights at the regional intergovernmental level in the past, especially in relation to Myanmar.⁵

⁵ Forum Asia, 'The ASEAN Charter: Some windows of opportunity for human rights', 23 November 2007, accessed at http://www.forum-asia.org/index.php?option=com_content&task=view&id=1253&Itemid=42 17 November 2008.

Recommendations

That the Committee recommend to the Australian Government to offer support to the development of an ASEAN human rights body, through the APF of NHRIs, but note civil society criticisms.

TOR 3: Roles for Parliaments

We would urge caution in considering Parliaments as key institutions for protecting human rights in the region. The Inter-Parliamentary Union reported in March 2008 that Pacific countries have the world's lowest proportion of female representatives. Solomon Islands, Nauru and Tuvalu are among the 13 countries worldwide with no women in Parliament at all. The others include Libya, Saudi Arabia and Burma.⁶ The Committee should be careful of using Parliaments as the only mechanism to promote human rights outcomes with respect to groups who are not represented in the Parliament, such as women, people with disabilities, migrants and refugees and indigenous groups.

Moreover, even the Australian Parliament's record on considering human rights on a structural level is patchy.⁷ The only formal human rights mechanism in the Parliament is the work of this committee, and it is clearly marked as part of the Parliament's consideration of external affairs, not domestic issues. This is not to say that the Australian Parliament does not have considerable expertise to offer other parliaments in the region, but self-reflection may be required on our part before promoting the Australian chambers as a model institution.

Recommendations

That the Committee recommend to the Australian Government to promote equal representation of women in regional Parliaments

That the Committee take note of research and opportunities to improve institutional methods of protecting human rights in legislatures

We would be pleased to discuss these issues further with the Committee if required.

Yours sincerely,



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⁶ IPU, *Equality in Politics*, 2008, available at <http://www.ipu.org/PDF/publications/equality08-e.pdf>, accessed 17 November 2008.

⁷ Carolyn Evans and Simon Evans, '[The effectiveness of Australian parliaments in the protection of rights](#)', Legislatures and the Protection of Human Rights Conference, Melbourne Law School, 20-22 July 2006.

Who we are

Regulatory Institutions Network, ANU

RegNet is a large research group within the College of Asia and Pacific. It is also a network of institutions, practitioners and academics involved in exploring and understanding critical domains of regulation. Members of the network differ in their approaches to regulation but their work is interconnected. The key motivation driving RegNet is to advance current understanding and approaches to issues such as human security, policing, environment, cyber crime, illicit organisations and markets, intellectual property and the governance of knowledge, development, peacebuilding, human rights, international law, micro foundations of democratic governance, health and occupational health and safety through a regulatory framework that develops evidence-based theory, policy and practice.

Professor Hilary Charlesworth

Hilary Charlesworth is an Australian Research Council Federation Fellow, Professor in RegNet and Director of the Centre for International Governance and Justice, ANU. She also holds an appointment as Professor of International Law and Human Rights in the ANU College of Law. Her research interests are in international law and human rights law.

Susan Harris Rimmer

Susan Harris Rimmer is a Research Officer with the Centre for International Governance and Justice at RegNet. Susan graduated from the University of Queensland in 1997 with a BA (Hons)/LLB (Hons) and received a University Medal in 1996. Susan will receive a Doctor of Juridical Science from the ANU College of Law for her thesis "Transitional Justice and the Women of East Timor" in December 2008. Susan is also the President of national voluntary NGO Australian Lawyers for Human Rights. Susan is a Board Member of UNIFEM Australia.