

## CHAPTER THREE

### THE PLACE OF HUMAN RIGHTS IN AUSTRALIA'S RELATIONS

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#### Introduction

3.1 The broad subject of the role allocated to human rights in Australia's foreign policy is the basis for this chapter. Subsequently, Chapter Four canvasses the various kinds of human rights dialogue and activities in which Australia engages in the region. The government's approach to human rights, which it represents as realistic and practical, was criticised by a number of witnesses for its sacrifice of human rights to Australia's broader foreign policy interests.

3.2 Many witnesses characterised the Australian approach to protection of human rights as pragmatic and inconsistent. While in some respects the policy is regarded as practical, and capable of 'making a difference', it is also seen as insufficiently pragmatic in not paying attention to the longer-term gains from an increased respect for human rights in the region. These gains—economic growth and social stability—are fundamental to Australia's interests.

3.3 Some witnesses were concerned that the government relies too heavily on bilateral approaches and relationships, rather than using and supporting the international human rights framework. That is, Australia seems to have renounced its traditional role as a champion of human rights and a good international citizen and is acting as a loner in respect of its human rights advocacy.

3.4 Techniques for improving human rights advocacy were included in a number of submissions. An overview of these is provided, before the chapter concludes with discussion of the role of development assistance. The links between such assistance and human rights have become particularly pertinent in the wake of the Asian crisis, as Australians question the support that such aid may give and be seen to give to authoritarian regimes, and whether we should use it as a force for political reform.

#### Human rights in Australia's foreign policy

3.5 The Australian government views human rights as an inseparable part of its overall foreign policy approach. Four principles govern the attitude to human rights in Australia's foreign policy, according to the Minister for Foreign Affairs (the Minister).

- First, human rights are important to foreign policy because the treatment of individuals is a matter of concern to Australia.
- Second, the promotion and protection of human rights is important to Australia's interest because it underpins our broader security and economic interests.
- Third, the government's policies on human rights are based on the Universal Declaration of Human Rights and subsequent international human rights

instruments which enshrine the principles of universality and indivisibility of human rights.

- Fourth, the government considers attention should be given to the promotion, protection and implementation of all human rights, civil, political, economic, social and cultural.<sup>1</sup>

3.6 Two considerations are said by the Minister to govern Australia's approach to implementing policy: first, achievable objectives are vital for effectiveness, and second, 'policies must be based on a clear analysis of the way in which human rights concerns fit with Australia's interest in preserving security and enhancing prosperity'.<sup>2</sup> Therefore, government policy will be 'developed as part of a comprehensive treatment of foreign policy and implemented in the context of the overall relationships that Australia has with other countries'.<sup>3</sup>

3.7 The government's White Paper on Australia's foreign and trade policy echoes this concern for overall strategic objectives in our human rights activities:

Respect for human rights is generally a force for stability, not least because it tends to moderate political behaviour. At the same time, the relationship between economic growth and political freedoms is a complex one and should not be reduced to a simple equating of economic growth with political liberalisation. The Government recognises that, on occasions, support for human rights will create difficulties in Australia's bilateral relationships, including in our commercial relations. The best means of managing such difficulties is to focus on practical measures and address human rights concerns in the context of a sound overall bilateral relationship. Linking human rights to trade serves neither Australia's trade nor its human rights interests.<sup>4</sup>

3.8 Australia's statement of policy leans towards the pragmatic, and may be seen to imply that human rights is at the centre of our relations with other countries—provided that it does not interfere with Australia's wider interests. It has been argued that if there is a conflict between economic or strategic interests, and human rights, then human rights appears likely to be awarded a place at the margins of our overall relationship. The Committee remains to be convinced that this is the case.

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1 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs, at Consultations Between the Department of Foreign Affairs and Trade and Non-Government Organisations on Human Rights, Canberra, 30 July 1996, DFAT/AusAID, Submission, p. 884.

2 *ibid.*, pp. 884-885.

3 *ibid.*, p. 885.

4 *In the National Interest*, White Paper on Australia's Foreign and Trade Policy, Canberra, 1997, pp. 13-14.

3.9 A comparison may be made with the policy of the UK government:

Our concern for human rights is fundamental to both our departments' work [Foreign and Commonwealth Office and Department for International Development]. It is not an add-on or a sidelined appendage, but an integral part of the way we see the world and the challenges ahead. ... In the modern world, we cannot afford to treat human rights as an optional extra. They must be at the heart of what we do.<sup>5</sup>

3.10 The 'right' place for human rights in our foreign relations was put forcefully by one witness:

We only have to look at every day's headlines of what is happening in Indonesia, for example, to see that there is a saliency, an urgency, to what is human rights. Our suggestion is that Australia's stance on human rights is about to be tested in ways that it has not been tested quite so directly for a very long time. That means that maybe it is time to start asking some questions about whether human rights has not been somewhat marginalised in Australian public discourse and also in the actual structure and organisation of the Department of Foreign Affairs and Trade; about whether a Chinese wall ... has not been erected between human rights and the whole dialogue, delivery and discourse of human rights and Australia's national interests. Human rights and national interest have tended to be regarded as not direct opposites but certainly there has been some distance between them.<sup>6</sup>

3.11 In evidence, Human Rights Commissioner, Chris Sidoti, said:

[S]o far as foreign policy is concerned, trade, security and human rights issues all need to rank as the three primary components of foreign affairs, on an equal footing and with inter-reactions amongst the three which require a great deal of subtlety in the work that needs to be undertaken.<sup>7</sup>

## **Human rights and trade**

3.12 The Australian government policy is not to link trade with human rights. With respect to Australia's difficulties in signing the framework trade agreement with the European Union, the Department of Foreign Affairs and Trade (DFAT) said:

We made it quite clear that we had no problem with our human rights record being scrutinised and our performance being held up to account. It was the linkage between human rights and trade. We do not think a choice needs to be made between human rights and trade.

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5 Foreword to Foreign and Commonwealth Office and Department for International Development, *Annual Report on Human Rights 1998*.

6 Australia Tibet Council, Transcript, p. 215.

7 HREOC, Transcript, p. 44.

We pursue both issues in the most appropriate means on a country by country basis. This government and previous ones have always been opposed to tying those two issues together in that way.<sup>8</sup>

3.13 The connection between human rights standards and trade was recognised as a complex issue, but it was noted that, in the past, Australian governments have supported trade sanctions and embargoes with respect to pariah states (such as South Africa, Burma and Iraq). There is a clear case for maintaining economic pressures through trade sanctions and investment restrictions in respect of Burma, it was suggested.<sup>9</sup> Dr Ian Barns argued that the situation is not so clear with respect to countries which systematically abuse human rights. In regard to Indonesia and China, he felt that Australia should adopt a more principled stand with respect to the kinds of trading and security relationships it enters.<sup>10</sup>

3.14 The Australian Forum of Human Rights Organisations (AFHRO) referred to the effectiveness of Australia's human rights dialogue being undermined by the government's refusal to accept the standard human rights clause in the European Union trade agreement. The policy of non-linkage and events such as this compromise Australia's reputation as a leader in human rights protection and diminish the effectiveness of our dialogue with regional nations.<sup>11</sup>

3.15 Community Aid Abroad (CAA) found that our trade and investment practices have an impact on human rights and it regretted that Australia has not taken a stronger stance on trade and human rights.<sup>12</sup> While it noted that there is a lack of research on the effect of trade liberalisation on human rights, it stated that there was growing evidence that liberalisation is an uneven process that does not necessarily lead to faster growth or a reduction in inequality. It called for the government to commission independent research into the impact of trade liberalisation on human rights in Asia and the Pacific, in particular on the human rights of women and children.<sup>13</sup>

## **Pragmatism and principle**

3.16 A record of uneven and selective performances in human rights by successive Australian governments was described by James Dunn, a former diplomat. He referred to Australia's strong opposition to apartheid in South Africa by contrast with support for Indonesia's treatment of the East Timorese. He stated:

In foreign relations discourse, human rights have been relegated to the dubious technique of quiet diplomacy, a method credible only if the government concerned is strongly committed. This creates the appearance of positive action, but rarely achieves anything. ... Unfortunately the Government has marginalised the human rights process, undermining efforts to shape a safer and more just world. ... [I]n a region that is weak on commitment to the ideals expressed in the Universal Declaration, promoting, upholding and implementing

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8 DFAT/AusAID, Transcript, p. 9.

9 Barns, Dr I, and TEAR Australia, Submission, p. 257.

10 *ibid.*, p. 258.

11 AFHRO, Transcript, p. 128.

12 Community Aid Abroad, Submission, p. 975.

13 *ibid.*, p. 976.

international human rights should be the foundation of our national interests.<sup>14</sup>

3.17 The government's policy is represented as one that seeks to make a difference on human rights, rather than 'merely to posture'.<sup>15</sup> The Attorney-General, in reply to comments by James Dunn, referred to the government's practical steps to promote good governance and effective institutions to ensure the protection of human rights, and concluded:

The true protection of rights does not lie in grand gestures and exaggerated rhetoric, but in our democratic institutions and the mutual respect inherent in our democratic institutions and the mutual respect inherent in an open and tolerant society.<sup>16</sup>

3.18 Different interpretations have been placed on Australia's preferred means of promoting human rights. A number of witnesses did not see Australia's record as one of quiet effectiveness. The Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) referred to the observations of its clients, whose experience of torture had left them with a 'more acute sense of justice', and made them astute observers of the language and behaviour of governments:

They see most clearly the lapses and inconsistencies in Australian policy on human rights: the neglect of Afghanistan ...; the habitual silence about ongoing abuses in East Timor, and the skirting of human rights issues in Australia's dealings with Indonesia; an apparent preoccupation in Australia's foreign policy with trade and economic links ...; a focus on government to government relations rather than the broader perspective afforded by contact with informed local community groups and non-government organisations ...<sup>17</sup>

3.19 Amnesty International, among others, argued that there had been an erosion of Australia's reputation and credibility over several years. One of the reasons for this may be that the emphasis government puts on international multilateral fora has moved more into the economic stream and away from issues around human rights and social norms.<sup>18</sup>

3.20 Australia's apparent willingness to subjugate its traditional promotion of human rights in the region to its need for economic interaction was noticed by the Australian Human Rights Foundation.<sup>19</sup> The Foundation referred to Australia's robust demands of Burma in contrast to its indecisive position on Sri Lanka and human rights abuses by the Sri Lankan government:

[I]t would appear that economic concerns have been put ahead of legitimate concerns raised by Amnesty International and other local

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14 *The Age*, 9 December 1997, p. 15.

15 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs, at Consultations Between the Department of Foreign Affairs and Trade and Non-Government Organisations on Human Rights, Canberra, 30 July 1996, Submission, p. 885.

16 The Hon Daryl Williams, AM QC MP, *The Age*, 23 December 1997, p. A11.

17 STARTTS, Transcript, p. 177.

18 Amnesty International, Transcript, p. 88.

19 Australian Human Rights Foundation, Submission, p. 275.

and international NGOs. Such a selective and inconsistent foreign policy position will adversely affect Australia's diplomatic credibility. Diplomatic credibility is crucial for a middle power such as Australia, its ability to bring nations together in a coalition in order to achieve its goals.<sup>20</sup>

3.21 The need for realistic goals in human rights issues cannot be argued against. Dr Barns, accepted this, and the contention that a moralistic approach would likely be counterproductive. However, the alternative to moralising—pragmatic constructive engagement, in which human rights concerns are raised in the context of building stronger economic, trading and security linkages—was considered to be inadequate.<sup>21</sup>

3.22 Even where Australia's policy aims to be realistic and practical, it may be flawed, not simply for being short on principle. It may be insufficiently practical. The failure of the "softly, softly" approach taken by the Australian government in relation to East Timor' was raised by Dr Barns.<sup>22</sup> This 'realistic' approach was criticised as myopic and short-term, for failing to see that longer-term stability (within particular countries and the region as a whole) is intimately linked to the development of democratic institutions and an effective human rights culture.<sup>23</sup>

3.23 A similar view of Australia's growing myopia was put by Amnesty International when it suggested that requiring human rights to conform to the overall strategic and economic environment was not, finally, in Australia's interest:

The observance of human rights is central to Australia's long-term interests in the Asian region. A positive human rights environment provides the basis for a positive strategic and economic environment in the region. Human rights violations ... are major threats to regional security and stability. Thus the prevention of such violations—and the resolution of continuing crises—must be central in Australia's relations with its neighbours.<sup>24</sup>

3.24 The danger of the signals sent by our reactions to East Timor and to China's human rights record, for example, was seen by Dr Barns to be that the Australian community and the region may understand that human rights concerns will not be allowed to interfere with the development of strong economic and trading relationships with our neighbours. Dr Barns was also concerned that this downgrading of human rights concerns in the region reflected an ambiguous commitment to human rights and democratic institutions within Australia.<sup>25</sup>

3.25 Dr Barns submitted that there was an alternative to moralism and pragmatism, but this required a firm commitment to the ongoing elaboration of an already agreed international framework of human rights institutions and effective implementation of this framework at

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20 *ibid.*, p. 274.

21 Dr I Barns and TEAR Australia, Submission, p. 255.

22 *ibid.*

23 *ibid.*

24 Amnesty International, Submission, p. 693.

25 Dr I Barns and TEAR Australia, Submission, p. 254.

regional, national and local levels.<sup>26</sup> Australia's dealing within the Asia Pacific should centre on the obligations assumed by states under the UN human rights declarations and covenants because commitment to these implies a willingness to account to the international community for the observance of human rights within their jurisdiction.<sup>27</sup>

## Bilateral approaches

3.26 As part of Australia's dialogue on human rights, bilateral representations may be made by the Australian government to other governments in respect of:

- general situations; and
- representations on individual cases.

3.27 The Foreign Minister has stated that Australia will maintain a vigorous human rights diplomacy, both multilaterally and bilaterally, and 'will continue to make representations through our Embassies and High Commissions on cases of human rights' concern brought to our attention by Amnesty International. These representations strengthen Australia's profile as a concerned and active country in the human rights field'.<sup>28</sup>

3.28 Australia's moves away from multilateral pressures which can be expressed through the UN and its Commission on Human Rights, are also regarded as regressive by Amnesty International. This is a change from the emphasis that successive governments had placed on international organisations as the basis of foreign and trade policy and, given the emphasis the White Paper places on international organisations like APEC and the World Trade Organisation in trade policy, a movement away from regional and multilateral approaches in other areas could affect Australia's role in the international system adversely.<sup>29</sup>

3.29 The Human Rights and Equal Opportunity Commission (HREOC) emphasised the need for collaboration in human rights advocacy: 'Australia is not in the business of human rights advocacy by itself'.<sup>30</sup> The Human Rights Council of Australia raised its concern that Australia was moving away from being a good international citizen and was moving from multilateral to an almost exclusive focus on bilateral diplomacy.<sup>31</sup>

3.30 In respect of human rights in Asia, Australian governments have concentrated on bilateral relationships. Although Australia has been active in international treaty negotiations and international forums, when regional issues have arisen—for example in East Timor or other parts of Indonesia, China, Vietnam, Burma, Bougainville, and Fiji—the expectation has been that the Australian government would take the matter up with the government concerned.<sup>32</sup>

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26 *ibid.*, p. 256.

27 *ibid.*

28 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs to a Forum on Australia's Human Rights Obligations for Human Rights Day, 10 December 1996, DFAT/AusAID, Submission p. 893.

29 Amnesty International, Submission, p. 693.

30 HREOC, Submission, p. 1173.

31 Human Rights Council of Australia, Submission, p. 1249.

32 Camilleri, Submission, p. 307.

3.31 Professor Camilleri suggested that some criticisms of the bilateral approach are unfair. He noted that such approaches are :

... unlikely to satisfy the expectations of human rights organisations or public opinion more generally, which will accuse it of timidity dictated by commercial and geopolitical interests. Other governments, on the other hand, are likely to view even gentle prodding at best as well intentioned meddling and at worst as politically motivated interference. Caught between such conflicting pressures, the government's bilateral diplomacy will frequently appear indecisive, ambiguous, evasive, or even hypocritical.<sup>33</sup>

Bilateral approaches may be useful, but :

... only if they derive their legitimacy from international instruments and standards, and more importantly if they parallel and reinforce initiatives and approaches which have been developed through regional negotiation and agreement. ... What is true of bilateral approaches in general is likely to apply even more sharply in cases where the initiative is to apply sanctions or to place conditionalities on aid or economic relations. Where this is done purely on a bilateral basis without the support of the international community, as expressed through any of its recognised international or regional institutions, that action is likely to be much less effective...<sup>34</sup>

3.32 Mr Bill Barker outlined Australia's public dialogue in the region. Over the last ten years or so, dialogue has comprised two parliamentary delegations to China, one to Vietnam, and a visit to China by high level officials. Each was substantive contact, but they related to only two countries. In addition, in the late 1980s and early 1990s, a senior DFAT official would stop briefly en route to and returning from the UN Commission on Human Rights in Geneva to make contact occasionally in Indonesia, India, Malaysia, Iran and Russia. These visits were rushed and superficial.<sup>35</sup> The balance of contact was left largely to embassy officials. The problem with such contact, in Mr Barker's view, was that these officials could not be expected to have expertise in human rights. Mr Barker did concede the value of the China visits.<sup>36</sup>

3.33 Mr Barker considered Australia tended to use this dialogue when there were no:

... other weapons in the armoury and when we do not want to use a more ... robust form of interacting with our neighbours. In relation to China, for example, it is more comfortable to send a delegation to discuss human rights than it is to co-sponsor a resolution in the UN Human Rights Commission because the Chinese tend to get a bit upset about things.<sup>37</sup>

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33 *ibid.*, p. 308.

34 *ibid.*

35 Barker, Transcript, p. 362 and Submission, p. 362.

36 Barker, Transcript, p. 362.

37 *ibid.*



3.34 Mr Barker's view was that these arrangements were plainly inadequate:

Instead of the present ad hoc approach which has essentially restricted dialogue to only two countries [China and Vietnam], dialogue on human rights ought to be a regular part of Australia's relations with most of our regional neighbours.<sup>38</sup>

Mr Barker suggested Australia could have fruitful dialogue with countries such as Thailand and the Philippines and others in the region where there is little discussion of human rights issues by the Australian government but there is interest in those countries in improving their human rights records.<sup>39</sup>

3.35 The raising of human rights concerns at a high level, for example, by Foreign Ministers, was seen as encouraging a slightly confrontational approach because the governments concerned tend to be defensive.<sup>40</sup> Mr Barker said these exchanges usually would not be considered 'dialogue'. They are, essentially, 'representations', that is, expressions of concern about particular issues or cases and the circumstances in which they are raised makes it difficult to achieve the relationship of equality that is needed for effective dialogue.<sup>41</sup>

3.36 While criticisms may be levelled fairly at an inappropriate reliance on bilateral approaches to human rights, in one area there is an expectation that dialogue will be bilateral. DFAT makes approximately 500 bilateral human rights representations each year, whether they have been brought to its attention by overseas posts, media reports, or members of the public. Most are as a result of Amnesty International 'Urgent Action cases' which the government pursues on behalf of the Amnesty International Parliamentary Group.<sup>42</sup>

3.37 Mr Barker would not characterise such exchanges as dialogue. In his view, they are representations, or expressions of concern over individual issues or cases. At nearly all posts in the region, according to DFAT, representations on individual human rights are made in the context of a developing or continuing human rights dialogue.<sup>43</sup>

3.38 Australian parliamentary delegations often take the opportunity to monitor and discuss human rights situations in the countries they visit. This less public aspect of human rights dialogue is discussed further in Chapter Seven.

## **Multilateral approaches**

3.39 In its submission DFAT provided an overview of the issues on which Australia takes part in dialogue with other countries in the region, including at the Commission on

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38 Barker, Submission, p. 362.

39 Barker, Transcript, p. 362.

40 *ibid.*, p. 363.

41 Barker, Submission, p. 362.

42 DFAT/AusAID, Submission, p. 840. An analysis of new cases between January and July 1997 shows 10.2% of representations took place in South East Asia, 1.3% in North Asia, 3.7% in South Asia, and 0.4% in the South Pacific (see DFAT/AusAID, Submission, p. 841).

43 *ibid.*, p. 817.

Human Rights and in the Third Committee of the UN General Assembly. Australia is also involved in promoting national institutions in the UN and in human rights standard-setting.<sup>44</sup>

## United Nations

3.40 The main international forum for promoting and protecting human rights is the UN Commission on Human Rights. The Fifty-Second (CHR52), Fifty-Third (CHR53) and Fifty-Fourth (CHR54) Sessions took place in 1996, 1997 and 1998. At CHR53, the Australian delegation did not have a vote, but delivered six statements, covering support for national human rights institutions, support for the promotion of human rights in Cambodia<sup>45</sup> and acknowledging some progress in China, Indonesia and Bougainville.<sup>46</sup>

3.41 Statements were also delivered by the Australian delegation at CHR54. Australia noted its concern about the situation in Afghanistan, particularly for women and girls, and referred to some positive developments in Burma, China, and Indonesia. Australia called on the government in Sri Lanka to ensure human rights observance in a difficult security environment.<sup>47</sup> In a statement on 16 April 1998, the leader of the Australian delegation referred to the situation in Sri Lanka and urged the Sri Lankan government to pursue rigorously the prosecutions of security forces for human rights abuses. He also mentioned that the Australian government deplored and condemned all acts of terrorism.<sup>48</sup> Evidence regarding reaction to Australia's role at recent sessions of the CHR is included in the survey of dialogue and activity with individual countries in the following chapter.

3.42 DFAT reported that at the Commission there is resistance by regional countries (including India, Pakistan, Indonesia, Malaysia and China) to what is seen as the predominantly Western agenda and preoccupations, particularly with civil and political rights, at the expense of economic, social and cultural rights.<sup>49</sup> The right to development was the subject of a consensus resolution at CHR52 and 53 and Australia was a co-sponsor on both occasions.<sup>50</sup>

3.43 At the 51st and 52nd Sessions of the UN General Assembly, Australia co-sponsored resolutions on the human rights situation in Cambodia. Australia engaged in dialogue, particularly with ASEAN countries, the United States and Japan, to ensure a consensus text that conveyed international concern about the human rights situation in Cambodia. At UNGA51 Australia co-sponsored the resolution adopted by consensus on Burma, again working closely with the Japanese and ASEAN delegations.<sup>51</sup>

3.44 Other efforts by Australia have included a contribution of \$123,000 to the UN Centre for Human Rights for a project to establish a human rights commission in Papua New Guinea. This fund formed part of Australia's contribution to the UN Voluntary Fund for

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44 *ibid.*, p. 845.

45 *ibid.*, and p. 936.

46 *ibid.*, p. 937.

47 UN Commission on Human Rights, *Press Release*, 16 April 1998 and Exhibit 26 (e), statement of HE Mr JB Campbell, Leader of the Australian Delegation to the Fifty-Fourth Session of the Commission on Human Rights, on the Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, 16 April, 1998, pp. 3, 4, 6.

48 Exhibit 26 (e), p. 6.

49 DFAT/AusAID, Submission, p. 846.

50 *ibid.*, pp. 847-848.

51 *ibid.*, p. 848.

Technical Cooperation in the Field of Human Rights. The former Australian Human Rights Commissioner, Mr Brian Burdekin, was attached to the UN Centre for Human Rights for two years as Special Adviser to the UN High Commissioner for Human Rights on National Institutions, Regional Arrangements and Preventive Strategies. This appointment was largely funded by Australia (\$1.105 million).<sup>52</sup>

3.45 Human rights standard-setting has enabled Australia to strengthen dialogue with Thailand and the Philippines as our missions in those countries worked towards developing an Optional Protocol to the Convention on the Rights of the Child (CROC) on the Sale of Children, Child Pornography and Child Prostitution. Informal consultations were held preparatory to the annual negotiation sessions of the CHR Working Group.<sup>53</sup>

### **Making better use of the international human rights framework**

3.46 A number of submissions urged a stronger focus by Australia on the UNCHR and multilateral mechanisms. Australia should base any bilateral and regional dialogue on human rights squarely on the principles contained in the international instruments. In addition, greater support for the UNCHR would strengthen that institution, as well as our own influence in multilateral dialogue.

3.47 The need for reliance on the international framework in our dialogue was clear to Ms Elizabeth Evatt:

First of all, we must approach any regional dialogue on human rights within the context of the international framework, the international bill of rights and the United Nations framework for the protection of human rights. ... Within that, I see the three principles that we should aspire to here as being, firstly, that Australia be a good international citizen; secondly, that we be frank, open and direct, without compromise in our principles; and thirdly, that we understand that there are myriad ways in which we can deal with human rights issues in our own and other countries—in other words, not just having a head-to-head confrontation.<sup>54</sup>

3.48 Amnesty International perceived in the government's White Paper a 'shift in emphasis ... from support for the United Nations and its covenants, protocols and institutions to greater emphasis on bilateral relationships, particularly in the Asian region'.<sup>55</sup> Amnesty was concerned that the White Paper placed an emphasis on bilateralism that is out of step with international relations in the 1990s and will become increasingly so. It considered that moves away from multilateral influence such as that offered by the UN and particularly its Commission on Human Rights were regressive.<sup>56</sup>

3.49 The criticism by Dr Barns of Australia's inconsistent human rights activity over the last decade, also suggested an over-emphasis on bilateral approaches. He referred to

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52 *ibid.*, pp. 848-849.

53 *ibid.*, p. 849.

54 Evatt, Transcript, p. 67.

55 Amnesty International Submission, p. 693.

56 *ibid.*

statements by the Hon EG Whitlam AC QC, who commented on the human rights performance of the previous governments:

Australia is seen in Europe and Australia to be constantly making bilateral protests to other countries on human rights and constantly stalling on the most effective steps to bring human rights into a framework of international law.<sup>57</sup>

3.50 Criticism of Australia's failures in respect of human rights advocacy are not new. Dr Barns suggested that the previous government's policy of 'appeasement with respect to East Timor' has been continued by the present government. In addition, he was concerned that this government has retreated from the previous government's rhetorical commitment to strong international and regional frameworks, particularly in dealing with Indonesia and China.<sup>58</sup>

3.51 In its evidence, Amnesty International sought reinforcement of our commitment to human rights, to ensure that we do not give complicit approval to undermining them. It referred to Australia undermining a consensus that had previously existed to pressure on China over human rights at the UNCHR.<sup>59</sup>

3.52 CAA was also concerned that Australia's abstention in respect of China could weaken the CHR, which is so central a part of the international human rights system. The unified voice of UNCHR resolutions were said to be more effective than 'bilateral approaches which lack transparency, can result in a softening of human rights concerns, and can give rise to inconsistencies of approach towards different countries'.<sup>60</sup> While 'quiet diplomacy' can be effective, it must be set in the context of consistent, clearly and publicly articulated principles.

3.53 The Committee acknowledges perceptions in some submissions that the Australian government's focus on bilateral relations in its promotion of human rights may be at the expense of its contribution to multilateral mechanisms, and would regret this if it were the case. However, it is too early to judge whether an emphasis on bilateral mechanisms makes Australia's human rights dialogue less effective. The Committee supports the statement in the White Paper on Australia's Foreign and Trade Policy that, in promoting human rights, the government's approach would include:

... 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>61</sup>

## Regional approaches

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57 Dr I Barns and TEAR Australia, Submission, p. 253 citing the Hon Gough Whitlam AC QC, 'Human Rights in One Nation: The Keating Government and the Whitlam Legacy', Whitlam Revisited Conference, April 1992.

58 Dr I Barns and TEAR Australia, Submission, p. 253.

59 Amnesty International, Transcript, p. 78.

60 Community Aid Abroad, Submission, p. 971.

61 *In the National Interest*, op. cit., p. 14.

3.54 Australia's human rights activities at the regional level are discussed in more detail in the final chapter. For the purposes of this chapter, it should be noted that there is no regional inter-governmental arrangement in the Asia Pacific for the promotion and protection of human rights. This is the only region in the world without such a mechanism.

3.55 There are, however, strong initiatives in terms of institution building and institutional support. The Human Rights Commissioner submitted that HREOC has 'an effective role in promoting the development of domestic human rights commissions in countries in this region'.<sup>62</sup>

3.56 The Asia Pacific Forum of National Human Rights Institutions was formed following the July 1996 meeting in Darwin of national human rights commissions of the Asia Pacific region, with some regional governments and NGOs. The Forum is the only official regional human rights arrangement for the Asia Pacific.<sup>63</sup> While governments in the region, human rights NGOs and UN agencies may be observers, core membership of the Forum is confined to established independent national human rights institutions.<sup>64</sup> The Australian and New Zealand governments have allocated special funding to enable the HREOC to staff the Forum secretariat for three years.

3.57 ASEAN's traditional stance of consensus, and non-interference in the internal affairs of member states, has meant that it could not be used as a forum for human rights dialogue. However, indications are that it wavered slightly from this stance during the conflict in Cambodia in July 1997.<sup>65</sup> ASEAN's security organisation, the ASEAN Regional Forum (ARF) holds meetings at the same time as ASEAN Ministerial Meetings and the Post Ministerial Conferences. While Australia is not a member of ASEAN, it does take part in ARF, so that these meetings provide an opportunity for raising human rights issues, however informally.

3.58 Foreign Minister Downer reported Australia's encouragement for discussion of Burma's human rights' record during the formal session of ARF.<sup>66</sup> Mr Downer believed that:

... ASEAN is the key to human rights progress in Burma. ... As such I am convinced that Australia must work for change in Burma by working closely with ASEAN neighbours to influence Burma. If we set ourselves at odds with ASEAN over this issue I am convinced that we will lose the best chance we have to influence developments in Burma.<sup>67</sup>

In the event, Burma's membership of ASEAN in 1997 does not appear to have had a beneficial effect on its human rights record.

3.59 Professor Camilleri referred to heated exchanges between Western and Asian governments at the 1997 ASEAN meeting and suggested that human rights have become and

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62 HREOC, Submission, p. 1175.

63 *ibid.*, p. 1177.

64 *ibid.*, p. 1178.

65 Amnesty International, Transcript, p. 83.

66 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs to a Forum on Australia's Human Rights Obligations, 10 December 1996, DFAT/AusAID, Submission, p. 894.

67 *ibid.*

will remain a major issue on the regional agenda. Professor Camilleri suggested that these exchanges, and the events in Burma and Cambodia, brought into the open long-standing frustrations between Western and Asian governments. He foresees damage to bilateral relationships and multilateral processes and institutions unless the issue is handled carefully. On the other hand, if managed carefully, there could be benefits in terms of regional co-operation and improvements in human rights.<sup>68</sup>

3.60 Asia-Pacific Economic Cooperation (APEC) has maintained its original focus on economic growth, but Mr Bill Barker raised the eventual prospect of human rights discussions at economic forums such as this. He acknowledged the issue would be sensitive, but he considered the inclusion of human rights as inevitable. In his view, as labour rights and the effects of development on the right to subsistence have an impact on them, people from regional countries will press for international economic discussions to take account of their interests. Effective dialogue at this level would have as a pre-condition the development of trust through effective bilateral dialogue.<sup>69</sup>

## Effective human rights advocacy

3.61 Mr Downer has affirmed that the Australian government is committed to an active diplomacy aimed at improving the observance of international human rights standards. This involves the use of both public and private diplomacy to express Australia's concerns and to urge action to resolve problems.

Most fundamentally, the Australian Government seeks to be *effective* in its human rights work. In practice that means that we have to choose what will be the most effective method of improving human rights conditions in any particular case. In some cases that will mean strong public statements and in others that will mean that the bulk of the work must be done in private...<sup>70</sup>

3.62 The Minister referred to his outspokenness on Burma and also to intensive regional diplomacy, including putting Australia's concerns to his Burmese counterpart at the ASEAN Regional Forum in July 1996.<sup>71</sup> The Minister outlined his representations to Indonesian Foreign Minister Ali Alatas and to President Suharto. 'Whilst making Australia's concerns clear, I deliberately chose not to lecture or hector, but to offer Australia's assistance in seeking a constructive and peaceful resolution.'<sup>72</sup>

3.63 Australia's position in the region is an awkward one, and this was acknowledged. Australia is 'excluded from some regional fora, seen as [an] outsider or "big brother" in others'.<sup>73</sup> STARTTS referred to these difficulties and welcomed Australia's promotion of human rights through education and advocacy. It suggested human rights should be addressed with discretion but without apology. Notwithstanding the costs and benefits

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68 Camilleri, Submission, pp. 302-303.

69 Barker, Submission, p. 363.

70 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs to a Forum on Australia's Human Rights Obligations for Human Rights Day, 10 December 1996, DFAT/AusAID, Submission, p. 893.

71 *ibid.*, p. 894.

72 *ibid.*, p. 895.

73 STARTTS, Submission, p. 341.

(economically or politically), the prime reason for Australia's promotion of human rights should be humanitarian: promoting the rights and dignity of the human person, and Australia's approach should be fair and consistent.<sup>74</sup>

3.64 The Australian Council for Overseas Aid (ACFOA) noted the influence of some governments and institutions in the region which have no enthusiasm for human rights dialogue and which have considerable economic and political power. 'So the dilemma is: do we go soft on human rights, do we back-pedal on human rights or do we stick to our principles and try another way—try a new strategy'.<sup>75</sup>

3.65 Conscious of Australia's difficult position, in terms of its power and capacity to influence, the Australian Human Rights Foundation noted: 'Australia is in no position to lecture the region on human rights as the Americans and Europeans do. ... Australia's interest however lies in securing a mutually beneficial relationship with Asia'.<sup>76</sup> The Foundation sought a foreign policy which protected economic interests while maintaining ethical and moral considerations which are acceptable to the majority of Australians.<sup>77</sup>

3.66 The effectiveness of quiet diplomacy was questioned by Ms Evatt:

When we see a situation where human rights of whatever kind—economic, social, civil or political—are not respected, we should be prepared to say so. ... I do not believe that we can, in the long run, establish effective relationships in our region if we are not frank and open about human rights. ... We must find a way to speak the truth which is open and frank but has the objective of maintaining a relationship, not severing it—in other words, to maintain a frank dialogue.<sup>78</sup>

3.67 Quiet diplomacy was also rejected as a substitute for active promotion of human rights by the Asian Human Rights Commission.

The very essence of human rights is to stand up and be counted when circumstances require it. To do otherwise is not honest. Quiet diplomacy that is not supported by open measures when necessary is not going to win any respect, which is what happens most of the time.<sup>79</sup>

3.68 In the Committee's view, there is a place for quiet diplomacy, at times, just as there are requirements, occasionally for a more public stance by government as it promotes and protects human rights.

3.69 HREOC's submission in respect of the successful promotion of human rights in international relations was practical and comprehensive. Effective human rights advocacy in international relations has a number of clear requirements, including intelligence and

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74 *ibid.*, p. 340.

75 ACFOA, Transcript, pp. 302-303.

76 Australian Human Rights Foundation, Submission, p. 276.

77 *ibid.*, p. 277.

78 Evatt, Transcript, p. 70.

79 Asian Human Rights Commission, Submission, p. 166.

knowledge of Australia and of other countries in the Asia Pacific region. We should be aware that the history of these countries makes them wary of Western moralising and dominance.<sup>80</sup>

3.70 The second requirement for successful advocacy is sensitivity and balance. Nations in our region 'have achieved a great deal, sometimes with difficulty and often in spite of us' and we need to acknowledge these achievements.<sup>81</sup>

3.71 The third requirement, according to HREOC, is consistency. HREOC argues that Australia must apply the same standards to all and not be selective.<sup>82</sup> Tactics may be selective—choosing the response likely to be most effective in a situation—but principles must be uncompromising and consistency must be ensured. 'Human rights advocacy is undermined everywhere if one rule is applied to one country and another rule to another country for the same or similar violations.'<sup>83</sup>

3.72 The fourth requirement is a commitment to follow through, to do what we say we will do.

If a bad decision is taken or if we change our minds the change must reflect good principle and tactical considerations and it should be explained fully in those terms. A change of policy because of the short term convenience or economic self interest undermines human rights advocacy for the long term.<sup>84</sup>

3.73 The fifth requirement is honesty, both with and about ourselves. 'Australia's honest acknowledgment of its own human rights deficiencies has enhanced the effectiveness of our international human rights advocacy.' It follows that Australians who criticise our human rights record while overseas should not be criticised: not only are they exercising freedom of speech, but they demonstrate that we are open to honest criticism.<sup>85</sup>

3.74 HREOC's last requirement for human rights advocacy is:

... collaboration with like-minded countries, with non-government organisations and with United Nations agencies. Australia is not in the business of human rights advocacy by itself. It is part of the international community and it is seeking to be a good international citizen. That requires acting as a member of the community and not as a loner.<sup>86</sup>

HREOC's concern with respect to the resolution on China's record at the CHR was that:

... the greatest damage to the cause of human rights advocacy resulted not from the decisions not to co-sponsor but from the division of

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80 HREOC, Submission, p. 1171.

81 *ibid.*, p. 1172.

82 *ibid.*

83 *ibid.*

84 *ibid.*, pp. 1172-1173.

85 *ibid.*, p. 1173.

86 *ibid.*



opinion and strategy among states that consider themselves human rights advocates.<sup>87</sup>

3.75 Tactics should play a significant role in human rights advocacy:

... if human rights advocacy is to be effective, different tactics will be adopted at different times in relation to different countries according to what we judge to be most effective. Consistency will be served by a clear articulation of principle and of the basis for our tactical choices, not by always coming to exactly the same kind of response.<sup>88</sup>

3.76 In HREOC's view there is a role not only for dialogue, but also for public international criticism of human rights violations and for quiet diplomacy.<sup>89</sup> However, dialogue 'requires the engagement of the dialogue partner' and HREOC's submission refers to the failure of Australian human rights delegations to China in 1991 and 1992 because the Chinese government was not appropriately or fully engaged. HREOC argues this was clear from the failure of that government to respond to Australian invitations to send delegates for inspections and discussions here.<sup>90</sup> More recent exchanges with China appear to be more promising, however.

3.77 In some circumstances, a 'big stick' will be needed. While economic and investment sanctions of South Africa were an important means of changing the apartheid regime, the human rights situation in China deteriorated when the West isolated it over 25 years. The lesson to be drawn from this is that the 'big stick' must be used sparingly, and only when there is:

- broad international support;
- endorsement through the official organs of the UN; and
- assessment that this is the means most likely to improve human rights.<sup>91</sup>

3.78 The Committee supports generally, as practical and constructive, HREOC's requirements for the successful advocacy of human rights.

## **Death penalty**

3.79 While evidence provided to the Committee did not emphasise the use of the death penalty, the Committee is concerned that in any discussion of regional human rights, the issue of capital punishment should be mentioned. Separate from any allegations or evidence of extra-judicial, summary or political executions, the imposition by regional states of the death penalty has been the subject of debate, particularly by the UN Commission on Human Rights and NGOs such as Amnesty International. In 1997, the UNCHR called on states which have not yet abolished the death penalty to consider suspending executions, with a view to abolishing the death penalty completely. The resolution was adopted by a vote of 27 in favour and 11 against, with 14 abstentions.

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87 *ibid.*

88 *ibid.*, p. 1174.

89 *ibid.*

90 *ibid.*

91 *ibid.*, pp. 1174-1175.

3.80 The Committee shares the opinion of the UN High Commissioner for Human Rights, Mrs Mary Robinson, that the increasing use of the death penalty by states is a matter of serious concern.<sup>92</sup> The Committee also notes Amnesty International's reports that at least 4272 prisoners were executed in 39 countries in 1996; this represents an increase of 30 per cent over 1995 figures. Amnesty reported that the 'leap' in world executions was due to China's increased use of the death penalty during its anti-crime drive.<sup>93</sup>

## Development assistance and human rights

3.81 There is increasing recognition that human rights is central to development assistance. This changing role of human rights in development assistance has been documented by the OECD's Development Assistance Committee<sup>94</sup> which noted that in the 1970s, aid was only indirectly related to human rights and democracy, while the focus was on aid and economic growth which, it was assumed, would automatically yield democracy.

3.82 Until the 1990s, development donor agencies did not generally pursue civil and political rights. However, in this decade, three ways have been identified in which donor governments and NGOs can support recipient governments and indigenous NGOs. These are technical and financial assistance (which help to promote human rights); persuasion (involving international conferences, policy dialogues, research, meetings and debates); and pressure (applied through public declarations to withdraw personnel, impose sanctions, or through conditionality).<sup>95</sup>

3.83 Historically, Australia's aid program has appeared to be isolated from human rights considerations and, in particular, from civil and political rights. While there have been attempts to link aid policy with human rights, ACFOA stated it would be difficult to identify a document that is AusAID's human rights policy, although it noted that the Foreign Minister had spoken publicly about the role of the aid program in fostering human rights and good governance.<sup>96</sup>

3.84 Australia's aid program is focused mainly on the Asia Pacific and is intended to promote human rights in terms of economic, social, cultural, civil and political rights. ACFOA was conscious of the opportunity that the program (which is significant in the region), presents in terms of dialogue about human rights and the offer of assistance which will enhance economic, social and cultural, as well as civil and political rights.<sup>97</sup>

3.85 Development assistance, or co-operation, has a particular role to play in strengthening civil and political rights. The difficulty lies in incorporating human rights principles into operational guidelines.<sup>98</sup> CAA also flagged the uncertainty that exists on the

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92 United Nations Commission on Human Rights, *Media Release*, 4 February 1998.

93 Amnesty International *Media Release* 57/97, 'Amnesty International Backs United Nations Call to Limit Executions', 3 April 1997.

94 DAC Expert Group in Aid Evaluation: *Evaluation of Programs Promoting Participatory Development and Good Governance: Synthesis Report*, 1997, referred to by ACFOA, Submission, p. 747.

95 *ibid.*

96 ACFOA, Transcript, p. 313.

97 DFAT/AusAid, Submission, p. 868.

98 ACFOA, Submission, p. 747.

part of NGOs and governments as to how to address human rights concerns effectively through the aid program.<sup>99</sup>

3.86 The Foreign Minister outlined the government's approach to development co-operation:

Australia's aid program not only promotes economic, social and cultural rights but also civil and political rights. The Australian Government recognises that the development of these rights must be safeguarded and nurtured by appropriate institutions and structures. Australia's development cooperation program, through AusAID, will continue to support democratic development and human rights institution building in developing countries. The Government is particularly supportive of helping countries in the Asia Pacific region to develop strong, independent national human rights institutions. These are an important means of promoting adherence to international human rights standards.<sup>100</sup>

3.87 The Minister again represents the government's goal as effective outcomes, based on a commonsense approach, rather than 'grandstanding'.<sup>101</sup> In relation to civil and political rights, the aid program has a focus on practical activities in:

- accountability of government and the rule of law;
- participation of civil society in democracy;
- protection of vulnerable groups; and
- institutional strengthening to protect human rights.<sup>102</sup>

3.88 The risks associated with inadequate attention to the place of human rights in aid were spelled out by the Human Rights Council of Australia. Development assistance should have as its objective the realisation of rights:

At the moment, many donor agencies see their role as being a kind of underhand, trade promotion branch of the government—and sometimes not even that underhand—and many donors in fact see their role even more politically as being part of the national interest in terms of influence-peddling in exchange for charity, if you like.<sup>103</sup>

## **'Good governance'**

3.89 Use of the archaic word 'governance' was revived and popularised by the World Bank in the late 1980s, as a general term applying to the operation of societies and

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99 Community Aid Abroad, Submission, p. 978.

100 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs, to a Forum on Australia's Human Rights Obligations for Human Rights Day, 10 December 1996, DFAT/AusAID, Submission, p. 892.

101 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs, 'Promoting Good Governance and Human Rights through the Aid Program', at the DFAT/NGO Human Rights Consultations, 27 August 1997, DFAT/AusAID, Submission, p. 902.

102 DFAT/AusAID, Transcript, p. 6.

103 Human Rights Council of Australia, Transcript, p. 106.

economies, covering both government and non-government activities. 'Governance', usually with the adjectival form 'good governance' has been taken up by the UN and is a well recognised term in 'UN-speak'. No examples of the term 'bad governance' have been found. The term 'corporate governance' is creeping into the language of accountancy. Critics of the term suggest that it contributes to confusion because users have quite different concepts of what they mean. This was demonstrated during public hearings of this inquiry.

3.90 The terms 'governance' and 'good governance' have been taken up by DFAT. Recently, Australia's aid program has increased its focus on governance, with greater support for activities which support civil and political rights.<sup>104</sup> In response to the Simons review,<sup>105</sup> a new objective was announced for the aid program: advancing Australia's national interest by assisting developing countries to reduce poverty and achieve sustainable development.<sup>106</sup>

3.91 The Foreign Minister considers good governance to be fundamental to poverty reduction, something that is essential to human rights:

Good governance creates the environment in which civil and political rights are respected and promoted. At the same time, the exercise of civil and political rights through participatory processes is essential to the achievement of sustainable development because it helps to ensure government accountability and effectiveness.<sup>107</sup>

3.92 While human rights falls well within the sector of governance in the aid program (and so could bring within the scope of the program promotion of the rights of women, indigenous people, and children, assistance in the development of human rights advocacy organisations and national human rights institutions, and training in human rights), ACFOA was concerned that 'governance' could be interpreted simply as ensuring financial transparency and probity.<sup>108</sup>

3.93 Because there is scope within governance to promote human rights, ACFOA considered that the identification of governance as one of the five major areas that the aid program would cover was a positive development from the Simons review and the government's response to the review.<sup>109</sup> ACFOA also noted that the Simons review had blurred concepts of good governance and human rights, implying that provision of aid for good governance necessarily improved human rights.<sup>110</sup>

3.94 CAA objected to the trend in AusAID and DFAT towards use of the term 'good governance'. Its concern was that human rights is being overlooked by the use of this term. Its meaning is uncertain and it is used to refer often to efficiency in government management practices rather than creation of a human rights culture. CAA suggested that human rights should form the framework into which good governance fits and it called for a greater focus

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104 DFAT/AusAID, Submission, p. 868.

105 *One Clear Objective: Poverty reduction through sustainable development*, April, 1997.

106 DFAT/AusAID, Transcript, p. 6.

107 Address by the Hon Alexander Downer, MP, Minister for Foreign Affairs, 'Promoting Good Governance and Human Rights through the Aid Program', at the DFAT/NGO Human Rights Consultations, 27 August 1997, DFAT/AusAID, Submission, p. 897.

108 ACFOA, Transcript, p. 312.

109 *ibid.*

110 ACFOA, Submission, p. 749.

on human rights within the AusAID program.<sup>111</sup> The Committee agrees that difficulties are posed by use of the term 'good governance' and is concerned that this may lead to a confusion of good management practices with human rights observance, to the detriment of an appropriate awareness of human rights considerations in development assistance.

3.95 In the OECD the term 'governance' is being suggested as an appropriate term to describe the need to develop and coordinate global policy in areas involving the interaction of national states and international corporations (for example, transborder data or money flow).

3.96 In its evidence to the Committee, AusAID noted the debate about use of the word 'governance' and agreed it was difficult to define. However, AusAID's intention was to take a practical approach. It starts from the view that if government policies are poor, or if their capacity to implement policy and deliver services is weak, then development will be impaired. In AusAID's view, there is a close relationship between good governance and human rights:

The key to this relationship is the fact that the obligations which correspond to human rights—whether they be economic ones, such as the right to an adequate standard of living, or social equality before the law—fall to a significant degree on the state. If state institutions do not or cannot meet these obligations, human rights will not be protected; so the role of the state, as we see it, is pretty central.<sup>112</sup>

### **The Asian crisis and conditionality**

3.97 The Asian economic crisis has brought a strong reminder about the use that may be made of development assistance by our neighbours, and whether Australia should consider attaching conditions—when we provide assistance and encouragement towards economic reform should we also press for political reform?

3.98 Following India's nuclear test in May 1998, Australia was quick to announce the suspension of all but humanitarian aid. The Australian government also condemned strongly Pakistan's nuclear tests. The contrast with our more sanguine response to the Indonesian government's repression of demonstrations was sharp.

3.99 The Australia Tibet Council referred to the need to mainstream human rights and, in doing so, drew attention to the opportunity presented by the Asian economic crisis:

For example, in the Asian bail-out packages, as they are commonly called, human rights has not even had a look-in. ... Australia contributes both bilaterally and multilaterally in a very proper recognition that these are our neighbours and this does impact on us. If human rights had a stronger voice, there ought to be ways in which it could be institutionally recognised that an integral component of such a bail-out package must include ensuring the civil and political rights of a populace, who are the long-term guarantee that such a bail-

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111 Community Aid Abroad, Transcript, p. 249.

112 DFAT/AusAID, Transcript, p. 262.

out package can in fact be administered, and we do not go back to the old days of crony capitalism.<sup>113</sup>

3.100 Conditionality in aid is widely accepted as something which must be used with care, as most aid is provided for humanitarian purposes, and its withdrawal may damage the most vulnerable, without affecting the offending regime. ACFOA was concerned that aid conditionality not be used as a blunt political weapon because it could jeopardise essential activities. However, positive conditionality could be useful, that is, encouragement to undertake certain action.<sup>114</sup>

3.101 ACFOA suggested possible increases of aid and corresponding approaches to aid with improvements in the human rights situation, rather than withdrawing aid when confronted with human rights violations in a recipient country. Where violations are extreme, government to government aid may not be appropriate. Assistance through channels such as churches and NGOs could address that difficulty, without jeopardising the needs of ordinary people. This is the case at present with Burma.<sup>115</sup>

3.102 In practical terms, the use of positive conditionality may be limited where a donor government is fully extended in terms of the development assistance it proposes to offer the recipient. Australian public opinion on repressive regimes in the region may also limit the use that the Australian government would wish to make of this option.

### **Improving the place of human rights in aid**

3.103 The unique role that development assistance has to play in the realisation of rights was highlighted by the Human Rights Council of Australia. It had straightforward suggestions for implementing human rights principles into the operation of development programs.

3.104 First, it would be necessary to establish clearly and publicly a policy such that the objective of the aid program is the realisation of human rights—economic, social and cultural, as well as civil and political. The result would be that in policy dialogue and the choice of programs that will be funded, realisation of rights will have priority.<sup>116</sup>

3.105 The Council gave an example relating to education assistance. In this regard it would be necessary to look to the covenant and consider what the right to education entails: free primary education for all. So, the receiving country should be examined to see what levels of education there are and what access there is to that. In essence, by examining the content of the right, the obligation of governments in relation to the right will serve to establish priorities and programs of the development program.<sup>117</sup>

3.106 The isolation of human rights from aid, and lack of dedicated expertise within AusAID was referred to by ACFOA. Although there have been improvements, in ACFOA's view, the aid program is still operating in a vacuum.

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113 Australia Tibet Council, Transcript, p. 217.

114 ACFOA, Transcript, pp. 316-317.

115 *ibid.*

116 Human Rights Council of Australia, Transcript, p. 106.

117 *ibid.*

3.107 ACFOA recommended that the human rights aspect be integrated into policy dialogue at consultations between AusAID and recipient governments.<sup>118</sup> The inclusion of human rights in policy dialogue with aid recipients should be on the basis that there are common ratifications by both parties of international instruments and an undertaking given by states when they sign the UN charter to respect and promote human rights (this is part of the Scandinavian aid programs). There is an expectation by Australian taxpayers that aid should respect and promote human rights.<sup>119</sup>

3.108 ACFOA made a number of recommendations, which the Committee endorses. These include:

- the expansion of Australia's commitment to human rights in the overseas aid program into a more dedicated program in AusAID which promotes awareness, coherence and a strategy for human rights. (Towards this, there should be establishment of a human rights policy for AusAID, human rights training for all AusAID staff and consultants, inclusion of human rights in policy dialogue between AusAID and aid recipients, both governments and NGOs, development of explicit AusAID policies on indigenous rights, children and vulnerable groups, the inclusion of human rights perspectives and language in AusAID publications and materials, guidelines on human rights for project identification, design, and evaluation, a dedicated human rights officer who would work in collaboration with DFAT's human rights section, and allocation of a percentage of aid for dedicated human rights projects);<sup>120</sup>
- incorporation by AusAID of international human rights instruments into program design by ensuring, for example, that the project refers to the relevant UN human rights instrument which it seeks to promote;<sup>121</sup>
- a long-term program of human rights education with aid recipient governments in the region should be developed as part of AusAID's contribution to the United Nations Decade on Human Rights Education;<sup>122</sup>
- AusAID develop a policy on conditionality of aid, with input from NGOs and consultants, and should discuss this policy with recipient countries during consultations.<sup>123</sup>

3.109 The Committee recommends that:

- 4. AusAID increase the emphasis on human rights in the overseas aid program by including the following measures:**
- (a) establishing a human rights policy for AusAID;**
  - (b) introducing human rights training for all AusAID staff; and**

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118 ACFOA, Transcript, p. 314.

119 ACFOA, Submission, p. 751.

120 *ibid.*, pp. 751-752.

121 *ibid.*, p. 752.

122 *ibid.*

123 *ibid.*, p. 754.

**(c) including the issue of human rights in policy dialogue between AusAID and aid recipients.**



- 5. AusAID:**
- (a) incorporate relevant international human rights instruments into program design;**
  - (b) develop a program of human rights education with aid recipient governments in the region; and**
  - (c) invite contribution from NGOs and consultants to assist in developing a policy on conditionality of aid. This policy should be explained to recipient countries before the grant of aid.**

