The Parliament of the Commonwealth of Australia

THE SENATE
TABLED PAPER

Joint Committee on Foreign Affairs, Defence and Trade

DEPARTMENT OF THE SENATE
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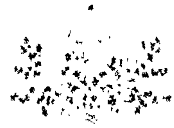
5 DEC 1994

A Review of Australia's Efforts to Promote and Protect Human Rights

November 1994

Australian Government Publishing Service
Canberra



November 1994

A REVIEW *of* AUSTRALIA'S EFFORTS *to* PROMOTE *and* PROTECT HUMAN RIGHTS

JOINT STANDING COMMITTEE ON

FOREIGN AFFAIRS, DEFENCE AND TRADE

The Parliament of the Commonwealth of Australia

Between the IDEA

And the reality...

Falls the SHADOW

The Parliament of the Commonwealth of Australia

THE SENATE
- 5 DEC 1994
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DEPARTMENT OF THE SENATE
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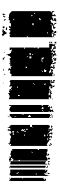

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To renounce one's liberty is to renounce one's quality as a man, the rights and also the duties of humanity. For him who renounces everything there is no possible compensation. Such a renunciation is incompatible with man's nature, for to take away all freedom from his will is to take away all morality from his actions. In short, a convention which stipulates absolute authority on the one side and unlimited obedience on the other is vain and contradictory. Jean-Jacques Rousseau, 1762.

Contents

	Page
List of Appendices	xi
Tables	xii
Terms of Reference	xiii
Membership of the Committee	xiv
Abbreviations	xvi
Foreword	xix
Summary of Conclusions and Recommendations	xxi

Chapter One

HUMAN RIGHTS IN 1993-94 1

- The World Conference on Human Rights 2
- The International System 3
- Regional Human Rights 4
- Human Rights as a National Responsibility 9

Chapter Two

THE UNITED NATIONS 11

- The Context 11
- Reform of the UN 12
- Funding Human Rights at the UN 13
- Structural Reform of the UN 16
- The Structure of the UN Committees 18
- New Covenants and Conventions 22
  - Indigenous Peoples' Convention 22
  - Violence Against Women Convention 22
- The Status of the Human Rights Conventions in Australia 22

. The International Covenant on Civil and Political Rights (ICCPR) 23
. International Convention on the Elimination of Racial Discrimination (ICERD) 25
. Genocide Convention 26
. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Political Rights of Women (CPRW) 26
. International Convention on the Rights of the Child 27
. International Labour Organisation (ILO) Conventions 28
- ILO Convention No 169: Indigenous and Tribal Peoples in Independent Countries 28
. Recent Developments 29
. Reporting 30
. Resources 30

Chapter Three

AUSTRALIAN HUMAN RIGHTS FRAMEWORK 37

. Policy 38
- Human Rights Treaties 38
- Coordination and Consultation 39
- States' Perspective 42
. The Federal Parliament 47
- Ratification 47
- A Joint Standing Committee on Human Rights 49
Implementation and Monitoring 50
- Implementation - The National Action Plan 53
- Implementation - Human Rights Centre for Dialogue and Cooperation 53
- Implementation - Human Rights Education 55
. Parliament - The States 56
- Ratification 56
- Implementation and Monitoring 56
. The Impact of Treaties on the Federal/State Distribution of Powers and National Sovereignty 58
- The Bill of Rights 59
- The Tasmanian Case 62
- Electoral Reform 63

Chapter Four

AID AND TRADE AND HUMAN RIGHTS 67

. Introduction 67
. Australian Policy 69
. Multi-lateral and Bilateral Programs 73
. Population Programs 73
. National Institutions 75
. Defence Cooperation 77
. Defence Exports 79

Chapter Five

PEACEKEEPING 83

. The Context 84
- Peacekeeping and Human Rights 84
- Post Cold War Peacekeeping 85
. Australian Involvement in UN Peacekeeping Operations 87
- Cyprus(UNFICYP) 1964 - 87
- Nambia (UNTAG) 1989 - 1990 87
- Somalia (UNOSOM) 1992 - 1993, (UNITAF) 1992 - 1993 and (UNOSOMII) 1993 - 88
- Cambodia (UNTAC) 1992 - 89
- Preparation and Training 90
- The Outcome 93
. The Australian Electoral Commission (AEC) 94
. The Australian Federal Police (AFP) 95
. The Justice Package 96
. Non-Government Organisations and Volunteers 100
. Landmines 102
- The Scale of the Problem 102
- Current Measures 103
. Conclusion 105

Chapter Six

INDIGENOUS PEOPLES RIGHTS 107

. Definitions 108
. The Terms of Reference of the Committee 111
. The International Year of the World's Indigenous People 112

. Australian Efforts to Promote Indigenous Rights 113
- Collective Rights 115
- Self-determination 116
- Customary Law 117
- Land Rights 119

Chapter Seven

VISIT TO THE NORTHERN TERRITORY 121

. Discussions with the Northern Territory Government 123
- Aboriginal Eye Health Program 123
- Housing 124
- Other Programs 124
. Pigeon Hole 125
. Kalkaringi/Daguragu 126
. Mistake Creek 127
. Education and Training 127
. Health 128
. Housing 129
. Planning, Integration and Funding 130
. Conclusions 131

Chapter Eight

THE HUMAN RIGHTS OF WOMEN 133

. Introduction 134
. Australia's International Efforts 135
. Declaration on the Elimination of Violence Against Women 136
. National Action 136
. Commitment Under CEDAW 138
- Domestic Violence 139
. International Issues 140
- Rape as a Weapon of War 140
. International Conference on Population Development (ICPD) 142
. Coercive Family Planning 144
. Exploitation, Prostitution and Traffic in Women 147
. Conclusions 148

Chapter Nine

PROTECTING THE RIGHTS OF CHILDREN 151

. Introduction 152
. Aims of the Convention 155
. Australia and the Convention on the Rights of the Child 155
- Criticism of the Convention in Australia 155
- Australia's First Report Under the Convention 156
- Aboriginal and Torres Strait Islander Children 157
- Juvenile Justice 157
- Asylum Seekers - Children in Detention 159
. International - Children as Victims of Violence 160
- Summary of Arbitrary Execution and Torture of Children 160
- Traffic in Children 162
- Child Sex Tourism 163

Chapter Ten

THE RIGHTS OF WORKERS 165

. Introduction 165
. Australia and the ILO 167
. Regional Labour Conditions 168
. Australian Regional Technical Assistance Program 170
. Forced Labour in China and Burma 171
. Child Labour 173

Chapter Eleven

THE RIGHTS OF ASYLUM SEEKERS 177

. Introduction 178
. The International Environment 178
. Australia as a Destination Country 179
- Refugee Law 179
- Human Rights Law 180
- Australia and the UNHCR 182
- Detention Practices: Community Criticism 182
- Rationale for Detention 184
- Provision of Services 187
- Cost of Detention 187
- Comparable International Practices 187

. Plight of Returnees 188
- Chinese Boat People 188
- Chinese Students 189
- The Cambodians 189
. Illegal Trafficking of People 189

Chapter Twelve

CIVIL AND POLITICAL RIGHTS 193

. Introduction 194
. Burma 194
. Tibet and China 195
. Vietnam 197
. Israel and the Occupied Territories 199
. Lebanon 200
. Kuwait 200
. Sudan 201
. Kenya 203
. Indonesia 204
. Sri Lanka 207
. The Balkans 208
. Religious, Racial and Other Discrimination 208
. Environmental Rights 210

Chapter Thirteen

MINORITY RIGHTS AND SELF-DETERMINATION 211

. The Context 211
. The Role of the UN 214
. The Balkans 216
- The Process of Ethnic Cleansing in the Former Yugoslavia Republic 220
. Kurdish Minorities 225
. The Sudan 228
. Sri Lanka 229
. Tibet 232
. East Timor 234
. Bougainville 236
. Ethnic Minorities in Burma 237
. Conclusion 242

Appendices

1 List of Submissions 245

2 List of Public Hearings and Witnesses 255

3 List of Exhibits 267

4 Principles and Procedures for Commonwealth - State Consultation on Treaties 291

5 The Principles Relating to the Status of the National Institutions Competence and Responsibilities (Paris Principles) 295

6 Australia's Participation in UN Peacekeeping Operations 1946-1993 301

7 Where Indigenous Peoples Live 305

8 Draft Declaration on the Rights of Indigenous Peoples 309

9 ILO Conventions 321

10 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 325

Minority Report - Senator Dee Margetts 329

Tables

2.1	International Treaties for the Protection of Human Rights	32
2.2	Australia's Reports to the UN Human Rights Committees	34
5.1	The Numbers Involved in Peacekeeping Operations	86
5.2	Where The Mines Are	102
8.1	Birth Control Operations in China 1971 - 1989	146
9.1	Literacy	161

Terms of Reference

To consider and report on the Government's international efforts to promote and protect human rights, as contained in an annual report by the Department of Foreign Affairs and Trade, with particular reference to:

- Australia's status in relation to the various United Nations human rights conventions [and the question of further action yet to be taken by Australia pursuant to some of those conventions];
- the most recent reports presented by Australia to any of the United Nations human rights committees; and
- the responses made in the previous year by any of the United Nations human rights committees to Australia's reports submitted to them.

Referred by the Minister for Foreign Affairs on 20 May 1993.

Membership of the Committee

37TH PARLIAMENT

Senator S Loosley (Chairman)
Hon M J R MacKellar MP (Deputy Chairman to 18 February 1994)
Mr R G Halverson OBE MP (Deputy Chairman from 23 February 1994)

Senator M Beahan (to 1 February 1994)
Senator V W Bourne
Senator D G C Brownhill
Senator C Chamarette (to 30 September 1993)
Senator H G P Chapman
Senator B K Childs
Senator N A Crichton-Browne
Senator K J Denman (from 10 February 1994)
Senator B Harradine
Senator G J Jones
Senator D Margetts (from 30 September 1993)
Senator D MacGibbon (to 19 August 1993)
Senator The Hon M Reynolds
Senator Baden Teague (from 19 August 1993)
Mr R A Atkinson (from 23 February 1994)
Mr A R Bevis MP (to 10 May 1994)
Hon N Blewett MP (to 11 February 1994)
Mr G Campbell MP
Hon M J Duffy MP (from 9 February 1994)
Mr L D T Ferguson MP
Mr E J Fitzgibbon MP
Mr G D Gibson MP
Mr E L Grace MP
Mr D P M Hawker MP
Mr N J Hicks MP
Mr C Hollis MP
Mr D F Jull MP (from 30 June 1994)
Hon R J Kelly MP (from 10 May 1994)
Hon J Kerin MP (to 22 December 1993)
Mr J V Langmore MP
Hon L S Lieberman MP
Hon J C Moore MP (to 30 June 1994)
Hon L R S Price MP
Hon D W Simmons MP
Rt Hon I McC Sinclair MP
Mr W L Taylor MP

Secretary: Ms J Towner (from May 1994)
Acting Secretary: Mr P Stephens (to May 1994)

Committee Staff:
Mrs L Cowan (from August 1994)
Mrs D Picker (to August 1994)
Mrs E Robertson (to February 1993)

Membership of the Human Rights Sub-Committee

37TH PARLIAMENT

Senator S Loosley (Chair)
Senator Baden Teague (from 1 September 1993, Deputy Chair from 18 February 1994)
Hon M J R MacKellar (Deputy Chairman to 18 February 1994)

Senator M E Beahan (to 1 February 1994)
Senator V W Bourne
Senator C M A Chamarette (to 30 September 1993)
Senator K J Denman (from 10 February 1994)
Senator B Harradine
Senator the Hon M Reynolds
Mr L D T Ferguson, MP (to 19 August 1993)
Mr E J Fitzgibbon MP
Mr G D Gibson MP
Mr C Hollis MP
Rt Hon I McC Sinclair MP

Secretary: Ms M Swieringa

Sub-Committee Staff:
Mr A Burn (from July 1994)
Mr G Mount (from September 1994)
Ms P Ahlgren (from July 1994)
Ms M Kawaja (to June 1994)
Ms M Cahill (to July 1994)
Ms D Christophers (to July 1994)

Abbreviations

ACTU	Australian Council of Trade Unions
ACFOA	Australian Council for Overseas Aid
ADF	Australian Defence Force
AEC	Australian Electoral Commission
AEC	Aboriginal Educational Policy
AFP	Australian Federal Police
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIDAB	Australian International Development Assistance Bureau
ALRC	Australian Law Reform Commission
ASEAN	Association of South East Asian Nations
ASILO	ILO Project to Support Programs in Asia
ATSIC	Aboriginal and Torres Strait Islander Commission
BKKBN	Indonesia's National Family Coordination Board
BRA	Bougainville Revolution Army
CAT	Convention Against Torture
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
CDEP	Community Development Employment Projects
CHIP	(ATSIC) Community, Housing & Infrastructure Program
CHR	Commission on Human Rights
CNRM	National Council of Maubere Resistance
CPRW	Convention on the Political Rights of Women
CSCE	Conference on Security and Cooperation in Europe
CSHA	Commonwealth/State Housing Agreement
CSW	Commission on the Status of Women
DAB	Democratic Alliance of Burma
DFAT	Department of Foreign Affairs and Trade
DHCS	(Northern Territory) Dept of Health and Community Services
DIEA	Department of Immigration & Ethnic Affairs
DIR	Department of Industrial Relations
DORS	Determination of Refugee Status
ECAJ	Executive Council of Australian Jewry
ECHR	European Convention on Human Rights
ECOSOC	Economic, Social and Cultural Committee
EMPLA	ILO Employment & Labour Administration (Project for South Pacific Countries)
EXCOM	Executive Committee of the High Commissioner's Program
FYROM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
GNP	Gross National Product

HRC	Human Rights Commission
HREOC	Human Rights and Equal Opportunity Commission
HWT	Herald and Weekly Times
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICJ	International Commission of Jurists
ICPD	International Conference on Population Development
ICRC	International Convention on the Rights of the Child
ILC	International Labour Congress
ILO	International Labour Organisation
IWC	Inhumane Weapons Convention
JNA	Yugoslav National Peoples' Army
KIO	Kachin Independence Organisation
KNLA	Karen Liberation Army
LACA	Standing Committee on Legal & Constitutional Affairs
LAOC	Law of Armed Conflict
LDC	Least Developed Countries
LTTE	Liberation Tigers of Tamil Eelam
MFN	Most Favoured Nation
NFF	National Farmers Federation
NGO	Non-government Organisation
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OPM	Organisasi Papua Merdeka
OSW	Office of the Status of Women
PKK	Partiya Karteren Kurdistan
PLO	Palestine Liberation Organisation
PNGDF	Papua New Guinea Defence Force
PRC	Peoples Republic of China
SCAG	Standing Committee of Attorneys-General
SIDCDE	Standing Inter-departmental Committee on Defence Exports
SLORC	State Law and Order Restoration Council
SPLM	Sudan Peoples' Liberation Movement
SRRA	Sudan Relief and Rehabilitation Association
SSA	Shan State Army
TAR	Tibet Autonomous Region
TEAK	Training and Environmental Awareness for the Karen People
TGLRG	Tasmanian Gay & Lesbian Rights Group
TIN	Tibet Information Network
TRIPS	Trade Related Intellectual Property
TWA	Tibetan Womens' Association
UN	United Nations
UNAA	United Nations Association of Australia
UNCIVPOL	United Nations Civilian Police
UNCSD	United Nations Commission on Sustainable Development

UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific & Cultural Organisation
UNFICYP	United Nations Forces in Cyprus
UNGA	United National General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Committee
UNFPA	United Nations Fund for Population Activities
UNITAF	Unified Task Force in Somalia
UNMCTT	United Nations Mine Clearance Training Team in Afghanistan
UNOSOM	United Nations Operations in Somalia
UNTAC	United Nations Transitional Authority on Cambodia
WGIP	Working Group on Indigenous Populations
WHO	World Health Organisation
WTO	World Trade Organisation

Foreword

1. The first report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on human rights was tabled in December 1992. In the Thirty-Seventh Parliament a further reference was given to the Committee by the Minister for Foreign Affairs, Senator Gareth Evans, to inquire into and report on Australia's international efforts to promote and protect human rights.

2. The Committee held a preliminary hearing for the inquiry on 1 June 1993. Overall, 20 public hearings were conducted in Canberra, Melbourne, Sydney and Adelaide, generating over 1300 pages of transcript. In March 1994, the Committee went to the Northern Territory to visit remote Aboriginal communities. One hundred and forty submissions, constituting over 2500 pages, were also received. Most submissions were accompanied by large and weighty attachments and these are represented by the 157 separate exhibits listed in Appendix 3.

3. As with the first inquiry, the matters raised have been very wide-ranging, covering philosophical questions and international law, the complexities of the United Nations' human rights system, reform of the UN, the place of human rights in bilateral relations and regional affairs, domestic policy on matters as diverse as peacekeeping, aid and human rights and Australia's compliance with treaties relating to indigenous people, women, children and workers. Issues of the Federal\State constitutional balance and the need for a Bill of Rights were also canvassed. As well as the core matters of the inquiry, there was a constant stream of requests for representation on behalf of individuals or groups, both in Australia and abroad, who found their human rights abused. Many of the situations were particularly tragic but with minimal resources the secretariat was unable to do as much as it would have wished.

4. While the Committee received a large number of submissions on human rights abuses in other parts of the world, the submissions did not address all human rights problems throughout the world today. There are obvious gaps in the evidence. Those submissions which were received were considered carefully. They are treated as representative of problems rather than as a definitive list of current human rights abuses. Moreover, claims were checked where possible against the findings of reputable international human rights bodies or they are presented in the report as claims only.

5. The research needs associated with such a variety of issues were considerable and the sub-committee resources, even with the *ad hoc* arrangements which were made, were stretched to meet the demand. The Committee believes that this level of interest in and concern for human rights will only increase. Therefore, the Committee proposes that the sub-committee should be constituted as a separate Joint Standing Committee of the Parliament. (See Recommendation 14)

6. In the event of the Committee becoming a committee in its own right, it would look to focussing its attention more on specific aspects of the human rights agenda, separate the policy aspects of its inquiries from the representational aspects and make briefer and more frequent reports to the Parliament.

7. In the current report, the emphasis is on the implementation of international human rights standards; that is on the effectiveness of the monitoring mechanisms and processes and the achievement of real improvements for individuals. The Committee acknowledges that covenants, conventions and laws can only go so far, that 'the question of human rights in its broader sense is an attitude and a performance, rather than a mere rigid adherence to a legal requirement'[1]. Yet it does see laws as a vital starting point, a framework into which must fit the goodwill, the informed understanding and the commitment of human beings individually and collectively. To marry theory and practice successfully is the challenge on questions of human rights as it is in every other area of human endeavour. So far theory has outstripped practice, but hope remains.

8. I wish to thank my colleagues for their dedicated commitment to the very great demands of this inquiry. I extend appreciation also to the staff of the secretariat, Margaret Swieringa, Margaret Cahill, Patricia Ahlgren and Rashida Khanbhai for their assistance in the conduct of the inquiry and the preparation of the report. Marie Kawaja, Adrian Burn, Donna Christopher and Gavin Mount were attached to the secretariat for part of the inquiry and made invaluable contributions.

Senator Stephen Loosley
Chairman
Human Rights Sub-Committee

November 1994

[1] Acting Chairman, Hon MJR MacKellar, Evidence, 28 January 1994, p. 898

Conclusions and Recommendations

Chapter One

The pursuit of human rights is a matter of great importance to Australians; it is one of our defining characteristics. There is broad support for human rights principles by all Senators and Members of the House of Representatives. It is a view that comes not just from our liberal and social democratic traditions, but also from a history which has led us to uphold a strongly egalitarian culture. However, giving full effect to our principles is rarely easy.

This report will focus on the possibility of achieving improvements in human rights, internationally, regionally and nationally. The changes in international relations wrought by the end of the Cold War have raised human rights to prominence and offered opportunities to move from the defining of rights to the implementation of them. It is a moment which needs to be grasped. The bipolarity of the post war years marginalised the human rights system of the United Nations (UN) to the largely academic exercise of definition. The human rights system has operated in a sphere separate from the security concerns of the organisation; it has been underfunded, understaffed, disconnected; and it has avoided the difficult task of developing an effective means of achieving its ends. This Committee believes that security and the promotion of human rights are connected and therefore it is time serious attention was paid by all levels of government to the means to achieve the goals of the human rights treaties.

1. **As an initiative to develop regional understanding on human rights matters, the Committee recommends that the Government explore with regional countries the possibility of establishing a regional dialogue on human rights through regular ministerial meetings of the foreign ministers, and other ministers as appropriate, of the APEC countries and through regular contacts between the Human Rights Commissions of regional countries.**

Chapter Two

Central to the achievement of peace, security and improved human rights is the reform of the United Nations. The United Nations is not a world government, nor is it a particularly expensive organisation when a comparison is made with money expended on a variety of other activities internationally. It is, nevertheless, an organisation in need of new focus and new structures, greater efficiency and accountability and greater support, both moral and financial, from the more powerful states. Australian support for the organisation and involvement in the reform process is consistent with our history and our understanding of the value of the UN to small and middle-sized powers. It has the potential to provide more ordered and just international relations in which smaller powers have some influence over the realpolitik of the great powers.

2. **In the current debate on UN reform, the Committee recommends that the Australian Government take all appropriate measures to urge the United States administration and Congress to fulfil the United States' financial obligations to the UN promptly.**

3. **The Committee recommends that, in the current reforms of the UN, the financing and structure of the human rights regime be addressed and urges the Australian Government to continue its support for greater funding and coordination in the system.**[2]

4. **The Committee recommends that the Australian Parliament promote the possibility of the funding of a position or positions at the Human Rights Centre in Geneva by the International Parliamentary Union.**

5. **The Committee urges the Government to promote, during debates on the reform of the UN, discussion of the creation of a UN Parliamentary Assembly to monitor, among its responsibilities, human rights practices on a regular basis.**

6. **The Committee recommends that, in the process of UN reform, the Australian Government should press for a review of the committee structure to address questions of the independence of members of UN committees. In particular, the Government might urge the UN to confine the eligibility for membership of the Human Rights Committee to nationals of those countries which have ratified the First (Optional) Protocol.**

[2] The Committee notes that the final declaration of the World Conference in Vienna made a series of recommendations for the strengthening of the system through greater financial support for the Human Rights Centre and its technical and advisory services, for wider ratification by States of the human rights treaties, for greater coordination of the reporting and monitoring mechanisms, and for the development of national and regional institutions. To date Australia, through the work of Peter Wilenski and Richard Butler, has played an important role in the reform process, particularly in the bureaucracy in New York.

7. **The Committee draws the attention of the Government to those areas not yet subject to legislation under Article 4(a) of the Convention on the Elimination of All Forms of Discrimination.**

8. **The Committee draws the attention of the Government to the lack of legislation for implementation of the Genocide Convention.**

9. **The Committee draws the attention of the Government to International Labour Organisation (ILO) Convention 169 which it has not yet ratified.**

10. **The Committee recommends that the Government table in the Parliament the reports (detailed at Table 2.2 of this report) prepared by the various Commonwealth agencies in response to our obligations under UN human rights treaties.**

11. **The Committee recommends that the Government reinstate the regular human rights reports from all Australian diplomatic posts and urges the Government to make provision in resources and training for officers of the Department of Foreign Affairs and Trade to carry out the task.**

Chapter Three

Nationally, Australia has committed itself to the genuine implementation of the human rights treaties. Unlike many states within the system, the treaties are signed when it is believed the obligations can be fulfilled. In recent years efforts have been made to ratify all treaties with a minimum of reservations. However, as the number and scope of the human rights treaties have increased and, with the ratification of the individual complaint mechanisms, it has become obvious that there are significant gaps in the process. Processes of consultation and coordination between the Commonwealth and the States and throughout the bureaucracies must be improved. Furthermore, although the constitution gives sole treaty making power to the executive, and this constitutional arrangement is affirmed by the Committee, it is no longer adequate that Parliament should be so completely bypassed.

The Committee believes that it is time for greater parliamentary involvement with the human rights treaties and endorses the Government's decision to table the treaties before signature. However,

the Committee recommends the scrutiny of legislation for compliance with the specific obligations of the treaties.

The First (Optional) Protocol of the International Covenant on Civil and Political Rights (ICCPR) reveals the need for reconsideration of a Bill of Rights in Australia. The Protocol is a new factor in an old equation. A Bill of Rights would give domestic force to the ICCPR. Without it, Australians have no opportunity to test their rights as defined by the Covenant and must take their complaints straight to an international committee for redress. While this was the view of a majority of the Committee, a minority dissented from it.

12. **The Committee recommends:**

- **the further streamlining of the processes of the Commonwealth/State Standing Committee on Treaties to improve the collection and dissemination of information between line departments and the coordinating agency at both the State and Commonwealth levels; and**

- **the establishment of an educative program on the treaty process for officials at all levels of government.**

13. **The Committee strongly endorses the move to inform the Parliament at an early stage in the treaty making process by tabling treaties in the Parliament before signature and recommends that the Minister for Foreign Affairs should use the forum of the Parliament to raise international human rights issues.**

14. **The Committee recommends that in order to fulfil the task of monitoring human rights policies and developments, the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade be made a separate joint committee of the Parliament.**

15. **The Committee recommends that the terms of reference of both the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances Committee include a requirement to examine the compliance of legislation with the specific terms of the ICCPR and the ICESCR.**

16. **The Committee recommends that the Australian Development Assistance Bureau (AIDAB) undertake a feasibility study, including a full evaluation of funding options, of the proposal by ACFOA to establish a human rights centre for dialogue and cooperation in Australia as a part publicly funded and part privately funded non-government institute.**

17. **The Committee recommends that the human rights fund of the Department of Foreign Affairs and Trade (DFAT) should be boosted in order to allow Australia to have greater influence in the human rights field by assisting Non-Government Organisations (NGOs) and individuals in other countries directly.**

18. **The Committee recommends that the Government establish an inquiry into:**

- **the desirability of developing a Bill of Rights for Australia;**

- **the means by which such a Bill should be introduced - by statute or by referendum and change of the Constitution; and**

- **the nature of the rights which should be encompassed by an Australian Bill of Rights. A minority of the Committee dissented from this recommendation.**

Chapter Four

The Committee believes there is a linkage between aid, trade and human rights, but that aid should not necessarily be made conditional on the human rights record of a recipient country. The Committee believes that Australia's aid program would have more credibility and be more effective if all major Australian political parties were to recommit themselves to achieving the UN target of 0.7% of GNP being spent on Official Development Assistance (ODA), in both bilateral and multilateral programs. The report outlines the current focus of Australia's official development assistance program and finds merit with much that is being achieved through multilateral and bilateral programs, population programs, institution building and the Defence cooperation program. While the latter is not intended primarily as a vehicle for fostering human rights in neighbouring countries, the Committee is pleased that the Department of Defence is mindful of its responsibilities, and the opportunities it has, to sensitise key defence personnel from other countries to human rights issues. Australia's aid program is a vital means by which human rights issues in the region are being addressed.

19. **The Committee urges that a further inquiry be made to investigate the implications of the World Trade Organisation (WTO) upon the efforts to protect human rights, and the compatibility of membership of the WTO with membership of the International Labour Organisation (ILO) and other international rights agencies and agreements.**

20. **The Committee recommends that:**

- **AIDAB include a human rights impact statement in all their development assistance project proposals;**
- **all Australian political parties make a recommitment to attaining the UN target of a ODA/GNP ratio of 0.7%; and**
- **the Australian Government, in its preparations for the World Summit on Social Development, give consideration to the UNICEF, UNFPA, UNDP proposal-for-discussion known as the 20/20 Initiative and involve itself in resolving the definitional problems that remain.**

21. **The Committee recommends that the Australian Government make bilateral representations where necessary and use multilateral forums where appropriate to urge the cessation of coercive population control programs, while at the same time continuing to fund education and health programs in developing countries to enhance the rights of parents to determine freely and responsibly the appropriate size and spacing of their families.**

22. **The Committee:**

- **endorses the recommendations of the *Report on the Implications of Australian Defence Exports*;**
- **urges the Department of Foreign Affairs and Trade and the Department of Defence to set up a cooperative system for the consideration of defence export applications, within which all applications for export licences of defence and related goods must include a referral to and assessment by the Department of Foreign Affairs and Trade to ensure that they are consistent with Australia's human rights policy; and**
- **stresses the principle that defence and related exports should not be made to countries whose human rights record includes persistent and serious violations of the rights of its citizens.**

Chapter Five

Successful peacekeeping operations of the UN have confirmed the important role the organisation has to play in world peace; however the problems of many operations, including Rwanda, have revealed the organisation's deficiencies. The gap between expectation and capacity is greatest here. Peacekeeping is a principle function of the United Nations but during the Cold War it was an activity severely curtailed by the veto power of the permanent five in the Security Council. With the veto largely unused, the demands for peacekeeping have grown beyond its resources, its organisational capacity or the political will of many of its members. There is the further challenge of the internal nature of so many contemporary disputes, once considered outside the domain of the United Nations. Reform and reconsideration of both purpose and procedure is urgent. This report concentrates on those human rights aspects of peacekeeping efforts and points to the need, in any reform, to integrate the political and the military objectives of the exercise. Furthermore, consideration must be given to the longer term preventative measures that should be taken to deal with conflicts before they become outright war. Australia has an outstanding record in peacekeeping. There are two other committee reports on the subject: the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade in May 1991 and the current inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

23. **The Committee urges the Government of Australia to continue judicious support for the Cambodian Government in its efforts to establish a rule of law, to develop infrastructure, to provide educational and health services for the people and to bring security and peace to Cambodia.**

24. **The Committee recommends that the Government:**

- **support and fund the development of a justice package, as defined in paragraphs 5.49 and 5.50, as a basic component of any peacekeeping operation; and**
- **promote the idea of a justice package as a basic component of peacekeeping operations at the United Nations.**

25. **The Committee recommends that the Government encourage policy changes at the UN to set guidelines for the protection of volunteers involved in UN operations.**

26. **The Committee recommends continued and strengthened liaison between the ADF and NGOs, both before and after missions, for the purpose of exchanging information about institutional operations and**

functions, and towards this end urges the exchange and secondment of staff between the NGO agencies and the military forces.

27. **The Committee recommends that the Government consider ways in which the following propositions can be put forward internationally for the better control of landmines:**

- **Landmines should be on the list of weapons that are monitored by the UN under the United Nations arms register.**
- **The current convention and protocol should be strengthened.**
- **Mine clearance should be a major issue for aid for both governments and humanitarian agencies and in particular should be included in Australia's aid program.**
- **Campaigns need to be mounted to get more countries to sign and ratify the landmines protocol.**
- **Consideration should be given to instituting a total ban on the manufacture and export of landmines, using the models of the current international disarmament law, particularly the Chemical Weapons Convention.**
- **International conventions relating to landmines could be couched in terms of rights and obligations, thereby making international criminal law applicable and making breaches subject to international criminal tribunals or war crimes tribunals.**
- **There should be campaigns against the companies which export landmines for profit.**

Chapter Six

Australia's international reputation for good human rights practice is most adversely affected by the record of our treatment of our indigenous peoples. Therefore Australia has taken special interest in the International Year of the World's Indigenous Peoples and in the drafting at the UN of a Declaration on the Rights of Indigenous Peoples. The debate, by no means finished, is an important one. It seeks to understand the sources of disadvantage for indigenous peoples and the best means of protecting the special circumstances that affect their lives. It has introduced concepts of collective rights and it has

reassessed self-determination[3] in ways that will be important for other disadvantaged and minority groups. It seeks to accommodate customary laws and cultural differences within industrial societies. There are considerable human rights challenges raised in the process. In Australia, a number of inquiries, most notably the Royal Commission into Aboriginal Deaths in Custody and the Inquiry into Racist Violence, as well as inquiries at a parliamentary and bureaucratic level have detailed the situation. There have been landmark decisions such as the Mabo decision, the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) and, for many, the passing of the Native Title Bill. For many Aboriginal people in remote communities, in country towns and in the cities, the gains, as yet, are perhaps unrealised. Nevertheless, some gains have been made and potential is there to be maximised.

28. **The Committee recommends that:**

- **the Joint Standing Committee on Foreign Affairs, Defence and Trade, through its Human Rights Sub-Committee, liaise with the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs on particular complaints which are brought to the sub-Committee's attention;**
- **where specific, geographic health problems are identified by the sub-Committee, they be referred to the Department of Health in conjunction with ATSIC for action; and**
- **ATSIC ensure that resources are not only sufficient but also appropriately and systematically directed and that appropriate technology is applied to infrastructure problems in Aboriginal communities.**

Chapter Seven

The extent of the gap between theory and practice and the complexity of the challenge facing Australians in delivering the whole range of human rights to its citizens were made obvious to the Committee on its visit to the Northern Territory. The Committee reports on this visit with a full awareness of its limitations. Its conclusions are tempered by the requirement that it consider matters in the light of obligations under the international human rights treaties and the broad means by which these responsibilities might be met.

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3 For a detailed discussion and definition of self-determination as proposed in the Draft Declaration on the Rights of Indigenous Peoples, see paragraphs 6.23-6.24.

29. **The Committee requests that the problems associated with the septic systems at Pigeon Hole be fixed by the responsible agency and that ATSIC report back to the Committee about the condition of these systems as a matter of urgency.**

30. **The Committee recommends that:**

- **community housing management schemes with inbuilt training are developed in remote communities;**
- **Aboriginal communities are encouraged to mobilise local skills and resources in cooperation with neighbouring communities and other people who are available to train Aborigines within a community; and**
- **by way of improving and increasing resources to outback communities, the Commonwealth Government encourage the private sector and/or NGOs to sponsor workers in the fields of health, education, building or community development within Aboriginal communities.**

31. **The Committee recommends that the Commonwealth Government, in consultation with ATSIC and the relevant State and Territory Governments, consider the establishment of an Office of Remote Communities to provide information on planning and funding options, to assist in the development of community plans which take account of the funding options and to assist in the equitable distribution of funds to Aboriginal communities in remote areas.**

32. **The Committee recommends that the Government investigate the means by which credit facilities, and an improved understanding of their use, can be made available to Aborigines in remote areas.**

33. **This Committee endorses and reiterates the recommendations of the 1990 report, *Our Selves, Our Future*, particularly on the question of funding, where it recommended, among other things, that:**

- **the Commonwealth, in conjunction with the States and Territories, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations; and**
- **Commonwealth, State and Territory Governments implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.**

34. **The Committee recommends that the Joint Standing Committee on Foreign Affairs, Defence and Trade through its Human Rights Sub-Committee or, should one be established, a separate Joint Committee on Human Rights, report regularly on Australia's obligations to Aboriginal and Torres Strait Islander people.**

Chapter Eight

Women carry the burden of work in many societies; they are responsible for almost the whole burden of population control programs, they carry chief responsibility for the rearing of children and yet they lack power and independence in most parts of the world. They suffer greater poverty and disadvantage than men: discrimination in educational opportunity and literacy; legal disadvantage; lack of political representation; abuse, violence and exploitation. These problems exist in varying degrees of severity in all societies. There is a close relationship between the development of women's rights and the level of development of a whole society. The World Conference on Human Rights in Vienna 1993 and the World Conference on Population and Development in Cairo 1994 both focussed on the rights of women as an area in need of specific attention.

A particular area of concern to the Committee in this report is that any program of family planning and population related activities offered as part of Australia's ODA should be sensitive; be based on free and fully informed consent; and be totally voluntary such that no disadvantage is meted out by governments or government supported organisations as a result of the non-participation of individuals in such programs.

Furthermore, the Committee expresses concern about continuing reports of the violation of human rights in Indonesia's National Family Coordination Board (BKKBN) Family Planning Programs and considers it inappropriate that BKKBN is involved at this stage in teaching of Pacific Islanders with Australian aid money.

35. **The Committee recommends that, in the light of the revision in the Defence Forces's employment policy, similar adjustments be made to the reservation on Article 111 of the *Convention on the Political Rights of Women.***

36. **The Committee recommends that steps be taken as a matter of priority through extensive community consultations to address the issue of violence, and the reason underlying the violence, perpetrated against Aboriginal and Torres Strait Islander women.**

37. **The Committee recommends that:**

- **the Australian Government, as part of an international effort, put in train mechanism for investigating and identifying those responsible**

for crimes committed in the former Yugoslavia, particularly the raping of Bosnian women as part of the policy of ethnic cleansing, in order to ensure that they are prevented from entering Australia, and that if any have managed to enter that they be identified and extradited to face trial; and

- **the Government ensure that those women living in Australia and who appear before the War Crimes Tribunal are given appropriate protection from threats of harm and intimidation and that this issue be raised at international forums to ensure similar commitment by the international community.**

38. **The Committee recommends that AIDAB ensure that any program of family planning and population related activities offered as part of Australia's ODA be sensitive; be based on free and fully informed consent; and be totally voluntary such that no disadvantage is meted out by governments or government supported organisations as a result of the non-participation of individuals in such programs.**

39. **The Committee recommends that:**

- **the Australian Government urge the Government of Thailand to ratify or accede to key international instruments relevant to the trafficking in women and girls, namely the International Covenant on Civil and Political Rights and the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others;**

- **the Australian Government develop programs in conjunction with the local authorities to change social attitudes towards traffic and exploitation of women in order to secure the elevation of the status of women in Indo-China and elsewhere; and**

- **AIDAB ensure funds be allocated to develop programs with the Thai authorities aimed at educating communities on the link between the sex industry and HIV/AIDS.**

Chapter Nine

Children internationally are much abused. Children are traded across borders, used as slave labour, as a source for organ transplants, and in the infamous sex tourism industry as prostitutes and for child pornography. That such abuses are taking place in countries which have either ratified or acceded to the Convention on the Rights of the Child (ICRC) gives grave cause for concern that international action has become one of form rather than substance. The Committee supports the comments made by the former Secretary-General of the

United Nations that children are humanity's most vulnerable as well as its most cherished resource. It is with some disquiet that the Committee noted the report of the UN Special Rapporteur on the Sale of Children, Mr Vitit Muntarbhorn. He was critical of the youth welfare and justice system in Australia. The report of the Australian Human Rights Commissioner on youth homelessness is also disturbing. The Committee proposes to support the recommendations of both reports while acknowledging that comprehensive national programs are contemplated in the newly developed National Action Plan.

40. **The Committee recommends that**

- **the Australian Government introduce legislation which incorporates the *Convention on the Rights of the Child* into domestic law: and**

- **the Attorney-General investigate the feasibility of establishing a Children's Ombudsman within the office of the Human Rights and Equal Opportunity Commission (HREOC).**

41. **The Committee recommends that the Australian Government:**

- **instruct appropriate agencies to develop effective policies and practices designed to enhance the welfare and rights of children/youths and their families; and**

- **in consultation with the States, develop a national code to consolidate youth/children's rights.**

42. **The Committee recommends the enhancement of child/youth related facilities in rural areas, with particular regard to the needs of Aboriginal and Torres Strait Islander children.**

43. **The Committee recommends that the Australian Government monitor closely reports of torture and summary or arbitrary execution of children and subsequently make strong representations to those governments who are breaching international standards on the rights of children.**

44. **The Committee recommends that the Australian Government propose an initiative at the UN to ensure the development of an international treaty to address the question of child exploitation.**

45. **The Committee recommends that the rights of children be placed prominently on the agenda of the Foreign Minister during his overseas visits.**

Chapter Ten

A breach of the rights of workers is a breach of human rights and therefore contravenes international law. As the ILO Director-General said at the 1968 International Labour Congress (ILC), 'One of the objectives assigned to the ILO under its Constitution is to encourage formal recognition of the human rights that lie within its field and of the conditions for their realisation. From the beginning it set itself the task of building up a body of international labour standards and of achieving their widest possible acceptance throughout the world.' Despite the proclamation of this continuing theme by subsequent Directors-General, violation of the rights of workers continues.

There is a danger that in the battle for economic advantage the rights of workers globally will be jeopardised. The Committee has serious reservations about the development argument alone and is of the view that low wages, forced labour and child labour, the norm in many developing countries, have created a wide gap between the deprived and the endowed.

46. **The Committee recommends that:**

- **appropriate legislation be enacted to ensure that goods made in prison under conditions of forced labour are prohibited entry into Australia; and**
- **Australia initiate, through the UN and, as necessary and appropriate in the future, the World Trade Organisation (WTO), a campaign to introduce international standards of minimum age and minimum conditions of work for the employed.**

Chapter Eleven

One of the most indicative signs of human rights abuses, whether they be economic, social and cultural or civil and political is the extent of refugee flows. The efforts of the Australian Government in supporting the United Nations High Commissioner for Refugees (UNHCR) refugee placement programs are generous and consistent with its foreign policy goal of contributing to a more just international order.

However, on the question of detention in Australia of those claiming asylum the situation is less clear. The Committee understands the importance and desirability of maintaining the integrity of the immigration system and notes that rights are never absolute. Furthermore, the Committee understands that Australia's detention policies for illegal entrants are not technically in breach of international law. The Committee is of the view, however, that the spirit of these obligations has been breached and that Australia should act with probity and explore means by which 'unlawful non-citizens' can be dealt with in a more humane fashion. The Committee believes there may well be a role for appropriate non-government organisations in this effort. The length of detention is viewed with real concern. Australia gives mixed signals to the international community by endeavouring to be a good international citizen and neighbour on the one hand but having to maintain people in detention for a long term on the other.

47. **The Committee recommends that the Government review its current policy for the detention of refugees and asylum-seekers.**

48. **The Committee urges the Australian Government to recommend that the UNHCR conduct an investigation into the allegations of organised international traffic in illegal departures with a view to getting international agreement on the means to prohibit or limit such practices.**

Chapter Twelve

The Committee continues to be concerned at human rights abuses in many parts of the world. However, this report can only deal with situations which have been the subject of direct representations to the inquiry. This chapter examines civil and political rights issues in a number of countries, even if such issues related to countries outside Australia's area of primary foreign policy focus. Accordingly, allegations of human rights abuses in China and Tibet, Kenya, the Sudan, Sri Lanka, the Balkans, and Israel and the Occupied Territories are examined, as well as the situation in countries closer to Australia's doorstep such as Vietnam, Burma and Indonesia. Regrettably, the human rights situation in a number of the countries examined has not improved since the Committee's last report in 1992, although progress has been made in others.

In addition, the Committee has addressed the issue of religious discrimination in a number of countries, and a relatively new human rights issue - the impact of global economic and industrial practices on the rights of our children and grandchildren to clean air and an unpolluted environment.

49. **The Committee recommends that:**

- **in the eventuality of the Tibetan Womens' Association being denied accreditation to the World Conference on Women in Beijing in 1995, the Australian delegation to that conference be briefed fully on**

issues of specific concern to Tibetan women, with a view to ensuring that those issues are raised at the conference; and

- the Australian Government keep Mr James Peng's case under close review and keep making representations to Chinese authorities until such time as Mr Peng is given a fair trial and legal representation of his own choice.

50. The Committee recommends that:

- the Australian Government continue to make representations to the Vietnam Government asking it to allow an early visit by an Australian Parliamentary delegation to foster a dialogue between the two Governments on a range of issues, including human rights; and

- the Australian Government closely monitor allegations of religious discrimination in Vietnam and bring all necessary pressure to bear on the Vietnamese Government to allow complete freedom of religious assembly and worship.

51. The Committee recommends that the Australian Government seek the release of the Kuwaiti prisoners held in Iraq and the identification of those deceased through every avenue available.

52. The Committee recommends that:

- the Australian Government use the forums of the General Assembly of the UN to publicise the human rights abuses in the Sudan, specifically highlighting the revival of slavery in that country;

- the relevant Australian diplomatic post be asked to report, as a matter of urgency, on the human rights situation in the Sudan, particularly regarding the allegations about the revival of slavery in that country; and

- independent organisations, such as Amnesty International, be encouraged to continue to scrutinise and report on the human rights situation in the Sudan.

53. The Committee recommends that the Australian Government make representations to the Kenyan Government asking it to:

- bring an end to human rights abuses in Kenya, including physical and psychological torture, detention without trial and state-sanctioned tribal fighting;

- restore the rights of assembly and freedom of expression under Kenyan law;

- treat all Kenyans equally before the law, regardless of ethnic background, and outlaw discrimination by any individual or body against any Kenyan on the basis of ethnic background; and

- improve physical standards inside Kenyan prisons, including medical care facilities, so that they accord with international standards and Kenyan law.

54. The Committee recommends that:

- the Australian Government make representations to the Indonesian Government seeking to have the implementation of the Anti-Subversion Law reviewed by an independent body such as Indonesia's Human Rights Commission or the International Commission of Jurists (ICJ); and

- the Australian Government continue to monitor the situation of Xanana Gusmao closely and to urge Indonesian authorities to release him from custody to enable effective dialogue and negotiation on achieving a peaceful settlement to all those issues which relate to the East Timorese.

55. The Committee supports the Executive Council of Australian Jewry's (ECAJ) call and urges the Australian Government to continue its condemnation of 'Holocaust denial', which the European Parliament has identified as a feature of contemporary European racism.

56. The Committee recommends that:

- the Australian Government use diplomatic channels to check with Russian authorities on the situation of Mr Semyon Livshits, currently in detention in Vladivostock;

- the Australian Government use diplomatic channels to get an up to date assessment of the human rights situation of Syrian Jews and, if necessary, make representations to the Syrian Government on their behalf; and

- the UN Human Rights Commissioner monitor the human rights situation inside Iran, with particular reference to any restrictions on religious freedom in that country, especially regarding the Baha'is.

This chapter examines, in the light of situations brought to the attention of the Committee, the problems that arise for states because of the demands by minority groups for self-determination and independence. The Committee believes that governments cannot maintain national cohesion by force and the continual oppression of minorities. And it supports the proposition that effective and successful multi-racial/multi-ethnic states need to express their diversity in institutions and political structures which genuinely accommodate the aspirations of their minorities. Failure to make that accommodation, and worse, abuse and oppression of minorities, gives moral force to claims for independence and secession.

57. **The Committee suggests that the Australian Government make representations to the Governments of Greece, Macedonia, Bulgaria and Albania concerning the rights of minorities within their states, to freedom of speech and association, rights to use their own language, practice their own religion, preserve their culture and rights to full participation in educational and employment opportunities within the state.**

58. **The Committee urges the Australian Government, through agencies such as the International Committee of the Red Cross and the Red Crescent or the Commonwealth Human Rights Unit in London, to encourage the Turkish Government to trace the missing Greek Cypriots and provide information to their relatives on their fate.**

59. **The Committee believes the situation in Kosova requires urgent attention from the international community, both in identifying human rights abuses and in seeking negotiations between the Government of Serbia and the representatives of the majority of the people of Kosova. The Australian Government should urge the European Union and the United Nations towards these processes.**

60. **The Committee, while noting with real concern the claims of terrorism and human rights abuse, urges the Australian Government to monitor the circumstances of the Kurdish people closely, in particular to monitor the trials of the Kurdish representatives who have been expelled from the Turkish Parliament.**

61. **The Committee asks the Australian Government to make representations to the Government of Sudan concerning the treatment of the people of southern Sudan and to urge the United Nations to provide monitors in the Sudan, to maintain an effective ceasefire and to encourage either the resumption of negotiations on a peaceful settlement to the civil war or to encourage the United Nations to hold a referendum on the status of the south and in the interim to place an arms embargo on the Sudan.**

62. **The Committee believes that, in relation to East Timor, if there is to be any prospect of peace, there should be an enduring and just resolution of the Dili massacre - the release of political prisoners and those detained as a consequence of peaceful demonstration, devolution of appropriate powers to the province and the reduction of the combat military forces.**

63. **The Committee believes that, in relation to Bougainville, despite the failure of the peace conference, there should be no return to violence and both parties should maintain the ceasefire. The Committee hopes that the peace process can be resumed as soon as possible and in particular, that both parties will accept the movement of people within the island so that humanitarian assistance might be freely distributed to all Bougainvilleans. Finally, the Committee urges that the PNG Government and the PNG Defence Forces should continue to give assurances that, in any reconvening of the peace talks, free passage for the leaders of the Bougainville Revolutionary Army (BRA) be guaranteed and, possibly, that talks should be held on neutral ground.**

CONCLUSION

Human rights standards are aimed at improving the quality of life for ordinary people. They should be the central driving force of all governments' policies. As this report testifies, this is patently not so. Governments are often the perpetrators of abuses and they hide behind the concept of national sovereignty whenever criticised despite the fact that they have often previously acknowledged the universality of the rights in question. A Canute-like adherence to isolationist nationalism is futile in any aspect of modern life, but especially on questions of human rights abuses as they are so intricately linked to national and international security. Respect for human rights inhibits mass refugee flows, makes states less inclined to go to war with each other and alleviates the poverty and inequality which breed terrorism - a force that knows no national boundaries. Moreover, states can be strengthened not diminished by the adherence to international standards, which, arrived at by international consensus, represent a form of collective wisdom and best practice in government. Such practices preserve the nation, its cohesion and stability. The lack of them fragment it.

In this report, the Committee has stressed those aspects of the human rights agenda which can make a difference, both in our domestic and in our foreign policy. In conclusion, a number of points should be reiterated:

- Peacebuilding, a process which integrates the human rights standards, both civil and political and economic, social and cultural, must inform policy, whether it is aid or trade policy, defence cooperation or bilateral or multilateral arrangements.

- Universal ratification of the major human rights conventions should be encouraged.

- Internationally, the trigger for action must be abuse not conflict. Rwanda demonstrates this most forcefully. Early preventive action is essential.

- Continuous open and free dialogue and debate between nations on human rights must be maintained and the structures which facilitate it need to be developed and improved.

- Where human rights abuses have become endemic, reintroduction of states into the community of nations should depend on real and verifiable improvements, targeted to the nature of the abuses.

- Australia's commitment to human rights, widely supported in the community as it is, should be further enhanced by refined and improved processes at all levels of government and in non-government organisations.

- There is room for greater Parliamentary involvement. Parliament, the expression of the democratic will, is the body most suited to the oversighting, the preservation and the enhancement of rights in Australia.

Chapter One

HUMAN RIGHTS IN 1993-94

Between the idea
And the reality
Between the motion
And the act
Falls the shadow
T.S. Eliot[1]

The pursuit of human rights is a matter of great importance to Australians; it is one of our defining characteristics. There is broad support for human rights principles by all Senators and Members of the House of Representatives. It is a view that comes not just from our liberal and social democratic traditions, but also from a history which has led us to uphold a strongly egalitarian culture. However, giving full effect to our principles is rarely easy.

This report will focus on the possibility of achieving improvements in human rights, internationally, regionally and nationally. The changes in international relations wrought by the end of the Cold War have raised human rights to prominence and offered opportunities to move from the defining of rights to the implementation of them. It is a moment which needs to be grasped. The bipolarity of the post war years marginalised the human rights system of the UN to the largely academic exercise of definition. The human rights system has operated in a sphere separate from the security concerns of the organisation; it has been underfunded, understaffed, disconnected; and it has avoided the difficult task of developing an effective means of achieving its ends. This Committee believes that security and the promotion of human rights are connected and therefore it is time serious attention was paid by all levels of government to the means to achieve the goals of the human rights treaties.

1 Quoted from *The Hollow Men*, 1925.

1.1 World conferences provide opportunities to pause and evaluate as well as to plan and project. It is opportune that the World Conference on Human Rights was held in 1993, 25 years after the first world conference on human rights in Tehran. Communications have unified and shrunk the distances between places but the world is now less manageable; it is no longer split into two spheres of influence, national and ethnic groups, long suppressed, are demanding recognition and regional groupings are assuming more importance. Very great changes internationally are demanding a reconsideration of policies and institutions. Reform and reorientation of the United Nations, its institutions, its structure, its funding and its practices, also demand debate and decision by the international community. It is timely, therefore, that human rights be considered, not just in the old dichotomies of universalism versus relativism - that argument was reaffirmed in favour of the universality of human rights at Vienna - but also in terms of the place of human rights in both domestic and international politics.

1.2 Human rights is too often perceived as the soft option, the poor relation, relegated to minor consideration and a peripheral place, tacked onto policies. For a long time, especially in a cold-war, competitive world, concentration has been on economics, banking and finance, trade and war at the expense of education and health, social and cultural development and peace; it has been on the use of force rather than the restraint on force; things that can be used and measured rather than things that can be conserved and protected; a world that competes rather than a world that cooperates.

1.3 In fact, human rights is the core, the hard option, central to development and progress, peace and stability.

THE WORLD CONFERENCE ON HUMAN RIGHTS

1.4 The World Conference on Human Rights held in Vienna in June 1993 reaffirmed the rights outlined in the Charter of the United Nations and within the International Bill of Rights - the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Protocols attached to these. This reaffirmation of the universality and indivisibility of rights was important in the light of pre-conference discussions which sought to cast doubts or limitations on these concepts.

1.5 The final declaration restated the right to self-determination, a right limited by the need to preserve the 'territorial integrity and political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.' It acknowledged that 'democracy, development and respect

for human rights and fundamental freedoms are interdependent and mutually reinforcing.'[2]

1.6 New areas of international concern were also defined: the right to development, the right to a clean environment, the rights of indigenous peoples, the rights of the disabled, a condemnation of terrorism and of ethnic cleansing. Emphasis was placed on the rights of women and children and the rights of asylum seekers; these were seen as matters either of neglect or of particular contemporary focus.

1.7 The World Conference was also most concerned to examine the monitoring and implementation mechanisms of the United Nations. This is a recognition that the defining of rights over the last fifty years has been thorough but that the means of ensuring that the rights are delivered are deficient; that the United Nations has neither the organisational structures nor the funding nor the political will to enforce the rights it has defined. A most significant part of the program of action within the final declaration encompasses the coordination, resourcing and structure of the human rights system. The Human Rights Centre in Geneva has been grossly underfunded and understaffed and therefore its capacity to provide advisory services and technical assistance has been limited. There has been little connection between the special rapporteurs appointed to examine particular areas of abuse and those dealing with peacekeeping and strategic planning in New York. The appointment of a Commissioner for Human Rights begins to address these issues.

1.8 Many of the issues raised by the World Conference on Human Rights are matters of practice rather than theory. This report will also focus on the practice and implementation of rights at the international, the regional and the national level. It is in this realm, between the idea and the reality that the shadow falls; that high ideals founder on poor organisation, failure to communicate or inform, failure to follow through or a lack of commitment or good will.

THE INTERNATIONAL SYSTEM

1.9 Internationally, the United Nations is sometimes criticised as a bloated and unaccountable bureaucracy; a security system which is weak, hesitant and inconsistent in tackling problems and at the same time about to become an overbearing world government; an organisation that is too expensive to maintain and yet too poor to be effective. Many of these criticisms are harsh, contradictory and unfounded. However, as the UN comes up to its fiftieth anniversary, it is definitely time to review and reform the organisation. This Committee believes that the institution is too valuable to abandon and that efforts to integrate, coordinate and streamline its activities should be made. This would involve a redefinition of purpose and procedure as well as structural and bureaucratic reform at the centre.

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2 Quoted from the Vienna Declaration and Program of Action, 25 June 1993.

1.10 Most importantly, the promotion and protection of human rights must be moved from the periphery to the centre of UN activities. Human rights abuses are both indicative and predictive of instability and conflict which, once entrenched, are costly and complicated situations for the international community to resolve. Promotion of good governance, assistance to states for economic development which encompasses equitable outcomes, the provision of mechanisms for the protection of minority rights and the timely availability of conflict resolution are all issues which come under the competence of the human rights regime of the UN. Human rights need to be seen as starting points in the system of international security rather than, as now, a moralising irritant, carping from afar.

1.11 Australia has a long tradition of support for the UN. This is appropriate as the UN gives middle and smaller powers a greater opportunity than they would have individually to influence the shape of the international agenda. Australia's interest in making the UN work then must involve it in the reform process - in improving structures such as the Security Council to reflect the modern distribution of power, in improving the coordination of the agencies, in encouraging the financial commitment of all states and in refining and defining the peacekeeping role of the UN to improve its responsiveness and its effectiveness. In the human rights arena, Australia encourages others to adhere to the international human rights instruments and by supporting UN mechanisms for monitoring observance.[3] Reforms which make those mechanisms stronger and more transparent are needed.

REGIONAL HUMAN RIGHTS

1.12 To manage, implement and monitor the delivery of the universal rights defined by the international Bill of Rights, the United Nations has encouraged the development of regional human rights institutions. This has a long history. In Europe, the European Convention on Human Rights (ECHR) entered into force in 1953. It is the oldest and most sophisticated of the multilateral systems and the most effective guarantees of rights are ensured in this domain. The concentration is on the civil and political rights and these rights are legally enforceable according to decisions of the European Court of Human Rights. Individuals can petition the court and since 1959 it has built up an impressive body of jurisprudence. There is a Committee of Ministers which supervises compliance with the Court's judgements.

1.13 The American Convention on Human Rights entered into force in 1978. It encompasses the American continent, north and south, and is supported by a commission and a court on human rights. The American convention deals with both rights and duties, it accepts individual petition and it covers economic, social and cultural rights as well as civil and political rights in its charter. The Commission can investigate, conciliate, report and recommend and refer cases to the Inter-American Court of Human Rights. The Court interprets the convention and can hear cases referred to it by the Commission. It gives advisory opinions.

3 Department of Foreign Affairs and Trade submission, p. S3.

1.14 The African Charter on Human and Peoples' Rights entered into force in 1986. It, too, deals with both rights and duties. It lists the rights of individuals but it places emphasis on the collective rights of peoples, self-determination and the duties to family and state security and to African cultural values. An African Commission of Human and Peoples' Rights has been established in Banjul consisting of eleven members elected by secret ballot and acting in their individual capacities. Its role is to interpret the Charter, to educate and to highlight.

1.15 The League of Arab States, founded in 1945, established an Arab Commission of Human Rights in 1968. It has dealt with the rights of combatants in armed conflict and the Geneva Conventions, the question of Palestine and the establishment of national commissions of human rights.[4]

1.16 In the Asia-Pacific region there is no comparable organisation.

1.17 These regional organisations define rights which are compatible with the International Bill of Rights but they give regional emphasis to those rights according to the cultural and historical experiences of the region. The regional enforcement of universal rights recognises the utility of local action and local focus, away from the unwieldy politics of the United Nations, and assumes that local interests in peace and stability create both greater understanding and greater urgency. In practice this is not always so. The regional organisations have varying degrees of development and effectiveness. Enforcement is, for the most part, dependent on publicity rather than legally binding powers in the institutions. This is consistent with both UN practice and the importance placed by states on national sovereignty. However, it has also meant that local political conditions and practices have undermined the institutions and left a huge gap between theory and practice.

1.18 Continuous terrible human rights abuses in many places covered by these bodies suggest that an evaluation of their purposes and processes is necessary. The UN experience would confirm that standard setting in the arena of human rights is the simpler task. Effective enforcement comes much more slowly. As one commentator has put it:

> Signature and ratification of conventions are not the same thing as fidelity to them. As Richard Falk has pointed out, the absence of any real prospect of enforcement makes it feasible for some governments to ratify agreements they cannot keep, while other governments that might observe them are deterred from becoming parties to the conventions by the theoretical possibility of enforcement.[5]

4 Department of Foreign Affairs and Trade, *The Human Rights Manual*, p. 83.

5 Vincent, R J *Human Rights and International Relations*, Cambridge University Press, 1986, p. 99.

Commitment to human rights then is something that must ultimately be generated nationally. The Australian Human Rights Commissioner, Mr Brian Burdekin, told the Committee:

> the reality of human rights, on the ground, for most people in most countries, means that there has to be some effective national mechanism otherwise the treaties, for many people, are very theoretical.[6]

1.19 The danger of regionalism in relation to human rights is that the universality will be lost; that the regional cultural and historical experiences will not produce merely different routes to the same end, but different ends; that cultural difference will be an excuse for authoritarian regimes to dispense with human rights altogether.

1.20 The Bangkok Declaration[7] is illustrative of the difficulty. The declaration affirms its commitment to the Universal Declaration on Human Rights, encourages further ratification of the human rights instruments and reiterates the indivisibility of rights. It strives to redress the balance in the consideration of rights in favour of Economic, Social and Cultural Rights and the right to development and a fair and just economic order, areas in which there is arguably just cause for complaint. However, the document also clearly, though not explicitly, denies the universality and indivisibility of rights. It denigrates and attempts to limit the application of civil and political rights, denying them as matters of legitimate international concern or of immediate relevance to developing countries struggling to advance and compete.

1.21 This Committee believes that if there has been deficient attention to economic, social and cultural rights, the redress does not lie in the diminution of the attention that states should pay to civil and political rights. They are not exclusive of one another; they are indivisible. And the cost to States of the implementation of civil and political rights would neither hinder development nor create anarchy. Civil and political rights, as applied in the West are never absolute but qualified by the impact they have on the rights of others. There is nothing in these rights that is necessarily either anarchic or unheeding of the interests of the community.

1.22 An NGO conference representing 110 non-government organisations from the Asia Pacific region met simultaneously in Bangkok at a preliminary conference to the World Conference. The declaration produced by this meeting showed a marked divergence with that produced by governments. It concluded that:

6 Evidence, 13 October 1994, p. 1300.

7 The final declaration of the Asian regional meeting in preparation for the World Conference on Human Rights.

> There must be a holistic and integrated approach to human rights. One set of rights cannot be used to bargain for another.[8]

1.23 This document stressed among other things the transcendence of human rights over state sovereignty, the importance of fostering democracy in all countries, the need to demilitarise, the importance of democratically organised, sustainable development and the right to self-determination for all peoples, noting that self-determination did not necessarily imply secession or independence but free association and constitutional arrangements arrived at through popular consultation and consent.

1.24 Australia's commitment to human rights and the impact this has on regional relationships is often a complicating factor in our foreign policy. The Committee believes that the pursuit of human rights is a matter of great importance to Australians; it is one of our defining characteristics. There is broad support for human rights principles by Senators and Members of the House of Representatives. It is a view that comes not just from our liberal and social democratic traditions, but also from a history which has led us to uphold a strongly egalitarian culture. In the region, it is also a matter which requires continuous dialogue. Discussion, debate and argument are the basis of our system of government. The Committee believes that judgement is best informed and refined by debate. For this reason, regional human rights institutions would be a useful development.

1.25 Two possibilities have been suggested to the Committee. One is the Human Rights Centre for Dialogue and Cooperation, proposed by the Australian Council for Overseas Aid (ACFOA) to foster, in the region, dialogue and debate, research and analysis, and education and practical support. (See Chapter 3) The second is the establishment of a regional commission along the lines of the regional commissions described above. This was a recommendation made in the first report of the Committee. It was also endorsed by the regional governments in Article 26 of the Bangkok declaration. It is an initiative worth exploring.

As an initiative to develop regional understanding on human rights matters, the Committee recommends that the Government explore with regional countries the possibility of establishing a regional dialogue on human rights through regular ministerial meetings of the foreign ministers, and other ministers as appropriate, of the APEC countries and through regular contacts between the Human Rights Commissions of regional countries.

1.26 Development of better human rights in the region is more than an idealistic ambition; it is a practical necessity. In evidence to the Committee, Mr Burdekin, the Human Rights Commissioner, emphasised the linkage between regional stability and human rights and noted the centrality of human rights issues in Australia's foreign policy, particularly regional policies. Mr Burdekin said:

8 Quoted from the *Bangkok NGO Declaration on Human Rights*, 27 March 1993, p. 2.

> I think our security in this region is dependent on the stability of the region, and I very strongly believe that the stability of the region, in turn, is dependent on the extent to which governments in particular do or do not observe fundamental human rights.[9]

1.27 Mr Burdekin also reflected that a dichotomy exists both at the UN and in Australia on security and human rights questions. For example, preventive diplomacy and security matters are discussed in New York and human rights issues in Geneva. A similar disjunction exists in Australia between the Department of Defence on Russell Hill and 'the very understaffed human rights section in the Department of Foreign Affairs and Trade'.[10] Mr Burdekin emphasised that:

> until we recognise that violations of human rights have costs, not only for the individuals but also in terms of matters relating to defence, security and stability, we will not have got the picture. I think we are some way from incorporating that into our own domestic political processes at the bureaucratic level at the minute.[11]

1.28 At another level, Mr Harris van Beek, National Director for Amnesty International defined the connection between trade and human rights. Mr van Beek noted that the Business Council of Australia had indicated an interest in discussing the role that business can play in raising human rights issues, 'because it is now increasingly recognised that countries with a poor human rights record appear to have an inherent instability'.[12] Mr Andre Frankovits, Campaign Director for Amnesty International informed the Committee that at a round table organised in Hong Kong, the point that 'bad human rights was bad for business' was drawn out.[13]

1.29 The final institutional development and perhaps the most vital that must be put in place for effective implementation of human rights is the development of national institutions, independent of governments.

1.30 The Committee notes that a number of regional countries have established national human rights institutions. Such developments, if sincere, are to be welcomed. The United Nations and the World Conference on Human Rights encouraged this development on the assumption that human rights are in the first

9 Evidence, 1 June 1993, p.25.

10 Evidence, 1 June 1993, p.32.

11 Evidence, 1 June 1993, p.32.

12 Evidence, 1 June 1993, p.11.

13 Evidence, 1 June 1993, p.12.

instance a domestic responsibility and are best protected in the domestic jurisdiction.

1.31 It is the responsibility of all governments to govern impartially in the interests of all citizens and the greatest protection for citizens in this matter lies in the separation of powers, in the independence of the judiciary from political influence. Since governments are the chief violators of human rights, the UN adopted guidelines, the Paris Principles (see Appendix 5), for the establishment of national human rights commissions. The test of their *bona fides* lies in their independence from government, their capacity or willingness be critical of government agencies, the police or the military. Without this independence, such institutions are window dressing and betray a cynical lack of commitment to human rights.

1.32 This Committee believes that, regardless of cultural and historical circumstances, progress towards better human rights practice is intricately bound up with democratisation; that democratic government, whatever constitutional form it takes, is an effective and proven way of protecting human rights. By allowing the individual to participate in the political life of a country, democracies seek to ensure that leaders are accountable to their people and that governments are open and accessible. An effective democratic process ameliorates the frustration and the sense of injustice which, in closed or authoritarian societies, develop into conflict, insurrection and civil strife.

1.33 The Committee rejects the argument that ideas developed in one culture have no place in another. Whether it be means of industrial production or design, social services or political philosophy, best practice is best practice in any field of human endeavour.

1.34 Therefore, while the Committee agrees with the Government that development assistance should not necessarily be made conditional on the human rights record of the recipient country, it believes that aid should be directed to countries in such a way that the human rights of citizens of that country are enhanced - through equitable development for all including women, religious and ethnic minorities - and through an open, transparent and independent system of justice.

HUMAN RIGHTS AS A NATIONAL RESPONSIBILITY

1.35 At the World Conference on Human Rights in Vienna in June 1993, Australia proposed that each state be encouraged to develop a National Action Plan which would identify the steps by which that state would improve its promotion and protection of human rights. This is in keeping with the idea expressed above that commitment to human rights is generated nationally; that it is a national responsibility and that the international community involves itself only when a state fails to meet its responsibilities. It is in Australia's interest to involve the Australian community as thoroughly as possible in the process of promoting and protecting and monitoring human rights.

1.36 If the protection of human rights suffers in the international system by being marginalised and underfunded, at the national level there are similar problems relating to a lack of consultation and coordination, debate and dissemination. Public interest in the subject is intense but, in Australia, the policy, and the governmental structures which support policy, are in a state of evolution.

1.37 Australia's record in the ratification of human rights treaties is good. Since January 1993 there are few reservations left on existing treaties. However, in the process of signing and ratification there has been only intermittent parliamentary debate or scrutiny. Most treaties have been implemented by specific legislation or are seen to have been implemented by existing legislation. Where new legislation is introduced into the parliament there is a general scrutiny of it for its human rights impact. This monitoring of legislation for its affect on the rights of citizens takes place in the Senate Scrutiny of Bills Committee, but this is not done strictly in accordance with the treaty obligations that have been signed. There is scope for improvement here.

1.38 However, there is a glaring gap in the process in relation to the ICCPR. For implementation of the ICCPR Australia relies on a variety of statutes and the common law to protect rights. As the Tasmanian Gay and Lesbian Rights case taken to the Human Rights Committee in Geneva has shown, this may not be sufficient. The right of individual petition to the UN committees has highlighted a gap in the process in Australia. Without a Bill of Rights, Australians lack an important domestic avenue of redress. This report addresses the need to put the question of a Bill of Rights back on the political agenda in Chapter 3.

1.39 There is, therefore, an argument for greater parliamentary involvement at both the treaty making and the treaty monitoring stages of the process. These matters are also examined in Chapter 3 of this report.

1.40 Australia is conscientious about human rights. Much energy and innovative thought has gone into the promotion and protection of human rights both nationally and internationally. Our record on peacekeeping is exceptional, our development of national machinery is independent and seen as a model for such institutions elsewhere. We ratify treaties only with the serious intention of implementing the standards contained in them. Nevertheless, performance falls short of ideal and this report seeks, within the perspective of the efforts made, to suggest ways towards better practice.

Chapter Two

THE UNITED NATIONS

The state has become too big for the small things and too small for the big things ... The small things call for delegation downwards to the local level ... The big things call for delegation upwards, for coordination between national policies, or for transnational institutions.[1]

> Central to the achievement of peace, security and improved human rights is the reform of the United Nations. The United Nations is not a world government, nor is it a particularly expensive organisation when a comparison is made with money expended on a variety of other activities internationally. It is, nevertheless, an organisation in need of new focus and new structures, greater efficiency and accountability and greater support, both moral and financial, from the more powerful states. Australian support for the organisation and involvement in the reform process is consistent with our history and our understanding of the value of the UN to small and middle-sized powers. It has the potential to provide more ordered and just international relations in which smaller powers have some influence over the realpolitik of the great powers.

THE CONTEXT

2.1 After decades of superpower rivalry and mutual distrust during the Cold War and being effectively marginalised from its intended role as a respected and influential world body, the United Nations is at last achieving many of the goals that its creators envisaged. Importantly, human rights is now receiving due recognition as a defining theme of the UN system - one of the 'big things'.

1 Professor Hans Singer, monograph 'International Governance', Jubilee Papers, Institute of Development Studies, University of Sussex, 1992, quoted in 'Strengthening the United Nations System in a Time Beyond Warnings', address by Erskine Childers to a conference on reforming the UN, Heythrop College, University of London, 23 January 1993.

2.2 Although enshrined in the United Nations Charter itself, consideration of human rights was often politicised and viewed from the opposing ideological perspectives of the Cold War antagonists through much of the post-Second World War era. From the West's perspective human rights was often defined merely in terms of violations of the civil liberties of those people living under communist or other totalitarian regimes.

2.3 After years of relative inactivity on human rights issues at the UN level through the 1950s and 1960s, the seventies saw renewed interest in such issues, in part because of the high priority accorded them by the then US President Jimmy Carter. On the other side of the Atlantic, human rights standards and laws were developed in the Council of Europe and the European Community, creating the world's first effective regional enforcement arrangements.[2]

2.4 By the late 1980s, following the tough anti-communist rhetoric of the Reagan administration and the collapse of European communism, there was a renewed global commitment to democratic rights, social justice and the universality of human rights. The UN was seen once again as the natural umbrella organisation for setting human rights standards and for ensuring a continued global commitment to them. A number of formerly repressive governments, like the apartheid regime in South Africa, were replaced by democratic governments and real progress towards peace in historically turbulent regions such as the Middle East was achieved. There was a new and genuine commitment to the human rights of hitherto oppressed groups in many countries, not least in eastern Europe. International humanitarian standards became a key defining characteristic of the 'new world order' that replaced the Cold War bipolarity.

REFORM OF THE UN

2.5 The challenge now is to strengthen the UN and its institutions so that international humanitarian reform can be addressed effectively and be seen to be a worthwhile objective for the expenditure of limited international resources. Yet the time has never been more propitious for such a development. The Committee believes that a positive agenda for reforming the UN to enable it to better fulfil its functions, including through the effective monitoring and facilitation of global human rights standards, is set out in *Cooperating for Peace* by the Minister for Foreign Affairs, Senator Gareth Evans.[3] As Senator Evans points out, it is a miracle that the UN is coping with its many and varied challenges given its outdated and inappropriate structure, reflecting past rather than present priorities, and its

2 Address by James Dunn, 'The United Nations and Human Rights in the Nineties', University of Tasmania, 23 April 1993.

3 Gareth Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, Allen & Unwin, 1993 - Chapter 11, 'Reforming the United Nations'.

ongoing financial crisis.[4] He reiterated many of the points in his book in an address to the UN General Assembly (UNGA 49) in October 1994, including calling for a major overhaul of the Security Council by enlarging its membership and changing the rules regarding use of permanent members' veto powers. It is the Committee's view that reform of the UN has never been so urgent.

FUNDING HUMAN RIGHTS AT THE UN

2.6 Senator Evans points out in his book that the serious shortfalls in the UN's budget and the large amount of outstanding arrears have, on occasion, brought it close to the brink of insolvency.[5] With far greater demands on the UN in recent years for peacekeeping activities, plus calls for a better funded human rights regime, the situation will not improve without some new funding arrangements and a renewed commitment by member states to fulfil their financial obligations promptly. A number of suggestions have been made to improve the financial viability of the UN. Senator Evans suggests a $10.00 per sector levy on all international air travel tickets to be paid directly to the UN, which would raise around $3.0 billion per annum.[6] The Committee notes the importance of the Minister's observations; however, getting the required international cooperation and agreement from the International Civil Aviation Organization to implement such a scheme may prove difficult.

2.7 Another proposal is for a small transaction tax on foreign exchange turnover, the so-called Tobin Tax which was first proposed by American Professor James Tobin. The Tobin Tax proposal is presently being evaluated by a working group under the auspices of the UNDP. Again the Committee is mindful of the problems likely to be associated with gaining the necessary agreement to implement the taxation scheme, even though it has considerable merit and would be unlikely to have a negative impact on global financial markets.

2.8 The Committee notes that the past failure of the United States to pay its assessed contributions in full is one of the major reasons for the present financial weakness of the UN.[7] The Committee notes with concern that the US Congress is attempting to delay the Clinton administration's decision to pay all arrears owing to the UN by the end of 1995, as promised by the Bush administration.[8] Although the United States is by no means the only state to not have paid its UN

4 ibid., p. 169.

5 ibid., p. 174.

6 Evidence, 19 October 1994.

7 Evans, op. cit., p. 175.

8 ibid.

contributions, it can and does set standards in many areas of contemporary world affairs. It is capable of giving a valuable lead in this.

In the current debate on United Nations reform, the Committee recommends that the Australian Government take all appropriate measures to urge the United States administration and Congress to fulfil the United States' financial obligations to the UN promptly.

2.9 In easing the UN's financial problems, the US could help create a better international human rights environment as well as a more stable and peaceful world, thus reducing its own defence and security costs in the future. It is the Committee's firm view that all member states of the UN have a vested interest in making the UN system work well, which necessitates ensuring it is financially viable. The best contribution a member state can make to the UN's financial viability is to ensure that their own assessed contributions are paid promptly and in full. As at August 1993, the outstanding assessed contributions of member states was $1,193 million for peacekeeping and $848 million for the regular UN budget. The UN's total cash reserves were $380 million, while its total monthly outlays were $310 million.[9] This financial situation cannot continue if the UN is to fulfil the high expectations that are held for it in the mid-1990s.

2.10 If the UN's financial health can be restored, an amount greater than the present 1% of the UN's budget could be spent on human rights matters. The Committee would like to see the UN's expenditure on human rights increase as a percentage of its total expenditure.

2.11 The resource problems of the UN human rights system were highlighted by other witnesses before the Committee. Mr Bacre Waly Ndiaye, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, outlined the funding crisis at the Human Rights Centre in Geneva from personal experience:

> The Centre for Human Rights has only one per cent of the United Nations budget and 0.75 per cent of the personnel. ... Already staff travel has been cut, and there are considerable budget problems. To deal with the 3,500 allegations I received in 6 months last year, I have one three-quarter time staff member and one half time staff member, and I lack the minimum resources to work. ... No telex or fax numbers are dedicated to my mandate, and I have no computer links with the NGOs which regularly supply information on an urgent basis.[10]

2.12 Senator Rod Kemp quoted Professor Philip Alston, Chairman of the United Nations Committee on Economic, Social and Cultural Rights as describing the UN

9 ibid., pp 174, 175.

10 Evidence, 5 October 1993, pp. 241, 247.

human rights committee system as in a 'crisis situation' and 'in need of sustained reform'.[11]

2.13 Amnesty International recognised the financial problems and the need for improved functioning of the UN Centre for Human Rights.[12] The United Nations Association of Australia (UNAA) also recognised the need for reform and strengthening of the UN machinery to deal with human rights. Particularly, UNAA

> supports more adequate funding for human rights work within the UN, from the UN budget and beyond. The Centre for Human Rights is especially in need of funds.[13]

2.14 The Committee believes that much greater resources need to be allocated to the Human Rights Centre in Geneva. This should come from United Nations funding. However, it believes that the parliaments of the world could support the activities of the Centre by allocating funding either directly through the Inter Parliamentary Union or through individual parliaments supporting the secondment of a member of their staff to the centre for a period of one or two years, sufficient time for a real contribution to be made. This is the preferred option as it would have the dual function of bringing regional perspectives to the Human Rights Centre and informing national parliaments of the workings and needs of the Centre.

The Committee recommends that, in the current reforms of the UN, the financing and structure of the human rights regime be addressed and urges the Australian Government to continue its support for greater funding and coordination in the system.[14]

In particular,

The Committee recommends that the Australian Parliament promote the possibility of the funding of a position or positions at the Human Rights Centre in Geneva by the International Parliamentary Union.

11 Senator Kemp, Liberal Party, Senator for Victoria, submission, p. S1935.

12 Evidence, 29 October 1993, p. 466.

13 UNAA submission, p. S1816.

14 The committee notes that the final declaration of the World Conference in Vienna made a series of recommendations for the strengthening of the system through greater financial support for the Human Rights Centre and its technical and advisory services, for wider ratification by States of the human rights treaties, for greater coordination of the reporting and monitoring mechanisms, and for the development of national and regional institutions. To date Australia, through the work of Peter Wilenski and Richard Butler, has played an important role in the reform process, particularly in the bureaucracy in New York.

2.15 The Australian delegation to the 49th session of the Commission on Human Rights in Geneva in March 1993 suggested several practical ways in which legal infrastructures and national machineries can be strengthened by donor countries to improve respect for human rights in other countries. The suggestions included:

- offering expert advice and practical assistance in the holding of free and fair elections;

- providing technical and legal advice on the drawing up of constitutions or the establishment of institutions at the national level to protect the human rights of citizens; and

- offering advice in the functioning of the judiciary and the police, and on the measures to strengthen the rule of law.[15]

2.16 The Committee supports the provision of such practical assistance to other countries. It is a recognition that human rights are best protected within a state by the national government. This is where the primary responsibility lies and this is where most effective and timely responses can be made. However, any effective domestic protection is reliant on both laws and institutions commited to the principles of human rights as outlined in the International Bill of Rights. Support for and development of such mechanisms as outlined above also strengthens international human rights consciousness. Such support should complement the improved financial arrangements for the UN referred to above.

STRUCTURAL REFORM OF THE UN

2.17 Senator Evans and Professor Erskine Childers[16] have, among others, put forward considered proposals for major reform of the UN's structure and administration.[17]

2.18 One proposal under discussion and receiving some support in Canada and Australia and through the Inter Parliamentary Union and the Commonwealth Parliamentary Association was the suggestion, made first in 1945 by the UK Foreign Secretary, Mr Ernest Bevin, and reiterated by Professor Childers, that the UN should have a Parliamentary Assembly. The present proposal suggests this assembly,

15 From the statement by H.E. Ms P.A.Wensley, leader of the Australian delegation to the 49th session of the Commission on Human Rights, Geneva, 4 March 1993, in the Department of Foreign Affairs and Trade submission, p. S89.

16 Professor Childers is now retired; however he was formerly Senior Adviser to the UN Director-General for Development and International Economic Cooperation.

17 Evans op.cit, Chapter 11, 'Reforming the United Nations', and Childers, op.cit.

more representative of peoples than of governments, as a vehicle for monitoring human rights.

The Committee urges the Government to promote, during debates on the reform of the UN, discussion of the creation of a UN Parliamentary Assembly to monitor, among its responsibilities, human rights practices on a regular basis.

2.19 The scope of the problem of UN reform is apparent when one considers the complexity and number of issues which are currently before the organisation. Rather than being a modern, streamlined organisation it is patently still one designed half a century ago to meet a very different agenda. The potential for the Secretary-General to coordinate effectively the 40 separate departments, offices, agencies, instrumentalities and commissions that report directly to him must be limited. The competing demands on his office are too much for any one person to deal with effectively. The Committee believes that the case for urgent reform of the UN's structure and administration is clear.

2.20 The Secretary-General has already taken welcome steps to restructure the top levels of the UN secretariat, by creating a Department of Peace Operations, rationalising the senior level structure of the secretariat, changing personnel and management systems, and improving coordination within the secretariat and the specialised agencies.[18] These are major steps forward for which the Secretary-General deserves commendation. However, much remains to be done and the Committee agrees with the proposals put forward by Evans and Childers[19] for the creation of four new Deputy Secretary-General positions, with a consequent restructuring of the secretariat into four functional groups along the following lines:

- peace and security matters
- economic and social affairs
- humanitarian affairs
- administration and management.[20]

2.21 The Committee believes that it is timely for such a significant restructuring of the UN's administration to improve greatly its management efficiency and ability to carry out its charter responsibilities. While the Committee is mindful of the need not to expand the UN bureaucracy unnecessarily, the potential benefits of improved management of the UN structure are paramount in the opinion of the Committee. It is worth noting that the UN's current total workforce of about 51,000 (excluding World Bank and IMF staff and peacekeeping troops), who serve 5 billion people in over 180 countries, number less than, for example, those employed in the district

18 Evans, op.cit., p. 170.

19 See footnote seventeen above.

20 For a diagram outlining this restructure proposal see Evans, op.cit., p. 172.

health service of Wales, the civil service of the City of Stockholm or who are on the public payroll in the state of Wyoming.[21]

2.22 Another UN reform which has already been instituted, and which the Committee commends, is the creation of the post of UN High Commissioner for Human Rights. The Secretary-General nominated Ecuador's representative, Mr Jose Ayala Lasso, to be the first holder of the position, a decision which did not meet with universal approval due to the fact that Mr Lasso was foreign minister in Ecuador's military government in the late 1970s.[22] While the Committee commends the creation of the High Commissioner's position, it is felt that Mr Lasso will have to move quickly to prove his human rights *bona fides* given his former membership of a regime which had scant regard for human rights.

2.23 The new Human Rights High Commissioner has a challenging agenda if he is to reconcile the differing views on what his job should entail. At the time this report was written it was still unclear whether Mr Lasso would have the authority to initiate independent inquiries into alleged human rights abuses or whether he would have a far more limited brief, operating only as directed by relevant UN organisations. The Committee believes that it is important that the post of human rights High Commissioner be as independent as possible.

THE STRUCTURE OF THE UN COMMITTEES

2.24 Professor Phillip Alston is the Director of the Centre for International and Public Law at the Australian National University and the Chairperson of the UN Committee for Economic, Social and Cultural Rights. In his latter capacity he prepared a report at the request of the General Assembly in 1989 on enhancing the long term effectiveness of the United Nations human rights treaty regime. That report has since been updated.

2.25 In the report, he described the human rights treaty system as one which, since the adoption of the Covenants in 1966, has grown haphazardly and, of late, rapidly. For example, between 1989 and 1992, there has been a 27 per cent increase in the number of States parties to the principal human rights treaties. It was to be expected that, by the year 2000, there would be 1000 reports per reporting cycle to be dealt with by the six treaty committees. Already there was a backlog of 1000 overdue reports.[23] The strain on resources has been serious for both the committees trying to deal with the reporting cycle and for the Human Rights Centre trying to give technical advice and coordination to the system.

21 Quoted in Childers, op.cit.

22 See 'UN human rights job dismay' in the *Sydney Morning Herald*, 3 February 1994.

23 Interim Report on the study on enhancing the long-term effectiveness of the United Nations human rights treaty regime, United Nations General Assembly, A/CONF.157/PC/62/Add.11/Rev.1, 22 April 1993, p. 5.

2.26 The report recommends that, while the aim of achieving universal participation in the human rights treaties is pursued, the process of dealing with monitoring and implementation is in urgent need of review. Four areas were listed:

- advisory services;
- public information;
- collaboration with other United Nations bodies and agencies; and
- the relationship between the United Nations human rights bodies and their regional counterparts.

The aim of the reforms was to minimise the burden and to maximise the effectiveness of measures to ensure respect for human rights. This involved a streamlining of requests to States for information to give emphasis to the most essential, the consolidation of the reporting requirements, consultation and coordination of activities, expectations and requests at the committee level in Geneva to avoid duplication, possible reduction of the number of treaty bodies, an expansion in both time, resources and expertise available to the treaty bodies, and an improved relationship between the treaty bodies and non-government organisations and the various intergovernmental agencies.[24]

2.27 Senator Rod Kemp commented at length on the composition and processes of the UN human rights committees, and, therefore, their eligibility to make judgements on human rights in Australia. He claimed that there is a crisis of resources and a lack of coordination between the various UN committees.[25] Also, he claimed that:

- the UN human rights committees are ill-suited to playing any role in the Australian legal system;

- at the very time Australia has intermeshed its legal system with that of the UN, there is widespread recognition that the UN human rights system is in need of major reform; and

- UN conventions are being used as a political weapon to undermine the federal nature of the Australian constitution.[26]

2.28 On the question of the judicial process and the composition of the UN committees, this Committee believes that, while it does not accept several of Senator Kemp's analogies, there are some anomalies which the United Nations should address. Specifically, Senator Kemp argued that:

24 ibid. pp. 7-10.

25 Senator Kemp submission, p. S1935.

26 Senator Kemp submission, pp. S1922-23.

- the committees do not meet Australian standards of judicial process - the proceedings are not in public and there is no cross examination of witnesses;

- not all members of the committees are accepted as acting freely and independently of their governments;

- members from countries which are not democratic and which have not ratified the First (Optional) Protocol sit on the committees; and

- the rights enshrined in the conventions are vague, contradictory and controversial.

2.29 The Committee does not believe that a strict analogy between court processes and those of the UN committees is appropriate. Although the committees are established to monitor observance of international treaties, which constitute one form of international law, they are not courts and they do not have court powers. They receive 'communications' on which they give views, not judgements. Nor do they have the formal procedures of a court such as the International Court of Justice or the European Court of Human Rights. The committees make assessments about whether obligations agreed to under the treaties have been met or breached.

2.30 As an international body dealing with complaints from all over the world the committee system does not nor could not operate as a court system which parties attend to put a case. However, the committees have a quasi-legal and important function. Mr Anton Hermann put a view:

> No matter what you call it - a Committee, a Court, a Tribunal or anything else - its ultimate effect was to bring about a change to an Australian law. The stakes are high - and so too should be the Committee's standards of justice.[27]

Whatever the arrangement, this Committee believes that principles of natural justice should be incorporated into the proceedings. It should be noted that in dealing with human rights cases the complainant is often poor or in prison and the matters which are brought to the committee are often of a sensitive nature where in-camera proceedings are necessary for the safety of the person making the complaint. Most human rights abuses result from government action. Appropriately, therefore, human rights complaints and responses are made by written submissions and submissions are made available to each party. Time is given at each stage for responses to be made by the parties concerned.

2.31 Remedies are left to the states concerned. The independence and sovereignty of the nation state is preserved at a number of stages in the process.

27 Mr Anton Hermann, 'Australia's Human Rights Obligations' Alan Missen Memorial Lecture, 24 October 1994, p. 8.

The state chooses to be bound by the treaty, it chooses to respond to the assessment of the committee and it also chooses the remedy it will apply, appropriate to its domestic legal or social framework.

2.32 Internationally, there are some anomalies within the UN committee system. However, the criticism of the composition of the committees on the basis that some members lack independence from their governments, that a number of governments are not identifiably democratic and that they have not always ratified the First (Optional) Protocol has only partial validity.

2.33 The Committee notes that members of the UN committees are not 'appointed' but 'are elected by secret ballot by the States that have ratified the particular instrument' and believes that this is appropriate[28]. To this extent they are not undemocratic. Nor does the criticism of undemocratic composition seem to be reasonable in the case of the Human Rights Committee where 13 of the 18 members, as in the Human Rights Committee, are said to come from 'fully democratic countries.'[29] While the numbers on the racial discrimination committee are eight to ten 'fully democratic' to non democratic, on the Committee against Torture the 'fully democratic' countries still prevail. Moreover, Justice Evatt noted that, once appointed, members were members in their own right and not responsible to their government. She also stated that in her experience she found members of the Human Rights Committee to be highly 'competent and experienced'; people of 'personal integrity and independence, who have sometimes worked under very difficult circumstances to achieve effective procedures and develop dialogue with states'.[30] This Committee believes that the personal reputation, expertise and commitment of particular individuals to human rights is not necessarily determined by nor synonymous with the political organisation of their country.

2.34 However, it should be noted that nomination is made by governments. In this respect, Justice Evatt did note with regret that there had been difficulties occasionally in the past when 'some members of the committees from the Eastern Bloc were not permitted to act freely and independently of their governments' and 'some had been in government foreign service.' She further stated, 'I would personally prefer that members of the foreign service not be nominated to these committees, because of the potential for a conflict of interest to arise. But I do not think this has been a significant obstacle to the work of the committees.'[31]

28 Justice Evatt submission, p. S1773.

29 Senator Kemp submission, pp. S1933-34.

30 Evidence, 6 December 1993, p.742.

31 Justice Evatt submission, p. S1772.

The Committee recommends that, in the process of UN reform, the Australian Government should press for a review of the committee structure to address questions of the independence of members of UN committees. In particular, the Government might urge the UN to confine the eligibility for membership of the Human Rights Committee to nationals of those countries which have ratified the First (Optional) Protocol.

2.35 On the question of the inconsistency of rights, it seemed to the Committee that the problem was more apparent than real. It is in the nature of rights that they must always be balanced against obligations and other rights. This fact underlies both domestic and international justice systems. Rightly, making judgements about the balance of rights is the role given to judges, magistrates and tribunals, or committees of the UN.

NEW COVENANTS AND CONVENTIONS

Indigenous Peoples' Convention

2.36 A draft Indigenous Peoples' Convention has passed the Sub-Commission on Human Rights, prior to going to the full Commission on Human Rights in February 1995. The proposed convention is a complex and controversial matter; reaching unanimity on the terms of such a convention will not be easy. The issues it raises are discussed more fully in Chapter 6.

Violence Against Women Convention

2.37 At the Vienna Conference in June 1993, Senator Evans called for a renewed commitment to the rights of women. He pointed out that womens' interests had been well served by the Commission on the Status of Women (CSW), a body created in 1946. Most recently CSW had developed international norms to safeguard women from violence. However, Senator Evans said that there was an unfortunate tendency for 'mainstream' human rights organisations to give insufficient consideration to womens' rights issues.[32] Specific action was needed to ensure the full integration of womens' issues into all major human rights forums.

THE STATUS OF THE HUMAN RIGHTS CONVENTIONS IN AUSTRALIA

2.38 Australia's human rights policy incorporates a deep regard for the significance of international human rights instruments, as specified in the National Action Plan:

32 See the address by Senator Evans, 'Human Rights and the New World Order', to the Second World Conference on Human Rights, Vienna, 15 June 1993, quoted in the Department of Foreign Affairs and Trade submission, p. S46.

> ... Australia accords a high priority to the promotion and protection of human rights, both internationally and domestically. This is a position based on the belief that the universal observance of the rights and principles embodied in the *Universal Declaration of Human Rights* and the other major international human rights instruments would result in a more just international order, from which the prosperity and security of all nations and individuals would benefit. In seeking to advance human rights through its foreign and domestic policies, the Australian Government subscribes to the view that human rights are *inherent*, that is, they are the birthright of all human beings; *inalienable*, insofar as they cannot be lost or taken away; and *universal* in that they apply to all persons, irrespective of nationality, status, sex or race. Australia rejects the view that there is any hierarchy of human rights.[33]

2.39 The following paragraphs outline Australia's position with regard to a number of the key international human rights instruments.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

2.40 Australia currently has reservations to Article 10 paragraphs 2(a), 2(b) and 3 regarding the separation and treatment of convicted and non-convicted persons, separation of juveniles from adults in prison, and reformation and social rehabilitation of prisoners; Article 14 paragraph 6, dealing with legal compensation for miscarriage of justice; and, Article 20 dealing with propaganda for war, and racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

2.41 With regard to Article 10 paragraphs 2(a), 2(b) and 3, Australia's demographic and geographic features make it difficult to achieve total segregation of accused and convicted prisoners and juvenile and adult prisoners. The Australian Government considers it to be appropriate that the responsible authorities maintain the discretion to determine whether it is beneficial for a child or juvenile to be imprisoned with adults. The Government is committed to the goal of separation of accused and convicted prisoners.[34]

33 *National Action Plan: Australia*, AGPS, 1994, p. 3. The National Action Plan was an initiative of the Australian government endorsed by the World Conference in Vienna in 1993. The concept of the National Action Plan seeks to ensure that governments will produce a strategic plan for the improvement of human rights in their countries. The first National Action Plan was produced by the Australian Government in 1994. It covers a period of five years.

34 ibid., p. 8.

2.42 Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances outlined in Article 14, paragraph 6 may be made by administrative procedures rather than pursuant to specific legal provision. These procedures are available in all Australian jurisdictions to provide compensation for miscarriages of justice covered by the ICCPR.[35]

2.43 In 1992 the Government introduced legislation outlawing racial vilification, as described in Article 20 of the ICCPR and Article 4(a) of the International Convention on the Elimination of Racial Discrimination (ICERD) (see paragraph 2.39), but it lapsed due to the dissolution of the Parliament prior to the 1993 Federal elections. New South Wales, Queensland, Western Australia and the Australian Capital Territory have legislated to outlaw racial vilification.[36]

2.44 The whole issue of the appropriateness of racial vilification legislation has been the subject of much community debate in recent times and, indeed, some witnesses spoke to the Committee about the efficacy of such legislation in curbing neo-Nazi activities and 'Holocaust denial' propaganda.[37]

2.45 Critics of the legislation respond by saying that there is little likelihood of successful prosecutions under the legislation and, in any case, education, debate and discussion are more potent weapons against racism. Fr Frank Brennan, SJ, has argued that there are already criminal sanctions against acts of violence and the threat of violence and he doubted the 'practicality of the distinction [between violence motivated by race, as opposed to sex, religion or personal vendetta], unless one sort of violence is judged to be more ideologically unsound than another ...' Furthermore, he notes that in Australia 'most vilification is exchanged between members of warring minorities.'[38] In the debate between the rights to free speech and the problems of racial vilification, Fr Brennan concluded that in his view the balance of the argument favoured the preservation of civil liberties:

> The Criminal law is a blunt instrument for reshaping the hearts of racists. This proposed interference with civil liberty would do nothing to enhance further the human rights of the woman wearing the *hijab*. It would not help the resolution of inter-ethnic conflict or produce more reasoned public discussion about migration or Aboriginal rights which are the two key issues relating to race and which play on the public's racial fears. It would bring the criminal laws and its governors into disrepute.[39]

Critics have also argued that there is an apparent inconsistency in pressing other countries to respect the rights of their citizens to free speech while seeking to outlaw the expression of certain views and opinions in Australia.

2.46 The Government is currently considering submissions and responses to a new draft Bill to prepare suitable legislation for Australian jurisdictions, as a prerequisite to considering the removal or modification of the reservations to the articles mentioned in paragraph 2.39 above. In the last review the Committee stressed its realisation of the potential conflict between the desirable goal of eliminating racial discrimination and the right to free expression, and asked the Government to ensure that any such legislation did not 'proscribe opinions or inhibit free speech as it is understood in a democracy, especially as it involves humour or satire'.[40] The Committee reiterates that sentiment.

2.47 The Committee notes also that 1995 has been proclaimed as the United Nations Year for Tolerance. This is in line with a move within the United Nations to recognise that improvements in human rights will be best obtained by positive action rather than negative and critical approaches. Australia, with its diverse ethnic mix and its largely successful program for the integration of migrant groups into the Australian community, is in a good position to demonstrate the value of multicultural policies. The Committee believes that such positive approaches to the promotion of human rights are useful and to be encouraged and therefore the Year of Tolerance should be endorsed and supported by the Australian Government.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION (ICERD)

2.48 Australia holds a reservation against Article 4(a) of ICERD. This Article is concerned with legislating against racist activities including the promotion of racial hatred, discrimination and violence. This reservation relates directly to Article 20 of the ICCPR cited in the preceding paragraph. The racial offences covered by the ICERD are currently only offences punishable to the extent that they fall under the existing criminal law dealing with such matters as public order, public mischief, assault, riot, criminal libel, conspiracy and attempts.[41] Some witnesses urged the Committee to press the Australian Government to legislate to implement the terms of Article 4(a), in accordance with the Whitlam Government's undertaking at the

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35 ibid., pp 8, 101.

36 ibid., p. 9.

37 For instance, evidence by Mr Jeremy Jones, Executive Vice President of the Executive Council of Australian Jewry, 28 January 1994, pp. 906-913.

38 Quoted from *The Australian*, 12 August 1994, 'Law won't soften hearts of racists'.

39 ibid.

40 Joint Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, AGPS, 1992, p. 35.

41 *National Action Plan*, op.cit., p. 102.

time Australia ratified the ICERD in 1974.[42] The Committee notes the views of one witness that failure to legislate to implement all the matters covered by the convention raises potential questions about Australia's good faith in this matter.[43]

The Committee draws the attention of the Government to those areas not yet subject to legislation under Article 4(a) of the Convention on the Elimination of All Forms of Discrimination.

GENOCIDE CONVENTION

2.49 In its first review of Australia's efforts to promote and protect human rights, the Committee recommended that 'the Australian Government introduce legislation to Parliament to implement the Genocide Convention' which Australia ratified in 1949.[44] The Committee notes with regret that the Government has decided against enacting such legislation, apparently believing that existing state and federal legislation obviates the need for the creation of a specific offence of genocide. The Committee does not share the view that there is no need for legislation specific to the offence of genocide and repeats its recommendation from 1992 that such legislation should be enacted by the Government.

The Committee draws the attention of the Government to the lack of legislation for implementation of the Genocide Convention.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) AND CONVENTION ON THE POLITICAL RIGHTS OF WOMEN (CPRW)

2.50 Australia's current reservation against Article 11(2) of CEDAW relates to paid maternity leave and combat duty for women. Australia also holds a reservation against Article III of the CPRW, relating to discrimination in regard to recruitment and conditions of service in the Defence Forces.[45]

42 For instance, Professor Hilary Charlesworth of the University of Adelaide law school, in evidence given on 5 November 1993, p. 557. When ratifying the ICERD, the Whitlam Government stated that 'Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 of the convention ... [but i]t is the intention of the Australian government at the first suitable moment to seek from parliament legislation implementing the terms of article 4A'. (Quote in Professor Charlesworth's evidence.)

43 ibid.

44 *A Review of Australia's Efforts to Promote and Protect Human Rights*, op. cit., 1992, pp. xxvii, 31-32.

45 *National Action Plan*, op.cit., pp. 103-104.

2.51 The National Action Plan lists the following points in relation to the reservation to Article 11(2) of CEDAW:

- the Government has not, as yet, been in a position to remove the existing reservation as full implementation would require the introduction of maternity leave with pay or comparable social benefits across the entire country;
- maternity leave with pay is available to most women employed by the Federal Government. The New South Wales, Australian Capital Territory and Northern Territory public services also offer paid maternity leave, subject to qualifying periods. Paid maternity leave has been available to Victorian public servants, although the present state government has introduced legislation to remove this for new employees;
- unpaid maternity leave is available to all women employed in NSW and to women employed under Federal, and some State, industrial awards. Maternity leave in the private sector is mostly unpaid; and
- subject to income tests, Social Security benefits are available to women who are sole parents.

2.52 The Government has the following reservation about CEDAW and Article III of CPRW:

- women are now able to serve in all positions in the Australian Defence Force (ADF) other than direct combat positions. It is likely that the Government will remove the exclusion from combat related duties, and amend the *Sex Discrimination Act 1984* to restrict the exemption for combat duties to a more limited range of duties involving hand-to-hand combat. It is estimated this will open approximately 90 per cent of all ADF positions to women.[46]

INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (ICRC)

2.53 In a Reservation on Article 37(c) of the International Convention on the Rights of the Child, Australia rejects the obligation to separate adults and children in prison. The intent of the Article is to protect juveniles who are incarcerated. While accepting the obligation to separate children from adults in prison, the Government feels that there is a parallel obligation, having regard to the particular geography and demography of Australia, to allow children to maintain contact with their families. The Committee is confident that state and federal authorities with responsibility for prisons take all reasonable steps to protect the welfare of any under age persons within their jurisdiction.

46 ibid., pp 9, 103-4.

Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I).

2.54 Australia ratified this Protocol in 1977 with reservations concerning Articles 5, 44 and 51-58.[47] Article 5 refers to the appointment of Protecting Powers and of their substitute; Article 44 relates to combatants and prisoners of war; and 51-58 covers protection of the civilian population, general protection of civilian objects, protection of cultural objects and places of worship, protection of objects indispensable to the survival of the civilian population, protection of the natural environment, protection of works and installations containing dangerous forces, precautions in attack and precautions against the effects of attacks.[48]

INTERNATIONAL LABOUR ORGANISATION (ILO) CONVENTIONS

2.55 Australia has ratified 54 of a total of 125 conventions which have been adopted by the ILO and which are still current and open to ratification. The Government recently identified 33 ILO Conventions as suitable for ratification, six of which have since been ratified. The Government proposes to actively pursue ratification of the remaining 27 Conventions, through consultation with the States and Territories and the removal of barriers to compliance.

2.56 The Government plans to consider ratification of a number of Conventions dealing with human rights and freedoms of association, including:

- No 97 *Migration for Employment (Revised)*, 1949;
- No 141 *Rural Workers' Organisations*, 1975;
- No 143 *Migrant Workers (Supplementary Provisions)*, 1975;
- No 151 *Labour Relations (Public Service)*, 1978; and
- No 154 *Collective Bargaining*, 1981.[49]

ILO Convention No 169: Indigenous and Tribal Peoples in Independent Countries

2.57 Australia has not ratified ILO Convention No 169 and no decision has yet been made regarding its suitability for ratification. Some experts, such as Professor Breen Creighton of La Trobe University, are concerned that the convention, in dealing with criminal procedure, land rights and other issues, exceeds the competence of the ILO in a number of respects.[50] Other parties do not share

47 Whitlam Submission, p. S461.

48 *Australian Treaty Series*, 1991, No 29, pp. 4-6, 37-39 and 44-52.

49 *National Action Plan: Australia*, op.cit., pp. 4-5.

50 Evidence, 14 October 1993, pp 271-272.

Professor Creighton's misgivings. For instance, after consultation with Aboriginal and Torres Strait Islander organisations, the Board of Commissioners of ATSIC has recommended that the Australian Government ratify the Convention.[51] On balance, the Committee sees no reason to change its 1992 recommendation that Convention 169 be ratified.[52]

The Committee draws the attention of the Government to ILO Convention 169 which it has not yet ratified.

RECENT DEVELOPMENTS

2.58 Recent developments since the Committee's first report in 1992 include:

- Australia made a declaration removing the reservation on Article 41 of the ICCPR on 28 January 1993.[53] This represents a great advance, allowing international scrutiny of Australia by any member State, and recognising the competence of the UN Human Rights Committee to receive and consider communications from another declared State Party that the first State Party was not fulfilling its obligations under the Covenant;

- the reservation against Article 14 of ICERD was removed by a declaration by Australia on 28 January 1993.[54] Like Article 41 of the ICCPR, this article allows for scrutiny of Australia's record in relation to the convention; and

- Australia became party to Articles 21 and 22 of Convention Against Torture (CAT) on 28 January 1993.[55] Article 21 recognises the competence of the Committee against Torture to receive and consider communications from one State Party that another State Party is not fulfilling its obligations under the Convention. Article 22 recognises the competence of the Committee to receive and consider communications from or on behalf of individuals who claim to be victims of a violation by a State Party of the provisions of the Convention.

51 *National Action Plan: Australia*, op.cit., p. 4.

52 *A Review of Australia's Efforts to Promote and Protect Human Rights*, op.cit., pp. 38-39.

53 Whitlam Submission, p. S458.

54 Whitlam Submission, p. S457.

55 Whitlam Submission, p. S459.

REPORTING

2.59 The Committee commends the Department of Foreign Affairs and Trade for its moves to facilitate the participation of NGOs in consultations prior to the preparation of Australia's reports under international human rights instruments, in accordance with Recommendation 6 of the last Review.[56] DFAT consults extensively with NGOs in the preparation of its human rights reports required by the various UN human rights committees. The Department included the latest reports to the UN in its last annual report to this Committee. They are listed at Table 2.2. The Committee believes that there is a need to disseminate further the information contained in these reports by tabling them in Parliament.

The Committee recommends that the Government table in the Parliament the reports (detailed at Table 2.2 of this report) prepared by the various Commonwealth agencies in response to our obligations under UN human rights treaties.

RESOURCES

2.60 In its 1992 report, the Committee recommended that the Government reinstate the annual human rights reports from Australian diplomatic posts and urged the Government to make provision in resources and training to officers of the Department of Foreign Affairs and Trade to enable them to carry out this task.[57] The former Director of the Human Rights Section of the Department of Foreign Affairs and Trade explained the reasons that annual human rights reports were not required of posts were '...firstly, a resources and priorities issue, and secondly, to do with the quality of information available from other sources'.

He also stated:

> We have not mandated for an annual report on human rights simply because we do not think that would be a useful utilisation of resources, bearing in mind the competing priorities for those resources and where there are human rights considerations they can be dealt with in terms of reporting back on particular issues. Our embassies, of course, are also very much involved in making representations on human rights matters, particularly those that are brought to the Government's attention by the Australian Parliamentary Group of Amnesty International. So there is no shortage of human rights work being done by our missions overseas. The formalisation of an annual report has not been seen as a necessary step.[58]

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56 *A Review of Australia's Efforts to Promote and Protect Human Rights*, op.cit., pp. 40-41.

57 ibid., p. 41.

58 Evidence, 1 June 1993, p. 78.

2.61 Australia, and DFAT in particular, has done much to promote a viable regional and international human rights regime since the publication of the first report on human rights by the Committee in December 1992. The Committee welcomes the steps DFAT has taken since 1992 to sensitise its officers to human rights matters and to monitor human rights more closely. DFAT now runs a human rights training course for their own officers and those from AIDAB, which is designed to sensitise relevant officers to human rights issues and to the human rights dimensions of government decisions that have an international focus. In this context the publication of the National Action Plan and the Human Rights Manual are further welcome signs of progress.

2.62 Given this progress, the Committee feels that it is entirely appropriate for Australia's diplomatic posts to report annually on the human rights situation in their country or countries of responsibility. Accordingly, the recommendation from the previous review, for such reporting to take place, is repeated.

The Committee recommends that the Government reinstate the regular human rights reports from all Australian diplomatic posts and urges the Government to make provision in resources and training for officers of the Department of Foreign Affairs and Trade to carry out the task.

TABLE 2.1 INTERNATIONAL TREATIES FOR THE PROTECTION OF HUMAN RIGHTS as at June 1994

Title	Adoption by United Nations	Entry into Force	Ratifications, Accessions or Successions as at June 1994	Ratification or Accession by Australia	Outstanding Declarations or Reservations
Universal Declaration of Human Rights	1948		* Vote only	1948	
International Covenant on Economic, Social and Cultural Rights	1966	1976	129	1975	
International Covenant on Civil and Political Rights	1966	1976	127	1980	Articles **10**, p.2(a),2(b),3; **14**,p.6; & **20**
(First) Optional Protocol	1966	1976	77	1991	
Second Optional Protocol	1989	1991	22	1990	
First, Second, Third and Fourth Geneva Conventions	1949	1950	185	1958	
Protocol I	1977	1978	133	1991	Articles **5;44;51-58**
Protocol II	1977	1978	123	1991	
Convention on the Prevention & Punishment of the Crime of Genocide	1948	1951	114	1949	
Convention on the Political Rights of Women	1953	1954	106	1974	Article III

* Vote only: 48 for, 0 against, 8 abstained, 2 absent

Title	Adoption by United Nations	Entry into Force	Ratifications, Accessions or Successions as at June 1994	Ratification or Accession by Australia	Outstanding Declarations or Reservations
International Convention on the Elimination of All Forms of Racial Discrimination	1966	1969	140	1975	Article 4(a)
Convention on the Elimination of All Forms of Discrimination Against Women	1979	1981	134	1983	Maternity leave & combat duty
Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment	1984	1987	84	1989	
International Convention on the Rights of the Child	1989	1990	161	1990	Article 37(c)
Convention on the Reduction of Statelessness	1961	1975	17	1973	
Convention Relating to the Status of Stateless Persons	1954	1960	41	1973	
Convention Relating to the Status of Refugees	1951	1954	123	1954	
The Protocol Relating to the Status of Refugees	1967	1967	123	1973	
Slavery Convention, as amended	1953	1955	88	1953	
Supplementary Convention on Slavery	1956	1957	112	1958	

TABLE 2.2 STATUS OF AUSTRALIAN REPORTS TO THE UN HUMAN RIGHTS COMMITTEES

Title	Department Responsible	Reporting Period	Current Status
International Covenant on Civil and Political Rights	AG's	Entry into force for Australia - Nov 1980	First report submitted Nov 81 Considered Oct 82
Article 40		1st report due 1981 and thereafter every five years 2nd report due 1986 3rd report due 1991	Second report submitted Feb 87 Considered Apr 88 Third report is being finalised. The report is expected to be submitted by the end of the year
International Covenant on Economic, Social and Cultural Rights	DFAT	Entry into force for Australia - Mar 1976	Second periodic report on Art 13-15 Submitted June 92 Considered May 93
Article 16		More complex reporting cycle has been simplified to one comprehensive report every five years	Comprehensive report on Art 1-15 due June 94. Currently under preparation
International Convention on the Elimination of All Forms of Racial Discrimination	DFAT	Entry into force for Australia - Oct 1975	Combined 6th, 7th and 8th report Considered Aug 91
Article 9		1st report due 1976 and thereafter every four years with interim two yearly reports	Ninth interim report due Oct 92 Considered Aug 94

Title	Department Responsible	Reporting Period	Current Status
Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment	AG's	Entry in force for Australia - Sep 1989	First report submitted Aug 91 Considered Dec 91
Article 19		1st report due 1990 and thereafter every four years	Second report due Sep 94. Report currently being updated by Commonwealth agencies and State and Territory governments.
Convention on the Elimination of All Forms of Discrimination Against Women	Office of the Status of Women	Entry into force for Australia - Aug 83	First report submitted 1986 Considered 1988
		1st report due 1984 and thereafter every four years	Second report submitted in 1992 Updated report considered in Jan 1994
Convention on the Rights of the Child	AG's	Entry in force for Australia - Jan 1991	First report is currently being finalised. The report will be submitted by the end of the year
Article 44		1st report due 1993 and thereafter every five years	

Chapter Three

AUSTRALIAN HUMAN RIGHTS FRAMEWORK

> *We live at a time when human rights have been beautifully enunciated in numerous documents, subscribed to by many nations. These enunciations, in themselves, are no small accomplishment. Ethical codes have always preceded ethical conduct. A certain time is needed for education and adaptation. Even afterwards, perfection is never attained.*
> *President Jose Figueres*[1]

Nationally, Australia has committed itself to the genuine implementation of the human rights treaties. Unlike many states within the system, the treaties are signed when it is believed the obligations can be fulfilled. In recent years efforts have been made to ratify all treaties with a minimum of reservations. However, as the number and scope of the human rights treaties have increased and, with the ratification of the individual complaint mechanisms, it has become obvious that there are significant gaps in the process. Processes of consultation and coordination between the Commonwealth and the States and throughout the bureaucracies must be improved. Furthermore, although the Constitution gives sole treaty making power to the executive, and this constitutional arrangement is affirmed by the Committee, it is no longer adequate that Parliament should be so completely bypassed. The Committee believes that it is time for greater parliamentary involvement with the human rights treaties and endorses the Government's decision to table the treaties before signature. However, the Committee recommends the scrutiny of legislation for compliance with the specific obligations of the treaties.

The First (Optional) Protocol of the ICCPR reveals the need for reconsideration of a Bill of Rights in Australia. The Protocol is a new factor in an old equation. A Bill of Rights would give domestic force to the ICCPR. Without it, Australians have no opportunity to test their rights as defined by the Covenant and must take their complaints straight to an international committee for redress. While this was the view of a majority of the Committee, a minority dissented from it.

1 Mr Jose Figueres, President of Costa Rica, *Some Economic Foundations of Human Rights*, Official UN document from the International Conference on Human Rights, Tehran, 1968.

POLICY

Human Rights Treaties

3.1 Human rights treaties are only one part of growing multilateral arrangements which a rapidly interconnecting world seeks to make in order to deal with international problems. Human rights treaties address those matters both moral and legal which, through good or poor governance, affect international peace and security. In Australia, the framework for dealing with the ratification and implementation of the human rights treaties is evolving but, given the pace and scope of development of the human rights treaty regime, especially in the last few years, the evolution is perhaps not fast enough.

3.2 The Australian Constitution includes some guarantees of rights viz. those relating to the acquisition of property by the state on just terms (s.51 xxxi), trial by jury for all indictable offences (s.80), religious freedom (s.116), and non-discrimination against citizens on the basis of their State of residence (s.117)[2]. However, the list is not extensive and Australia has no formal Bill of Rights. Therefore, the application of human rights policy in Australia is largely treaty based.

3.3 The framework for this emanates from the Department of Foreign Affairs and Trade which takes overall responsibility for the international aspects of the human rights treaties and the Attorney-General's Department which is closely involved in domestic implementation and compliance.[3] Particular departments have administrative carriage of conventions which are specific to particular policy areas:

- the ILO (International Labour Organisation) conventions under the Department of Industrial Relations;
- the CEDAW (Convention for the Elimination of Discrimination against Women) under the Office of the Status of Women;
- the Genocide Conventions under the Department of Defence;
- the ICCPR (International Covenant on Civil and Political Rights), the CAT (Convention against Torture) and the ICRC (International Convention on the Rights of the Child) are the responsibility of the Attorney-General's Department; and
- the ICESCR (the International Covenant on Economic, Social and Cultural Rights) and the ICERD (the International Convention on the Elimination of Racial Discrimination) are the responsibility of the Department of Foreign Affairs and Trade.[4]

2 Department of Foreign Affairs and Trade, *Human Rights Manual*, p. 33.

3 Evidence, 1 June 1993, p. 92.

3.4 Treaties are the responsibility of the Federal Government (s.51 xxix). This power has been interpreted by the High Court as including the power to conclude treaties (including human rights treaties) on behalf of Australia and to legislate as appropriate to give effect to these international obligations.[5] Where there is a clash between Federal and State law on a matter involving an international treaty obligation, according to s.109 of the Australian Constitution, the Federal law will prevail.[6] Furthermore, a conflict between federal and state jurisdictions in a federal system of government is not recognised in international law as an excuse for failure to comply with treaty obligations signed and ratified by the national government.

3.5 According to the Department of Foreign Affairs and Trade, Australia is a party to over 1,300 treaties currently in force, of which 900 are bilateral and the remainder multilateral.[7]

Coordination and Consultation

3.6 While the Federal Government has the power to make treaties, it generally does not do so, according to both the Department of Foreign Affairs and Trade and the Attorney-General's Department, without extensive consultations with the States to ensure compliance. This occurs through the regular consultations of the Standing Committee of Attorneys-General (SCAG). The consultation also takes place before ratification or accession by the Federal Executive Council ie Governor-General in Council.

4 The process of treaty making was described in detail in the Committee's first report on human rights. It is also comprehensively outlined in the Department of Foreign Affairs and Trade's Human Rights Manual produced as a result of a recommendation of the last inquiry.

5 *The Human Rights Manual*, op. cit., p. 33.

6 This section has been tested in the High Court, the Koowarta and Franklin Dam cases (see the Committee's 1992 report, A Review of Australia's Efforts to Promote and Protect Human Rights). p. 22.

7 *Human Rights Manual*, op. cit., p. 26.

The implementation of the major human rights treaties is through the following Acts of the Federal Parliament:

- ***Racial Discrimination Act 1975***

  (The International Convention on the Elimination of All Forms of Racial Discrimination)

- ***Sex Discrimination Act 1984***

  (The International Convention on the Elimination of All Forms of Discrimination Against Women)

- ***Human Rights Commission Act 1981***
  Human Rights and Equal Opportunity Commission Act 1986

  (International Covenant on Civil and Political Rights
  Convention on the Rights of the Child
  Declaration on the Rights of Mentally Retarded Persons
  Declaration on the Rights of Disabled Persons
  ILO Convention Concerning Discrimination in Respect of Employment and Occupation
  United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief)

- ***Privacy Act 1988***

  (International Covenant on Civil and Political Rights
  Organisation for Economic Cooperation and Development Guidelines on the Protection of Privacy and Transborder Flows of Personal Data)

- ***Crimes (Torture) Act 1988***

  (Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment)

- ***Disability Discrimination Act 1993***

  (Declaration on the Rights of Mentally Retarded Persons
  Declaration on the Rights of Disabled Persons)

3.7 Monitoring and reporting is allocated across departments as listed in paragraph 3.3. Officers of the Department of Foreign Affairs and Trade and the Attorney-General's Department meet formally in the Coordinating Committee on International Law which seeks to coordinate matters relating to international law and human rights policy. At a Commonwealth level there is a newly formed Interdepartmental Committee on Human Rights which has been established to develop better coordination and information exchange across relevant departments and agencies. There is a further interdepartmental committee specifically tasked with coordinating report writing. For this, information is collected from Commonwealth departments and the States. The Principal International Law Counsel from the Attorney-General's Department told the Committee:

> We have close contact with the States and territories; we rely on them for information when preparing reports. In that sense we are informed of adherence. There is no formal system of monitoring as such, although there is obviously close contact among ourselves, the States, the Human Rights Commission and the various State bodies. But there are instances such as the WA legislation relating to juvenile justice; that happened more or less before anyone realised because of the push for it in WA.[8]

3.8 In specific areas of policy there are further mechanisms, some standing arrangements and some developed on an *ad hoc* basis as needed. For example, since 1988, when the defence exports controls were revised, the Government set up a Standing Interdepartmental Committee on Defence Exports (SIDCDE) to vet sensitive export proposals.[9] There is an interdepartmental committee (DFAT, DIEA[10] and AIDAB) on humanitarian/refugee related matters. There is regular consultation at departmental head and division head level and between departmental areas of DFAT and the program areas of AIDAB. Consultation is either on-going or driven by impending international meetings such as the Development Assistance Committee and the UN Development Program (UNDP) and Economic, Social and Cultural Committee (ECOSOC).[11]

3.9 DFAT consults NGOs through regular forums (three times a year). The agenda for these forums is wide-ranging, covering treaties, policy issues, UN meetings and developments, aid questions, particular country situations and domestic human rights. The agenda is set jointly by representatives of the NGOs and the department.

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8 Evidence, 1 June 1993, p. 88.

9 See Chapter 4 for further discussion of the role of this committee.

10 Department of Immigration and Ethnic Affairs

11 Department of Foreign Affairs and Trade submission, p. S20

States' Perspective

3.10 Four of the States, South Australia, Queensland, Victoria and Western Australia, put submissions or gave evidence to the Committee in this inquiry. Of these, three, Victoria, Queensland and South Australia provided information about the process of consultation on and monitoring of treaty obligations. It appears from this evidence that inter-governmental consultation on treaties, their ratification and reporting, takes place on two levels - ministerial and official.

3.11 At a ministerial level, there is the **Standing Committee of Attorneys-General (SCAG).** At this meeting, there is a permanent agenda item on human rights treaties. Meetings are preceded by the circulation by the Commonwealth Attorney-General of a paper on human rights matters. These are regular meetings at which, in relation to human rights, the Commonwealth Attorney-General informs his State counterparts of the new instruments that are being developed, on UN meetings that have been held, on Australia's reporting obligations and on the need for inputs from the States. On matters of particular significance, particularly affecting the State as a whole, the Commonwealth and State Attorneys-General or the Prime Minister and Premier correspond directly.[12] Another formal ministerial avenue for the dissemination of information about international treaties is the regular **Heads of Government meetings**. The Heads of Government, Commonwealth and State, agreed at their meeting in 1991 to principles and procedures for Commonwealth/State consultation on treaties. (See Appendix 4)

3.12 Out of the principles and procedures agreed in 1991 emerged the establishment of the **Commonwealth/State Standing Committee on Treaties**. This is a consultative overview body of officials which gives State Governments the opportunity to comment on the negotiations for and implementation of international treaties. It provides an avenue for the sharing of information and is, according to the Queensland submission,

> intended to assist the States' officials to keep their governments informed of developments in areas where their State's interests are affected and to consider the whole of government aspects arising from all treaty matters. At the October 1993 meeting of the committee it was agreed that every three months the Commonwealth would provide the States with an updated list of new, finalised and terminated treaty negotiations.[13]

3.13 Beyond these formal procedures, there are informal and continuing contacts between Commonwealth and State departments affected by treaty obligations, for example contact between the Department of Employment, Education

12 Queensland Government submission, p. S2467.

13 Queensland Government submission, p. S2467.

and Training and the State Department of Employment, Vocational Training and Industrial relations on ILO treaties. These contacts, according to witnesses from South Australia, vary from department to department. And State involvement, or the extent to which a State is invited to participate, also varies.[14]

3.14 The overall assessment of consultation made by a representative of the South Australian Attorney-General's Department was favourable. She used the example of the Convention on the Rights of the Child:

> We were definitely involved in the development of the Convention on the Rights of the Child. Right from the start we were given all the drafts and invited to have an input into it. And there is a standing invitation by the Commonwealth that the states can be part of the Australian delegation, when it is a convention affecting States' interests.[15]

3.15 The perception in Victoria was different. A spokesperson for the Department of Premier and Cabinet in Victoria described the information supplied to the State in preparation for the meetings of the Standing Committee on Negotiation and Implementation of Treaties as both late and inadequate.

> I understand that there will be a meeting scheduled for mid-May of this year but there have been no papers received for that yet. ...
> At one meeting the Commonwealth provided us with a list of titles of treaties with no information about what stage they were at, which department was leading, or what mechanisms were being adopted for consulting the States.[16]

3.16 Mr Perton, MLA, Chairman of the Scrutiny of Bills and Regulations Committee of the Victorian Parliament reiterated this view. He talked of the perceived inadequacies of the consultative process at the Head of Government level.

> For instance, the six monthly meetings that are meant to occur have not occurred; although we are told that the standard of meeting is now improving. From the stories we have heard, there are even communication breakdowns between the Prime Minister's office and the foreign affairs department. I think a lot of work needs to be done at a Federal level and not just at a State level.[17]

14 Evidence, 5 November 1993, p. 548.

15 Evidence, 5 November 1993, p. 550.

16 Evidence, 18 March 1994, p. 1141.

17 Evidence, 18 March 1994, p. 1130.

3.17 In the case of the ratification of the Convention on the Rights of the Child, contrary to the experience of South Australia, the Committee was told that the only communications received by the Premier's Department in Victoria were a notification in early 1990 from Mr Hawke, the then Prime Minister, that there would be negotiations prior to ratification and, in late 1990, a press release saying that Australia had ratified the convention.[18]

3.18 It was conceded by representatives of the State Government that the problems with consultation may have been the newness of the process of consultation, which only went back to 1991, or the continued dispersal of information through a variety of channels - from Commonwealth minister to State counterpart or Prime Minister to Premier. This information was not always passed from the line departments to the central agency within the State system.[19]

3.19 On the question of consultation with the States, Senator Kemp was also critical. He cited the cases of the ratification of the First (Optional) Protocol, the declaration on the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief and the ratification of the ILO Convention on the Termination of Employment. On the first two examples the problem was not so much that there was no consultation as that there was no unanimity amongst the States and particularly that some States' views were overruled. On the First (Optional) Protocol, NSW and the Northern Territory raised objections to the ratification; on the right of individual petition under the ICERD and the CAT, NSW, Tasmania and the Northern Territory raised objections.

3.20 Senator Kemp quoted John Broome from the Attorney-General's Department in evidence before the first inquiry:

> ... we should not take the step of ratification until we are satisfied that domestic law in practice is in accordance with the requirement of the treaty. Consistently, federal governments of whatever political persuasion have taken the view that ... we need to rely on the States to put into effect at the ground level many of the principles which are involved, and therefore State cooperation needs to be encouraged not discouraged.[20]

3.21 This view, put to the first inquiry, remains persuasive. It represents good practical and political sense.

18 Evidence, 18 March 1994, p. 1143.

19 Evidence, 18 March 1994, p. 1141.

20 Joint Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, p. 30.

3.22 On the basis of the evidence it was difficult for the Committee to assess how much consultation between the Commonwealth and the States took place and how effective it was. In theory, it appeared to be elaborate, involving a variety of mechanisms and levels of government, both official and ministerial. Yet in practice some states talked of meticulous involvement and even inclusion in delegations to the UN, others claimed no consultation or information until after treaties had been ratified.

3.23 There did appear to be a problem of dissemination within some bureaucracies where information passed from Commonwealth line departments to State line departments, did not pass to the central coordinating agencies within the Premier's Department and vice versa.[21] This Committee was also aware of a level of opposition, disinterest or claims of stretched resources from some States when the subject of human rights was broached.

3.24 The extent to which the consultative process has slowed down the ratification process was also alluded to in State Government submissions. The Director of Inter-governmental Relations, Department of the Premier and Cabinet, South Australia told the Committee:

> Many of the instruments have profound implications for the States. In South Australia, I am not aware of any perverse obstruction at any stage in the past 10 years ... My experience would suggest that there are usually very good reasons if the States are cautious or approach them with some concern because of the implications for many of the services for which the States have primary responsibility.[22]

The Queensland submission reinforced this view:

> Ratification by the Commonwealth of human rights treaties and their protocols can affect significantly the operation of State Government programs and it is important that effective consultation occur.[23]

A witness from South Australia made the further point that:

> one of the reasons Australia delays a little in ratifying some conventions is the desire to see that Australia's law does comply. A lot of other countries will go off, sign and ratify without really bothering whether or not their domestic law does comply, whereas Australia is always meticulous in

21 Evidence, 18 March 1994, p. 1141.

22 Evidence, 5 November 1993, p. 553.

23 Queensland Government submission, p. S2467.

ensuring that its domestic law does apply before it makes an undertaking.[24]

3.25 Given the criticism over consultation, the profile and significance the treaties will assume as a result of the ratification of the First (Optional) Protocol and like articles in the ICERD and the CAT, the increasing numbers and scope of the treaties and the arguments about the expanding impact of the treaties on private industry and on services delivered by State Governments, the establishment of the Commonwealth/State Standing Committee on Treaties in 1991 is endorsed by this Committee as a vital element in proper consultation with the States. However the Committee believes this system of consultative arrangements needs to be refined and expanded.

The Committee recommends:

- **the further streamlining of the processes of the Commonwealth/State Standing Committee on Treaties to improve the collection and dissemination of information between line departments and the coordinating agency at both the State and Commonwealth levels; and**

- **the establishment of an educative program on the treaty process for officials at all levels of government.**

3.26 However, the Committee also wishes to underline the point that consultation does not imply or necessitate unanimous approval from the States. A requirement of unanimity could delay indefinitely treaties of national importance because of narrow or limited sectional interests. The treaty power lies constitutionally with the Commonwealth and in the view of the Committee it should remain there. Therefore, the final decision and responsibility must lie with the Commonwealth Government. On this point, Mr Brian Burdekin, the Human Rights Commissioner told the Committee:

> I believe that it is important, indeed fundamental, that Commonwealth and State laws are, from a human rights point of view, consistent. ... I do not believe, with the greatest respect to any State Government, that at the end of the twentieth century we should have different standards for the protection of human rights depending on which jurisdiction you happen to be in at the time. ... If there are breaches of human rights in States or pursuant to State legislation and they are not corrected by the States, then, in my view, the Commonwealth has a residual responsibility to use whatever powers it has in that regard.[25]

24 Evidence, 5 November 1993, p. 554.

25 Evidence, 1 June 1993, p. 25.

3.27 The Committee supports the view that through negotiations and consultations understanding of the implications and likely impact of treaties might be better achieved and anxieties might be somewhat allayed. Finally, it would hope that through cooperation between State and Federal Governments uniform national standards for the protection of human rights might be achieved.

THE FEDERAL PARLIAMENT

Ratification

3.28 A further question raised with the Committee concerned the role Parliament might or should play in a treaty-making process. Currently the role is very limited. Treaties are made by the executive without reference to Parliament and debate is confined to the point where implementing legislation is introduced into the Parliament.

3.29 The 1988 Final Report of the Constitutional Commission recommended that 'there be a statutory requirement that all matters [treaties] referred to a Treaties Council (a Commonwealth/State consultative mechanism proposed by the Advisory Committee to the Constitution Convention) be tabled at the same time in both houses of Federal Parliament. This would thereby ensure that Parliament has relatively early notice and explanation of treaty negotiation'.[26]

3.30 Further to this question, Senator Harradine, a member of this Committee, has had a longstanding notice of motion on the Notice Paper for the formation of a Standing Committee on Treaties. The purpose of this committee would be to scrutinise treaties proposed for ratification and to report on the desirability of Australia signing the proposed treaty and the effect the proposed treaty would have on the legislative powers and responsibilities of the Australian States.

3.31 The case for parliamentary involvement was also put by a number of major industry associations - the Australian Chamber of Commerce and Industry, the Australian Mining Industry Council, the Council for International Business Affairs, the Environment Management Industry Association of Australia, the Institution of Engineers, the National Association of Forest Industries and the Metal Trades Industry Association. They put the view that:

> the ever-increasing impact of treaties (binding international agreements) on Australia's domestic affairs has not been accompanied by any improvements in the Federal Parliament's and the wider community's opportunity to consider and debate these agreements *before* they take legal

26 Quoted from the National Farmers' Federation submission, p. S1977.

> effect in Australia. Government and parliamentary processes for parliamentary consideration of treaties have remained substantially unchanged since the days - decades ago - when Australia undertook far fewer multilateral treaty-making activities.[27]

3.32 Although the submission embraced treaties generally, not specifically human rights treaties, the Committee believes that it does apply in principle to human rights treaties.

3.33 Again, because of the expanding influence of the human rights treaties, Senator Kemp argued that the Australian Parliament should have a role in the approval of UN conventions. He argued that:

- the current arrangements are hopelessly inadequate - particularly in view of the fact that the UN conventions have significant impact on the Australian legal system;
- the Committee should make recommendations on the possibility of establishing a Treaties Council to involve the State Governments; and
- Parliament currently has no role in the approval of UN conventions and the Committee should make recommendations regarding the appropriate role for Parliament.[28]

3.34 In line with this argument, the submission from the National Farmers' Federation (NFF) suggested a number of changes in relation to multilateral treaties, including:

- timely briefings to Parliament and industry to enable comment to be fed into the negotiating delegations position;
- a commitment to table the text of proposed treaties in Parliament well before the deadline for signature;
- the parallel tabling of a government statement of explanation, summarising the terms of the treaty, the economic, social and environmental impact of the treaty, the relevance of any protocols, and the extent of any consultation already held;
- the referral of contentious treaties to relevant parliamentary committees for inquiry and report;

27 National Farmers' Federation submission, p. S1975.

28 Senator Kemp submission, p. S1923.

- the possibility of a disallowance period;
- a parliamentary review of the impact of treaties; and
- the opportunity for participation of NGO (industry) and parliamentary representation on delegations.[29]

3.35 This Committee acknowledges that the number and scope of the multilateral human rights treaties has increased and that a cooperative arrangement operating across various levels of government is necessary for their successful implementation. Moreover, the Committee wishes to emphasise the view that decisions on the ratification of treaties should remain the prerogative of the executive arm of government. Nevertheless, the Committee believes there is scope for parliamentary involvement at an earlier stage than at present as a means of informing both the Parliament and the public and establishing a dialogue between the Parliament and the Government.

3.36 The Committee also notes that at the time of writing this report the Government has announced an extension to the process of informing the Parliament about treaties which are under consideration. The Minister for Foreign Affairs, Senator Gareth Evans and the Attorney-General, Mr Michael Lavarch, MP, announced at a press conference on 21 October 1994 that the Government will supplement the [current] *information flow* [about treaties] by now tabling, wherever possible, all treaties, other than sensitive bilateral ones, before action is taken to adhere to them. [The Government] will also take steps to increase the possibility of participation of Members of Parliament on various treaty negotiating delegations and to offer full briefings on treaties to any Member or Senator who asks for them.[30]

The Committee strongly endorses the move to inform the Parliament at an early stage in the treaty making process by tabling treaties in the Parliament before signature and recommends that the Minister for Foreign Affairs should use the forum of the Parliament to raise international human rights issues.

A Joint Standing Committee on Human Rights

3.37 The Committee notes also that, since its establishment in 1991, the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade has played a significant part in raising the debate at a parliamentary and public level on the Australian Government's policies on human rights, particularly as they involve the UN human rights treaties. The volume of

29 National Farmers' Federation submission, p. S1979.

30 *Joint Statement by the Minister for Foreign Affairs*, Senator Gareth Evans, QC, and the Attorney-General, Mr Michael Lavarch, MP, 21 October 1994.

submissions to the Committee has increased greatly over the two inquiries - from 88 in the first inquiry to 140 in the second. The number of requests for meetings by groups in the community creates a large work load and requests for assistance on particular cases continue to stream in. Even redirection of such requests is a time consuming and labour intensive process. The issues raised by any human rights inquiry are of a complex nature, covering political, philosophical and legal issues, both domestic and international. They also touch on many policy areas of the government. The present structure and resourcing of the Committee is inadequate to the task of dealing with the subject of human rights.

The Committee recommends that in order to fulfil the task of monitoring human rights policies and developments, the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade be made a separate joint committee of the Parliament.

IMPLEMENTATION AND MONITORING

3.38 There have been a series of Acts passed to implement the human rights treaties Australia has signed (see p. 35). However, there is no Bill of Rights in Australia to implement the ICCPR. Furthermore, since Australia has acceded to the First (Optional) Protocol of the ICCPR in September 1991, it is vulnerable to complaints from individuals for failure to live up to the obligations of the covenant.

3.39 There is an undertaking in the ICCPR that parties to it will ensure that there will be effective remedies and that the rights and remedies will be determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the state.

3.40 The **Human Rights and Equal Opportunity Commission (HREOC)** was established in 1986 under the Human Rights and Equal Opportunity Commission Act, replacing the former Human Rights Commission, to ensure the implementation of and compliance with Australia's international human rights obligations. It monitors four Acts of Federal Parliament - Human Rights and Equal Opportunity Act (1986), Racial Discrimination Act (1975), Sex Discrimination Act (1984) and Disability Discrimination Act (1992) to give force to five international instruments - the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Declaration on the Rights of Disabled persons, the Declaration on the Rights of the Mentally Retarded and ILO Convention 111, concerned with discrimination in employment and occupation.

3.41 In 1992-93, the Commission received over 31,000 approaches for assistance, including 26,000 telephone inquiries and 1,000 personal interviews, 4,432 written inquiries and complaints. Of these 2,024 were found to be within the jurisdiction of one of the seven acts administered by the Commission. During the

year, 1,453 complaints were finalised - 632 conciliated successfully and 408 discontinued by the complainant.[31]

3.42 Cooperative arrangements with the States are in place to avoid duplication. Complaints under Federal legislation can be handled also by the State Equal Opportunity agencies in Victoria, South Australia and Western Australia. HREOC handles complaints under State and Territory legislation for Queensland and the Australian Capital Territory.

3.43 Two major inquiries have been completed by the Human Rights Commissioner: the National Inquiry concerning the Human Rights of People with Mental Illness and the National Inquiry into Homeless Children. At a hearing of the Committee in June 1993, the Human Rights Commissioner, Mr Brian Burdekin, concluded:

> In my view, the most serious violations of human rights in Australia are not violations of what my profession calls civil and political rights; they are violations of what are generally described as economic, social and cultural rights. ... It does not matter whether you are talking about Aboriginal people, mentally ill people, homeless people, the intellectually disadvantaged, people with dual and multiple disabilities, ... they are the key areas of violations of human rights.[32]

3.44 Mr Burdekin believed the international conventions were not sufficiently part of the 'bureaucratic culture' of Canberra and that beyond those people who negotiated them in the Department of Foreign Affairs and Trade and the Attorney-General's Department, they were not widely known. The vehicle for greater understanding, he believed, was Parliament.[33]

3.45 One specific change to broaden the scope of the human rights commission was suggested by Mr Peter Bailey, a Visiting Fellow at the Faculty of Law, Australian National University . It aimed to provide a more comprehensive and systematic approach to monitoring and implementing human rights obligations. It involved an amendment to the *Human Rights and Equal Opportunity Commission (HREOC) Act* to give the commission 'the power to make determinations in respect of Commonwealth agencies when a complaint revealing an infringement of human rights under the ICCPR is received and not settled by agreement'.[34]

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31 Statistical and structural information in this section is taken from the *Annual Report of the Human Rights and Equal Opportunity Commission, 1992-93*, pp. 11-42.

32 Evidence, 1 June 1993, pp. 33-34.

33 Evidence, 1 June 1993, p. 35.

34 Peter Bailey submission, p. 987.

3.46 Mr Peter Bailey in conjunction with Dr David Kinley, Lecturer in Public Law at the Australian National University, put jointly to the Committee a further proposal which would 'provide a means by which legislative violations of the covenant might be anticipated rather than merely repaired or, worse, disregarded'. Dr Kinley quoted Sir Leslie Scarman most aptly:

> There must be a constitutional restraint placed upon the legislative power which is designed to protect the individual citizen from instant legislation, conceived in fear or prejudice and enacted in breach of human rights. [35]

3.47 Dr Kinley began from the standpoint that the greatest responsibility for the protection of rights should rest with elected legislators, as they in turn are subject to electoral scrutiny, rather than the appointed judiciary. His proposal is a simple, persuasive and potentially effective one. It involves the extension of the terms of reference of the existing Senate Committees for the Scrutiny of Bills and the Scrutiny of Regulations and Ordinances to include specific reference to the compliance of legislation with the provisions of the ICCPR and the appointment of a specialist human rights adviser to the committee. The recommendation for the inclusion of the provisions of the ICCPR in the terms of reference of the Senate Committees is a minor change to its present terms of reference. The terms of reference already require it to report, *inter alia,* whether any clauses of bills introduced into the Senate 'trespass unduly on personal rights and liberties'. Dr Kinley suggests that this is too stark an instruction.[36]

3.48 He argued for the efficacy, efficiency and necessity of such a process by citing the experience of the United Kingdom, which, like Australia, was a common law system operating without a Bill of Rights and without any pre-legislative scrutiny of bills for compliance with the convention. The United Kingdom accepted the right of individual petition under the European Convention on Human Rights in 1966. Nevertheless, between 1975 and 1991 the United Kingdom has been found in breach of the ECHR on 28 occasions, 22 of which were infringements caused by domestic legislation. In this period, 80 laws or regulations have been repealed or amended as a result of proceedings under the European Convention, which was an expensive time consuming process which might have been less necessary with pre-legislative scrutiny.[37]

3.49 In Canada, there is a requirement on the Minister for Justice to examine every bill for the consistency of its provisions with the Canadian Charter of 1982 or the Canadian Bill of Rights of 1966. The Minister must report to the Canadian House of Commons on any inconsistencies.

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35 Exhibit No. 18, p. 5.

36 Exhibit No.18, p. 30.

37 Exhibit No.18 p. 10-11.

The Committee recommends that the terms of reference of both the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances Committee include a requirement to examine the compliance of legislation with the specific terms of the ICCPR and the ICESCR.

Implementation - The National Action Plan

3.50 The Committee commends the Department of Foreign Affairs and Trade for its efforts in publishing a National Action Plan on the protection and promotion of human rights.[38] As mentioned in the previous chapter, the World Conference on Human Rights held in Vienna in June 1993, which reviewed the progress in the preceding 25 years in the promotion and protection of human rights around the world, recommended that states draw up a National Action Plan outlining their strategies for addressing human rights matters. It is pleasing that Australia, in launching its National Action Plan at the 50th session of the Commission on Human Rights in February 1994, was the first nation to state formally its position on human rights before that body.

Implementation - Human Rights Centre for Dialogue and Cooperation

3.51 In December 1993 ACFOA put forward a proposal for the establishment in Australia of a Human Rights Centre for Dialogue and Cooperation. The proposal resulted from extensive consultation between government, academics and non-government organisations involved in both human rights and development.

3.52 The proposal envisaged that such a centre would promote dialogue on human rights matters, particularly in the Asia-Pacific region, by focusing on applied policy and research in the human rights area, providing a specialist human rights information service, and being an 'honest broker', when asked, in the area of human rights.[39] According to ACFOA, the aim would be to embrace the gap between international and domestic human rights activity as well as the gap between the civil and political rights and the economic, social and cultural rights.[40]

3.53 The Committee finds merit in the concept of a human rights centre that is outside established governmental and academic structures. It could have a significant role in training and education, both domestically and regionally (and, indeed, farther afield if its expertise was sought beyond Australia's region of primary foreign policy focus), network-building, institution-building, as well as enhancing Australia's utility as a model for human rights and democracy. In addition, it accords with a decision of the 1993 Vienna conference on human rights, endorsed

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38 *National Action Plan: Australia,* AGPS, 1994.

39 Evidence, 6 December 1993, p. 679.

40 ibid., p. 680.

by Australia, that countries move towards an indicative figure of 0.5% of ODA for human rights programs by 2000.[41]

3.54 The proposal is that the centre be a public institute, rather than another NGO.[42] Relevant overseas models include the Danish Centre on Human Rights, an independent and self-governing institute funded by the Danish Parliament, Canada's International Centre for Human Rights and Democratic Development, a public body created in 1990 by an act of the Canadian Parliament, and the Asia-Pacific Human Rights Information Centre which is planned to open in Japan in December 1994.[43] There is no reason why Australia could not have a similar body which could be recognised as a regional centre of excellence in its field, providing a proactive mechanism for dialogue and cooperation on human rights matters.

3.55 The Committee, while mindful of limitations on public sector expenditure and the need to direct ODA to areas of greatest need, believes that this proposal should be examined further. In order to establish such a centre as a genuinely autonomous body, the Committee believes that non-government funding options should be explored. Philanthropic organisations such as the Ford Foundation in the United States provide a good model for funding such an enterprise.[44] With suitable taxation arrangements, there may well be Australian organisations and individuals willing to provide 50% of the funds necessary to establish a human rights centre.[45] The Committee would consider it appropriate for AIDAB and the Attorney-General's Department to provide the other 50% of the necessary funding between them.

3.56 The Committee recommends that there be a feasibility study undertaken by AIDAB to fully cost the ACFOA proposal and explore funding options.

41 See evidence from Eric Sidoti on 28 January 1994, page 924, and page 4 of ACFOA's proposal. The assumption advanced in the evidence is that the proposal be funded from ODA; however, if it was funded from a different appropriation the centre may have the appearance of greater autonomy.

42 ibid.

43 See *Proposal to Establish the Human Rights Centre for Dialogue and Cooperation*, submission by ACFOA dated 6 December 1993, attachment 5, pp. 27-30.

44 The Ford Foundation has provided the Human Rights Council of Australia with a grant of $75,000 to undertake a twelve month project to explore the relationship between human rights and development assistance. (See evidence at pages 917-918.) This could provide a precedent for the Foundation, or a similar body, to partially fund the establishment of a human rights centre.

45 That is, full tax deductibility for grants and donations towards the establishment of a human rights centre.

The Committee recommends that AIDAB undertake a feasibility study, including a full evaluation of funding options, of the proposal by ACFOA to establish a human rights centre for dialogue and cooperation in Australia as a part publicly funded and part privately funded non-government institute.

Implementation - Human Rights Education

3.57 Professor Hilary Charlesworth told the Committee that human rights in general and the treaty system in particular were not well understood in Australia, either by the general public, by Members of Parliament or officials at the various levels of government. In her evidence to the Committee, Professor Charlesworth explained some of the misconceptions at a State Government level over the operation of the First (Optional) Protocol.[46] Professor Charlesworth believed that a program of education was needed. In this, she thought the universities had a role to play. In relation to this problem of understanding of the human rights system, which is a world-wide phenomenon, the Committee notes that the United Nations is proposing that there should be a decade of human rights education. It is to ask member states to make a concerted effort to make the process better known and understood.

3.58 The Committee is pleased that, as noted in the previous chapter, DFAT has produced a human rights manual to foster understanding of human rights issues amongst DFAT and AIDAB officers. It provides a sound grounding in the major human rights themes, instruments and organisations relevant to the work of government officials both domestically and internationally. The manual is available to the public and should serve to increase the level of knowledge and understanding of Australia's human rights policies in the community. With wide distribution, it has the potential to educate Australians on human rights, one of the requirements of the covenants.

3.59 DFAT administers a small human rights fund which provides assistance directly to organisations and individuals in other countries who are involved in the promotion and protection of human rights.

The Committee recommends that the human rights fund of the Department of Foreign Affairs and Trade should be boosted in order to allow Australia to have greater influence in the human rights field by assisting NGOs and individuals in other countries directly.

3.60 A non-government initiative which the Committee welcomes is the Diplomacy Training Program. The program, which has been in operation for over five years and is funded entirely by donations from NGOs and philanthropic

46 Evidence, 5 November 1993, p. 564.

organisations, is affiliated with the University of New South Wales law school.[47] It is a specialist human rights training program for NGOs in the Asia-Pacific region, founded on the philosophy that local people and local advocates can best represent the human rights interests of their own country or region. The Committee considers that such education and training is vital, and commends the role of the Diplomacy Training Program in that regard.

PARLIAMENT - THE STATES

Ratification

3.61 At the State Government level there is little debate on treaties in State Parliaments prior to ratification. State Parliaments, like the Federal Parliament, scrutinise the effect of treaties generally only at the point where implementing legislation is required to be introduced into the legislature.

Implementation and Monitoring

3.62 Most States have legislation which seeks to implement human rights. The Committee did not receive a comprehensive list; however, it was informed of some of the mechanisms. In South Australia there is a an Equal Opportunity Commission which administers the Commonwealth's human rights legislation in South Australia. In Queensland, human rights obligations are implemented by such legislation as the *Anti-Discrimination Act, 1991, the Industrial Relations Reform Act, 1994* and the *Legislative Standards Act 1992. The Legislative Standards Act* establishes 'fundamental legislative principles' which requires that legislation be scrutinised for its regard to, among other things, the rights and liberties of individuals.[48]

3.63 In Victoria, the Committee spoke to the Chairman of the Scrutiny of Bills and Regulations Committee of the Victorian Parliament, Mr Victor Perton, MLA. He presented detailed evidence on the operation of his committee. He believed it was unique in State Parliaments, although it was rapidly becoming a model. Mr Perton likened its operations to the Senate Committee on the Scrutiny of Bills. The Victorian committee was established in November 1992 and 'combines the scrutiny of bills function in essence under the same terms as the Senate committee but also adds a requirement to analyse privative clauses - that is clauses in legislation

47 For instance, the Ford Foundation's office in Jakarta has funded attendance by an Indonesian; other funding has come from French and German church groups. See evidence from Mr Christopher Scott-Murphy, Coordinator of the Diplomacy Training Program, Sydney, 29 October 1993, p. 501.

48 Queensland Government submission, pp. S2468-69.

restricting the jurisdiction of the Supreme Court. ... It also has a law reform function.'[49]

3.64 Mr Perton explained that, for the purpose of the functioning of the committee, rights had been interpreted very broadly; they included statutory rights and fundamental human rights, interpreted by resort to international convention. He saw the committee's role to alert the Parliament to all reductions in rights or to any undue effect on human rights resulting from legislation. The scrutiny covered not only laws, but also regulations. Each bill was examined and a report made to the Parliament. Where matters were urgent, the chairman corresponded directly with the minister. Where time allowed, the committee took submissions and evidence from the public. The committee also had a monitoring function on the operation of legislation, especially where undertakings for review had been given by the executive on controversial legislation. In terms of the success rate of the recommendations of the committee, Mr Perton stated that to date 40 per cent of their recommendations had been taken up by the Victorian Government.

3.65 Mr Perton was enthusiastic about the potential of committees such as his own to assist in achieving uniformity in practice, especially in regard to the development of national template legislation - that is, where each of the States and the Commonwealth agree to be bound by legislation passed in one jurisdiction. In a whole range of fields, not just in the matter of human rights, such legislation is obviously advantageous.

3.66 On the question of the achievement of uniformity of practice in the implementation and monitoring of obligations under the human rights treaties, Mr Perton believed it was a challenge the committees were well placed to deal with.[50] They developed a cooperative spirit across party lines. They had an educative role in informing public servants, lawyers and legislators about the human rights expectations and implications which needed to be considered, and it did so at the most appropriate point in the legislative process.

3.67 On implementation and monitoring, the spokeswoman from the Victorian Department of Premier and Cabinet believed there was 'not much real work' done yet by the Committee on Implementation and Negotiation of Treaties.[51]

3.68 Professor Hilary Charlesworth also told the Committee that the reporting process on treaties as implemented in Victoria was haphazard and lacking in appropriately trained staff and adequate resources.[52]

49 Evidence, 18 March 1994, p. 1122.

50 Evidence, 18 March 1994, p. 1131.

51 Evidence, 18 March 1994, p. 1142.

52 Evidence, 5 November 1993, pp. 562-3.

THE IMPACT OF TREATIES ON THE FEDERAL/STATE DISTRIBUTION OF POWERS AND NATIONAL SOVEREIGNTY

3.69 Over the last two years there has been a growing debate concerning human rights treaties and of their impact on Australia's domestic political balance of power. Senator Kemp put the case in the following terms:

- In agreeing to allow complaints to UN human rights committees the Government has, in effect, overturned the philosophy of the *Australia Act* and compromised Australian independence.

- The decision is already having a significant impact on the Australian legal system and this impact will increase over time.

- A complaint against a State Government is not answerable by the State Government.[53]

3.70 A number of members of the Committee supported Senator Kemp's view on the implications of treaties for national sovereignty and believed that the matter should be a matter for further inquiry. However, the majority of the Committee reiterated the argument put earlier in this report on the question of Australian independence.[54] In the UN treaty process the independence and sovereignty of the nation state is preserved at a number of stages in the process. The state chooses to be bound by the treaty, it chooses to respond to the assessment of the committee and it also chooses the remedy it will apply, appropriate to its domestic legal or social framework.

3.71 On the question of the right of a State Government to answer a case, the Committee notes that in Australia only the Federal Government has the power to make treaties and therefore only the Federal Government is answerable for breaches of the treaty. Constitutionally, it is therefore inappropriate for communications to be made between the human rights committees and a State (as in provincial) government. It is incumbent on the Federal and State Governments of Australia to settle issues of compliance through negotiation or to prepare a case for the defence of State practice in conjunction with that State.

3.72 The Committee remains strongly of the view expressed in the conclusion of its first report to the Parliament that Australia's human rights record is a laudable one. Australia has no reason to be unduly concerned about the operation of the First (Optional) Protocol, the individual complaint mechanism. There are procedures which prevent frivolous complaints being made to the UN committees. Complainants must exhaust domestic remedies which means that matters must be taken, where possible, through Australian courts or such bodies as the Human

53 Senator Kemp submission, pp. S1922-23.

54 See paragraph 2.31.

Rights and Equal Opportunities Commission to seek redress before they are admissible to the Human Rights Committee. The Committee believes these are appropriate hurdles for any individual to overcome.

3.73 The Human Rights Commissioner supported this view. He believed that the UN committees were neither overly powerful nor easily accessible. He told the Committee that:

> the international machinery to monitor treaties like the International Covenant on Civil and Political Rights is still extremely weak. Indeed on a scale of one to ten I would put it at one and a half. That is not the fault of the international committees; it is simply a reflection of the fact that they have no power to order governments to do anything. Perhaps nor indeed should they.
>
> What that means is that, for 99 per cent of the people we are dealing with in the Human Rights Commission, mechanisms in Geneva or New York are, frankly, inaccessible.[55]

The result of this is an increased responsibility on national governments to provide national laws and institutions which can provide protection of human rights, especially for the vulnerable, weak and disadvantaged, in line with the standards we have agreed to in the international human rights treaties.

The Bill of Rights

3.74 However, in Australia there is a gap in the law because the provisions of the ICCPR have not been included in Australian legislation and therefore Australians cannot test whether our laws comply with the covenant in the High Court. Justice Evatt made the point:

> Senator Kemp felt it was preferable for Australian courts to deal with our human rights issues rather than UN human rights committees. ... We are one of the few countries where that result can occur, and it is a matter of regret that the High Court has not been given jurisdiction to apply the covenant directly. ... I do agree that Australian courts should have the power to deal with human rights issues. ... I think that if the High Court could deal with those issues, probably very few matters would ever go to the UN Human Rights Committee.[56]

55 Evidence, 13 October 1994, p. 1299.

56 Evidence, 6 December 1993, p. 741.

3.75 A number of factors have combined to put back on the agenda the question of a Bill of Rights for Australia. First, is the ratification of the First (Optional) Protocol. It has revealed already that the consequence of gaps in Australian law to protect human rights, in whatever jurisdiction, is that appeals may be made to the Human Rights Committee. And, while this might be a reasonable remedy, it is a less desirable one.

3.76 Second, in the absence of domestic law implementing the ICCPR, either the Government will have to pass a succession of individual laws as particular situations arise and as Australians resort to the use of the First (Optional) Protocol. This is a piecemeal approach and one that may be a continually embarrassing one, internationally.

3.77 A significant view in the Committee does not accept that the ratification of the First (Optional) protocol of the ICCPR gives any weight to the notion that Australia must have a Bill of Rights. It does not follow from the ratification of the protocol that there are 'gaps' in Australian law which can be stopped only by domestic law implementing the ICCPR or by a succession of laws as particular situations arise. The parliaments of Australia may ensure that Australians enjoy the rights enumerated in the ICCPR by shaping their ordinary legislation accordingly. For the most part in fact they have long since done so. Australians are able to exercise these rights precisely because the legislation of the various parliaments embodies those rights and provides remedies for their protection. The parliaments may continue to ensure that their legislation is framed to embody those rights. The incorporation of the ICCPR into domestic law or the enactment of a Bill of Rights would not curb judicial law-making or reassert the prerogative of Parliament. On the contrary this would simply provide a charter for more extensive judicial law-making and the usurpation by the courts of the legislative power. Judges would become legislators beyond the control of the democratic will. This would threaten the position where the judiciary would over time become politicised.

3.78 Third, there has been a tendency for the High Court to fill the vacuum left by the lack of guarantees of rights in the Constitution by defining implied rights. This process shifts law making from the legislature to the judiciary in ways and to an extent that is arbitrary, unpredictable and *ad hoc* and undermines the primary role of Parliament as the law making branch of government. While there will always be ambiguities or deficiencies in the law which will require the courts to interpret rights, such judicial law-making may be minimised and more properly constitutionally balanced if there were a Bill of Rights.

- In 1992, the High Court found an implied right of free speech existed in the cases of *Australian Capital Television v the Commonwealth* and *Nationwide News v Wills.*
- In 1993 in *Dietrich v the Queen,* the Court decided that, in the absence of special circumstances, a person accused of a serious criminal offence who could not afford representation was entitled to an adjournment of the trial until counsel could be provided at public expense. Two of the

majority judges in this case, Justices Deane and Gaudron, held that the right to a fair trial was implicit in the Constitution.

- The latest ruling of the High Court on 12 October 1994 in the cases of the *Herald and Weekly Times Ltd (HWT) v Theophanous* and the *Western Australian Newspapers Ltd v Six members of the Western Australian Legislative Council* found that the concept of representative government enshrined in the Constitution meant that it applied to political discussion.

3.79 At the conference, 'Australia and Human Rights: Where to from Here?' held at the Australian National University on 15-17 July 1992, the Hon Justice Sir Gerard Brennan presented a paper in which he discussed the merits and the dangers inherent in a Bill of Rights and the need for such an instrument in the light of Australian political and legal developments. He argued that Australia, should it introduce a Bill of Rights, would have the Canadian experience to draw upon and that this would be advantageous. There would be further protection in the natural balance or limits to rights - no rights are absolute; the rights of an individual are always limited by the rights of another. The need for a Bill of Rights was increased by the dominance of the executive and the bureaucracy *vis a vis* Parliament and by the increasing diversity of Australian society which has seen an increase in the number of minority groups which might need protection.[57]

3.80 Against this he posed the dangers of increased time delays and costs as complex constitutional questions were examined in cases, the confinement of the High Court to constitutional cases and a more transparent political factor in the judgements being asked of judges - 'the projection of the Courts into the political dynamic'.[58]

3.81 In the light of recent developments, the majority of the Committee believes it is time the Parliament reasserted its prerogative to define human rights and freedoms and re-examined the question of a Bill of Rights.

The Committee recommends that the Government establish an inquiry into:

- **the desirability of developing a Bill of Rights for Australia;**
- **the means by which such a Bill should be introduced - by statute or by referendum and change of the Constitution; and**

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57 See Hon Justice Sir Gerard Brennan, 'The Impact of a Bill of Rights on the Role of the Judiciary: An Australian Response' from conference papers of the Conference on Australia and Human Rights: Where to from Here? Australian National University, 15-17 July 1992.

58 ibid.

- **the nature of the rights which should be encompassed by an Australian Bill of Rights. A minority of the Committee dissented from this recommendation.**

However, although a minority of the Committee dissents from this recommendation, the whole Committee believes that human rights considerations should form part of any community debate on constitutional review.

The Tasmanian Case

3.82 These issues are best illustrated by the first case from Australia admitted under the First (Optional) Protocol. Two issues are involved: basic human rights and State/Commonwealth distribution of powers and the treaty power.

3.83 On 25 December 1991, Mr Nick Toonen lodged a communication with the United Nations Human Rights Committee (UNHRC) under the First (Optional) Protocol to the ICCPR. He claimed that Sections 121(a) and (c) and 123 of the Tasmanian Criminal Code, criminalising all forms of sexual contact between consenting adult males in private, violated Articles 17 (the right to privacy), 26 (the right to equality before the law) and 2.1 (the right not to be discriminated against on the basis of sexual orientation) of the covenant.

3.84 The Tasmanian Gay and Lesbian Rights Group (TGLRG) outlined in considerable detail the human rights aspects and the legal implications of their case. At the time they wrote to the UN committee, the laws had not been enforced for ten years. However, they believed the continued existence of these laws on the statute books were used as a justification for discrimination and harassment. They quoted the Tasmanian Attorney-General, the Hon Ron Cornish, as saying in 1992 that as long as homosexuality was illegal in Tasmania, anti-discrimination legislation could not apply to homosexuals.[59] The Mayor of Hobart, Mr Doone Kennedy was quoted as saying in 1988 that 'It is right that there be one law for heterosexuals and one law for homosexuals.'[60]

3.85 The Tasmanian Labor Government of Premier Michael Field introduced reform in December 1990 and it passed the House of Assembly but was blocked in the Legislative Council. In 1992 the reform bill was reintroduced and again defeated in the upper house. The current Liberal Government was elected on an explicit platform of not repealing those parts of the criminal code which criminalise sex between consenting adult males in private. Nevertheless, the TGLRG quoted opinion polls which showed a shift in public opinion - 58 per cent supporting reform of the law.

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59 Tasmanian Gay and Lesbian Rights Group submission, p. S1198. Quoted from *The Mercury*, 14 September 1992, pp. 1-2.

60 ibid., p. S1197. Quoted from 'Hinch at Seven,' Channel 7, 5 December 1988.

3.86 In the case put to the Human Rights Committee, the Australian Government supported the claim of Mr Toonen that the Tasmanian laws violated his rights. They appended the arguments of the State Government to the Australian Government submission.

3.87 On 11 April 1994, the Human Rights Committee declared that the Tasmanian laws were in breach of the International Covenant on Civil and Political Rights on the grounds of the right to privacy.

3.88 As a consequence of this decision, the Federal Government considered what action it would need to take to remedy the breach. The Attorney-General, the Hon Michael Lavarch, MP, introduced legislation the *Human Rights (Sexual Conduct) Bill* into the House of Representatives on 12 October 1994. The legislation seeks to ensure that sexual conduct in private involving only consenting adults shall no longer be subject to any arbitrary interference with privacy. It was debated at length over three separate sitting days and passed the House of Representatives by a majority of 110 votes on 19 October 1994. At the time of writing the Bill was due to go to the Senate.

3.89 On the substantive issue of the particular case that sections 121 and 123 of the Tasmanian Criminal Code, which do not provide a defence on the grounds of arbitrary interference with privacy are a violation of rights, the view of the UNHRC seems to this Committee to be valid and reasonable. Therefore, given that the State Government was offered an opportunity to act in its own right, on the question of States' rights, the Committee does not believe that the decision of the Federal Government to legislate on privacy represents, either by itself or in conjunction with former decisions based on the external affairs power, an untrammelled exercise in undermining States' rights. On the contrary, the Committee believes this is an occasion when it was incumbent on the Federal Government to provide national leadership in attempting to ensure that the particular State legislature provides for no interference with privacy by establishing national standards.

3.90 Finally, the Committee reaffirms its view, expressed in the first report, that the arguments which have been put to it concerning States' rights carry less weight than those which stress the need for Australia to speak with one voice, to uphold its principles on human rights, to work to upgrade our practice and standards on human rights as a whole nation. If, ultimately, that requires Federal legislation to ensure that the rights of all Australians are upheld and our treaty obligations are met, it should be passed.[61]

Electoral Reform

3.91 Mr Toonen's successful pursuit of his rights under the First (Optional) Protocol should alert governments, State and Federal, to the need to examine their

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61 *A Review ...* op.cit. p. 30.

practice in relation to the ICCPR as it is to Australia's advantage to act in advance of decisions of the Human Rights Committee in Geneva. Areas of possible non-compliance are brought regularly to the attention of the various governments in Australia by the Human Rights and Equal Opportunity Commission - matters relating to child homelessness, domestic violence, racial intolerance and discrimination against the disabled or the mentally ill. Some of these matters have been noted in other parts of this report.

3.92 One matter which was brought to the attention of the Committee was the question of the democratic processes of government in Australia. In a submission to the Committee, the Hon E G Whitlam asserted that significant parts of Australia were yet to achieve equal suffrage as guaranteed under the International Covenant on Civil and Political Rights ratified by Australia in 1980. Article 25 (b) states that:

> Every citizen shall have the right and the opportunity, without any distinctions mentioned in Article 2 and without any unreasonable restrictions:
>
> To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage ...

Mr Whitlam outlined the problem in the following terms:

> For State electoral purposes Western Australia is divided into a metropolitan area and a non-metropolitan area. An elector's vote for the Legislative Council is worth one third as much in the metropolitan area as in the non-metropolitan area. An elector's vote for the Legislative Assembly is worth only one-half as much in the metropolitan area as in the non-metropolitan area.[62]

3.93 In both Tasmania and Queensland similar problems exist. In Tasmania the suffrage for the Legislative Council is still unequal and in Queensland five of the electorates are significantly smaller than the others. Equal suffrage is a primary tenet of democracy and an imbalance of three to one or two to one even in a large and sparsely populated State can hardly be justified in an era of modern communications.

3.94 Mr Whitlam saw three possible avenues of redress:

- an individual elector from any of the affected States could approach the High Court of Australia;
- an individual elector from any of the affected States could approach the Human Rights Committee; and

62 Exhibit No. 154, p. 10.

- the Federal Government could introduce legislation to apply the equal suffrage provisions of the ICCPR to all Parliaments in Australia.[63]

3.95 The Committee endorses the proposition that responsible government is dependent on a representative parliament and reiterates its view that Australia's credibility internationally requires that, as a nation, it monitors its own practice and seeks continually to refine it to the best standard.[64]

63 ibid, p. 11.

64 ibid.

Chapter Four

AID AND TRADE AND HUMAN RIGHTS

> *Abraham Lincoln said that our nation could not exist half-slave and half-free. We know that a peaceful world cannot long exist one-third rich and two-thirds hungry.*[1]

The Committee believes there is a linkage between aid, trade and human rights, but that aid should not necessarily be made conditional on the human rights record of a recipient country. The Committee believes that Australia's aid program would have more credibility and be more effective if all major Australian political parties were to recommit themselves to achieving the UN target of 0.7% of GNP being spent on ODA, in both bilateral and multilateral programs. The report outlines the current focus of Australia's official development assistance program and finds merit with much that is being achieved through multilateral and bilateral programs, population programs, institution building and the Defence cooperation program. While the latter is not intended primarily as a vehicle for fostering human rights in neighbouring countries, the Committee is pleased that the Department of Defence is mindful of its responsibilities, and the opportunities it has, to sensitise key defence personnel from other countries to human rights issues. Australia's aid program is a vital means by which human rights issues in the region are being addressed.

INTRODUCTION

4.1 Although there was little evidence presented in submissions on the relations between trade regimes and human rights, the ACTU highlighted the conflict between human rights and trade regimes, particularly between workers rights and measures under the World Trade Organisation (WTO)[2] It noted that there is a need to make support of GATT and the WTO consistent with support for

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1 President Jimmy Carter, commencement address, Notre Dame University, 1977.

2 ACTU submission, p. S1428.

the ILO.[3] This is of concern given the reservations to including any measures against human rights violations in WTO regulations, the 'social clause' mentioned in the ACTU submission, and opposition by some representatives of the WTO to many suggestions of the ILO.

4.2 Under the WTO regime, the ability of any nation or nations to discriminate in any way against products of exploitative practices, or against any products of nations deemed to violate human rights is restricted. These include discrimination against products of child labour, products involving dispossession of communities, or exploitative labour accompanied by repression of workers' organisations. The WTO has the power to bring strong, international and multilateral action to bear to impose cross-sectoral sanctions against any nation found to so discriminate. Such actions are not confined to tariff or other monetary trade barriers, but include very broadly interpreted 'non-tariff' trade barriers, including discrimination through labelling and standards.

4.3 The issue of Trade Related Intellectual Property (TRIPs) is another area where the WTO regime may over-ride existing intellectual property regimes, and compromise the rights of people from developing countries, particularly rights over traditional knowledge and genetic resources. It could also effectively reduce access to lifesaving and disease prevention drugs and the ability to transfer technology. Technology transfer and developing nation's rights have already been identified as a crucial issue under the United Nations Commission on Sustainable Development (UNCSD) and Agenda 21 regimes.

The Committee urges that a further inquiry be made to investigate the implications of the WTO upon the efforts to protect human rights, and the compatibility of membership of the WTO with membership of the ILO and other international rights agencies and agreements.

4.4 The debate over the appropriate relationship between aid, trade and human rights has intensified since the end of the Cold War. Some countries clearly and explicitly link the concepts, some separate them, while others make a linkage in specific cases only.[4] At times action is determined, at least in part, by what others are doing and by the limitations of what can be realistically achieved. Humanitarian sentiments are of little use to recipient countries if unilateral action proves largely ineffectual.

3 The policy adopted by the recent ALP conference for a 'Code of Conduct' for Australian companies investing in Asia also highlights the links between trade and human rights. Recently the Minister for Trade has also announced a working party to look into ways to address labour rights, including those overseas.

4 For instance, the United States, Canada, Denmark, Norway and the Netherlands have made a linkage between aid and human rights since the end of the Cold War. In contrast, Australia has linked aid and human rights in the cases of South Africa, China, Burma, Fiji and Serbia while generally following a 'no-linkage' policy. See *A Review of Australia's Efforts to Promote and Protect Human Rights*, AGPS, 1992, p. 52.

4.5 There has been a close connection between human rights and development since the founding of the United Nations in 1945 and the proclamation of the Universal Declaration of Human Rights in 1948. Despite the Cold War schism which was emerging in the late 1940s, a compromise emerged between the predominantly Western emphasis on civil and political rights (so-called first generation rights) and the Communist countries' insistence on articulating economic, social and cultural rights (second generation rights).[5] Even the Marshall Plan, the United States' package of assistance to help the reconstruction of Europe after World War II, had a strong human rights element, as did US aid to Asian countries.[6]

4.6 There was a convergence between the Western powers' aid programs and their political and strategic interests throughout the Cold War. It is the Committee's view that a new convergence of interests exists, free of the old Cold War parameters, but equally imperative as a guide to foreign policy interests.

AUSTRALIAN POLICY

4.7 AIDAB, Australia's official overseas aid agency, sees a clear link between the Government's foreign policies and human rights concerns. In its submission, AIDAB said that 'virtually all aid activities have the potential to contribute to the achievement of the right to development, the right to work, and other economic and social rights'.[7] While this demonstrates a focus more towards 'second generation' rights rather than civil and political rights, AIDAB stated that they use both positive programs and punitive actions to encourage more open and consensual government in the region.[8] There is a reluctance to cut off aid, even after the most flagrant human rights abuses, as such action often tends to penalise further the victims of such human rights abuses.

4.8 Correctly, in the view of the Committee, Australia's aid program is not determined by the recipient's closeness or otherwise to Western-style forms of democratic government. Australia is correct to respect cultural and historical differences which have lead to the evolution of different styles of government. Nevertheless, Australia should continue to press for respect for human rights in all countries, particularly those in receipt of Australian development assistance, regardless of the model of government used by those countries. Country-specific

5 The historical background to the link between aid, development and human rights is outlined in the Australian International Development Assistance Bureau (AIDAB) submission, p. S1068.

6 Albeit that the aid was given through a Cold War prism of seeking to stop the spread of communism, and the resultant curtailment of civil and political rights that would have been likely to ensue.

7 AIDAB submission, p. S1071.

8 ibid.

human rights strategies, as suggested by Amnesty International, whereby aid is provided in concert with institution building, preventative diplomacy, defence cooperation, and human rights training have considerable merit.[9] Such an approach can be sensitive to cultural differences while still promoting Australia's human rights goals firmly.

4.9 AIDAB acknowledges the heightened international interest in human rights in recent years and has modified its aid policies accordingly. Its Program Operations Guide has been amended to include specific consideration of human rights, a grant was given in 1993-94 to the United Nations Voluntary Fund for Technical Development (operated by the UN Centre for Human Rights) to support national human rights institutions in the Asia-Pacific region, and AIDAB assisted DFAT with the development of a human rights manual, which now forms the basis of a joint DFAT/AIDAB human rights staff training course. (Additional information about international labour standards programs, occupational health and safety programs and other technical cooperation programs for workers, funded by AIDAB, is in chapter 10 below on *The Rights of Workers.*) Human rights have become key issues for multilateral agencies such as the Organisation for Economic Cooperation and Development (OECD) and the development banks, thus sensitising AIDAB further to human rights issues, and the Minister for Development Cooperation met NGOs several times in the reporting period to discuss human rights issues.[10] The Committee welcomes these developments.

4.10 AIDAB provided the Committee with a list of projects which 'are *specifically and primarily* designed to promote human freedoms, humanitarian values or minority rights'.[11] In so doing, Australia is following a policy of *incorporation*, trying to assist other countries to develop viable human rights regimes, rather than a policy of *conditionality*, which would make aid conditional on a specific change within the recipient country. The Committee believes that this is an appropriate approach in most cases, while noting that, historically, it has been varied occasionally for good reasons.[12]

4.11 The Committee received other submissions about aid and human rights, notably from Care Australia and Australian Catholic Relief, the overseas aid agency of the Catholic Church in Australia.[13] Care Australia, one of 11 organisations in

9 See Evidence, 1 June 1993, p. 6.

10 More details are in AIDAB submission, p. S1072.

11 ibid., pp. S1086, S1088-S1090, (emphasis in submission).

12 See footnote 4 above. South Africa was a clear case where Australia, and much of the international community, withheld development assistance until apartheid was dismantled and multi-party, representative democracy instituted. Without doubt, this approach hastened the end of apartheid.

13 Care Australia, submission, pp. S1095-S1115, and Australian Catholic Relief Submission, pp. S2463-S2464.

the Care International network, sees adequate food, water and shelter and a minimum standard of health as the most essential human rights.[14] They believe that 'the right to free speech and education become irrelevant if a person is starving to death, and there is little point lobbying for political rights if an individual's health status is such that they are too weak to walk.'[15] While the Committee concurs with that view, the ideal aid program should facilitate an improvement in both the health and welfare and the civil and political rights of recipients.

4.12 While generally supporting the direction of Australia's aid policy, Australian Catholic Relief believes that both the quantity and quality of Australian aid has been substantially reduced in recent years, criticising a perceived shift to a more commercial focus to the aid program.[16] The Committee believes that any such shift would be inappropriate. If AIDAB were to include a human rights impact statement with all their aid proposals, it would ensure that human rights remain a primary focus of Australia's official development assistance program. Such an approach would allow a balance between the interests of the recipient country and the donor, by simultaneously assisting recipients' economic development and the enhancement of their human rights climate and institutions.

4.13 Similarly, the Committee believes that Australian trade in our region enhances the standards of living of those countries with which we trade. Trade in goods and services facilitates economic growth by both trading partners and therefore may help to address human rights concerns. There have been some notable debates in recent times about the wisdom of trading with countries that have particularly oppressive regimes. For instance, in the United States there was considerable debate about whether or not China should be given Most Favoured Nation (MFN) trading status in spite of its human rights record, or whether the MFN option should be used as a conditional lever to encourage Chinese authorities to improve their human rights regime.

4.14 There is no clear way forward in such a debate. Each case has to be looked at on its merits as, for instance, where it was argued that overt pressure on the ruling authorities to modify their human rights regime may be counter productive. Care has to be taken that well meaning policy decisions do not rebound on the very people the policies are designed to help. Sometimes bringing an isolated regime more fully into the international community through increased trade and commercial contacts will assist their citizens in the quest for a better human rights environment. Greater contact with Western countries like Australia facilitates more interchange of information - and it was the information revolution which, in part, led to the collapse of the totalitarian regimes in Eastern Europe. Governments that abhor Western notions of human rights find it difficult, if not impossible, to restrict global

14 Care Australia submission, p. S1101.

15 ibid.

16 Australian Catholic Relief submission, p S2463.

communications which demonstrate the rights and freedom enjoyed in much of the developed world.

4.15 Australia, along with many developed countries, has been subject to criticism about the level of its resources directed to official overseas aid.[17] While the Committee is concerned that Australia's level of ODA as a percentage of GNP has been declining, especially given the impact of this decline on Australia's ability to influence human rights standards, it has to be borne in mind that there are reasons for this which are shared by most developed countries. Australia, in common with other OECD countries, has been reducing its total public sector expenditures in recent years, which has had an impact on the level of development aid. In addition, the expected 'peace dividend' arising from the end of the Cold War has not been forthcoming, as is explained below.[18] Also, some donor countries are adding new types of expenditure to the ODA category (for instance, expenditure on asylum-seekers or on debt relief programs), thus reducing the amount available for 'traditional' aid programs. The Committee calls on all Australian political parties to *make a recommitment to attaining the UN target of a ODA/GNP ratio of 0.7%.*

4.16 There is an emerging debate about the most practical ways in which the international community can address the huge discrepancies between rich and poor nations. This is particularly relevant at a time of falling aid contributions from the developed nations. One proposal that has been put forward for discussion by UNICEF, UNFPA and UNDP is the 20/20 proposal. It suggests a global compact by which the developed or donor countries agree to increase aid allocations to basic services to 20 per cent of an aid budget if recipient countries agree to increase their level of public spending on basic services to 13 to 20 per cent of GDP. The concept would bring about a sizeable improvement in the funds needed to develop basic services, estimated by the sponsoring UN agencies at $US30 - 40 billion.[19] The debate on the proposal continues around definitional questions of what constitutes basic services and whether the 20 per cent should be calculated in terms of our total aid budget or on country by country allocation.

The Committee recommends that:

- **AIDAB include a human rights impact statement in all their development assistance project proposals;**

[17] For instance, *The Reality of Aid '94: An Independent Review of International Aid*, ICVA, EUROSTEP, ACTIONAID, 1994, critically analyses the level of ODA from OECD countries, including Australia, to developing countries.

[18] See 'Defence Cooperation', paragraph 4.37.

[19] A Note Prepared Jointly by UNDP, UNFPA and UNICEF, 'The 20/20 Initiative: Achieving Access to Basic Services for Sustainable Human Development' 1994.

- **all Australian political parties make a recommitment to attaining the UN target of a ODA/GNP ratio of 0.7%; and**

- **the Australian Government, in its preparations for the World Summit on Social Development, give consideration to the UNICEF, UNFPA, UNDP proposal-for-discussion known as the 20/20 Initiative and involve itself in resolving the definitional problems that remain.**

MULTI-LATERAL AND BILATERAL PROGRAMS

4.17 Australia provides development assistance and humanitarian relief both bilaterally and through multi-lateral channels, with bilateral aid through country programs making up around 60% of Australia's total ODA.[20] As specified above, AIDAB has an extensive bilateral aid program that is designed to address human rights issues specifically.[21] Bilaterally Australia provides funding for education and training, technical assistance, the strengthening of legal and law enforcement institutions, and the provision of infrastructure and equipment for longer term economic development. Multi-lateral aid has similar goals as well as providing emergency relief for famines and droughts. Both types of aid have the potential to assist in the development of sound human rights practices in recipient countries.

4.18 While the Committee supports both types of aid program, it is true that bilateral aid programs allow a greater degree of focus in meeting Australia's aid objectives. Such programs are better able to meet human rights objectives, especially as in recent years multi-lateral agencies such as the World Bank and the IMF have had an economically rationalist agenda which at times may compromise human rights objectives.

POPULATION PROGRAMS

4.19 In 1993-94 the Australian Government trebled aid for population activities and announced a commitment to achieve a target of 4% of total aid flows for population activities by 2000.[22] The linkage between population size and human rights is a vexatious matter, causing much debate both within and between countries. There was considerable debate in 1993 in the Australian Senate and wider community on the appropriateness of Australia's aid for population programs. In September 1994 a UN conference on population and development in Cairo provided an international forum where many of the issues were debated.[23]

[20] *The Reality of Aid '94*, op.cit., p. 35.

[21] See footnote 11 above.

[22] *The Reality of Aid '94*, op.cit., p. 35.

[23] See *The Australian*, 'UN Talks End In Human Rights Battle', 12 September 1994.

4.20 Broadly, there are two schools of thought on the nexus between population and poverty. One argument is that high rates of population growth are not the cause of poverty but rather a side effect of it. The proponents of this argument say that once a country improves its standard of living through aid and economic growth, its population growth rates will stabilise. More affluent people tend to have smaller families, it is argued. Supporters of this point of view say that Australia should not be seeking to influence directly the sizes of families in developing counties by funding what, it is argued, are essentially coercive population control strategies.

4.21 The contrary argument is that large families and quickly growing populations cause poverty, and that poverty emasculates the human rights of those who are impoverished. Proponents of this argument say that money directed into population programs in developing countries to educate people about options available to limit family size, directly assists womens' health and the welfare and human rights standards of recipient communities. It is argued that population programs are about education and choice, not about coercion.

4.22 In 1993 Professor Dennis Ahlburg was appointed by the Government to head an inquiry into population and development. On the question of whether rapid population growth causes poverty, the Inquiry stated there was little direct evidence but that indirect evidence suggest some possible links including reduced per capita income, pressure on land, health and education. The report suggests that family planning has a broader impact than most other economic and social policies. However, Professor Ahlburg gave this advice in his report:

> If the government seeks to improve the economic position of the poor, the largest and quickest impact will come from the most direct policy instruments available. Among such instruments are policies to increase access of the poor to land, credit, public infrastructure and services, particularly education and health.[24]

The government also requested Professor R Duncan, director of the National Centre for Development Studies at the Australian National University, to provide it with a brief review of the Inquiry Report. Professor Duncan said it is not possible to make a general argument that slowing population growth will increase economic growth, but rather that cause and effect mainly goes in the opposite direction from economic development to slower population growth.[25]

4.23 The Committee strongly supports assistance for womens' education programs. Too often in developing countries there is a great disparity in the educational opportunities available to men and women. Restricting womens' educational opportunities reduces both their employment options and their ability

[24] Quoted from R C Duncan, *Review of the Independent Inquiry Report into Population and Development*, April 1994, National Centre for Development Studies, ANU, p. 18.

[25] From *Review of the Independent Inquiry Report into Population and Development*, op.cit., incorporated into Senate Hansard, Wednesday 29 June 1944, pp. 2280-2282.

to make informed choices about family size. It is a factor in perpetuating poverty and poor health and it is directly related to population growth. Greater educational opportunities will lead to rising standards of living and slower population growth rates.

4.24 The Committee is well aware of the coercive population policies practiced by a number of countries around the world. Often authoritarian population policies are implemented by countries which have very high density populations and high growth rates which, it is argued, if left unchecked would result in even greater overcrowding, poverty and poor community health in the years to come. The Committee acknowledges the great problems faced by many populous countries but it rejects totally the coercive population policies of many governments in those countries. Forced sterilisation and abortion, infanticide, restricted health and welfare benefits for families above a mandatory size, and reduced employment opportunities for women who bear more than the mandatory number of children are quite unacceptable to the Committee and it urges the Australian Government to speak against such practices in all appropriate forums.

4.25 Many of the issues raised by the debate about population policies impinge directly on womens' rights and these are discussed more fully in Chapter Eight of this review. However, it is important to note at this stage that the Committee supports an integrated approach to population issues, one that emphasises aid to provide economic growth and the alleviation of poverty, but also one that facilitates education and health programs that give women the opportunity to determine their own fertility.

The Committee recommends that the Australian Government make bilateral representations where necessary and use multilateral forums where appropriate to urge the cessation of coercive population control programs, while at the same time continuing to fund education and health programs in developing countries to enhance the rights of parents to determine freely and responsibly the appropriate size and spacing of their families.

NATIONAL INSTITUTIONS

4.26 Australia should, and does, play an important role in fostering national institutions in developing countries to facilitate the strengthening of the human rights regimes in those countries.[26] This is achieved through training of legal professionals, law enforcement officers, members of armed services, electoral officers, administrative officers and educational bodies.[27] Through such methods an environment conducive to the maintenance of acceptable human rights norms can

[26] See the Department of Foreign Affairs and Trade submission, pp. S8-S9.

[27] An example is Australia's funding for Indonesia's Legal Aid Institute, which was formerly funded by the Netherlands. AIDAB will be providing funding through an NGO.

be fostered. It is a much better approach than seeking to lecture other countries when they appear not to uphold internationally acceptable human rights standards, and it is better than merely addressing specific human rights violations. Mr Brian Burdekin, the Human Rights Commissioner, noted that an Australian policy on human rights which balanced our criticism and representations with a more constructive approach would be more effective. He told the Committee:

> There is a perception in many places, at least in terms of the people with whom I have dealt over the last eight years, that the core activity of our foreign policy on human rights is in condemning or querying the failings of other nations. ... our foreign policy needs to keep very much in the forefront the reality that human rights, on the ground, for most people in most countries, means that there has to be some effective national mechanism otherwise the treaties, for many people, are very theoretical.[28]

The Committee believes that human rights policy must be proactive rather than reactive, an approach which would be assisted if AIDAB more clearly defined the human rights goals of its development projects.

4.27 There are important international bodies, such as the International Commission of Jurists, which play an important role in proactively shaping the international human rights climate. Other organisations, such as the Commonwealth in the case of South Africa's transition from a one party state to a democratic one, allow Australia to be effective in multi-lateral efforts to improve human rights.

4.28 Australia has provided a number of countries with assistance to develop their own human rights machinery in order that human rights may be monitored more effectively in specific countries, often using the vehicle of Australia's Human Rights and Equal Opportunities Commission.[29] This keeps the Australian Government at arms length from what otherwise may be seen as inappropriate interference in the internal affairs of other countries, but nevertheless facilitates an invaluable monitoring of human rights. The efficacy of such assistance is measured by the extent to which the activities of human rights institutions in recipient countries meet the criteria of the so-called 'Paris Principles', which were endorsed at the 48th session of the Commission on Human Rights.[30] The Committee commends the work of NGOs in establishing human rights institutions and monitoring machinery in other countries.

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28 Evidence, 13 October 1994, p. 1299-1300.

29 For instance, HREOC has provided assistance to establish human rights institutions and monitoring machinery in Indonesia, Russia, the Philippines, India, Mexico, Thailand, Malawi, Latvia and Hong Kong.

30 The 'Paris Principles' are set out in Appendix 5.

DEFENCE COOPERATION

4.29 There is a long-standing debate on the optimum relationship between defence spending and spending on non-defence development assistance in order to maximise regional growth and stability and best meet Australia's national interests. Unfortunately, too much of that debate is based on an assumption that the two types of development assistance (defence related and non-defence) are mutually exclusive. They are not and, in fact, the trend increasingly is towards more and more integration between the two types of assistance. Indeed, much defence spending can enhance human rights in other countries, as in the instances where peacekeeping troops are deployed under UN auspices to bring order and stability to a country, thus allowing that country's national institutions to be regenerated. As in Cambodia and Somalia, such defence spending can be important in enhancing the human rights environment in countries which are otherwise slipping towards anarchy and despair. While there is a positive role for defence cooperation or assistance at times, the Committee notes that the Minister for Foreign Affairs has advocated other approaches to security in his recent book *Cooperating for Peace*. These approaches involve the fostering of economic well being as a better approach than simply supporting military security. This is consistent with a basic approach that gives a priority to economic and environmental security and the fostering of human rights.

4.30 Since the end of the Cold War, the focus of much military expenditure in Australia and elsewhere has shifted from the former preoccupation with containment of the Soviet Union, its satellites and proxies and the parallel close strategic alliance with the United States, to a more multi-lateral peacekeeping role. This has provided new challenges for the Australian Defence Force (ADF) but it has also enabled the ADF to have a positive role in addressing human rights concerns.[31]

4.31 Apart from having involvement in UN peacekeeping operations, the ADF performs an important role in training officers and other personnel from regional defence forces, thus helping to spread Australian standards of conduct and performance to our neighbours.[32] Such courses have the same structure as those given to the ADF, in which, for example, the law of armed conflict is a fundamental part. In some instances, foreign students get a specifically tailored course to meet the particular requirements of their own defence force.[33] While it cannot be

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31 When the Australian Government commits forces to a UN peacekeeping operation, under UN command and control, it does so on the basis of an agreed understanding of roles and functions. See evidence, 10 August 1993, p. 213.

32 There is a further discussion of the importance of training of defence forces for human rights consideration in Chapter 5, paragraphs 5.25 to 5.27.

33 For example, the ADF has provided a specific training program for the Papua New Guinea Defence Force, including instruction on the Geneva Convention and its protocols on the rules of engagement, orders on opening fire, proper treatment of civilians, suspects and prisoners of war, and aid to the civil power roles. See evidence, 10 August 1993, p. 226.

guaranteed that everything taught in ADF courses will be transferred easily to defence forces in different societies and cultures, the Committee is satisfied that by doing such courses personnel from other countries will be less likely to abuse human rights in their own country and their respect for law and due process will be enhanced.

4.32 The Committee is aware that some training provided by the ADF can be misused by the recipient defence force. There is a potential problem where foreign defence force personnel who have received training in Australia subsequently have a strong role in the internal security of their own country.[34] However, the Committee accepts the testimony from the Department of Defence that training provided by the ADF 'certainly is focussed on meeting national defence requirements', and not on matters of internal security.[35] The fact that other countries' defence forces, even after receiving training in Australia, engage in activities that are unacceptable to the ADF, is insufficient reason to cease such training in the opinion of the Committee.

4.33 The training should continue to stress the legal and human rights requirements of defence force activities. The more widely that Australian concepts of the roles, functions and responsibilities of a defence force are understood, the more likely it will be that the human rights of citizens in neighbouring countries will be respected. The Committee would like to see much more explicit, detailed and extensive human rights components to courses offered incorporating the constraints necessary on military forces to preserve human rights, the international covenants which address human rights issues, the inappropriateness of using military forces in domestic civilian situations and the importance that military forces which use excessive force in a civilian context are subject to due process in civilian courts.

4.34 The ADF enjoys a good relationship with NGOs in the aid field. For instance, officials from Care Australia testified that they have a very good relationship with the ADF, to the benefit of countries in receipt of unofficial Australian aid.[36] Information is passed between the ADF and NGOs to their mutual benefit and the ultimate benefit of the aid recipient. In the case of Somalia, Care Australia praised the ADF for their relaxed and friendly approach to the locals, and their willingness to get their 'hands dirty'. They said that 'it was recognised by all the NGOs ... that the best job that was done in that particular area [Baidoa in Somalia] was done by the Australian troops'.[37] The Committee commends the ADF

34 For example, the Indonesian Kopassus regiment has undertaken training with Australian special forces, yet it allegedly has a strong role in the 'social-political field' and is 'the pioneer of national discipline' (interview with Brigadier General Agum Gumelar in *Tempo* magazine, 17 July 1993, quoted by Senator Harradine at hearing on 10 August 1993).

35 Evidence, 10 August 1993, p. 225.

36 ibid., pp. 199-201.

37 ibid., p. 200.

for its efforts in Somalia as an outstanding example of how the ADF can operate to relieve poverty, famine, distress and major human rights problems.

4.35 Closer to our own region, Australia runs an extensive Defence Cooperation Program which, while not primarily aimed at addressing human rights concerns, can have an ancillary impact of that nature. For instance, the Pacific Patrol Boat Program, whereby the Australian Government built and supplied 15 patrol boats for eight Pacific countries, had the specific intent of enabling those countries to better police their own fisheries zones. This in turn facilitated healthier economies for those countries and a better standard of living for their citizens, allowing improvement in their economic and social (or second generation) rights.

4.36 The Committee is firmly of the view that there should be no conflict between Australia's defence cooperation policies and its human rights aims. As the chairman said at a public hearing, 'the parliament is particularly proud of the contribution made by the Australian defence forces over a very long period of time to a number of extremely successful peacekeeping operations'.[38] The defence cooperation programs should continue in parallel with other programs designed specifically to address human rights concerns.

4.37 The Committee wishes also to point out that post-Cold War defence spending reductions will not necessarily allow increased development assistance. Globally, there has not been the 'peace dividend' that many people expected at the end of the Cold War. Despite a reduction of nearly 25% in global military spending between 1986 and 1992, and predictions of a continuing significant decline in such spending, the IMF estimates that, after 11 years of reduced military spending, industrialised countries' GDP will be merely 0.3% higher by 1998 than if there had been no military spending cuts.[39] Regrettably, there will be no huge 'peace dividend' for the developing world.

DEFENCE EXPORTS

4.38 In addition to the Defence Cooperation Program, the Department of Defence operates a Defence Export Program which has both strategic and economic aims. In relation to this program there has been controversy over the sale of surplus military aircraft to a country on the Indian sub-continent and allegations of 'several occasions in recent years where Australian military exports have directly supported ... military repression or abuse'. The Committee was presented with 'little or no detail of [such] cases'.[40]

38 Statement, 10 August 1993, p.238.

39 *The Reality of Aid '94*, op.cit., p. 32.

40 Joint Standing Committee on Foreign Affairs, Defence and Trade, *The Implications of Defence Exports*, paragraphs 5.17-5.18

4.39 In response, the Department of Defence has established a set of guidelines to ensure that there are no exports of military equipment to countries where there are serious violations of human rights.[41] The determination of what constitutes serious violations of human rights is usually a case-by-case judgement by Australian officials. The program was examined in some detail by the Trade Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade which reported in September 1994 on *The Implications of Australian Defence Exports*, including the human rights implications.[42]

4.40 That report pointed to a number of problems in this area which needed to be addressed:

- a definitional problem of what constituted a defence export;
- a need for improvement in the collection, collation and dissemination of defence export data;
- the need for regular review of the guidelines;
- a much greater involvement of and liaison with the Department of Foreign Affairs and Trade on the applications for defence exports; and
- an improved process of control by the Australian Customs Service.[43]

4.41 In the Additional Report to the *Implications of Australian Defence Exports*, a number of members of the Committee sought to strengthen the above recommendations by extending the definition of what constitutes a defence export, by giving DFAT a right of veto where an export was perceived not to be in keeping with foreign policy considerations, by listing nations classified as sensitive (with the list to be reviewed annually), by a more specific tightening of the role of the Australian Customs Services, and by a mechanism of involving Parliament and NGOs in the process.

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41 The document 'Australian Controls on the Export of Defence and Related Goods' were first issued in 1989 and on the basis of these guidelines the Standing Inter-Departmental Committee on Defence Exports (SIDCDE) was established to process and make recommendations on applications. The guidelines have been refined and reissued in 1992 and 1994. However, the later guidelines have 'reversed the onus of proof so that instead of the exporter having to show why they should be permitted to export defence and related goods, the bureaucracy had to show why an export should be stopped.' Quoted from Joint Standing Committee on Foreign Affairs, Defence and Trade, *Report on the Implications of Australian Defence Exports*, 1994, p. 39. There is a comprehensive discussion of the guidelines in Chapter Three of that report and in the Additional Report.

42 Joint Standing Committee on Foreign Affairs, Defence and Trade, *The Implications of Australian Defence Exports*, AGPS, September 1994.

43 Joint Standing Committee on Foreign Affairs Defence and Trade, *Report on the Implications of Australian Defence Exports*, 1994, pp.11-12.

4.42 This Committee reiterates its view expressed in the first Report that the defence and related exports fall into a different category from aid or normal trade and that while 'sanctions' in this area should still be applied on a case by case basis, the strong principle must be upheld that no exports of defence and related goods can go to countries which commit persistent and serious violations of human rights.

The Committee:

- **endorses the recommendations of the *Report on the Implications of Australian Defence Exports*;**
- **urges the Department of Foreign Affairs and Trade and the Department of Defence to set up a cooperative system for the consideration of defence export applications, within which all applications for export licences of defence and related goods must include a referral to and assessment by the Department of Foreign Affairs and Trade to ensure that they are consistent with Australia's human rights policy; and**
- **stresses the principle that defence and related exports should not be made to countries whose human rights record includes persistent and serious violations of the rights of its citizens.**

Chapter Five

PEACEKEEPING

Peace is more easily maintained if one avoids even the smallest incursion into war, for, once the barrier of peace is broken, the process of diplomacy in restoring peace or preventing a larger war is infinitely more difficult. The maintenance of peace requires an aggressive commitment to imaginative diplomacy and to continual negotiation, not spasms of despair and the clash of military action in the hope for something better. Samuel R Williamson, Jr[1]

Successful peacekeeping operations of the UN have confirmed the important role the organisation has to play in world peace; however the problems of many operations, including Rwanda, have revealed the organisation's deficiencies. The gap between expectation and capacity is greatest here. Peacekeeping is a principle function of the United Nations but during the Cold War it was an activity severely curtailed by the veto power of the permanent five in the Security Council. With the veto largely unused, the demands for peacekeeping have grown beyond its resources, its organisational capacity or the political will of many of its members. There is the further challenge of the internal nature of so many contemporary disputes, once considered outside the domain of the United Nations. Reform and reconsideration of both purpose and procedure is urgent. This report concentrates on those human rights aspects of peacekeeping efforts and points to the need, in any reform, to integrate the political and the military objectives of the exercise. Furthermore, consideration must be given to the longer term preventative measures that should be taken to deal with conflicts before they become outright war. Australia has an outstanding record in peacekeeping. There are two other committee reports on the subject: the Report of the Senate Standing Committee on Foreign Affairs, Defence and Trade in May 1991 and the current inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

1 Samuel R Williamson, Jr, 'The Origins of World War 1' quoted from *The Origin and Prevention of Major Wars*, Eds Robert I Rotberg and Theodore K Rabb, Cambridge University Press, 1989, p. 248.

5.1 There are a number of themes running through this report which are relevant to peacekeeping. They are the universality and indivisibility of rights and therefore the importance of promoting simultaneously the civil and political rights and the economic and social developments of all peoples; the value of proactive and preventive measures as a preferred option to reactive or punitive ones; and support for the UN while at the same time recognising the need to balance internationalism and the role of the UN with state sovereignty and the national interest.

THE CONTEXT

Peacekeeping and Human Rights

5.2 War is the antithesis of human rights. It undermines the right to life and the dignity of the human person; it is indicative of the intolerance and persecution of human nature; it inhibits freedom and destroys economic and social infrastructure. It therefore affects all the rights defined in the covenants. Conversely, peacekeeping is fundamental to the preservation of human rights as it is to the purposes of the United Nations. The Charter of the United Nations begins:

> 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, and
> to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
> to promote social progress and better standards of life in larger freedom
>
> and for these needs
> ... to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest ...
>
> Have resolved to combine our efforts to accomplish these aims.

Within the United Nations the enforcement of this determination is centred on Chapter VII of the Charter but the powers can only be invoked with the assent of all five permanent members of the Security Council, the USA, Russia (formerly the USSR), the UK, France and China.

5.3 Peacekeeping, as it has evolved in the United Nations, has been a result of a number of aspects of the organisation:

- the emphasis on the importance of state sovereignty and the prohibition against interference in the domestic affairs of member states;
- the composition of the UN, made up as it is of sovereign states which must voluntarily agree to any action;
- the ineffectiveness of the peace enforcement measures of Chapter VII, the use of which has traditionally, throughout the Cold War, been restricted by the veto power of the permanent five members of the Security Council, which have not allowed action to be taken in their spheres of influence;
- the need for the consent of the parties in conflict; and
- the determination that the use of force should be a last resort.

The number and scope of peacekeeping operations has therefore been limited. It has often been restricted to the initiation and involvement of the smaller powers and to the resolution of regional disputes.

Post Cold War Peacekeeping

5.4 From 1948 to the end of the Cold War there were 13 UN peacekeeping operations. Few resulted in a resolution of the conflict and five are continuing. Since 1988 there have been 18 peacekeeping operations and the missions have become larger, more complex, and much more expensive. The rapid increase has illustrated amply the numerous flaws and problems in the UN peacekeeping and administrative process. (See Appendix 6)

TABLE 5.1 THE NUMBERS INVOLVED IN PEACEKEEPING OPERATIONS:

Military	1987	9500
	1992	45 000
	1993	74 000
Police	1987	38
	1992	4 852
Civilians	1987	895
	1992	9 500
Annual Cost of Peacekeeping		
1991 - US$1 billion		
1993 - US$4 billion[2]		

5.5 The increasing demand for and complexity of peacekeeping operations is a result of the end of the Cold War. The veto power is not used with the same frequency or predictability, and is, in fact, now rarely used as a tool to block UN peacekeeping measures. The decline in the power of one of the two super powers through the breakup of the Soviet Union has led to changes, and demands for changes, to borders and to a rise in nationalist and ethnic disputes in Eastern Europe, Central Asia and, less directly, in Africa. Within its Charter, the United Nations is not entitled to deal with internal disputes, nor are the administrative and financial structures, developed to deal with the limited peacekeeping operations undertaken since the war, adequate to the massive tasks being demanded in the last five years. It is unlikely that this demand will decrease. The UN must decide as a matter of some urgency what reforms need to be undertaken and how they can be implemented in time to meet the demand.

5.6 Apart from questions of structural reform of the UN in support of increased and more effective peacekeeping, decisions on the nature and extent of the involvement of member states need to be made. Do humanitarian crises or the large scale abuse of human rights legitimise intervention in a state's internal affairs? What are the implications for national sovereignty of peacekeeping operations concerned with internal disputes? Can UN assistance be offered in ways which respond quickly to real need and which are not dependent on the political and strategic interests of the members of the Security Council? Practice in the last few years would seem to have set precedents in these areas. In short, in the post-Cold War era, when the UN Security Council is no longer as paralysed by the veto, and there is both a great need for, and greater ability of the UN to respond to crises and act in a peacekeeping role, so too have these operations necessarily dealt with the notion of human rights.

2 Anderson, David, *The United Nations and International Security*, Research Paper (Foreign Affairs, Defence and Trade Group), Parliamentary Library, June 1994, pp.12-13.

5.7 As conflicts have become more intrastate and internal ethnic, religious and nationalistic strife is rampant, there has been a massive and widespread decline in the observance of basic human rights and norms. Consequently, the UN is increasingly called upon to act substantively to both create, or foster peace, as well as promote and maintain human rights in areas where such rights are being abused.

AUSTRALIAN INVOLVEMENT IN UN PEACEKEEPING OPERATIONS

5.8 Australia's role as a relatively neutral and detached middle power enables it to be a major participant in UN peacekeeping operations, as it was during the Cold War. This is a role successive Australian Government's have agreed with, and accepted as a part of good international citizenship and as an active and vocal member of the international community. At a practical level, Australia has been involved in 19 United Nations peacekeeping operations since 1945. Many of these contributions have consisted of small task forces supplying technical skill in specialised areas.

Cyprus (UNFICYP) 1964 -

5.9 UNFICYP has been Australia's longest peacekeeping involvement, beginning in 1964. Initially Australia sent 40 police officers as part of a 200 strong international police force (UNCIVPOL). The police worked in conjunction with an international military force of 6,000 deployed to secure the demarcation line between the Greek and Turkish communities. The numbers of peacekeepers have been reduced from 6,200 in 1964 to 940 in 1993. The mandate under which UNCIVPOL has worked limited its operations. It does not have normal recourse to arrest and the presentation of evidence in a court of law and the UN does not formally recognise Turkish Cypriot courts. The police provide humanitarian liaison between the communities and the local police.[3] However, the most serious problem with the UNFICYP operation is that it has been an open ended commitment. At present, there are 20 Australian Federal Police (AFP) officers detached to UNFICYP, but current trends indicate the UN Security Council is considering withdrawing all forces due to the lack of progress in resolving the dispute.

Namibia (UNTAG) 1989 -1990

5.10 In Namibia the UN supervised the transition to independence by monitoring the election held in November 1989. Eight thousand electoral officers

3 Australian Federal Police submission, p. S1125.

and troops were involved. At first, 304, and later 309 ADF troops in the areas of engineering, construction, and military police served, arriving in March 1989, and staying until the successful transition to independence in early 1990. In addition, from October 26-November 20, 1989, 28 Australian Electoral Commission (AEC) officials and Australian police officers aided the election process as well.[4]

Somalia (UNOSOM) 1992 -1993, (UNITAF) 1992 - 1993 and (UNOSOM II) 1993 -

5.11 Somalia suffered a prolonged civil war leading first to the overthrow of the Government in 1991 and then to famine. The UN mission sought to maintain a ceasefire and deliver humanitarian assistance. However, it was not perceived as an impartial peacekeeping force and came under attack from the forces of General Aideed, leader of one of the factions.

5.12 The initial UNOSOM operation had 1000 personnel protecting the delivery of humanitarian aid and attempting to reconstitute the civil administration of Somalia. It included 30 ADF personnel in a movement control unit. From 1992-1993, the Unified Task Force in Somalia (UNITAF) or as it is more commonly known, Operation Solace, protected the delivery of humanitarian assistance and attempted to restore peace under a Security Council resolution.

5.13 Australia deployed a 937 person battalion of infantry, armoured cavalry, field engineers, communications staff, intelligence and support personnel, and military police starting in late December 1992. They were supported by offshore naval units on HMAS Tobruk. The group was responsible for patrolling and maintaining order in the Baidoa area from 19 January 1993 to 14 May 1993 when UNOSOM II was created. When this Australian force departed Somalia in early May, the original movement control unit remained in Mogadishu and ADF personnel continued to serve in UNOSOM headquarters. UNOSOM II had a much more complex mandate involving peace enforcement provisions such as disarmament, the restoration of national institutions and national reconciliation. In May 1993, a senior AFP officer was deployed to Somalia as senior civil police adviser to the commander of UNOSOM II.[5]

5.14 At September 1994, an Australian logistical and support contingent and a small Special Air Service guard unit remain in Somalia, the only Western troops remaining in Somalia as a unit. The Somalia peacekeeping operation is illustrative of the confusion of role and task of the post Cold War UN which still conducts peacekeeping operations in an *ad hoc* and confused manner, with little advance thought given to preventing such conflicts and also, little reflection taken prior to force deployments on how to best carry out such operations.

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4 Hugh Smith, ed, *Peacekeeping: Challenges for the Future*, p.205.

5 ibid., pp.209-211.

Cambodia (UNTAC) 1992 -

5.15 The UNTAC mission represented an expanded peacekeeping role for the UN and one in which Australia played a significant part. After the withdrawal of the Vietnamese forces in 1989, negotiations on a peace settlement began in earnest with the first Paris Conference. It was at the suggestion of Australia that the UN took direct control of the administration of Cambodia to enable political parties to be formed, elections to be held, a constitution to be adopted and a new government formed. The formal agreement to this plan was signed in October 1991.[6] It was the first time the UN had taken on the whole task of running the full administration of a country. The task of peacekeeping in these circumstances was a difficult one whereby the UN authority had to maintain neutrality at the same time as gaining the cooperation of four factions with longstanding suspicions and hostility towards one another. An infrastructure had to be provided both in transport and communications and in services and institutions such as a policing and judicial system.

5.16 An Australian, Major-General John Sanderson[7], headed the UN military operation in Cambodia. It lasted eighteen months and involved more than 20,000 personnel from 32 nations, including, at its climax, over 507 ADF personnel who, at any one time, were involved in communications, naval patrolling, headquarters staff, air force transport units, movement control units, and infantry guard troops. Almost 370,000 displaced Cambodians were repatriated from refugee camps near, or in, Thailand.

5.17 General Sanderson gave evidence to the Committee's inquiry into peacekeeping in April 1994. He outlined a number of features that were important to the success of a peacekeeping mission: the agreement of the parties, a clear mission, the integration of the operation and logistics planning, unity in the peacekeeping force and, ideally, the capacity to implement the rule of law and to disarm the warring factions.[8]

5.18 By contrast with Cambodia, in the former Yugoslavia and in Somalia, the UN was operating in the absence of the agreement of the parties and was therefore attempting to provide humanitarian assistance in the midst of a hostile environment.

5.19 Mr Ian Harris, National Director of Care Australia, endorsed General Sanderson's point that peacekeeping operations cannot operate successfully without a political agreement. Specifically, in reference to Somalia, he said:

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6 Gareth Evans, *Cooperating for Peace: the Global Agenda for the 1990s and Beyond*, Allen and Unwin, 1993, p. 107.

7 Now Lieutenant General John Sanderson.

8 Evidence, 8 April 1994, p. 502-508.

> ... there has been a very successful military operation but a very poor political one on behalf of the UN. ... In other words the military people far outweighed the political people, and I think that has been to Somalia's detriment. ... you will continue to have this trouble until you have someone who can negotiate from a political sense the settlement with the various warlords.[9]

5.20 On the question of the clarity of the mission, General Sanderson made the observation that the connection that had been made between humanitarian operations and peacekeeping operations was a confusing one.

> Some mistakes have already been made in the belief that you can conduct a peacekeeping operation simply in support of a humanitarian operation. The peacekeeping operation has to be conducted on the basis of some agreement ... Peacekeeping operations are about political outcomes. Political outcomes have a humanitarian dimension to them but we are looking for political outcomes.[10]

5.21 In Cambodia, the parties agreed to the mission in the Paris Agreement, the mission was clear and the Commander (General Sanderson) succeeded in maintaining the unity of the force. The electoral process was a success; it was widely supported by the Cambodian people and the election was held without serious violence. It could be seen to have delivered to the Cambodian people a government with all the legitimacy of popular approval.

Preparation and Training

5.22 However, despite the decision of General Sanderson to oversight preparations in New York before going into Cambodia, he still reported concerns about the capacity of the UN organisation in New York to deliver resources as needed in the field.[11] Furthermore, the mission was jeopardised by the withdrawal of the Khmer Rouge from the Paris Agreement. This withdrawal meant that the cantonment process and the disarmament of the factions could not be achieved. Finally, the lack of an existing code of laws and the politicisation of the local police and judiciary meant that there were limited gains in the capacity of the operation to leave behind a rule of law.[12]

9 Evidence, 10 August 1993, p. 191.

10 ibid., p. 512.

11 Evidence, 8 April 1994, p. 508.

12 ibid., p. 505.

5.23 There were questions raised in relation to Cambodia, which to date has been the UN's largest and most complex operation, as to the UN peacekeeper's role in human rights. First, Khmer women were not substantively included in the process of rebuilding the country, and when they were employed by the UN in the civil administration, they were under-utilised and placed mostly in traditional jobs such as secretarial tasks and cleaning/cooking.[13] The UN actually facilitated this trend at a time when social progress could have been made.

5.24 Second, some of the UN forces, as is so often the case, were not properly educated and sensitised for their mission in Cambodia, and many problems ensued between them and the Cambodian population.[14] Sexual harassment of Khmer women was a real problem, and the UN force's general treatment of, and attitude towards the Khmer population was condescending. Frequent complaints included comments that the UN did not protect human rights, and did not investigate wrong doings.[15] Obviously, in such a complex situation there were bound to be problems, yet the fact remains that UN troops actually committed such actions, and in certain circumstances did not protect, but rather violated Khmer rights.

5.25 General Sanderson has, since his experience in Cambodia, reflected on the role of UN peacekeeping forces and their capacity to protect human rights during their operations. In Cambodia there were incidents which 'were inconsistent with the role of the world body as the main international instrument for upholding human rights.'[16] He further believed that 'respect for human rights needs to become part of the culture of the armed forces of the member state from which the peacekeepers are drawn.'[17] He suggested that greater emphasis on human rights training before missions commenced and at the highest level possible of the military hierarchy was essential. More humane and restrained conduct on the part of peacekeeping forces would not only ensure greater success for the mission by maintaining the support and confidence of a local population for it, but it would also

13 Arnvig, Eva, 'Women, Children and Returnees' in Peter Utting (ed) *Between Hope and Insecurity: The Social Consequences of the Cambodia Peace Process*, United Nations Research Institute for Social Development (UNRISD), Geneva, 1994, pp. 143-178.

14 It should be noted that Khmer women were subjected to significant abuse, sexual and otherwise, by the Pol Pot regime on a scale greater than anything that happened under UNTAC. In her study, Eva Arnvig quoted psychiatrists, Mollica and Jalbert, asked by the UN to look into socio-psychological situation in the border camps: 'the Khmer community has suffered a degree of sexual violence unprecedented in modern Khmer history. All respondents indicated that rape and sexual violence were commonly practised under the Khmer Rouge'. ibid. p. 155.

15 See Appendix 1 'Report on Public Perceptions of UNTAC in the City of Phnom Penh' from Utting, Peter, op. cit. pp. 174-178.

16 Quoted from a paper supplied to the Committee, General John Sanderson, 'Human Rights and Peacekeeping', p. 1.

17 ibid.

have the advantage of influencing the values of the society from which the troops were drawn.

5.26 The essential values were described by General Sanderson in the following terms:

> In stable societies, an equilibrium has been established between the state and the military. The rule of law is the glue that holds them together. The state makes laws which authorise the military to bear arms, and to use force within constraints. The use of military force is exclusive to those authorised by law, and due process is provided where constraints are exceeded. The constraints are generally codified in domestic laws, such as the military and criminal codes, but also include international constraints, such as customary laws and conventions which have been ratified by the state concerned.
>
> ... There needs to be a wider understanding among leaders that there is much more to the military profession than war fighting, and that the truly skilled exponent of the operational art achieves his objectives economically, with the use of minimum resources. If it is possible, he does so without the use of force.[18]

5.27 He contrasted this with a view of the role of the military which often proved counterproductive in peacekeeping operations:

> Some military forces have an ethos which is based on problem solving by violence, instilling fear and respect within the population among which they must operate. Military forces which have a tendency towards excessive force on peacekeeping operations create grave risks, since they undermine the consensus behind the force's operations, shattering its unity.[19]

The Committee believes that within these sentiments there lies an important imperative for the UN - the necessary and timely training of its peacekeeping forces in the restrained use of force in relation to civilian populations. In the longer term the more lasting possibilities of a broader understanding of the importance of the rule of law.

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18 ibid., pp. 1, 3.

19 ibid., p.3.

The Outcome

5.28 Peacekeeping operations inevitably have impacts beyond the intended ones. Operations involving large numbers of personnel, quantities of equipment, the introduction of new currency, the injection of a large amount of money into the economy and a vastly increased demand for goods and services affect both the local economy and social structure, often adversely. This can be exacerbated by the temporary nature of the influx. While the causal relationship is not yet always clear, nevertheless there has been preliminary study of the social impact on Cambodia of the peacekeeping operation. One study reported the emergence of new social problems:

> an increase in corruption; an increase in lawlessness, banditry and other forms of social violence; an increase in prostitution and a corresponding increase in the incidence of sexually transmitted diseases and HIV/AIDS; a further deterioration in the situation of Cambodia's 'vulnerable' groups, including segments of the returnee population; as well as significant problems in the reintegration of the Cambodia's war-affected populations.[20]

Such outcomes can negate the achievements of the operation itself.

5.29 Justice Michael Kirby was appointed Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia in November 1993. His task is to monitor human rights and report to the Secretary-General on the situation in Cambodia in the aftermath of the peacekeeping mission and the election. His assessment was both good and bad. Problems included the truly awful state of the prisons, which were overcrowded and unsanitary; the almost total lack of judges, most of whom had either fled or who had been killed by the Khmer Rouge; uncontrolled military power, which is undisciplined, disorganised and corrupt; corruption in the education system; low levels of literacy; and the harrying of the population and the Government forces by the Khmer Rouge who were increasingly seen as no better than bandits, opposed to any democratic test of their credentials.

5.30 However, he described a situation which for all its problems had produced 'many brave and good people' 'trying to rebuild a civil society'. Their work was 'quiet', 'admirable' and 'dedicated' and deserving of 'unflinching support'. Justice Kirby described moves to train judges, rebuild prisons, improve the integrity of the education system and to monitor abuses. He believed there had been real improvements even in the space of this year.[21]

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20 Curtis, Grant, 'Transition to What? Cambodia, UNTAC and the Peace Process' in Peter Utting (ed) *op. cit.*, p. 50.

21 Evidence, 25 August 1994, pp. 1192-1207.

5.31 The Committee believes it is too early to make judgements about the success or otherwise of the UNTAC operation. It is aware of contrasting, if unofficial views about the current situation in Cambodia - the level of corruption in official and military circles, the disproportionate numbers of officers in the armed services and the lack of control by the Government of significant sections of the country.

The Committee urges the Government of Australia to continue judicious support for the Cambodian Government in its efforts to establish a rule of law, to develop infrastructure, to provide educational and health services for the people and to bring security and peace to Cambodia.

THE AUSTRALIAN ELECTORAL COMMISSION (AEC)

5.32 In the Charter, in the human rights covenants and conventions, the UN affirms the importance of democratic processes. This recognition is translated into action in the UN peacekeeping operations which have sought to ensure free and fair elections in states where conflict has become endemic. This Committee believes that free and fair elections are fundamental to good government.

5.33 Australia has provided extensive electoral assistance in many of these UN operations - most extensively in Namibia and Cambodia but also in South Africa, in the Western Sahara, in Mozambique, in Uganda and in Ethiopia. The Australian Electoral Commission told the Committee that they saw electoral assistance as 'an absolutely vital ingredient in international aid or in peacekeeping programs.'[22] Dr Robin Bell, the Deputy Electoral Commissioner, outlined several criteria which were important in giving electoral assistance:

> Did the country want it? Was the result likely to be accepted? Did the main political, religious, cultural groups in the country agree to go along with the process? Should it be done more than once, or should you aim to leave behind enough expertise and infrastructure that it could become self sustaining?[23]

Further:

> It must be of a kind that we would want to be associated with. ... We would not like to lend an imprimatur of respectability to something that might not qualify for that.[24]

22 Evidence, 10 August 1993, p. 164.

23 ibid., p. 183.

24 ibid., p. 165.

5.34 The AEC's most extensive involvement has been in Cambodia. In Cambodia the UN drafted the electoral law, established the procedures which governed the conduct of the election, trained the electoral officers, informed the population of the election, created an atmosphere of trust in the process amongst voters, enrolled the population and conducted and scrutinised the actual poll. Australia supplied 44 officers from the AEC and 69 personnel in total who were involved in the elections, which represented the largest single contingent from any country. The foreign electoral officers played a training and supervisory role; Cambodian nationals provided the actual polling staff.[25] The AEC modified and used its training manuals for the purpose of training Cambodian officials. To register voters electoral officials made personal contact with every voter, photographed them and supplied them with a signed registration card.

5.35 Mr Avery, the Assistant Director Election Operations, AEC, described the elections in Cambodia as a success. He believed they were free and fair; operations in polling places were not subjected to outside influences.

> It just grew. People were coming in spite of very real threats to their livelihood, to their very lives. They turned out in large numbers in difficult circumstances; they walked long distances. They seemed determined to make this the start of their future, if you like.[26]

THE AUSTRALIAN FEDERAL POLICE (AFP)

5.36 The Australian Federal Police has long experience of peacekeeping; over 29 years as part of the United Nations Force in Cyprus (UNFICYP) and commitments in Namibia, Cambodia, Somalia and a border relief operation in Thailand. In evidence before the Committee it outlined its police role as an 'essential element in any mission aimed either partially or totally at the protection of human rights.'[27] This was particularly important where there was a lack of social infrastructure and civil security.

> Without law and order, no other structures essential to national rebuilding can be successfully completed. Transport systems, communication systems and fair and free trade systems will all fail if lawlessness prevails. Without law and order, abuses of human rights flourish. People, and disparate groups of people, take the law into their own hands.[28]

25 ibid., p. 175.

26 ibid., pp. 170-171.

27 ibid., p. 145.

28 ibid., p. 146.

The police provided the elements of a rule of law in peacekeeping zones by the establishment of proper policing practices and by the training of personnel.

5.37 Practices such as the resolution of incidents with the minimum use of force, the collection of evidence, the taking of statements, the proper documentation of cases, protection of individual rights, impartial treatment and gaining of the trust of the community. AFP went unarmed in Cambodia in order to establish the trust and respect of the community from whom, in turn, they sought protection. It had an important effect of de-escalating the level of violence in Thmar Pouk where the AFP contingent was stationed.

5.38 Specifically, the brief of the civilian police (UNCIVPOL) in Cambodia was to:

- establish the UNCIVPOL presence in the area;
- investigate human rights violations and report on such to UN command;
- bring about an environment of calm and confidence, conducive to the holding of free elections, planned for May 1993;
- control and supervise the factionalised police; and
- provide training and development for local police within their area of responsibility.[29]

5.39 The AFP provided 10 personnel, later increased to 11, policing a region in northwest Cambodia with great success and to widespread acclaim. Of significant long term value for the continuation of peace was the training program offered to police from all factions. The AFP produced a training manual for use in the UN border relief operation in Thailand which was modified for their UNTAC operation. The law upon which training was based was the common law.

5.40 The Committee commends the Australian Federal Police for the excellent record of its involvement in peacekeeping operations from Cyprus onwards.

THE JUSTICE PACKAGE

5.41 The Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (Peace Agreement) signed in Paris on 28 October 1991 by the four warring Cambodian factions included a number of provisions:

29 Australian Federal Police submission, p. S1126.

- the cantonment and disarming of the warring armies by UNTAC;
- the repatriation of refugees; and
- the holding of general elections for a national assembly.[30]

5.42 There were also provisions which referred specifically to the promotion and protection of human rights. These made particular reference to the Universal Declaration of Human Rights. Therefore, under the Peace Agreement, Cambodia undertook:

- to ensure respect for and observance of human rights and fundamental freedoms in Cambodia;
- to support the right of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms;
- to take effective measures to ensure that the policies and practices of the past shall never be allowed to return; and
- to adhere to relevant international human rights instruments.[31]

5.43 The implementation of these provisions of the Peace Agreement was the task of UNTAC and it was given all necessary powers to do so. These powers included the establishment of appropriate legal and judicial structures, supervision of the human rights situation, investigation of human rights abuses, corrective action where necessary and a program of human rights education.

5.44 Both in his submission and in evidence before the Committee, Mr Mark Plunkett, UN Special Prosecutor in Cambodia, outlined a situation which is a common one facing peacekeepers. In 1992, he said:

> Cambodia was a country in a state of anarchy where there was wholesale execution of suspected offenders, arbitrary and indefinite detention without trial, torture of prisoners. Freedom of movement [was] inhibited by the extortion of money by the military and the police in the guise of illegal road tolls. Murder, abduction and arson of political opponents

30 'Agreements on a Comprehensive Political Settlement of the Cambodia Conflict', Article 20.

31 ibid, Article 15(2)(a).

> [was] commonplace. Large scale armed conflicts involving cattle thefts were frequent occurrences.[32]

Furthermore there was:

> no functioning judiciary, no rule of law, no operative criminal code, no powers of arrest, few jails of an acceptable standard; the population was heavily armed; and the resolution of disputes was easily effected by people simply shooting each other.[33]

5.45 To counter this, in the UNTAC forces, there were too few civilian police - 3,600 compared to 16,000 military personnel. Many of the 'police' were not trained in police work, but were paramilitary border guards or riot control police, unlike the professional Australian contingent.[34]

5.46 Mr Plunkett believed that UNTAC failed to uphold the part of its mandate that obliged it to establish the rule of law and to create an independent judiciary and a professional police force. He cited a number of examples of problems he encountered as special prosecutor in trying to overcome the state of anarchy and implement the Peace Agreement. [35]

5.47 All such incidents undermined the confidence of people in the courts and the justice system and reinforced the reliance on the use of arms and individual, summary and factional justice. For these reasons, Mr Plunkett believed that the failure to address the need for the rule of law finally undermined any chance of lasting peace in Cambodia. The Committee endorses this conclusion for, while the success of the election was capable of giving legitimacy to the Government of Cambodia, the inability of that Government to deliver impartial and certain justice

32 Mark Plunkett submission, p. S1327-28.

33 Evidence, 10 August 1993, p. 129-131.

34 ibid., p. 132.

35 For example, the UN set up action cells which prevented the issuing of warrants by the special prosecutor for such crimes as the extra-judicial execution by a Khmer Rouge soldier because of the fear of UNTAC appearing to be biased against the Khmer Rouge. At the same time they connived at the interference by the Minister for Justice of the State of Cambodia Government when he ordered the courts not to hear from UNTAC in the case of Mr Than Theuan, a soldier arrested in January 1993 for the murder of 13 Cambodian Vietnamese and two Khmers. The Minister for Justice also publicly expressed the view that judges who did not follow orders would be punished. In Battambang, a general who shot a person for making too much noise hammering a nail to put up a hammock and the Governor of the Battambang Gaol, accused of setting fire to prisoners, were not prosecuted. Evidence given at the public hearing 10 August 1993, pp. 134, 141 and the Mark Plunkett submission, p. S1334.

to the people of Cambodia would, over time, detract from its support and make difficult the continuing disarmament process.

5.48 This Committee believes that the protection of human rights through the rule of law is a fundamental prerequisite for peace and therefore should be an integral part of UN peacekeeping operations.

5.49 Mr Plunkett recommended the incorporation of a justice package in future peacekeeping operations. The justice package presumes that it is important that military power be transferred to civilian authorities as quickly as possible and that any lasting peace can only be built on an independent judicial system which has the confidence of the people. It includes:

- the supply of experienced, serving or retired judges to preside alone or with local judges over criminal trials where courts do not exist;
- the supply of defenders and prosecutors capable of operating in the system in the short term and training locals for the longer term;
- a contingent of police capable of training local police in the processes of investigation, evidence gathering, arrest procedures and the preparation of prosecutions;
- the temporary institution of a simple criminal code covering basic, universally accepted offences such as murder, abduction, torture and theft; and
- the construction of jails of acceptable standards so that prisoners can be kept safe from attack and assassination.

5.50 A proposal has been put before the Committee and the Government for a project to be established to develop the planning principles and the field resources and materials for a Justice Package. It is a joint proposal by Australian police and human rights lawyers with experience of peacekeeping operations. It is a comprehensive proposal outlining the need for the package in countries bereft of a justice system, enabling cheaper and more effective peacekeeping operations and longer-lasting and more stable peace. The package once designed would be available for inclusion in future UN operations. It would be generic and capable of modification to specific circumstances, taking the form of a set of policy documents for incorporation in UN mandates and a series of field manuals, resources and materials for UN mission operatives. The project for the development of the package

is estimated to entail a year's work for two people at an estimated cost of $175,000-$220,000.[36]

The Committee recommends that the Government:

- **support and fund the development of a justice package, as defined in Paragraphs 5.49 - 5.50, as a basic component of any peacekeeping operation; and**
- **promote the idea of a justice package as a basic component of peacekeeping operations at the United Nations.**

NON-GOVERNMENT ORGANISATIONS AND VOLUNTEERS

5.51 United Nations peacekeeping operations involve not only the services of national governments and UN employees but also require the coordination of Non-Government Organisations (NGOs) and voluntary workers who are often the deliverers of humanitarian relief.

5.52 A particular problem associated with the Cambodian mission (and many others such as Somalia and the security of NGO staff) was outlined for the Committee by one of the 500 volunteer electoral officers, Mr Charles Bowers. He reported that the electoral officers in his district felt particularly vulnerable. This group had the misfortune of being placed under the 'protection' of an untrained, unprepared military battalion and civilian police who did not bring with them the necessary equipment to carry out the mission. Mr Bowers believed that too little attention was paid to the volunteers in comparison to the treatment of the official UN employees.

The Committee recommends that the Government encourage policy changes at the UN to set guidelines for the protection of volunteers involved in UN operations.

5.53 NGOs play a significant part in peacekeeping and in the protection of human rights.[37] Where they promote development, alleviate poverty and inequality, non-government organisations are peace builders and they concentrate on the economic, social and cultural rights of people. As humanitarian intervention becomes more common in the UN system the role of the NGOs has and will become integral to peacekeeping and the protection of human rights. Care Australia informed the Committee that:

36 Exhibit No. 156, pp. 1-8.

37 For instance, Care Australia reported to the Committee that it did general aid work in a number of countries as well as making contributions to peacekeeping operations. It has worked extensively in Cambodia, Iraq, Somalia, Bosnia and the Sudan. It has sought to go into Burma and, while it operates in Papua New Guinea, it has not been allowed access to Bougainville.

> There can be no more basic human rights than the right to life and that this right is ensured by the ability to access adequate food, water and shelter and to have a minimum standard of health.[38]

5.54 However, NGOs not only provide relief, but by their presence they supervise and scrutinise civil and political rights. They are able to, and often do alert the world to problems at an early stage and, where there has been a long relationship of development work, they are often knowledgeable about conditions and the social and political structure of a state. Their liaison with peacekeeping forces can be invaluable; they proved to be crucial to the success of Australia's peacekeeping efforts in Somalia. Mr Harris explained to the Committee that liaison between the Care Australia and the ADF for the purpose of sharing knowledge and providing assistance had begun formally in relation to the Somalia mission and had progressed since then.

5.55 Care Australia praised the ADF for their willingness and ability to consult with the aid organisations and with the local people. The ADF consulted Care Australia before leaving for Somalia about local conditions. As a result the ADF were particularly effective in the peacekeeping operation in Baidoa.

> The operational side of the 'open ear' policy was demonstrated by constant foot patrols around Baidoa instead of hiding behind sandbags at a heavily protected airport or riding around in a jeep that heralded the coming of the military. Escorts were placed on expatriate excursions around Baidoa instead of just on food convoys to the villages; a 24 hour radio watch was established and presence was established by placing troops inside NGO accommodation compounds.[39]

The Committee commends the Australian peacekeeping forces for their work in Somalia and Cambodia.

The Committee recommends continued and strengthened liaison between the ADF and NGOs, both before and after missions, for the purpose of exchanging information about institutional operations and functions, and towards this end urges the exchange and secondment of staff between the NGO agencies and the military forces.

38 Care Australia submission, p. S1101.

39 ibid., p. S1105.

LANDMINES

The Scale of the Problem

5.56 Landmines have become the scourge of civilians in many countries in Africa, Asia, the Middle East and Europe. They are a major source of the continuing refugee problems in Pakistan and in parts of Africa. More than 300 million have been produced. The International Committee of the Red Cross estimates that over 100 million landmines have been scattered in 62 countries claiming 800 victims each month. The US State Department has made a much more conservative, but nevertheless fearful, estimate.

TABLE 5.2 WHERE THE MINES ARE

Country	Estimated (million)
Afghanistan	9-10
Angola	9
Iraq	5-10
Kuwait	5
Cambodia	4-7
Western Sahara	1-2
Mozambique	1-2
Somalia	1
Bosnia/herzegovina	1
Croatia	1

Source: UN/US Dept of State

5.57 Landmines are increasingly miniaturised and made of plastic components which are difficult to detect in the ground or on people. They are indiscriminate and last well beyond the conflict for which they are deployed. For instance, the Chinese T72 has a lithium battery which will last between 75 and 100 years.[40] For every person killed there are another two people on crutches or with artificial or missing limbs.[41] In Cambodia there are 4 million mines in a country of 8 million people. There are already 36,000 amputees. In Afghanistan, 20% (200,000) of the deaths in

40 Exhibit No. 88, 'Landmines: A Human Rights Crisis'. Landmines Conference, Parliament House, Canberra 23 November 1993. Conference Papers: Statement by Jody Williams.

41 ibid, Gareth Evans, 'Stop Mining the Civilians: Too Much to Ask', p. 1.

the civil war were caused by mines; 400,000 people were injured. In Angola one in 400 people is a surviving amputee; in Somalia, the figure is one in 650.[42]

5.58 Removal of landmines is a dangerous, slow and expensive process. It is the work of individuals painstakingly testing the ground with prodders in order to uncover each mine. For every 5,000 mines cleared, one disposal expert is killed and two are injured. Landmines can be bought for as little as $3 but cost on average $1,000 per mine to clear. This cost does not take into account the costs of medical treatment, social security support, loss of working capacity and loss of land use. To understand the scope of the problem it is instructive to look at the example of Afghanistan. The devastating civil war and instability following the Soviet withdrawal has left 9-10 million mines scattered throughout the countryside. The International Committee of the Red Cross has estimated that at the current rate of removal it will take 4,300 years to clear 20 per cent of the country.[43] Starting in 1989, nine states, including Australia, despatched de-mining forces to remove and make mines safe through the UN Mine Clearance Training Team in Afghanistan (UNMCTT). While all nations except Norway withdrew their forces from Afghanistan in 1990 and 1991 for security reasons, Australia's team of initially six, later three ADF men remained until December 5, 1993, the last team to depart. Under UNTAC four million square metres of Cambodia were cleared of 37,000 landmines and 2,300 Cambodians were trained in mine clearance.[44]

Current Measures

5.59 Landmines are manufactured by 48 countries. Major manufacturers, suppliers and traders have included: the United States, USSR, China, Italy, the United Kingdom, France, Czechoslovakia, Singapore, Egypt, Pakistan and South Africa.[45] Components are manufactured in countries which have nothing overtly to do with the manufacture of the landmines themselves. For example the Swedes, who do not produce landmines, nevertheless produce explosives for landmines.

5.60 There has been mounting pressure in the international community, especially from NGOs, for new measures to control the manufacture and use of landmines. A landmark event was the ***Inhumane Weapons Convention, 1980, Protocol 11, 1981.*** However, only 39 countries have ratified this convention and the United States is a signatory but not a full member. In the United States the convention was still before the Senate in late 1994. Moreover, the convention lacks

42 ibid, Ian Maddocks, 'Landmines: A Medical Perspective', p.2.

43 ibid, Vietnam Veterans of America Foundation, 'Social Consequences of the Widespread Use of Landmines', p. 5-6.

44 ibid, Gareth Evans, p.2.

45 ibid, Kevin Clements, 'Landmines: A Human Rights Crisis'.

implementation provisions and does not apply to internal conflicts, which are the basis for UN peacekeeping in the post-Cold War era.

5.61 Some advance in the control of landmines has been made with the unilateral moratorium which has been placed on their trade by the United States, France, Belgium and the Netherlands. Furthermore, at the International Conference for the Protection of War Victims in Geneva in August 1993, Australia called for a review of the 1980 convention. The proposal has come before the General Assembly for endorsement. The expert group has now met on three occasions and is due to meet once more, in January 1995, before the Review Conference, scheduled for 25 September to 13 October 1995.

5.62 Australia has made representations to a number of regional countries including Brunei, Thailand, Philippines, Malaysia, Indonesia, Singapore, Vietnam, Burma, Republic of Korea, Papua New Guinea, Western Samoa, Solomon Islands, Vanuatu, Fiji and Kiribati, with a view to encouraging either ratification of the *Inhumane Weapons Convention (IWC)* or participation in the Review Conference. The Department of Foreign Affairs and Trade reported some regional reluctance to becoming part of the convention.

The Committee recommends that the Government consider ways in which the following propositions can be put forward internationally for the better control of landmines:

- **Landmines should be on the list of weapons that are monitored by the UN under the United Nations arms register.**
- **The current convention and Protocol should be strengthened.**
- **Mine clearance should be a major issue for aid for both governments and humanitarian agencies and in particular should be included in Australia's aid program.**
- **Campaigns need to be mounted to get more countries to sign and ratify the landmines protocol.**
- **Consideration should be given to instituting a total ban on the manufacture and export of landmines, using the models of the current international disarmament law, particularly the Chemical Weapons Convention.**
- **International conventions relating to landmines could be couched in terms of rights and obligations, thereby making international criminal law applicable and making breaches subject to international criminal tribunals or war crimes tribunals.**

- **There should be campaigns against the companies which export landmines for profit.**

CONCLUSION

5.63 Australia's record of achievement and its reputation for professional, measured and humane service in peacekeeping is excellent. The Committee congratulates the Australian Defence Force, the Australian Federal Police and the Australian Electoral Commission and the many NGOs and volunteers, particularly Care Australia, for their work in this field.

5.64 The Committee is aware that the increasing demand for peacekeeping has implications for the structure and resources of the defence forces. In particular, the question of the need for, and the nature of training required by peacekeeping forces is a significant issue, which presents important policy issues for the Government. The Committee directs attention to the much more detailed inquiry into peacekeeping conducted simultaneously by the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade which addresses these matters.

5.65 Peacekeeping, more so than any other activity of the UN, has severely strained the resources of the organisation and illustrated its many deficiencies. The demand for peacekeeping has reaffirmed the central role of the UN as one of maintaining world peace, but it has also indicated the new challenges the organisation has to accommodate as so many of the disputes are now internally generated and not a conflict between states. Peacekeeping is one of the driving forces for UN reform and the Committee commends Australian Foreign Minister Senator Gareth Evans for his contribution to the debate in his book *Cooperating for Peace.*[46] This Committee believes it is timely for the UN to look at regional responsibilities in peacekeeping, something first discussed in UN Secretary General Boutros-Ghali's 1992 report, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping,* but a concept since ignored in practice.

5.66 The issue of human rights and peacekeeping is a complex and problematic one for the UN and its members. As mentioned earlier, the basis of the UN Charter is national self-determination and sovereignty, with non-interference in the internal affairs of other states being central to the process. Peacekeeping in the 1990s is very difficult, as the failures of the UN in Rwanda, Somalia, Haiti and other areas illustrate. Human rights and non-interference in the internal affairs of other states within the UN framework is even more contentious than ever, at a time when human rights is becoming a major issue of importance to the international community and the need for UN peacekeeping around the world is increasing. This is likely to continue despite the best efforts of the UN and its more conscientious members.

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46 General consideration of reform of the UN is made in Chapter 2 of this report.

Chapter Six

INDIGENOUS PEOPLES' RIGHTS

> *We are looking at a range of options. None of these options calls into question our continued association with Australia in culture, spirit or law. We need reforms and improvements not a separation and certainly not a divorce.*
>
> *We need to be able to make decisions about social, cultural, economic and environmental matters in our region, not just the right to attend advisory meetings which may, or may not, pass our ideas up the line. Mr Getano Lui*[1]

Australia's international reputation for good human rights practice is most adversely affected by the record of our treatment of our indigenous peoples. Therefore Australia has taken special interest in the International Year of the World's Indigenous Peoples and in the drafting at the UN of a Declaration on the Rights of Indigenous Peoples. The debate, by no means finished, is an important one. It seeks to understand the sources of disadvantage for indigenous peoples and the best means of protecting the special circumstances that affect their lives. It has introduced concepts of collective rights and it has reassessed self-determination[2] in ways that will be important for other disadvantaged and minority groups. It seeks to accommodate customary laws and cultural differences within industrial societies. There are considerable human rights challenges raised in the process. In Australia, a number of inquiries, most notably the Royal Commission into Aboriginal Deaths in Custody and the Inquiry into Racist Violence, as well as inquiries at a parliamentary and bureaucratic level have detailed the situation. There have been landmark decisions such as the Mabo decision, the establishment of ATSIC and, for many, the passing of the Native Title Bill. For many Aboriginal people in remote communities, in country towns and in the cities, the gains, as yet, are unrealised. Nevertheless, some gains have been made and the potential is there to be maximised.

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1 Mr Getano Lui, Chairman of the Torres Strait Island Coordinating Council, quoted from his 1993 Boyer Lecture.

2 For a detailed definition and discussion of self-determination as proposed in the Draft Declaration on the Rights of Indigenous Peoples, see paragraphs 6.23-6.24

DEFINITIONS

6.1 Defining indigenous people has been a matter of some debate in international law. The World Council of Indigenous Peoples has proposed the following definition:

> The World Council of Indigenous Peoples declares that indigenous peoples are such population groups as we are, who from old-age time have inhabited the lands where we live, who are aware of having a character of our own, with social traditions and means of expression that are linked to the country inherited from our ancestors, with a language of our own, and having certain essential and unique characteristics which confer upon us the strong conviction of belonging to a people, who have an identity in ourselves and should be thus regarded by others.[3]

Within ILO Convention 169, Article 1 of the convention states:

> This convention applies to:
>
> (a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
>
> (b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
>
> 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this convention apply.
>
> 3. The use of the term 'peoples' in this convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

3 Cobo, J., *Study of the Problem of Discrimination against Indigenous Populations*, Vol 11, United Nations, E/CN 4/Sub.2/1986/7Add.1, p.5.

6.2 The most commonly used definition is one proposed by the UN Special Rapporteur, Mr Jose Cobo:

> Indigenous communities, peoples and nations are those which having an historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. On an individual basis, an indigenous person is one who belongs to those indigenous populations through self-identification as indigenous (group consciousness) and is recognised and accepted by these populations as one of its members (acceptance by the group).[4]

6.3 The definition of the term 'peoples' is also controversial in international law, because various international treaties have granted all peoples the right to self-determination. The UNESCO Expert Groups on the Rights of Peoples have drawn up the following description of the characteristics of a 'people' for the purpose of identifying when self-determination may be applicable:

> 1. Commonality of history, ethnicity, language, religion, culture, geographical connection, commerce, philosophy or otherwise so as to provide a group identity for the 'people' concerned;
>
> 2. Sufficiency of number to warrant being treated as a 'people' for international law purposes - so as to exclude a group of tiny numbers of insignificance for the international community;
>
> 3. A will to be seen as a distinct 'people'; and
>
> 4. Institutions, having some degree of formality, which can give effect to that will.[5]

4 ibid., paras 379-81, quoted in: Irons, C., *Indigenous Peoples and Self-Determination: Challenging State Sovereignty*, 1992, 24 Case W Res. J. Int. Law 199.

5 Kirby, M., *The Peoples' Right to Self-Determination - A New Challenge for the ICJ*, September 1993, New Zealand Law Journal, pp. 341, 343.

6.4 Indigenous people number 350 million people and represent almost one-tenth of the world's population. They live in over 70 countries, are the descendants of the original inhabitants in those countries and therefore are guardians for some of the oldest cultures on earth. (See Appendix 7.) They have often been particularly disadvantaged as a result of colonial expansion, particularly in the nineteenth century. The rights which have been articulated in the latter part of the twentieth century were only on the rarest of occasions acted upon in the nineteenth. It was a period when Darwinian views often prevailed over humanity. Indigenous people have, at varying times, been subjected to war, attempts at extermination, neglect or betrayal. Usually, the differences between their culture and their social and economic organisation and that of the invading power have been so great that there has been little accommodation between the two and any transition has been painful. Any judgement of the history of indigenous people based on the values defined in the international treaties and accepted by signatory states today would have to conclude that the abuse of indigenous peoples around the world has been grave. At its worst there was no recognition of sovereignty, no rights to self-determination, no rights to racial, social or economic equality, no rights to equality before the law and no recognition of the right to life. The legacy of abuse and neglect for most indigenous people is social disintegration and debilitation.

6.5 The Committee received submissions on behalf of two specific indigenous peoples' groups: Guatemalans and West Papuans.[6] The Committee was honoured to be addressed by Ms Viva Rigoberta Menchu, the 1992 Nobel Peace Prize winner from Guatemala. Rigoberta, a Quiche Maya, was awarded the Nobel prize in recognition of her fight for justice and human rights for the indigenous people of her country. While Guatemala is outside Australia's area of primary foreign policy focus, and receives only limited publicity in this country, the Committee found Rigoberta's testimony most instructive in terms of how indigenous peoples' rights can be fought for and protected. The Committee is pleased that Rigoberta's efforts are bearing fruit and that the civil conflict inside Guatemala, the longest-running in Central America, shows real signs of coming to a peaceful, negotiated conclusion.

6.6 The Committee received representations on behalf of the indigenous people of West Papua as well.[7] The Committee is concerned about the plight of those West Papuans who have been held in refugee camps in Papua New Guinea for

6 The Committee received submissions relating to Tibet as well, and these are discussed in Chapter 12 below. Tibetans can be considered either an indigenous group within China, or an independent sovereign people who were invaded by China. Either way, their human rights have been severely curtailed under Chinese administration, as discussed in Chapter 12.

7 Submissions were received from the West Papua Association (submission no. 17, pages S704-S706), Ms Christine Stewart of Evatt, ACT (submission no. 30, pages S816-S818), and the East Awin Refugee Central Committee in Kiunga, Papua New Guinea (submission nos. 31 and 39, pages S819-S827 and S933-S936 respectively).

a number of years.[8] It is imperative that their status be clarified as soon as possible and that they be given full access to health and educational facilities. Likewise the Committee is concerned about those West Papuans who are incarcerated on the Indonesian side of the border, some of whom are being held in Java and other places. The Committee feels that, for humanitarian reasons, such prisoners should be held in Irian Jaya where they would be able to receive family visits.

6.7 These two examples, of Guatemalan and West Papuan indigenous people, are illustrative of the problems faced by many indigenous groups around the world whose rights are ignored by their governments. The Committee is, of course, mindful of Australia's imperfect record in this regard, where the treatment of Australian Aborigines has, until comparatively recently, been as poor as that accorded to many other countries' indigenous groups.

THE TERMS OF REFERENCE OF THE COMMITTEE

6.8 However, while the Committee believes it is important to state this at the outset, it is not the role of this Committee to revisit or evaluate Australia's history. The terms of reference for the inquiry are for an annual review of human rights policy, limited to the context of the international system for the promotion and protection of those rights.

6.9 The Committee is not in a position to examine questions of domestic compliance in any detail. This is both outside the terms of reference and beyond the resources of the Committee. Moreover, the various domestic Committees of the Parliament have responsibilities for the scrutiny of government policy in many of these areas of compliance; Parliament's Committees on aboriginal affairs, community services, legal and constitutional matters all deal with such details.

6.10 By way of example, in 1993, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs inquired into the *implementation of the Commonwealth's Access and Equity Strategy*. This inquiry is particularly relevant to the rights of indigenous Australians.[9] These conclusions accord with the information presented to this Committee that indigenous peoples' rights in Australia remain unmet, particularly in the area of economic, social and cultural rights. (See also Chapters 7 and 9)

8 Around 3,000 West Papuan refugees are in the UNHCR East Awin Relocation Camp in PNG's Western Province and about 6,000 in other border camps according to Ms Christine Stewart (submission no. 30, page S816).

9 The Aboriginal and Torres Strait Islander Affairs Committee concluded that indigenous Australians' access to services was limited by racism, language, culture, inappropriately designed and delivered services and a lack of services in many areas. Essential services such as water, electricity and sewerage were inadequately provided to many communities and health services were under resourced and overstretched.

The Committee recommends that:

- **the Joint Standing Committee on Foreign Affairs, Defence and Trade, through its Human Rights Sub-Committee, liaise with the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs on particular complaints which are brought to the Sub-Committee's attention;**

- **where specific, geographic health problems are identified by the Sub-Committee, they be referred to the Department of Health in conjunction with ATSIC for action; and**

- **ATSIC ensure that resources are not only sufficient but also appropriately and systematically directed and that appropriate technology is applied to infrastructure problems in Aboriginal communities.**

THE INTERNATIONAL YEAR OF THE WORLD'S INDIGENOUS PEOPLE

6.11 At the UN there has developed a recognition that the problems faced by indigenous peoples around the world are distinctive and therefore their rights need specific definition. These developments are a recognition that indigenous peoples have quite particular problems in preserving their cultures and identities, their health and economic well-being in the face of contact with colonial powers.

6.12 On International Human Rights Day, 10 December 1992, the United Nations declared 1993 the International Year of the World's Indigenous Peoples and has followed this up with a declaration to make the next decade a decade devoted to indigenous peoples' rights. The aim is to improve the circumstances of indigenous people and to meet their aspirations for better lives. More substantially, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities established in 1982 a Working Group on Indigenous Populations (WGIP) which had a mandate to review national developments affecting indigenous peoples. Since 1985 the working group has worked on a Draft Declaration on the Rights of Indigenous Peoples. The draft declaration was completed in 1993 and sent back to the sub-commission. From the sub-commission it is expected to go to the Commission on Human Rights and finally, at some time in the future, to the General Assembly for proclamation. The draft declaration is reproduced in full in Appendix 8

6.13 At the World Conference on Human Rights in Vienna in June 1993, one of Australia's objectives was that the final declaration should contain, among other things, a strong statement on indigenous peoples' rights. This was achieved in Paragraph 11 of the final declaration where the needs of indigenous peoples to specific protection of their economic, social and cultural rights and to full participation in all aspects of the societies to which they belong were stated.

6.14 Australia has been involved actively in the working group and has supported the continued progress of the draft declaration through the UN system. In particular, Australia has supported the inclusion of self-determination within the declaration, emphasising the interpretation of self-determination as entailing the right of political participation of all peoples and individuals within each state[10] and elaborating the necessity of preserving the principle of the territorial integrity of states.[11]

6.15 In Australia, the International Year of the World's Indigenous Peoples was marked by a number of activities:

- a determination to raise the profile of indigenous issues on the international agenda;

- a major effort to raise the profile of Australia's indigenous peoples internationally through the Department of Foreign Affairs and Trade's information and cultural relations programs; and

- the implementation of a specific strategy for Aboriginal and Torres Strait Islander recruitment and career development.[12]

6.16 Australia's intention to raise the profile of indigenous peoples issues on the international agenda is illustrated in DFAT's annual report to this Committee, which explains Australia's involvement in the Working Group on Indigenous Populations (WGIP) and also by the statements made by Australia's representative at the UNGA47, Mr Richard Rowe and the statement made at the CHR49 by Ms Penny Wensley. These statements on racism and self-determination dealt with Australia's efforts to combat racism, and reiterated the interpretation of self-determination proposed by Australia in the WGIP as entailing full participation in decision making.[13]

AUSTRALIAN EFFORTS TO PROMOTE INDIGENOUS RIGHTS

6.17 Further efforts to improve the rights and conditions of Australia's indigenous people are outlined in the annual report and in two other documents supplied to the Sub-Committee, the Human Rights Manual, 1993, and the National Action Plan, 1994. These efforts include:

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10 DFAT submission, p. S16.

11 Department of Foreign Affairs and Trade, *The Human Rights Manual*, p.108.

12 DFAT Submission, p. S17.

13 DFAT Submission, p. S57.

- The establishment of the **Royal Commission into Aboriginal Deaths in Custody, 1989 - 1991**. A joint commission of Federal and State Governments and the Northern Territory which looked at the deaths of 99 Aborigines and Torres Strait Islander people between 1980 and 1989. While the report found that those who died did not lose their lives as a result of unlawful violence, it did find underlying causes in the rate of imprisonment for Aborigines and Torres Strait Islanders, 29 times the national average, and entrenched and institutionalised racism and discrimination. The report made 339 recommendations. It is ATSIC's responsibility to monitor their implementation.

- The **National Inquiry into Racist Violence** of the Human Rights and Equal Opportunity Commission, 1991. This report inquired into the history, nature and extent of racist violence in Australia and recommended the removal of qualifications under Article 4(a) of the International Convention for the Elimination of Racial Discrimination, the creation of legal sanctions against racist violence and intimidation, propaganda and incitement to violence.

- The **Aboriginal and Torres Strait Islander Commission Act, 1989**. The creation of ATSIC sought to ensure maximum participation of Aborigines and Torres Strait Islanders in the formulation and implementation of Government policy. It is in line with principles of self-management and self-determination. It is made up of 60 elected regional councils which make decisions about priorities, needs and the allocation of funds at the regional level. ATSIC is the peak national council.

- The **Council for Aboriginal Reconciliation Act, 1991**. The creation of this council is a recognition of the dispossession and disadvantage of Aboriginal people as a result of colonisation and seeks to find means to address the disadvantages and the aspirations of Aboriginal people in the areas of land, housing, law and justice, cultural heritage, education, employment, health, infrastructure and economic development by the year 2001, the centenary of Federation.

- The **Native Title Act 1993** was the Federal Government's response to the decision of the High Court of Australia in *Mabo v Queensland (No 2)* 1992. It was a decision of major significance for Australian law. The Court held that 'the common law of Australia recognises a form of native land title, and indicated that the principles applied to the mainland as well as the Murray Islands'.[14] It rejected the previously held doctrine of 'terra nullius', that is, that the land belonged to no one at the time of European settlement. The Act established a National Native Title Tribunal to deal with issues of native title.

14 Attorney-General's Department, *Native Title: Legislation with Commentary*, 1994. p. C1.

- The appointment of a **Social Justice Commissioner within HREOC** to monitor and the human rights of Aboriginal and Torres Strait Islander Peoples and to report to the Federal Attorney-General.

- A series of policies: **Aboriginal Employment Development Policy (AEDP)**, the **National Aboriginal Health Strategy**, the **Aboriginal Education Policy (AEP)** and the **Access and Equity Strategy** are specifically directed at redressing the gross disadvantage which Aboriginal and Torres Strait Islander peoples continue to suffer in Australia.

Under consideration is legislation to outlaw racial vilification, as well as the ratification of ILO Convention 169 dealing specifically with the labour rights of indigenous peoples.

6.18 The Committee received a number of submissions which addressed the question of Aboriginal rights. Submission 87 from ATSIC and submission 118 from the Australian Institute of Aboriginal and Torres Strait Islander Studies both dealt with the broad concepts of rights for indigenous peoples within the existing human rights treaties and in the Draft Declaration on Indigenous Peoples' Rights. They discussed the role of the Mabo decision in this context. Other submissions from Mr Whitlam, the International Commission of Jurists and the Department of Foreign Affairs and Trade addressed the land rights question also.

6.19 These submissions addressed significant issues in international law involving the rights of indigenous peoples, questions of collective rights, self determination, customary law and land rights. Some of these issues remain contentious matters within the wider Australian community.

Collective Rights

6.20 ATSIC described collective rights as 'inextricably connected to individual rights, since collective rights have little meaning unless individual members of the community collectively benefit from them'[15] They claimed that it was in the area of the community that indigenous peoples' cultures find expression and therefore these rights are essential for indigenous peoples' identity as a distinct group. In evidence before the Committee, the Chief Executive Officer of ATSIC put the significance in a more pragmatic way, explaining that where and while there is collective disadvantage, economically or socially, collective rights should hold sway:

> What individual right does the Aboriginal baby have who is born into a remote community where there is a high incidence of petrol sniffing, where there are no education facilities, and many miles from the proper provision of services because State Governments have not met their

15 ATSIC submission, p. S1693.

responsibilities to their Aboriginal citizens? ... It seems to me that Aboriginal people can start to depend upon individual rights when their collective rights as a group are recognised.[16]

6.21 The Australian Institute of Aboriginal and Torres Strait Islander Studies in answer to a question on the relationship between collective and individual rights gave a legal perspective, by quoting Professor James Crawford:

> The relationship between peoples' rights and individual rights is ... clear ... Peoples' rights are connected with the flourishing of groups, and with individuals who are members of groups. Groups ... are a way in which individuals achieve various ends which are necessary or desirable - in particular the good of community and the fulfilment of certain capacities and attributes which are best fulfilled in community. Thus peoples' rights should be regarded as a sub-category of human rights, a conclusion which is reinforced by the fact that many of the characteristics of human rights in international law already identified are also characteristics of peoples' rights.[17]

The rights which come under the heading of collective rights include:

> religious rights, linguistic rights, educational rights, cultural rights and the right to political participation. All of these rights are protected, ensured and encompassed by the right to self-determination.[18]

6.22 The High Court decision in the Mabo case effectively accepted collective rights for indigenous people: native title is a communal title based on collective rights. The principle underlying this idea of collective rights has application to the rights of minorities. (See Chapter 13)

Self-determination

6.23 The concept of self-determination has long been a matter of debate and dispute within the United Nations, since it is both assured and denied within the various treaties. Self-determination is listed in Article 1 (1) of the ICCPR as a right of peoples, but the Charter itself asserts the importance of maintaining the sovereignty and territorial integrity of states.

16 Evidence, 30 November 1993, pp. 661-662.

17 AIATSIS supplementary submission, p. S2169.

18 ATSIC submission, p. S1694.

6.24 The Draft Declaration on Indigenous Peoples' Rights advances self-determination as a central principle underpinning the rights of indigenous peoples. It is defined within the draft declaration as meaning the full political participation of indigenous people in decision making affecting them, with the provision that it does not imply secession or threaten the territorial integrity of states. ATSIC submitted that it was a broader concept than this, encompassing a range of possible forms which include 'associated statehood, the establishment of an internalised territory, federal systems or types of autonomy'.[19] They also saw it as a 'procedural mechanism, enabling people to select from a variety of political, structural arrangements and means of economic, social and cultural development.'[20] Its effect would be to give Aboriginal and Torres Strait Islander people control over policy and decision making which affected them. It was more than the purely administrative concept of self-management. Ms Lois O'Donohue, Chairperson of ATSIC, told the eleventh session of the Working Group on Indigenous Populations that:

> Self-determination ... did not imply a suggestion of separatism or secession ... It is about the right to choose, to have control over one's destiny. [It] is a dynamic right ... for the progressive empowerment of indigenous peoples and provides the underpinning for the fight for recognition of native title to land and for social justice.[21]

Customary Law

6.25 Self-determination encompasses another question which is not without controversy: the recognition and application of customary law in Aboriginal and Torres Strait Islander communities. The question is particularly apposite in the light of the findings of the Royal Commission into Aboriginal Deaths in Custody. The most recent report of the Institute of Criminology confirmed the royal commission's finding that the high incidence of Aboriginal deaths in custody related to the incidence of incarceration. As stated above, Aborigines are in gaol at a rate 29 times that of non-Aboriginal people.[22]

6.26 Both the Australian Law Reform Commission (ALRC) and the Royal Commission into Aboriginal Deaths in Custody have recommended either appropriate recognition of Aboriginal customary law by the general legal system or that due regard be taken by the courts of traditions and cultural methods of dealing with offences by the Aboriginal and Torres Strait Islander peoples. ATSIC reported to the Committee that the Northern Territory Government has released a report

19 ATSIC submission, p. S1698.

20 ibid, p. S1698.

21 ibid, p. S1700.

22 Evidence, 30 November 1993, p. 671.

looking at the extent to which customary law can complement Australia's common law system.[23]

6.27 Some concern was expressed by members of the Committee that, in relation to some punishments, notably spearing, conflicts might arise between the two types of laws; some punishments would be unacceptable from the point of view of Australia's human rights stance generally or from the point of view of the individual's human rights.

6.28 The head of ATSIC acknowledged the possible conflict, drew attention to the strong recognition of individual rights in Australia already and suggested that resolution lay in the balancing of rights, 'a day-to-day' responsibility of the law at any time.[24] Insofar as there has been any implementation of customary law in recent times, it has been done as a matter of choice for the individuals concerned.

6.29 Mr Mick Dodson, the Social Justice Commissioner, endorsed the idea of the need to balance rights. He stated that:

> The question of collective rights [of which customary law is one] has to be balanced with individual rights as well. ... Obviously some collective rights may, and I stress may, infringe individual rights. That is something where we can find a balance. I think as a reasonable, intelligent community we can work that out.[25]

6.30 The Committee accepts that there are inherent conflicts and a need to balance rights in any discussion of human rights. The Committee recognises and endorses the validity of the position taken by the Law Reform Commission in recognising the importance of customary law and culturally suitable processes in the treatment of Aborigines as a vital part of addressing the problem of Aboriginal deaths in custody. However, customary practices which conflict with Australia's obligations under conventions such as the Convention against Torture should not be accepted in any jurisdiction.

6.31 The Committee intends to keep these matters under review.

23 Evidence, 30 November 1993, p. 658.

24 Evidence, 30 November 1993, p. 661.

25 Evidence, 31 May 1994, p. 1185.

Land Rights

6.32 The Mabo decision and the Native Title Act were described by the Attorney-General's Department as a major development in Australian law and one which righted an historic wrong. The submissions which were put to the Committee sought to establish a connection between the land rights embodied in this legislation, the principles, discussed above, of collective rights and self-determination and, ultimately, the well being and social and economic progress of the Aboriginal and Torres Strait Islander people.

6.33 The Mabo Decision overturned the concept of *terra nullius* (no one's land) and found that traditional native land title existed at the time of acquisition of the continent by the Crown. Native title continued in areas where it has not been extinguished by government action and where indigenous peoples have maintained their connection with their traditional land, under traditional law. Native title may be held by a community, group or individual depending on the content of traditional laws and customs.[26]

6.34 The Commonwealth Government enacted the *Native Title Act 1993* in order to recognise and protect native title as established by the Mabo decision. The Act:

- recognises native title and sets down some basic principles in relation to native title in Australia;
- provides for the validation of past acts which may be invalid because of the existence of native title;
- provides for a future regime in which native title rights are protected and conditions imposed on acts affecting native title land and waters;
- provides a process by which native title rights can be established and compensation determined, and by which determinations can be made as to whether future grants can be made or acts done over native title land and waters; and
- provides for a range of other matters, including the establishment of a National Aboriginal and Torres Strait Islander Land Fund.[27]

6.35 The Committee believes that, while the decision on native title may not benefit a numerically large group of Aboriginal people, its value symbolically is high. It accepts prior ownership of the land by Aboriginal people, it acknowledges past

26 Exhibit No. 71c.

27 Exhibit No. 108 p. C9.

injustice, it is part of a reconciliation process, it stresses the connection between rights, self-determination and dignity and therefore offers hope of moving away from the welfare approach to Aboriginal affairs. Those economic benefits which can be derived from the land should also help communities move in the direction of independence from government handouts.

6.36 The Committee agrees with the Social Justice Commissioner that the acceptance and promotion of the rights described above, as a group, constitute an important evolution in policy in Aboriginal affairs. It is an emphasis on rights, justice and entitlement for aborigines, not welfare. Mr Dodson told the Committee:

> Although welfare is a component of social justice, it should not underpin social justice. Rights and entitlements should underpin social justice. ... [Human rights] are not matters to be bestowed as gifts from government; government has an obligation to protect and defend them.[28]

The implementation of changes to enable greater self-determination, self-management and maximum participation in all policy development and decision making affecting Aborigines and Torres Strait Islanders should bear fruit of Aboriginal advancement. While, it seems to the Committee that there is a good deal more theory than practical achievement in the process so far, the process is new. The Committee, in its role of monitoring the overall advancement of rights, looks forward to a time when advances will be obvious everywhere.

28 Evidence, 31 May 1994, p. 1174.

Chapter Seven

VISIT TO THE NORTHERN TERRITORY

> *Social justice is what faces you when you get up in the morning. It is awakening in a house with an adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to school where their education not only equips them for employment but reinforces their knowledge and appreciation of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity, free from discrimination. Mr Mick Dodson*[1]

The extent of the gap between theory and practice and the complexity of the challenge facing Australians in delivering the whole range of human rights to its citizens were made obvious to the Committee on its visit to the Northern Territory. The Committee reports on this visit with a full awareness of its limitations. Its conclusions are tempered by the requirement that it consider matters in the light of obligations under the international human rights treaties and the broad means by which these responsibilities might be met.

7.1 In terms of human rights conventions signed, and Australia's international obligations to indigenous people, key questions are: What is the practical effect of policies? How have indigenous people fared in relation to our obligations under the International Covenant on Economic, Social and Cultural Rights? Has social justice been delivered to the indigenous people of Australia?

7.2 In many respects the answers to these questions are well known and documented in Australia. The conditions in which many of Australia's indigenous people live do not meet our obligations and they are markedly below those of even

1 Quoted by Mr Mick Dodson, the Aboriginal and Torres Strait Islander Social Justice Commissioner, from the Report of the Federal Race Discrimination Commissioner, *Water*, 1994, Evidence, 31 May 1994, p. 1173.

the poorest 'other' Australians. The visit to the Northern Territory by the then Minister for Health, Senator Graham Richardson, in late January 1994, highlighted this and the visit of members of the Committee to remote settlements in the Northern Territory in March 1994 confirmed it.

7.3 The Committee believes that so long as there is that identifiable and significant gap between the Australian community as a whole and Australian Aborigines as a group, then the problem needs to be considered and acknowledged by the committee tasked with monitoring human rights in the Parliament.

7.4 Two submissions, from the Human Rights Foundation and from Mr Alan Harris, the Town Clerk of the Daguragu Community Council, listed problems of poor housing, low health standards and unemployment as failures of Australia to meet obligations under the Covenant on Economic, Social and Cultural Rights and other treaties. The submission from Mr Harris included an invitation to the Committee to visit the Aboriginal communities at Pigeon Hole, Kalkaringi/Daguragu and Mistake Creek to examine the conditions at the settlements.

7.5 Mr Harris said in his submission that Australia was failing to meet its international human rights treaty obligations in its treatment of Australian Aborigines in remote locations. In particular, he cited the Universal Declaration of Human Rights (Article 25) which says, *inter alia*

> ... everyone has the right to a standard of living adequate for the health and well-being of himself and family, including food, clothing, housing and medical care ...

He said that funding over the last ten years for housing and infrastructure had not raised the standard of living for many Aboriginal Australians and consequently poor hygiene, poor nutrition and inadequate services in health, education and sanitation contributed to high mortality and morbidity rates. Diabetes and eye problems, tuberculosis and sexually transmitted diseases were rife. Mr Harris said this showed Australia was not meeting its treaty obligations.

7.6 There are 600 people in the remote community at Kalkaringi/Daguragu, 480 kms south west of Katherine. Mr Harris' submission included the following information:

- Of 50 people screened for eye problems at Kalkaringi, 33 needed operations. At the time of writing ten operations had taken place. As there are 200 people in the age bracket 30-50, a further 120 cases might need eye operations.
- There is one nutritionist and one Aboriginal health worker for the Victoria River region, an area the size of Victoria.
- There has been no continuity of nursing staff and a high turnover of doctors (who visit for two days every fortnight) in the communities.

- There have been two reported cases of leprosy in the Katherine area.
- There is a shortfall of 33 houses for the current population.[2]

7.7 In relation to the International Covenant on Economic, Social and Cultural Rights and the draft Declaration on the Rights of Indigenous People, Mr Harris criticised the Northern Territory Government's policy of mainstreaming which, he believed, denied adequate resources to the remote communities and, in the longer term, would cause small Aboriginal communities to die out through lack of services.[3]

7.8 In conclusion, Mr Harris stated that a combination of Commonwealth Government policies of fiscal restraint and Territory Government policies of mainstreaming meant that the necessary services were not reaching remote communities; there was, therefore, too little change in Aboriginal health statistics and living conditions.

7.9 The Committee visited the settlements at Kalkaringi on 28 and 29 March 1994.

DISCUSSIONS WITH THE NORTHERN TERRITORY GOVERNMENT

7.10 During the Committee's visit, the Northern Territory Government provided some detail about programs targeted at Aboriginal and Torres Strait Islander people. The Committee secretary also held discussions with Territory Government officials.

Aboriginal Eye Health Program

7.11 A mobile eye unit was established through the eye clinic of the Royal Darwin Hospital in 1993, and supported by the NT Department of Health and Community Services (DHCS). A large waiting list was generated by the work of the mobile eye unit, which launched a successful campaign to seek out Aboriginal patients in remote communities. The mobile eye unit is collaborating with several agencies to provide adequate and culturally appropriate services and reduce the surgical waiting list. A high prevalence of diabetic eye complications in the Aboriginal population has led to the purchase of new laser equipment by the Royal Darwin Hospital and options to purchase portable laser equipment are also being examined. Culturally appropriate nutritional education programs, with an emphasis of diabetic factors in the diet, have been developed.

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2 Mr Alan Harris Submission, pp. S1449-52.

3 ibid.

Housing

7.12 Northern Territory Aboriginal community housing is provided by the Territory Government through funds allocated via the Commonwealth/State Housing Agreement (CSHA) and the ATSIC Community Housing and Infrastructure Program (CHIP). The NT Government provided an additional $2 million cash in 1993-94 to supplement the Aboriginal housing program.

Other Programs

7.13 The DHCS 1993-95 corporate plan specifically targets Aboriginals in the following programs:

- The Environmental Health Program, which includes the establishment and evaluation of pilot environmental health projects for ten Aboriginal communities.

- The Health Promotion Program, which includes the development of a network of 12 trained Aboriginal health promotion officers; training of Aboriginal health worker trainees in health promotion strategies; and the implementation of community-defined health promotion projects in some major Aboriginal communities.

- The Family, Youth and Children's Services Program, which aims, in consultation with Aboriginal communities, to develop strategies for improving the safety and protection of children and family members and to implement joint strategies with health services to reduce the level of malnutrition amongst remote Aboriginal children.

- The Dental Health Program, which aims to improve access to and acceptance of dental health care, including prevention and promotion, in Aboriginal people, particularly children up to five years of age.

- The Primary Health Care - Rural Program, which provides a broad range of multi-disciplinary services particularly designed for Aboriginal people living in remote communities. Specific target areas for 1993-95 are: the establishment of an Aboriginal Health Worker in-service training program complementary to the Batchelor College Associate Diploma program; establishment of the inter-departmental Aboriginal Hearing Program combining health and education strategies; and, co-operation with community controlled Aboriginal health services to establish a rural community health data base.

- The Alcohol and Other Drugs Program, which conducts a living with alcohol program and a workshop training package for field workers to deal with petrol sniffing problems in Aboriginal communities.

- The Department aims also to develop a cross-cultural mental health training program with and for Aboriginal people.

PIGEON HOLE

7.14 The first place visited by the Committee was Pigeon Hole. Pigeon Hole, which is an excision from Victoria River Downs cattle station, is a small settlement of approximately 75 Aboriginal people 430 kilometres south west of Katherine. The people are Bilinara and Gurindji people. Pigeon Hole has a one teacher school; however, unfortunately the Committee was unable to meet the teacher who was attending inservice training. There was no health clinic although at the time of the visit, the slab had been laid for one. Water is supplied by a bore and overhead tank. Electricity is provided by a small generator and there is a solar powered telephone. There are no obvious avenues of employment.

7.15 The Committee found the standard of housing in Pigeon Hole particularly poor. Most houses were built in the 1960s of galvanised iron. They were unlined and mostly unpainted and rusting. In the heat of Central Australia this made the houses extremely hot. Dwellings were approximately six meters by two metres. They housed ten to twelve people although at times of ceremonies this could increase to twenty.

7.16 There was a need for maintenance in a number of areas. Most of the houses were without fittings or furniture. The Committee saw exposed electrical switches and ceiling fans which did not work. Many of the septic systems were blocked and overflowing. Pools of sewage lying around the houses created a health hazard. This was exacerbated in the wet season when the overflows became mixed with flood waters around the settlement. This situation and the resultant sickness among children was of particular concern to the women in the community.

7.17 The Committee believes that alternative toilet systems, possibly based on composting arrangements, with low maintenance, low energy and water use, would be appropriate for remote communities. Innovative and appropriate design and technology should be given high priority in the development of systems for such communities.

The Committee requests that the problems associated with the septic systems at Pigeon Hole be fixed by the responsible agency and that ATSIC report back to the Committee about the condition of these systems as a matter of urgency.

7.18 The women expressed concern about the isolation of the community from medical assistance especially during the wet season. In the wet season road access to the settlements was cut and access to health care was confined to the air lifting of patients. Although this was a valuable service, it was expensive and it still put immediate care, even in optimal circumstances, an hour away. There was an obvious need for the clinic, which began operating in October 1994. At the time of writing it had not been staffed but the nurse from Victoria River Downs was visiting approximately once a week. The Northern Territory Department of Health had

plans to recruit a permanent Aboriginal health worker to work four hours a day at the clinic.

KALKARINGI/DAGURAGU

7.19 Kalkaringi/Daguragu are settlements approximately eight kilometres apart, 460 kilometres south west of Katherine. The population of the two towns is 581 comprising three main language groups, Gurindji, Walpiri and Mudbura. It is run by a Community Government Council established on 14 October 1988. Elections are held every two years. The Committee was met by the president of this council, Councillor Roslyn Frith.

7.20 Kalkaringi is populated by the Gurindji people who led the walk-off from Wave Hill station in 1966. That incident remains a powerful memory, which in discussions seemed to define the community's consciousness. They saw themselves as having established an important, early principle of Aboriginal rights. The walk off became more than a strike over pay, it became a demand for the return of traditional lands. In 1975 the Gurindji people were given leasehold title over 3,240 square kilometres of the old Wave Hill pastoral lease. The township at Kalkaringi was established by the Government in 1968; Daguragu is on the site of the camp of the strikers and their families.

7.21 The Committee briefly viewed the historic sites and the community facilities. The housing in Kalkaringi was built from the late 1970s to the present. The most recent housing was of a markedly better standard of construction and design than the earlier housing. Nevertheless, the community suffered from a shortage of housing stock and chronic overcrowding. Many of the houses were in need of maintenance, which was in short supply in the community.

7.22 At Daguragu, with a population of 261, the housing stock was similar to that in Pigeon Hole; it was of sub-standard quality, unsuitable for human habitation. The Northern Territory Government Department of Lands, Housing and Local Government surveyed the cabins and houses at Daguragu in January 1994. It found that in a housing stock of seventeen houses, ten were in poor or unserviceable condition and six were in fair condition. Of the forty-two 'cabins', forty-one were considered unserviceable and the remaining cabin was in poor condition.[4]

7.23 The school in Kalkaringi was generally well appointed and equipped. It was staffed by eight teachers, one principal, one part time teacher assistant and three full time Aboriginal teacher assistants. It catered for approximately 160 students aged from four to 20 years. A number of other people were attached to the school: four teacher education students, an Aboriginal Education Worker, a number of elders who help with the cultural program, 2 teacher assistants who work on the Community Development Employment Projects (CDEP) as well as a janitor/bus

4 Exhibit No. 115a.

driver, three gardeners, four cleaners, a part time canteen worker and an administration officer. The Committee was told the school taught a standard Northern Territory curriculum with some modifications to encompass the cultural and educational needs of the students.

7.24 The health clinic at Kalkaringi had a staffing establishment of two registered nurses and three Aboriginal health workers. At the time of writing, one of the Aboriginal health workers was in training and the actual staffing was three nurses, one of whom was temporary, and two Aboriginal health workers. One of the latter officers was a temporary full time officer who had been appointed to the newly opened clinic at Daguragu. The other worked at Kalkaringi. Despite some problems, the Committee drew the conclusion that the clinic worked effectively.

MISTAKE CREEK

7.25 Mistake Creek is a particularly isolated community, a small excision of 27.7 ha from a pastoral lease. About three hour's drive from Kalkaringi, it operates without local government funding. The housing is sub-standard. Approximately fifteen children of school age are to be taught through a school of the air which, when the Committee visited, had not commenced operating.

EDUCATION AND TRAINING

7.26 On Monday 28 March 1994 the Committee met with the community for discussions. The concerns and needs of the community in three main areas - education, health and housing - were discussed.

7.27 The women of the community stressed the importance of education and training as a means of solving many community and individual problems and of providing a sound basis for development. They focussed on planning, funding, curriculum and adult education.

7.28 The Committee members were told that year by year funding did not give the community a capacity to develop an integrated plan for services, including education. They believed that:

- adult education needed a much more integrated approach;
- enhanced TAFE facilities in the community and courses based on building and maintenance were needed; and
- there was a role for a job skills program and that these should be combined with ongoing training in literacy and numeracy so that skills in these areas could be maintained and developed as part of practical and useful courses.

7.29 As far as children's education was concerned, the members of the community wanted to see comparability of standards and certification between Aboriginal and non-Aboriginal education. They wanted mainstream curriculum, to enable Aboriginal children to compete with other Australian children. It appeared that this concern was perhaps more about the pace at which the curriculum was taught rather than the nature of the curriculum, which the school stated was a standard Northern Territory curriculum. The community members were particularly concerned that the teachers sent to remote communities should be experienced, mature teachers with the specialist training needed to teach English as a second language, an ability to integrate practical and theoretical studies and to combine mainstream and Aboriginal cultural studies. Some members of the community were also concerned that certificates obtained at specialist colleges, such as Batchelor College, did not have comparable status with those of other places, and that they were not saleable in the mainstream educational system of Darwin or Katherine.

HEALTH

7.30 Training was an issue which arose in the discussions in relation to Aboriginal health. There are currently three registered nurses and two aboriginal health assistants, one of whom is in training, for the 650 people in the area visited. The community said the second assistant was eager to undertake training but could not get approval because his training would leave the clinic unstaffed in his absence. Members of the community expressed the view that it was a pity that this enthusiasm for training could not be capitalised upon; it was likely to dissipate if ignored. Although the temporary loss of staff was recognised as a problem, the longer term goals of achieving more trained Aboriginal health workers seemed to be a goal of higher priority.

7.31 Apart from this rejection, other incentives for training were often lacking. White health workers were given a house with their position. The view was expressed that the allocation of a house to Aboriginal health workers or teaching assistants would be of significant benefit: it would recognise achievement, encourage others, give a much needed sense of equality with white staff and alleviate overcrowding.

7.32 On medical needs, the community made an eloquent plea for continuity of attention. It was claimed that the turnover of staff was a matter of some distress to Aborigines. More significantly, the need to travel to get medical attention was distressing and costly. Where possible, the community believed it would be effective if specialists could be brought to the communities. Mobile eye clinics were suggested as a means of addressing a particularly prevalent problem and there was a need for specialists in gynaecology and ear, nose and throat.

7.33 The Northern Territory Government in a brief supplied to the Committee explained that a new mobile eye unit had been purchased in 1993 by the Royal Darwin Hospital at a cost of $40,000. Between April and June 1993 it visited 17 Aboriginal communities and examined 546 patients. It covered 14,802 kilometres by

road and logged 60 hours of air travel. One hundred and eighty seven surgical procedures were carried out.

7.34 This purchase of equipment is impressive; however the Committee understands that there are still staff shortages which reduce its effectiveness. There is a single ophthalmic surgeon at the Royal Darwin Hospital, apart from a training position which has been unfilled since the Sydney Eye Hospital withdrew its surgeon. The demand for operations both in Darwin and in remote parts of the Northern Territory makes it imperative that a second permanent position be established.

HOUSING

7.35 The most readily assessable question which the Committee looked at was the standard of housing in the communities visited. The housing in Pigeon Hole and Daguragu was sub-standard; it was generally poorly constructed and designed, dilapidated, overcrowded, and lacking in basic fittings and equipment. Most houses were one or two roomed, unlined, galvanised iron structures. Many lacked working plumbing and electricity; most had no furniture. They were hot and leaking. At Pigeon Hole, septic systems were blocked and the effluent lay in pools around the houses where the children played. It was the type of scene for which Australia is rightly condemned for failing to provide and maintain basic systems and services to indigenous people. Although there was evidence of an improving standard over time, the gap in the standard between general community housing and the Aboriginal housing has widened.

7.36 Housing in Kalkaringi was of a better standard, designed with the climate in mind, more durable and comfortable, but still not comparable with Katherine or Darwin, let alone Sydney, Brisbane or Perth. It also lacked fittings and equipment and it, too, was overcrowded. Maintenance was badly needed.

7.37 On the problems of housing, the community again saw the solution in training, technical education and an organised building program. Planned programs of building, funded over longer periods such as three years, which utilised the members of the communities and trained them in both building methods and maintenance were seen to have benefits by providing apprenticeship training, self-sufficiency and much-needed employment. In the long term it would help to alleviate the housing shortage and provide better maintenance.

The Committee recommends that:

- **community housing management schemes with inbuilt training are developed in remote communities;**

- **Aboriginal communities are encouraged to mobilise local skills and resources in cooperation with neighbouring communities and other people who are available to train Aborigines within a community; and**

- **by way of improving and increasing resources to outback communities, the Commonwealth Government encourage the private sector and/or NGOs to sponsor workers in the fields of health, education, building or community development within Aboriginal communities.**

PLANNING, INTEGRATION AND FUNDING

7.38 Funding was mostly on a year by year basis and this inhibited any longer term planning and independent initiative and control at the community level. In discussions, the community articulated the relationship between education in literacy and numeracy, job training, life skills, building and maintenance of housing, maintenance of community facilities, such as septic systems and water and electrical supplies, and employment and health. They suggested the value of a three or five year plan developed by the community which addressed these problems in an integrated way. For this to work there would need to be continuity of funding on a three or five year basis to match the plan. While the community had its council which had a liaison role with the various bodies dealing with Aboriginal affairs - the Northern Territory Government, the land councils, ATSIC and a variety of Commonwealth agencies and departments - there was a definite feeling of frustration that they were not being heard, and their concerns not being met.

7.39 During discussions, Mr Harris put the view that bureaucratic requirements and jargon were alien to the people in these communities. It was, therefore, difficult to develop community plans. Moreover, in addition to the limitations of annual funding, the remote communities were confused by the layers of government and the multiplicity of programs they were confronted with and were often unaware of the funding options available to them. There was no single source of information which kept a data base of funding programs available for Aboriginal communities. ATSIC did not provide the information, nor was there close or continuing contact with ATSIC personnel. Mr Harris believed that accountability was stressed to the detriment of the implementation of programs.

7.40 The Committee believes that a single agency, an Office of Remote Communities, which could maintain close contact with communities, be aware of their specific needs, give information about funding options and assist in the development of 'plain English' community plans is needed.

The Committee recommends that the Commonwealth Government, in consultation with ATSIC and the relevant State and Territory Governments, consider the establishment of an Office of Remote Communities to provide information on planning and funding options, to assist in the development of community plans which take account of the funding options and to assist in the equitable distribution of funds to Aboriginal communities in remote areas.

7.41 The key to progress for remote Aboriginal communities lies in employment and housing, and greater community involvement and responsibility. The report of the Australian Housing Research Council, *Housing Management Training in Rural Aboriginal Communities* stressed the relationship between housing, health and overall welfare and development. However, the Council reported that the housing stock in the Northern Territory was declining and there was a lack of support for the training or employment of Aborigines in design, planning, management or maintenance of housing.[5] In particular, there was no involvement of women in the decision making processes. Finally, the lack of skills and experience in the communities was not being addressed by either the devolution of responsibility or the provision of funding to the community councils for the management of housing.

7.42 The Committee was told that remote communities were disadvantaged by a lack of credit facilities, which denied people in these areas the experience of budgeting and the facility or incentive to save. On occasions Aborigines were gaining access to substantial amounts of cash in the form of royalty payments or tax cheques. The provision of a saving facility, perhaps through the outlet of the general store of the community, offered options to communities to reduce dependency, develop skills and employment.[6]

The Committee recommends that the Government investigate the means by which credit facilities, and an improved understanding of their use, can be made available to Aborigines in remote areas.

CONCLUSIONS

7.43 To make assessments about the standard of living of Aborigines across the country or to make judgements about potential solutions to the particular problems faced by these communities is not possible within the terms of reference or the resources of this Committee. A major inquiry into funding arrangements and program content and delivery would be needed to determine whether progress has been made over the last thirty years.

7.44 Nevertheless, after looking at the sub-standard conditions on the ground, especially in Pigeon Hole, Daguragu and Mistake Creek, the Committee concludes that despite the effort and considerable sums of money that have gone into Aboriginal affairs, the problem in the distribution of funds remains acute. All levels of government have yet to find appropriate and effective programs to redress conditions that are unacceptable in modern Australia. While the discrepancy in standard of living between our indigenous people and the rest of the community remains so wide, Australia will have a problem in claiming any satisfaction in meeting its obligations under the international human rights treaties.

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5 Between 1987 and 1991 1,200 dwellings were constructed but at the same time the backlog has grown by over 1,000 since the 1976 estimate of the need, quoted from Australian Housing Research Council, *Housing Management Training in Rural Aboriginal Communities*, 1994, p. vii.

6 Mr Alan Harris, supplementary submission.

7.45 Finally, questions of self-determination and self-management appear to be frustrated by the complexities of funding arrangements and the short term and tied nature of the allocations. The Committee notes that the 1990 Report of the House of Representatives Standing Committee on Aboriginal Affairs, *Our Selves, Our Future*, made a number of recommendations which are relevant to the problems of the remote communities visited by this Committee in 1994.

This Committee endorses and reiterates the recommendations of the 1990 report, *Our Selves, Our Future*, particularly on the question of funding, where it recommended, among other things, that:

- **the Commonwealth, in conjunction with the States and Territories, develop proposals for implementing a system of block grant funding of Aboriginal communities and organisations; and**

- **Commonwealth, State and Territory Governments implement a system whereby Aboriginal communities and organisations are provided with a minimum level of funding on a triennial basis.**

7.46 Moreover, in order to consolidate and strengthen Australia's international credibility on matters related to human rights, the Committee reaffirms the need for continuous monitoring of Australia's compliance with international human rights treaties. It is important to open Australia's record to scrutiny, by both internal and external agencies, and thereby continue to examine our strengths and weaknesses in this area.

The Committee recommends that the Joint Standing Committee on Foreign Affairs, Defence and Trade through its Human Rights Sub-Committee, or should one be established, a separate Joint Committee on Human Rights, report regularly on Australia's obligations to Aboriginal and Torres Strait Islander people.

Chapter Eight

THE HUMAN RIGHTS OF WOMEN

Equality for women does more than contribute to development. Equality for women is development. Rafael M Salas[1]

> Women carry the burden of work in many societies; they are responsible for almost the whole burden of population control programs, they carry chief responsibility for the rearing of children and yet they lack power and independence in most parts of the world. They suffer greater poverty and disadvantage than men: discrimination in educational opportunity and literacy; legal disadvantage; lack of political representation; abuse, violence and exploitation. These problems exist in varying degrees of severity in all societies. There is a close relationship between the development of women's rights and the level of development of a whole society. The World Conference on Human Rights in Vienna 1993 and the World Conference on Population and Development in Cairo 1994 both focussed on the rights of women as an area in need of specific attention.
>
> A particular area of concern to the Committee in this report is that any program of family planning and population related activities offered as part of Australia's ODA should be sensitive; be based on free and fully informed consent; and be totally voluntary such that no disadvantage is meted out by governments or government supported organisations as a result of the non-participation of individuals in such programs.
>
> Furthermore, the Committee expresses concern about continuing reports of the violation of human rights in Indonesia's National Family Coordination Board (BKKBN) Family Planning Programs and considers it inappropriate that BKKBN is involved at this stage in teaching of Pacific Islanders with Australian aid money.

1 Rafael M Salas, Executive Director, UNFPA, 1985.

INTRODUCTION

8.1 Since the First World Conference on Human Rights there has been encouraging progress in addressing women's rights. Through the work of the Commission on the Status of Women, much has been done to establish international norms designed to achieve and secure the civil, political, economic, social and cultural rights of women. But this is not enough: mainstream human rights bodies have lagged behind. While the establishment of a separate Commission on the Status of Women was a necessary step and has enabled the development of international norms safeguarding the rights of women, it has also in a way moved women's issues into a specialised side-stream and has resulted in lack of attention from 'mainstream' human rights mechanisms.[2]

8.2 The record of Australia's activities at various international forums in the development and improvement of the status of women and their equal participation in all aspects of life was submitted to the Committee by DFAT.[3] Their report indicates the extent and seriousness given to women's issues by Australian delegations at international conferences. Professor Hilary Charlesworth, University of Adelaide, informed the Committee that she supported DFAT's assessment that at the international level, the Australian Government takes women's issues 'very seriously'.[4] Mr A G Frankovits, then of Amnesty International, Australia, agreed and noted that Australia's performance on the rights of women in the international arena was 'impeccable'.

8.3 Professor Charlesworth told the Committee that Australian women were under-represented on UN bodies. Despite the fact that Australia has argued for a UN program of gender equity, the Committee notes Professor Charlesworth's concerns, raised initially during the Committee's first inquiry, that this program should be pursued more rigorously by DFAT to ensure the appointment of women on UN bodies.[5]

8.4 There were no submissions to the Committee on any Australian breach of its international obligations regarding the status of women. The Committee acknowledges that two major parliamentary reports relating to the rights and status of women in Australia have already been tabled in the Parliament. The first report *Half Way to Equal* by the House of Representatives Standing Committee on Legal

2 Statement by the Deputy Leader of the Australian Delegation, Ms Penny Wenlsey, to the Main Committee of the World Conference on Human Rights in Vienna on 23 June 1993, p.44.

3 Submission No. 1 which reports on the Government's activities in pursuit of its human rights policy.

4 Evidence, 5 November, 1993, p.569.

5 Evidence, 5 November 1993, p.569, the Joint Committee on Foreign Affairs, Defence and Trade, *A Review of Australia's Efforts to Promote and Protect Human Rights*, p.64.

and Constitutional Affairs (LACA), April 1992, investigated Australia's laws, economy, institutions and community attitudes as they relate to women in Australia. The report was thorough and made some 79 recommendations. Another report by the Select Committee on Family Law which inquired into and reported on aspects of the operation and interpretation of the *Family Law Act 1975*, also made a range of recommendations which included amendments to the Act.

8.5 However, the Committee received a number of documents, which it recorded as exhibits, on a number of serious issues relating to the rights of women internationally. These indicate widespread abuse of women's rights, the use of rape as a weapon of war, international prostitution and coercive family planning. Although this chapter will deal mainly with these issues, the Committee believes it appropriate to acknowledge also the work Australia has done at the United Nations with regard the status of women.

AUSTRALIA'S INTERNATIONAL EFFORTS

8.6 The Committee understands from DFAT that Australia was an active participant at a number of human rights forums on the question of the status of women. At the 49th Session of the Commission on Human Rights (CHR 49), held in Geneva from 1 February to 12 March 1993, Australia co-sponsored a successful Canadian resolution designed to integrate women's rights issues within mainstream UN forums.[6] In future, work done in the Committee on the Elimination of Discrimination Against Women and the Commission on the Status of Women (CSW) will supplement developments in mainstream forums.

8.7 The Committee noted the importance placed on status of women issues by the composition of Australian delegations. A large delegation was led by Senator Gareth Evans, Minister for Foreign Affairs, to the World Conference on Human Rights in Vienna from 14-25 June 1993. The Delegation also comprised a range of NGO representatives and four parliamentary advisers.[7] A special feature of the conference was the appointment of a Special Rapporteur on Violence Against Women, an appointment supported by Australia. This secured an important mechanism to assist the process of integrating women's issues into the mainstream human rights debate.

8.8 In reflecting on the outcomes of the Vienna Conference and its emphasis on improving the rights of women, the Committee notes that Australia's record in the development of gender equity programs and gender analysis is very highly regarded internationally. This being so, there is an opportunity for Australia to lend greater support to other countries, both by example and through dissemination of

6 DFAT submission, p. S6.

7 Senator Vicki Bourne, Senator Brian Harradine, Senator the Hon Margaret Reynolds and Mr Philip Ruddock, MP.

information of our experience in these areas. The Government should seek to improve the coordination of its gender equity programs by improved linkages between the Department of Foreign Affairs and Trade, the Attorney-General's Department and the Office of the Status of Women (OSW). Better domestic dissemination of information should thereby enable better international dissemination of these programs through Australian embassies and with this the promotion of women's rights internationally.

DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

8.9 The question of violence against women has been on the international women's agenda for a number of years. In 1988, a UN Report noted 'that in the late twentieth century, violence as an ordinary form of behaviour may be becoming more public, common and frequent'. Violence takes the form of 'physical, sexual, emotional and economic abuse within the family, as well rape and sexual assault; sexual harassment and traffic in women; involuntary prostitution, and pornography'.[8]

8.10 In November 1991 violence against women was the subject of discussion at a UN Expert Group Meeting in Vienna. The meeting, which included Australian representation explored the idea of strengthening international approaches to the problem. The Expert Group produced the text to the Draft Declaration on the Elimination of Violence Against Women. The text was developed further and revised by an inter-sessional working group of the CSW. The Committee commends Australia's positive role on the working group.[9]

8.11 The primary tenet of the new instrument is to ensure the urgent universal application to women of the principles of integrity, dignity, security, liberty and equality of the person. The new Declaration is not binding in international law, but it does confirm moral and political norms on all parties.

8.12 The Committee welcomes the development of an instrument which recognises the international community's concern on this very real and growing problem of violence against women. The Committee urges the Australian Government to continue its active contribution in international forums to have violations of women's rights recognised as human rights violations.

NATIONAL ACTION

8.13 The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) came into force for Australia on 27 August 1983,[10] and

8 Cited in Elizabeth Evatt, 'Eliminating Discrimination Against Women', pp. 3-4.

9 Department of Foreign Affairs and Trade, *Human Rights Manual*, 1993, pp. 102-103.

10 Exhibit No.51, p. 1.

most of its provisions were implemented by *The Sex Discrimination Act 1984*. Discrimination on the grounds of sex is made unlawful by a number of other Commonwealth Acts as well as State and Territory anti-discrimination legislation.[11]

8.14 Australia has maintained the two reservations it made when ratifying CEDAW. One relates to paid maternity leave (Article 11 (2) (b)). At present, paid maternity leave is currently available to women employed by the Commonwealth and the State/Territory Governments of Victoria, the Northern Territory and the Australian Capital Territory.

8.15 During evidence, Professor Charlesworth said that, while she understood the Government's justification for not imposing the requirement of paid maternity leave, she thought the reservation was not appropriate, particularly as the Convention does not actually require that one imposes this condition; she thought Australian law was 'fairly good' in that regard.[12] Moreover, in the context of the 1995-96 Budget, the Government is considering the introduction of a maternity allowance paid through the Social Security system, in the spirit of ILO Convention 103 (Maternity Protection).[13]

8.16 Australia's other reservation relates to Article 11.1(c) of the convention which under the *Sex Discrimination Act 1984* excludes women from 'combat duties'. This reservation was criticised by Professor Charlesworth during evidence, who urged changes to defence force policy to ensure Australia's international obligations are met.[14] Also, Mr E G Whitlam drew the Committee's attention to the standing reservation to Article III of the *Convention on the Political Rights of Women* to which Australia acceded to in December 1974.[15]

8.17 The Committee considered Australia's responses to the CEDAW Working Group on 31 January 1994 regarding Australia's reservations to CEDAW and noted that since changes to Government policy in December 1992, women are now excluded from:

- duties requiring a person to commit, or participate directly in the commission of, an act of violence against an armed adversary; and

11 Second Progress Report, op. cit., pp. 4-5.

12 Evidence, 5 November 1993, pp. 557-558.

13 *Agreement with the ACTU to Implement Accord Mark 7*: Statement by the Prime Minister, The Hon P J Keating MP, No.48/94, Canberra, 1 June 1994.

14 Evidence, 5 November 1993, pp. 557-558.

15 Article II reads: Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

- exposing a person to a high probability of direct physical contact with an armed adversary.[16]

The Committee notes that these amendments will be made to the Sex Discrimination Act 1984 to reflect the Australian Defence Force's revised employment policy and that Australia will adjust its reservation to CEDAW.

The Committee recommends that, in the light of the revision in the Defence Forces's employment policy, similar adjustments be made to the reservation on Article 111 of the *Convention on the Political Rights of Women.*

COMMITMENT UNDER CEDAW

8.18 CEDAW requires parties to submit a report every four years to the Committee on the Elimination of Discrimination Against Women, the body established under the convention to monitor its implementation. That Committee, in turn, is mandated to report to the General Assembly each year. Australia submitted its first report in June 1986, which that Committee considered in February 1988. The Second Progress Report was presented to the Committee on 31 January 1994. OSW prepares and coordinates input from Federal and State Government departments.[17] The views of NGOs are canvassed also.[18]

8.19 The Committee requested a copy of the 1992 OSW report and noted the range of its assessment. The Committee is also aware that the Committee on the Elimination of Discrimination Against Women has commented that, since the incorporation of CEDAW into Australian law, 'there hardly exists any longer any discrimination on the basis of sex'.[19] The Committee agrees that, while Australian women are better off than women in many other countries and laws have been enacted to abolish discrimination on the basis of gender, nevertheless, in practice, Australian women are still subject to discrimination.

8.20 However, the Committee on the Elimination of Discrimination Against Women expressed a number of concerns. It called for an increase in women in Australian political life and remained critical about Australia's reservations under Article 11(2)(b) relating to paid maternity leave, the status of Aboriginal and Torres

16 Responses to Issues and Questions from the pre-session working group, 31 January 1994, New York, 29 November 1993. pp. 1-2.

17 DFAT submission, pp. 9-10.

18 *Women In Australia, Australia's Second Progress Report on Implementing the United Nations Convention on the Elimination of All Forms of Discrimination Against Women,* June 1992, p. iii.

19 CEDAW/C/1994/WP.14, 2 February 1994.

Strait Island and migrant women and the Government's policy to encourage part-time work.

8.21 Acknowledgment by the United Nations that in law women in Australia suffer no discrimination on the basis of sex attests to Australia's good record in implementing the provisions of CEDAW. The Committee is concerned, however, that criticism remains about the status of Aboriginal, Torres Strait Island and migrant women and urges the Australian Government to give particular attention to the special needs of these groups of disadvantaged women.

Domestic Violence

8.22 In Australia, domestic violence perpetrated against women continues to be a priority concern for the Federal and State/Territory Governments. The Committee noted in the OSW second report that all levels of government have introduced a range of initiatives to address the problem including the establishment of community education programs and committees on violence against women. The extent to which the Family Law Act and the Family Court take into account the needs of women who are victims of violence were addressed in submissions to the former Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act.[20] A national strategy on violence is currently being considered by the Federal, State and Territory Governments.[21]

8.23 Of grave concern is the violence perpetrated against Aboriginal women. The extent of violence against Aboriginal women by their partners and male relatives has particularly seriously affected Aboriginal communities in the Northern Territory, the Kimberleys and in North Queensland and given Aboriginal women the unhappy and unacceptable distinction of being 28 times more likely to die from homicide than any other Australian person.[22] Additional statistics quoted in the OSW presentation statement to the CEDAW Committee showed that while the Royal Commission into Aboriginal Deaths in Custody investigated 20 deaths that occurred in Queensland prisons from 1981 to May 1989, in that same period 23 indigenous women died as a result of violence in three communities alone.[23]

The Committee recommends that steps be taken as a matter of priority through extensive community consultations to address the issue of violence, and the reasons underlying the violence, perpetrated against Aboriginal and Torres Strait Islander women.

20 Second Report, op. cit., pp. 54-68, 161, 185, 203.

21 *National Action Plan, Australia,* AGPS, 1994, p. 45.

22 ibid., p. 13.

23 Introductory Statement by Ann Sherry, op. cit., pp. 11-12.

8.24 The Committee views with grave concern the apparent reluctance of the criminal justice system to recognise the criminal status of domestic violence.[24] The Committee is of the view that this lack of recognition of the criminality of domestic violence against women is a demonstration of unacceptable attitudes of some members of the judiciary. However, that Australia sought to incorporate its principles of justice into the text of the Declaration on the Elimination of Violence Against Women is confirmation to the international community of Australia's stand on this matter.

INTERNATIONAL ISSUES

Rape as a Weapon of War

8.25 In a statement by a DFAT official on behalf of the Australian Delegation to the Commission on Human Rights (CHR49), evidence was given on 'the stark reality of ethnic cleansing'. The official noted that it is a calculated policy of terror designed to expel whole groups of people from their homes on the basis of nationality, race or ethnic background and that as well as murder and detention, rape was one of the tools of this policy, particularly against Muslim women in Bosnia Herzegovina. There was evidence that violent crimes against women have been perpetrated by all sides to the conflict, but that rape appears to have been a deliberate and systematic policy of the Serb forces in Bosnia as part of the policy of ethnic cleansing.[25]

8.26 During evidence, the Reverend R F Wootton, Chief Executive Officer, Australian Human Rights Foundation, also spoke of widespread terror perpetrated against the civilian population in all parts of Bosnia, including the rape of Islamic women. The Reverend Richard Wootton said that such acts have been documented by statements taken down by lawyers from Helsinki Watch.[26] The Committee also noted a submission from the Australian Croatian Community Council which detailed mass rape of Muslim women of Bosnia Herzegovina.[27]

8.27 In its *Human Rights Manual,* DFAT stated that 'rape is a grave violation of the fundamental human right. That rape also violates the security of the person, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment'. Also, when 'committed against protected persons, including civilians, in the context of armed conflict, sexual violence is also

24 Reported in the Second OSW Progress Report, op. cit., p. 59.

25 DFAT submission, p. S97.

26 Evidence, 15 October 1993, p. 360.

27 Australian Croatian Community Council submission, p. S1636-7.

a violation of international humanitarian law'[28] specifically, Article 27 of the *Fourth Geneva Convention* on the protection of civilians in times of warfare which reads:

> Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.[29]

The Committee strongly endorses Article 27 and condemns the crime of rape in war.

8.28 The Committee further notes from the *Human Rights Manual* that the Special Rapporteur of the Commission for Human Rights for the former Yugoslavia considered that rape in the context of 'ethnic cleansing' could be characterised as a grave breach of the *Fourth Geneva Convention.* Also, the Declaration concerning the Protection of Women and Children in Emergency and Armed Conflict adopted by the General Assembly in 1974 states:

> all forms of repression and cruel and inhuman treatment of women and children ... committed by belligerents in the course of military operations or in occupied territories shall be considered criminal. (UNGA R.3318).[30]

8.29 The Committee strongly condemns the use of rape as a weapon of war. That it was used on the Muslim women of Bosnia Herzegovina during armed conflict in the former Yugoslavia, to render these women infertile for the purpose of 'ethnic cleansing,' is an act totally contrary to civilised human behaviour. The Committee supports the opinions of DFAT that sexual violence is a violation of international law and, in the context of 'ethnic cleansing', a war crime.

8.30 The Committee is pleased to note the Australian Government's support to bring to trial those who have committed crimes against humanity during the conflict in the former Yugoslavia. The Committee commends the Australian Government for its choice in appointing Sir Ninian Stephen to the International Court of Justice in The Hague as a judge on the Court for the International War Crimes Tribunal. The Committee also urges the Government to support international efforts to ensure that women who have been sexually abused are given urgent medical, counselling and advisory help.

28 *Human Rights Manual,* op. cit., 1993, p. 104.

29 ibid.

30 ibid.

The Committee recommends that:

- **the Australian Government, as part of an international effort, put in train mechanism for investigating and identifying those responsible for crimes committed in the former Yugoslavia, particularly the raping of Bosnian women as part of the policy of ethnic cleansing, in order to ensure that they are prevented from entering Australia, and that if any have managed to enter that they be identified and extradited to face trial; and**

- **the Government ensure that those women living in Australia and who appear before the War Crimes Tribunal are given appropriate protection from threats of harm and intimidation and that this issue be raised at international forums to ensure similar commitment by the international community.**

INTERNATIONAL CONFERENCE ON POPULATION DEVELOPMENT (ICPD)

8.31 The World Conference on Population and Development held in Cairo in September 1994 was the third of its kind. It was convened by the United Nations Economic and Social Council (ECOSOC) and was five years in the planning. Its precursors were held in Bucharest in 1974 and in Mexico City in 1984. Since the earlier conferences the number of countries which have developed population policies has risen from 27 in 1974 to over 100 in 1994. Both birth and death rates have fallen substantially.[31]

8.32 Despite this decline - the birth rate in developing countries has fallen from an average of six children per woman in the 1960s to 3.6 children per woman in the 1990s - one estimate puts population growth at 1,000 million per decade. The world's population is now estimated at 5,500 million and could stabilise at about double this figure around the year 2200.[32]

8.33 The conference appeared to produce considerable consensus despite the well publicised conflicts. One important view which developed was that population growth was best addressed by policies which focussed on a number of interrelated factors: the education of men and women, but particularly women, people who were better informed about health and reproduction, the availability of better health services, greater economic opportunities, especially for women and the freedom of individuals to decide for themselves the size and spacing of their families. The Prime Minister of Norway made the point:

31 Quoted from opening address of Dr Nafis Sadik, International Conference on Population and Development, Cairo, 5 September 1994.

32 Figures taken from Background Brief on Population and Development supplied by the Foreign and Commonwealth Office, London, August 1994.

> Women's education is the single most important path to higher productivity, lower infant mortality and lower fertility. The economic returns on investment in women's education are generally comparable to those for men, but the social returns in terms of health and fertility by far exceed what we gain from men's education.[33]

8.34 It was suggested to the Committee by the Hon Gordon Bilney, MP, Minister for Development Cooperation and Pacific Island Affairs (in reply to a question relating to the Papua New Guinea program) that concern for women's health is a major driving force for ensuring that women in developing countries have family planning options available to them. The Minister emphasised that 'there is a good deal of empirical evidence to the effect that, if women have children too early, too often or too late, then it has a marked deleterious impact on their health'.[34]

8.35 On the question of women's health, an American study concluded:

> Delays in the delivery of care are symptomatic of the inadequate care that results from shortages of staff, essential equipment, supplies, drugs and blood as well as inadequate management. Later or wrong diagnosis and incorrect action by the staff are other factors [which] contribute to delays in the timely provision of needed care ... In addition to identifying the diagnosis in cases of maternal death, some hospital based studies determine whether or not the deaths were avoidable. They generally find that while a small number of maternal deaths are unavoidable, the large majority are either entirely or probably preventable.[35]

8.36 Dr Nafis Sadik, Executive Director of the United Nations Fund for Population Activities (UNFPA), underlined the importance of better health care for women in developing countries.

> Nowhere is the gap between the rich and poor countries greater than with regard to maternal mortality. Compared with a risk of one in 10,000 in industrialised countries, women in developing countries run a one in 20 lifetime chance of death as a result of pregnancy and childbirth. The analysis done by the World Health Organisation (WHO) reconfirms this gap: some 500,000 women die each year as a result of pregnancy, and nearly all of them [99 per cent] are

33 Quoted from the key note address of Prime Minister Gro Harlem Brundtland, International Conference on Population and Development, Cairo, 1994.

34 Evidence, 6 December 1993, p. 775.

35 Thaddeus, S and Maine, D *Too Far to Walk: Maternal Mortality in Context*, pp. 41-2.

in developing countries. The technologies and systems of health to prevent these deaths are well known and inexpensive.[36]

8.37 The Committee accepts the importance of family planning to the realisation of the right of parents to determine freely and responsibly the number and spacing of their children. The Committee considers that aid programs of family planning and population related activities must be conceived as part of a broader program of assistance. They should not be at the expense of programs based on social justice principles which seek to alleviate the suffering of the poor. In particular they should not be at the expense of basic education, primary health care and infrastructure critical to health such as clean water reticulation and sanitation.

The Committee recommends that AIDAB ensure that any program of family planning and population related activities offered as part of Australia's ODA be sensitive; be based on free and fully informed consent; and be totally voluntary such that no disadvantage is meted out by governments or government supported organisations as a result of the non-participation of individuals in such programs.

COERCIVE FAMILY PLANNING

8.38 Coercive family planning as practised in some countries is a serious violation of the human rights of women. The Committee received a number of publications from Senator Brian Harradine, a member of the Committee, who has pressed the Minister for Foreign Affairs and, through him, AIDAB on the question of aid to family planning programs. One publication contained selected documents consisting of exchanges between Senator Harradine and the Minister for Foreign Affairs from October 1987 to October 1992 entitled *Coercive Family Planning and Australian Aid Policy.* This document was tabled in the Senate on 10 December 1992.

8.39 In addition to these documents, Senator Harradine submitted to the Committee a report written by John S. Aird on coercive family planning in China.[37] The Aird report charges the defenders of the Chinese program with ignoring substantial evidence that senior Chinese officials encourage coercion and that some forms of coercion have been openly commended by the central authorities.[38] The Aird report suggests that for family planners and demographers 'the issue of coercive

36 Quoted from the opening statement of Dr Nafis Sadik, International Conference on Population and Development, Cairo, Egypt, 5 September 1994.

37 Exhibit No. 4, John S. Aird, *Foreign Assistance to Coercive Family Planning in China,* 1992.

38 ibid., p. 3.

family planning poses value conflicts and conflicts of interests'.[39] The Aird report directly challenges the views of Terence Hull who was commissioned by the AIDAB to complete a sector report on population in China in 1991.[40]

8.40 The Committee understands that Australian concerns on family planning in China were put to the Chinese authorities during two human rights parliamentary delegation visits. These were reported in two separate delegation reports (1991 and 1992) as 'disincentives and penalties' such as additional tax to compensate for the cost of additional services like health and education prescribed for having more children.[41] The Committee notes that the Chinese Government assured members of the two human rights delegations that practices of local party cadres who are 'too enthusiastic are proscribed and contrary to Government policy.'[42]

8.41 The Committee is concerned that it has been acknowledged by the Second Australian Human Rights Delegation to China that by 'western liberal standards the policy has coercive elements'.[43] Despite this knowledge, there does not appear to have been any official Australian condemnation of the methods used by the Chinese Government in limiting its population growth. At the same time, the Committee is aware that criticism of China's family planning program would not result in China abandoning its program. As Aird suggested in his report, the Chinese would probably 'stonewall'.[44]

8.42 The Committee is particularly disturbed by the fact that it is the women of China which suffer the severe consequences of current Chinese family planning policies. As the table below indicates, contraceptive methods are used by or on women mainly. For example, while vasectomies accounted for 2,427 cases in 1989 in that same year there were 15,521 IUD insertions, 6,278 ligations and 10,567 abortions.

39 ibid., p. 5.

40 Terence Hull, *Population Policy in China, Australian International Development Assistance Bureau,* Sector Report 1991, No. 4.

41 *Report of the Australian Human Rights Delegation to China, 14-26 July 1991,* pp.21-22 and Report of the *Second Australian Human Rights Delegation to China, 8-20 November 1992,* p. 51.

42 *Report of the Australian Human Rights Delegation to China, 14-26 July 1991,* p. 22.

43 *Report of the Second Australian Human Rights Delegation to China, 8-20 November 1992,* p. 51.

44 Aird, John S., op. cit., p. 54.

TABLE 8.1 BIRTH CONTROL OPERATIONS IN CHINA 1971 - 1989

(In thousands)

Year	IUD Insertions	IUD Removals	Vasectomies	Ligations	Abortions
1971	6,173	--	1,223	1,745	3,910
1981	10,345	1,513	649	1,556	8,697
1985	9,577	2,279	576	2,284	10,932
1986	10,638	2,313	1,031	2,915	11,579
1987	13,337	2,384	1,733	3,846	10,395
1988	12,227	2,265	1,062	3,590	12,676
1989	15,521	2,271	2,427	6,278	10,567

Source: Cited in John S Aird, Foreign Assistance to Coercive Family Planning in China, P. 43

1971-85: Yearbook Compilation Committee, Zhongguoweishengnianjian 1986 (Public Health Yearbook of China, 1986), Beijing, Renmin weisheng chubanshe, 1986, p. 475.

8.43 The Committee is concerned also that the health of the women could be endangered by trialing on them various contraceptive methods. It is evident from the *Report of the Second Australian Human Rights Delegation to China* that any new scientific method of controlling birth is trialled on women in the first instance.[45] That such practices, which are detrimental to the health of women, are benignly supported by western democracies including Australia in the form of aid to the UNFPA is viewed with concern by the Committee.

8.44 At its final public hearing questions were asked about the involuntary and coercive aspects of family planning programs conducted by Indonesia's National Family Coordination Board (BKKBN).[46] AIDAB indicated to the Committee that the Australian Government does not endorse every action taken by the Indonesian Government in the area of population programs.[47] Further questions were asked about the program of assistance financed by AIDAB and managed by the United Nations Population Fund for Indonesia to provide family planning training and technical assistance to Pacific Island countries.[48] The assistance program included scholarships for Pacific Islanders to attend the Indonesian BKKBN International Training Program and field visits to Eastern Indonesian Provinces.

8.45 The Committee expresses concern about continuing reports of the violation of human rights in BKKBN Family Planning Programs and considers it inappropriate that BKKBN is involved at this stage in teaching of Pacific Islanders with Australian aid money.

Exploitation, Prostitution and Traffic in Women

8.46 In a paper written by Justice Elizabeth Evatt and submitted in evidence Justice Evatt noted that involuntary prostitution and traffic in women are often associated with violence against women.[49] The paper asserted that many women are forced into prostitution not only by poverty and unemployment, but prevailing attitudes in some societies. Justice Evatt further argued that such activities breached international law.[50]

8.47 The findings of the human rights monitor, Asia Watch, confirm Justice Evatt's findings. An article by Asia Watch submitted to the Committee by the Australia Burma Council, referred to thousands of Burmese women and girls who have been sold into a situation akin to female sexual slavery in Thailand.[51] Asia Watch claims that there are between 800,000 to two million prostitutes currently working in Thailand.

8.48 The Asia Watch article demonstrated that Burmese victims of trafficking suffer the range of violations of internationally-recognised human rights. These range from debt bondage to arbitrary detention, as Government officials are complicit in these violations and fail to enforce Thailand's obligations under national or international law.[52]

8.49 The gravity of the problem is compounded by the exposure to HIV/AIDS of the women and girls. Also, information on positive HIV/AIDS results is made available to brothel owners, immigration officials and others but not to the women and girls. Compounding the serious breach of the fundamental rights to privacy of these

45 *Report of the Second Australian Human Rights Delegation to China* 8-20 November, 1992, pp. 50-54.

46 Evidence, 5 October 1994, p. 1264.

47 Evidence, 5 October 1994, p. 1271.

48 Evidence, 5 October 1994, p. 1280.

49 Exhibit No.51, p. 6.

50 ibid.

51 Exhibit No. 15, *A Modern Form of Slavery, Trafficking of Burmese Women and Girls into Brothels in Thailand,* Asia Watch and The Women's Rights Project, December 1993.

52 ibid.

women and girls is the possible dangers in their treatment on return to Burma.[53] Also, the fear of AIDS has led to further exploitation and a booming trade in child sex.[54] Thailand holds the undistinguished and tragic record of having the highest reported incidence of AIDS in the world.[55]

8.50 The evidence presented to the Committee indicates that the plight of women and girls in Indo-China gives cause for very serious concern to the international community. The status of women has been lowered to that of a commodity to be traded and disposed of at will, thus ensuring that women in that region have been unable to advance their status, despite the international mechanisms established to assist them.

8.51 The Committee is encouraged by efforts taken so far by the Australian Government to work with Thailand to fight AIDS through the establishment of an AIDS office and resource centre in Chiang Mai, northern Thailand, as part of a five-year $3.2 million initiative.[56]

The Committee recommends that:

- **the Australian Government urge the Government of Thailand to ratify or accede to key international instruments relevant to the trafficking in women and girls, namely the International Covenant on Civil and Political Rights and the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others;**
- **the Australian Government develop programs in conjunction with the local authorities to change social attitudes towards traffic and exploitation of women in order to secure the elevation of the status of women in Indo-China and elsewhere; and**
- **AIDAB ensure funds be allocated to develop programs with the Thai authorities aimed at educating communities on the link between the sex industry and HIV/AIDS.**

CONCLUSIONS

8.52 The Committee did not receive any submissions specific to women's issues. However, a number of witnesses raised concerns during evidence regarding violence committed against women, as well as traffic and exploitation in women and girls in Indo-China.

8.53 The Committee agrees with the comments expressed by OSW to the Committee on the Elimination of Discrimination Against Women that Violence against women is a violation of women's human rights and a form of discrimination. The Committee also believes that violence against women is an issue of national concern.

8.54 The Committee welcomes the adoption by the General Assembly of the Declaration on Violence Against Women and acknowledges the efforts of the Australian delegation in the drafting of the declaration. The Committee supports moves for a complaints mechanism under CEDAW and encourages the development of an optional protocol to the convention. The Committee endorses the continuation of national action programs relating to women's health, education, training and domestic violence, particularly in rural areas.

8.55 Also the Committee is pleased to note that the Australian Law Reform Commission is inquiring into gender bias in the law and that the Australian Institute of Judicial Administration has been provided with Federal Government funds to conduct gender awareness programs for members of the judiciary and magistracy.[57]

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[53] ibid., pp.3-4.

[54] 'The Littlest Prostitutes', *The New York Times Magazine*, January 16, 1994, p. 31.

[55] *Far Eastern Economic Review*, April 7, 1994, p. 12.

[56] *Insight*, Department of Foreign Affairs and Trade, Vol.2, No.13, 2 August, 1993, p. 6.

[57] Introductory Statement by Ann Sherry, First Assistant Secretary, Office of the Status of Women, to the Committee on the Elimination of Discrimination Against Women, New York, 31 January, 1994, pp. 5-7.

Chapter Nine

PROTECTING THE RIGHTS OF CHILDREN

The Convention on the Rights of the Child addresses the needs of those who are humanity's most vulnerable as well as its most cherished resource. It is axiomatic that they should be afforded special protection ... One of the cardinal lessons of the convention is that the child is not alone: the convention recognises the primary role of the family and parents for the care and protection of children, as well as the need for the special protection of those who are without families or separated from them ... Mr Javier Perez de Cueller[1]

Children internationally are much abused. Children are traded across borders, used as slave labour, as a source for organ transplants, and in the infamous sex tourism industry as prostitutes and for child pornography. That such abuses are taking place in countries which have either ratified or acceded to the Convention on the Rights of the Child gives grave cause for concern that international action has become one of form rather than substance. The Committee supports the comments made by the former Secretary-General of the United Nations that children are humanity's most vulnerable as well as its most cherished resource. It is with some disquiet that the Committee noted the report of the UN Special Rapporteur on the Sale of Children, Mr Vitit Muntarbhorn. He was critical of the youth welfare and justice system in Australia. The report of the Australian Human Rights Commissioner on youth homelessness is also disturbing. The Committee supports the recommendations of both reports while acknowledging that comprehensive national programs are contemplated in the newly developed National Action Plan.

1 These comments were made by Javier Perez de Cueller, then Secretary-General of the United Nations on the adoption of the Convention. Cited in Robina Mills, *Migration Control v Human Rights*, unpublished thesis for Masters Degree in Public Law, p.13.

INTRODUCTION

9.1 The need for a special international instrument to protect the rights of children was recognised by the League of Nations in 1924 when it adopted the Declaration of Geneva. Accordingly, the League had responded to the desperate plight of children at the end of World War I. After World War II, the United Nations developed the Declaration on the Rights of the Child which it adopted on 20 November 1959.

9.2 The then Australian Government acknowledged the rights of children as human rights through the inclusion of the Declaration as a Schedule to the *Human Rights Commission Act 1981*. The Declaration was not a binding document in international law. Thus, in 1979 the United Nations Human Rights Committee began the process of drafting a children's convention, a process in which Australia played an active role. The UN Convention on the Rights of the Child (ICRC) came into force on 2 September 1990 and entered into force for Australia on 16 January 1991. One hundred and sixty-six States, including the Holy See (which ratified the convention in 1990) are parties to the convention.[2]

9.3 Why is there a need for a Convention on the Rights of the Child? Some statistics provided to the Committee include:

- 13 million children die each year from starvation, poverty and easily preventable disease.[3]
- About 100 million children work under exploitative and hazardous conditions.
- There are more than 10 million child refugees.[4]
- Millions of children and their labour are bought and sold for profit.
- 80 million children are homeless - including 20,000 to 25,000 in Australia.[5]

2 Fowler, Julie, 'Rights of the Child', briefing paper prepared for the Joint Standing Committee on Foreign Affairs Defence and Trade, January 1994, p. 1.

3 UNICEF, *State of the World's Children 1989*, cited in Elizabeth Evatt, AO, 'Protecting Children's Rights Under the UN Convention'; The Alicia Johnson Memorial Lecture, Darwin, 11 October, 1991, p. 1.

4 *Sydney Morning Herald*, 4 November 1989.

5 This figure was cited in *Our Homeless Children, Report of the National Inquiry into Homeless Children*, Human Rights and Equal Opportunity Commission, 1989, p. 69. The report concluded that it is impossible to state precisely how many homeless children and young people there are in Australia.

9.4 On 22 December 1992, the Attorney-General declared that the Convention on the Rights of the Child is an international instrument for the purposes of the *Human Rights and Equal Opportunity Act 1986*. Effectively this means that like the Declaration on the Rights of the Child, the rights articulated in the convention fall within the definition of 'human rights' in the Act. The convention has not been incorporated into Commonwealth legislation. The Human Rights and Equal Opportunity Commission can, however, conciliate complaints about acts or practices of the Commonwealth (but not individuals) which breach these rights.[6]

9.5 The Committee is concerned, however, that the Convention on the Rights of the Child is yet to be incorporated into Australian law. The monitoring of treaty obligations under this convention is the responsibility of the Human Rights and Equal Opportunity Commission. The Government, in ratifying the convention, has deemed implementation to be covered by existing laws, largely in the State jurisdiction. However, there has been some criticism of this arrangement by the UN Special Rapporteur on the Rights of Children, Mr Viti Muntarbhorn.[7] He found inconsistencies and lack of uniformity which might be addressed by the Commonwealth providing a national standard on children's services. (See 9.15 and 9.26)

9.6 The Committee is of the view that Australia in this instance should lead by example. Moreover, the Committee believes that it would be difficult for Australia to exert pressure in the international arena on the question of the rights of children if steps have not been taken domestically to acknowledge its commitment to its treaty obligations.

9.7 At the time of ratification, the convention was widely debated in the community and in Parliament and, at that time, concern was expressed about the potential conflict between the rights of children and the rights of parents. Where ambiguities exist in the convention between those two sets of rights the Committee believes they should be clarified. Insofar as there has been misinterpretation of the intent of the convention, a program of community education and informed debate might be necessary.

9.8 Some members suggested there was no role for the Commonwealth in introducing laws to override State legislation which already addresses children's responsibilities. However, the Committee notes that, with this as with all the human rights instruments, the Commonwealth's responsibility is one of providing a national standard in line with the treaties it has signed. Furthermore, the Committee stresses here, as it did in Chapter 3, the need for consultation with the State Government on matters which concern their primary constitutional competence.

6 The Committee would like to thank Anne Twomey of the Law and Public Administration Group of the Parliamentary Research Service for her assistance and advice.

7 Mr Muntarbhorn visited Australia in his official capacity in October 1993.

The Committee recommends that

- **the Australian Government introduce legislation which incorporates the *Convention on the Rights of the Child* into domestic law: and**

- **the Attorney-General investigate the feasibility of establishing a Children's Ombudsman within the office of the Human Rights and Equal Opportunity Commission.**

9.9 Children in Australia do not suffer the extremes of deprivation suffered by many children of the world. Australian laws prohibit child labor, slavery and any abuse or violence committed against children. Australians believe that children should be under the guidance and protection of parents. These values were articulated in Article 5 of the Convention on the Rights of the Child on the proposal of Australia:

> States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present convention.

9.10 Yet, as indicated earlier it has been estimated that there are some 25,000 homeless children in Australia.[8] The Human Rights Commissioner told the Committee:

> We have a very sophisticated system of law for protecting property, contracts, commerce ... ... in protecting the rights of vulnerable children, our legal system is still pretty archaic. I think we would find, given that we have literally tens of thousands of children now without the benefit of a protector - all evidence suggests that making kids wards of the state is disastrous; ... that the state is a hopeless parent by and large - that we have not really addressed what we do to correct that very significant absence of a caring, protecting person in the lives of these young people.[9]

9.11 This Committee does not seek to explore in detail the question of youth homelessness. This is a complex problem and the subject of a special parliamentary

8 See footnote five.

9 Evidence, 1 June 1993, p. 39.

inquiry being conducted by the House of Representatives Standing Committee on Community Affairs. Equally, violence in schools and its social consequences were examined in a report tabled by the House of Representatives Committee on Employment, Education and Training in early 1994. This chapter will address only those concerns submitted to this Committee and taken in evidence during the course of this inquiry.

AIMS OF THE CONVENTION

9.12 The convention addresses itself to the protection of children from:

> economic exploitation and performing hazardous work; sexual exploitation, including the use of children in pornography or prostitution; abduction, sale of and traffic.[10]

9.13 The convention has also specifically addressed the problems of abuse and exploitation of children articulated as:

> all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation, including sexual abuse, torture, capital punishment or life imprisonment without the possibility of release.[11]

9.14 The convention requires State Parties to recognise the cultural, economic and social rights of children. These rights include health, education, an adequate standard of living and the enjoyment and practice of the child's own culture, religion and language.[12]

AUSTRALIA AND THE CONVENTION ON THE RIGHTS OF THE CHILD

Criticism of the Convention in Australia

9.15 Criticism of the convention has been on the grounds that it undermines parental rights and responsibilities towards their children. In 1990 the Australian press carried articles alleging the convention would prohibit parents from exercising any form of discipline over their children, while giving the children and the government rights over those of the parents.[13] That the convention is directed at

10 Convention on the Rights of the Child, Article 32.

11 Convention on the Rights of the Child, Articles 34 and 39.

12 Convention on the Rights of the Child, Article 31.

13 Examples are 'The troubled path to protecting our children', *The Canberra Times*, 1 May 1990 and 'Children's rights feared by adults', *The West Australian*, 14 February 1990.

governments, rather than individuals was not taken into account during that period of debate thus moving Bishop Michael Calen, (during the time of writing, Executive Director of the Brotherhood of St Lawrence) to suggest that it was an 'uninformed if not mischievous debate'.[14] The Human Rights Commissioner, Mr Brian Burdekin, said of the development of the convention:

> Some of us worked fairly hard for about three years to set up the convention on the Rights of the Child. If I could have had my druthers, I would have renamed it the Convention on the Protection of the Child, because I think its current name has led to some misunderstanding.[15]

Australia's First Report Under the Convention

9.16 Having ratified the convention, Australia is obliged to report to the Committee on the Rights of the Child every five years. Australia's first report is being prepared by the Commonwealth Attorney-General's Department in consultation with the States and Territories. It will be submitted to the Committee on the Rights of the Child in early 1995 and tabled in Parliament at the same time.

9.17 Most of the subject areas of the convention are under State and Territory control. The report states:

> Australia accepts that there is a case for greater uniformity of Commonwealth and State laws, an analysis of the relationship between those laws and customary law and for interstate consultations on children's rights. However, despite the lack of uniformity, the rights of the individual child do have extensive protection under Australian law.[16]

The Committee recommends that the Australian Government:

- **instruct appropriate agencies to develop effective policies and practices designed to enhance the welfare and rights of children/youths and their families; and**

- **in consultation with the States, develop a national code to consolidate youth/children's rights.**

14 Calen, M., 'How can "Rights-Talk" help children: A practical perspective', in Alston, P., and Brennan, G. (eds), *The UN Children's Convention and Australia*, 1991, p. 13.

15 Evidence, 1 June 1993, p. 41.

16 ibid., p. 45.

Aboriginal and Torres Strait Islander Children

9.18 The Committee is concerned that the first report has identified a number of areas relating to Aboriginal and Torres Strait Islander children. These include the higher infant morality rate, poorer health compared to the rest of the community and over-representation in the juvenile justice system. On this question the first report stated:

> The problems in respect of Aboriginal and Torres Strait Islander peoples are being pursued. For example, in context of the International Year of the World's Indigenous Peoples and in the Government's response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.[17]

9.19 The Committee believes it is incumbent on the Government to set standards for the treatment of indigenous children to ensure the welfare of Aboriginal and Torres Strait Islander children, as well as those of special need, is brought into line with community standards and expectations and that the problems identified in the Attorney-General's First Report to the Committee on the Rights of the Child continue to be monitored until improvements have been made.

The Committee recommends the enhancement of child/youth related facilities in rural areas, with particular regard to the needs of Aboriginal and Torres Strait Islander children.

Juvenile Justice

9.20 At the time of writing, only three States had responded to a request on the question of the segregation of adults and juveniles in prisons in Australia. Queensland advised that on any one day there were about 40 juveniles aged 17 years being held in Queensland prisons. Juveniles under 17 years cannot be placed in prisons and are the responsibility of the Department of Family Services. In the Australian Capital Territory there is no prison, only a remand centre. Offenders sentenced to imprisonment in the ACT are transferred to New South Wales prisons. Juveniles are detained in the Quamby Youth Centre in Canberra. In the Northern Territory, juveniles, anyone who has not reached 17 years, are separated from the adult prison population. The number of juveniles in prison in the Northern Territory has been dramatically reduced with only ten receptions in 1993-94.[18]

9.21 A number of witnesses during evidence noted inconsistencies in laws relating to children and youths and that some States had adopted laws incompatible

17 *First Report on the Convention on the Rights of the Child*, Part II, p. 46.

18 Document tabled by the Attorney-General's Department in answer to a question at a public hearing, 5 October 1994.

with the convention. Professor Charlesworth cited the Western Australian juvenile offenders' legislation which 'very clearly violated the convention'.[19]

9.22 Mr Burdekin expressed similar views to the Committee. During evidence he mentioned that since the Committee's first report on human rights, the situation regarding juvenile justice in Western Australia had remained the same. He said there was a two-year sunset period on the juvenile offender's legislation, but there was no suggestion, so far, that the current West Australian Government would be changing course.

9.23 Senator Sid Spindler[20], outlined his concern at the *Victorian Crimes (Amendment) Act 1993* where it contravened The Convention on the Rights of the Child as well as the International Covenant on Civil and Political Rights. Senator Spindler noted three main areas of concern, namely, police powers to demand name and address, to undertake finger-printing and to undertake forensic procedures.[21]

9.24 In evidence Mr Burdekin stated that he too was 'particularly disturbed' about the Victorian legislation. To this end, he wrote 'several times' to the Victorian Attorney-General.[22] While Mr Burdekin said that he was unable to disclose the contents of his correspondence he suggested that:

> there is no point in Australia entering into treaties, be they the International Covenant on Civil and Political Rights or the International Convention on the Rights of the Child, if, when it comes to treatment of children - for example, one of those pieces of legislation in Victoria relates to sentencing, including the sentencing of juveniles -they are ignored.[23]

9.25 The Committee is concerned by the harsh laws enacted by the States of Western Australia and Victoria to deal with juvenile offenders. The Committee does not accept, however, that the imposition of harsher penalties on juvenile offenders, particularly Aboriginal youths is a solution to the problem. The Committee notes from a paper prepared by Justice Elizabeth Evatt that Aboriginal youth are over-represented in the juvenile justice system, 'attracting higher penalties and moving through the stages towards detention more rapidly than other groups'.[24] Both Justice Evatt and Professor Charlesworth during separate evidence expressed their

19 Evidence, 5 November 1993, p. 561.

20 Senator Sid Spindler, Australian Democrat, Senator for Victoria.

21 Senator Spindler submission, p. S1966.

22 Evidence, 1 June 1993, p. 29.

23 Evidence, 1 June 1993, p. 29.

24 Exhibit No.50, p. 8.

concern to the Committee about the lack of uniform laws with regard to children's welfare and juvenile justice and the necessity for Commonwealth legislation to incorporate the Convention on the Rights of the Child.[25]

9.26 Inconsistencies between Commonwealth and State laws attracted special mention from Mr Viti Muntarbhorn, the UN Special Rapporteur during his official visit to Australia in October 1993. The Committee notes from DFAT's submission that Mr Muntarbhorn drew attention to the potential for more uniform State and Commonwealth laws and for greater inter-state consultation and analysis. Mr Muntarbhorn recommended the implementation of a comprehensive national policy on the welfare of children, a central agency to deal with children's rights, a national code on youth/children's rights, a Commonwealth Minister on Youth and Children's Affairs and the need for child protection mechanisms such as a Children's Commissioner or Children's Ombudsman.[26]

9.27 The Committee understands from Australia's first report under the convention that measures are being taken to harmonise national law, policy and practices with the provisions of the convention. Among these measures was the publicising of the convention in all States and Territories and the holding of a national seminar on the convention.[27]

Asylum Seekers - Children in Detention

9.28 Criticism by the Human Rights Commissioner, regarding the detention of children, has been noted in Chapter 11. Mr Burdekin is of the opinion that the detention of children for the length they are detained in Australia is in breach of Australia's treaty obligations. Australia's detention practices as they related to children were also criticised by the Refugee Council of Australia in its submission to the Committee.[28]

9.29 In reply to such criticism, the Attorney-General's Department cited information given to them by the Department of Immigration and Ethnic Affairs (DIEA) for the first report under the children's convention. This information suggested that children in detention are treated in a way which serves the best interest of the child, 'in the sense of their being kept with their parents, which is what the Convention on the Rights of the Child requires.'[29] The Attorney-

25 Evidence, 5 November 1993, p. 561 and 6 December 1993, p. 748.

26 DFAT submission, pp. S15-16.

27 *First Report on the Convention on the Rights of the Child*, p. 48.

28 Refugee Council of Australia submission, pp. S1992-3.

29 Attorney-General's Department submission, pp. S1365-66.

General's Department also submitted that the report also makes a number of relevant comments namely:

- Minors seeking resettlement in Australia are considered on a case-by-case basis against the specific criteria of the Refugee and Humanitarian Programs.
- Unaccompanied minor cases receive a high priority within the refugee/humanitarian caseload.
- Administrative procedures have been established so that children who enter with, or join, a person other than a close relative over 21 years of age, come within the *Immigration (Guardianship of Children) Act 1946.* The purpose of the procedures is to ensure that such children receive the same care and supervision as other children in Australia under State care.

9.30 While the Committee acknowledges the efforts the Government has made to provide facilities for children in the detention centres and accepts the 'legality' of the position taken on the right to detain illegal entrants, it believes that it is unacceptable to keep in detention for long periods people who are seeking refugee status.

9.31 In addition, the first report refers to other programs administered by the Department of Immigration and Ethnic Affairs (DIEA). These include Commonwealth/State cost sharing programs for the supervision and support of refugee minors; maintenance allowance for unattached refugee minors, who are under 16 years of age and full-time students, and the Grant-in-Aid scheme, which provides financial assistance, amongst other things, employing workers providing services to refugee youth.[30]

INTERNATIONAL - CHILDREN AS VICTIMS OF VIOLENCE

Summary or Arbitrary Execution and Torture of Children

9.32 The *International Children's Monitor* indicated that in 22 countries children are victims of summary or arbitrary executions. This figure has been recorded by the UN Special Rapporteur on Summary or Arbitrary Executions, who reported to the UN Commission on Human Rights at its 49th Session that since the previous report in 1991, the figure of child victims of executions had doubled.[31] The 22 countries included: Bangladesh, Brazil, Cambodia, Colombia, Dominican Republic, El Salvador, Guatemala, Haiti, India, Indonesia, Iran, Israel, Kenya, Lesotho, Mexico, Peru, Rwanda, Saudi Arabia, Sri Lanka, Turkey, United States of America

30 ibid., pp. S1366-67.

31 International Children's Monitor, Vol.10, Nos.1-2, 1st and 2nd quarters 1993, pp. 34-39.

and Venezuela. In the case of the United States, the victim was 17 years of age at the time of his crime. He was sentenced to death in September 1982 after being convicted of murder by a court in the State of Texas and his execution was scheduled for 11 February 1992. It is believed he is still on 'death row'.[32]

9.33 The UN Special Rapporteur on Torture reported to the 49th session of the UN Commission on Human Rights that children had been tortured in 19 countries. The countries identified included those named as engaging in child summary or arbitrary executions, namely: Argentina, Bangladesh, Bhutan, Brazil, Cuba, Egypt, Greece, Guatemala, Haiti, India, Israel, Mexico, Peru, Philippines, Saudi Arabia, Turkey, Uruguay, Venezuela and Yugoslavia.[33]

9.34 With the Exception of Egypt and Saudi Arabia, all the countries on which reports were made by the two Special Rapporteurs to the UN Commission on Human Rights were signatories to the Convention on the Rights of the Child and most had ratified it. The Committee views very seriously the flagrant disregard for the rule of international law and the obligations to which these countries have committed themselves.

The Committee recommends that the Australian Government monitor closely reports of torture and summary or arbitrary execution of children and subsequently make strong representations to those governments who are breaching international standards on the rights of children.

TABLE 9.1 LITERACY

PERCENTAGE OF THOSE AGE 15-24 WHO ARE ILLITERATE

	Female	Male
Chile	3	4
China	18	5
Egypt	62	37
India	60	34
Iran	58	29
Italy	0.4	0.3
Mexico	9	7
Nepal	85	55
Rwanda	55	40
Pakistan	75	55
Peru	10	4
Thailand	4	2
U.S.	0.6	0.7

Source[34]: UN Statistical Office

32 ibid., pp. 34-39.

33 ibid., pp. 31-33.

9.35 World Vision expressed concern about the greater problems faced by the girl child. In some countries, girls were often unwanted, neglected or abused and in some cultures, the subject of genital mutilation. They were discriminated against in education. They were also victims of infanticide or abortion if the foetus is found to be female.[35]

Traffic in Children

9.36 The use of child labour in Asia, was brought to the attention of the Committee during evidence. Mr David Bitel, Secretary-General, Australian Section, International Commission of Jurists, informed the Committee that the question of child labour in Bangladesh has been a 'very topical debate' in Bangladesh in the last 12 months. Mr Bitel said he believed the Americans 'have considered, if not introduced, legislation' to make it obligatory for imports which have been produced by child labour to be so labelled.[36] The Hon John Dowd, Chairman of Council, Australian Section, International Commission of Jurists, suggested that once the Australian consumer was educated about goods produced by child labour, they would police that trade.[37]

9.37 Mr Bitel informed the Committee that the press in Bangladesh has carried stories about the horrific nature of child labour and the exploitation generally, especially the exploitation of children in Saudi Arabia for child jockeys. Mr Bitel had read in the Bengali English language newspapers that children between the age of three to five were allegedly placed on the back legs of the camels, and their screams cause the camels to run faster.[38]

9.38 Mr Dowd pointed to the difficulty of substantiating claims made about the exploitation of children. He said that an example was a rich Asian businessman arriving in Australia with a child purporting to be his 'nephew' who was donating his kidney to his 'uncle'. In these circumstances, the child would confirm the story. Mr Dowd said many children were taken to Saudi Arabia as 'nephews'.[39]

The Committee recommends that the Australian Government propose an initiative at the UN to ensure the development of an international treaty to address the question of child exploitation.

34 *The Bulletin*, September 13, 1994.

35 World Vision submission, p. S1416.

36 Evidence, 27 January 1994, p. 821

37 Evidence, 17 January 1994, p. 821.

38 Evidence, 27 January 1994, pp. 820-21.

39 Evidence, 27 January 1994, p. 820.

Child Sex Tourism

9.39 During evidence, Mr Burdekin discussed the child-sex tourist industry. He noted that an options paper examining whether there should be criminal sanctions has been prepared for the Attorney-General's consideration. On this question he had suggested either the creation of an international multilateral convention or the creation of a draft protocol to the Convention on the Rights of the Child to oblige countries to protect children from abuse and exploitation.[40]

9.40 World Vision Australia also submitted its concern to the Committee on this question. World Vision noted that each year more than a million girls become prostitutes. The size of the problem is increasing as demand has increased for younger girls, thought to be free of the HIV virus.[41] The problem of child prostitution is particularly acute in Thailand where young children are sold into prostitution for the price of a television set.[42]

9.41 Some Australian men have been involved in child sex tourism. With the Thai Government clamping down on the child sex trade, Australian paedophiles may now be prosecuted both in Thailand and in Australia. Social workers estimate there are about 200,000 underage prostitutes in Thailand, many children as young as eight years.[43] Many of these children are often sold across borders. *The Far Eastern Economic Review* reported that according to the Chinese police about 5,000 Chinese girls have been lured from quiet villages of the minority tribes in Yunnan province in south-western China by offers of phoney jobs.[44]

9.42 The Committee endorses the legislation which will enable Australian paedophiles to be prosecuted in Australia for offences committed overseas. The Committee also notes that under the legislation it is an offence to organise child sex tours or to publish material advertising such facilities to entice travel. The Committee reiterates the comments made in the summary of the report of the Standing Committee on Legal and Constitutional Affairs on its consideration of the Crimes (Child Sex Tourism) Amendment Bill. It stated:

> [I]n the past Australians travelling overseas have been able to abuse children sexually and escape the consequences of their behaviour on return to Australia. The same conduct would be criminal if it were perpetrated in Australia. This conduct is repugnant to Australians and to the world, not least because of

40 Evidence, 1 June 1991, p. 83.

41 World Vision submission, p. S1416.

42 'The Littlest Prostitutes' in *The New York Times Magazine*, January 16, 1994, p. 31.

43 *Sydney Morning Herald*, July 7, 1991, p. 11.

44 'Cry of the Innocents', *Far Eastern Economic Review*, 9 September 1993, pp. 36-7.

the devastating effect on children in the countries concerned. A secondary effect of this conduct is that it brings Australians into disrepute. Such conduct should be regarded as criminal, despite the fact that it occurs in other countries.[45]

9.43 The Committee believes that all States Parties should introduce measures to deter their nationals from the exploitation of children in Asia.[46] Some information was received by the Committee on the measures taken by other countries on this issue. Germany, Denmark, Sweden and Norway do not have specific offences relating to sexual conduct with children overseas. However, in each country there is scope for their laws to be applied to their citizens for offences committed abroad. In some cases, Norway, Sweden, Denmark or Belgium, for the law to apply the offence must also be an offence within the other country. France has recently passed legislation specifically applying to sexual contact with minors and Canada is considering it. A number of countries have requested copies of the Australian law since it has been enacted.

9.44 The Committee is encouraged that the Australian Government is examining the adoption of an additional international instrument to address the abuse and exploitation of children by the international child sex industry.[47]

The Committee recommends that the rights of children be placed prominently on the agenda of the Foreign Minister during his overseas visits.

45 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Advisory Report, Crimes (Child Sex Tourism) Amendment Bill 1994*, pp. 59-60.

46 As at June 1994, 161 States had ratified the convention on the Rights of the Child. (See Table 2.1) Specific countries are listed in Submission No. 2. pp. S490-92.

47 DFAT submission, p. S15.

Chapter Ten

THE RIGHTS OF WORKERS

We must analyse the human cost of what is sometimes an obsession with purely economic considerations and a blind quest for quick profits and maximum profits on investment.
Michel Hansenne[1]

A breach of the rights of workers is a breach of human rights and therefore contravenes international law. As the ILO Director-General said at the 1968 International Labour Congress, 'One of the objectives assigned to the ILO under its Constitution is to encourage formal recognition of the human rights that lie within its field and of the conditions for their realisation. From the beginning it set itself the task of building up a body of international labour standards and of achieving their widest possible acceptance throughout the world.' Despite the proclamation of this continuing theme by subsequent Directors-General, violation of the rights of workers continues.

There is a danger that in the battle for economic advantage the rights of workers globally will be jeopardised. The Committee has serious reservations about the development argument alone and is of the view that low wages, forced labour and child labour, the norm in many developing countries, have created a wide gap between the deprived and the endowed.

INTRODUCTION

10.1 In 1919 the International Labour Organisation (ILO) was established as an international forum with the objective of promoting and raising labour

1 Michel Hansenne, ILO Director-General in his introductory speech to the 1994 'World Labour Report.'

standards.[2] In a paper he submitted as an exhibit, Professor Breen Creighton noted that the single fundamental principle which has guided the activities of the ILO since its establishment in 1919: 'If you desire peace, cultivate justice', and the cultivation of justice requires respect for fundamental human rights. These principles were set out in Article 41 of the original Constitution of the ILO and, in the inter-war years, guided the standard-setting activities of the International Labour Congress (ILC).[3]

10.2 Throughout this period the emphasis was on improving basic working conditions.[4] Major amongst these were the regulation of working hours; the establishment of minimum wage-fixing machinery; the protection of particularly vulnerable groups of workers such as children, young persons and women; and the promotion of workers' compensation and other forms of income security provision.[5] A number of ILO conventions reflect these concerns.

10.3 By 1944 the Declaration of Philadelphia had proclaimed that 'all human beings, irrespective of race, creed or sex, have the right to pursue their material and spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'. The Declaration emphasised that 'labour is not a commodity' and that 'freedom of expression and of association are essential to sustained progress'.[6]

10.4 The ILO has a tripartite structure. This structure consists of representatives of governments, workers and employers at its annual conference, on its executive and in its various committees. As at September 1993, the membership of the ILO stood at 166 states. The main ILO bodies comprise the International Labour Congress (ILC), the Governing Body and the International Labour Office. The ILC is the annual meeting of the tripartite group and the supreme body of the ILO.[7] Member states are required to report regularly on the implementation of their obligations to the ILC.[8]

10.5 The ILO operates within the United Nations framework and became its first specialised agency.[9] The Charter of the UN reflects many of the aims of the

2 Department of Industrial Relations (DIR) submission, p. S1659.

3 Exhibit No.31, p. 1.

4 The Hours of Work (Industry) Convention (1919) was the first instrument adopted by the ILC at its first Session.

5 ibid., p. 3.

6 DIR submission, p. S1659.

7 See Submission No.85 for further information on the structure and role of the ILO.

8 ibid., p. S1662.

9 ibid.

ILO and both cooperate closely on the question of human rights. Also, the core ILO human rights conventions develop further the fundamental human rights recognised in the key international human rights instruments.[10]

10.6 Despite concerns and efforts of the international community in the early part of this century to improve the basic conditions for all working people, basic working conditions in many countries around the world remain today in a lamentable state. Few countries have ratified ILO conventions and fewer still, including some who have, place the conditions of the labour force as a priority of concern in nation building.

AUSTRALIA AND THE ILO

10.7 Australia was a founding member of the ILO. Ever since its foundation, Australian Governments have recognised the importance of the ILO and actively supported it. For most of the post World War II period Australia has been a member of the Governing Body and was its Chair in 1975 and 1989. At present Australia has full tripartite representation on the Governing Body. Senior representatives from the Australian Council of Trade Unions (ACTU) and the Australian Chamber of Commerce and Industry have traditionally been represented on ILO bodies. On various occasions Australian Government, employer and worker representatives have held executive positions on committees of the ILC. A Special Labour Adviser is attached to the Australian permanent Mission to the United Nations in Geneva.[11]

10.8 Despite this involvement, Australia has been somewhat slow in ratifying ILO conventions. The conventional explanation has been that Australia's federal system, with its division of legislative responsibility, makes compliance difficult.[12] Further reasons are Australia's peculiar industrial relations system which sets award standards rather than legislates for them, for example, on such matters as minimum wages. Australia has, however, ratified most of the core ILO human rights conventions and is giving active consideration to ratification of the remaining human rights conventions.

10.9 A Government Task Force comprising officers from relevant Federal Government departments was established in 1991 to review those conventions not yet ratified and which were still relevant and open for ratification. The Task Force was to assess the suitability for ratification and to identify legislative or other measures necessary for Australia to achieve compliance. The Task Force submitted three progress reports to the Government (July 1991, April 1992 and October 1992) and a further report is likely in the near future. An extra five conventions have been

10 ibid., pp. S1661-63.

11 ibid., p. S1665.

12 Exhibit No.31, p. 23.

ratified since its establishment.[13] As at February 1994, Australia had ratified 53 out of 170 conventions.[14] (See Appendix 9 for the complete list of ILO conventions ratified by Australia).

10.10 At a public hearing, a senior official of the Department of Industrial Relations (DIR) informed the committee that the task force had completed its work in 1994. It had identified 75 conventions that 'were worth examining, because a number are obsolete or have closed to ratification or have other reasons which make them inappropriate.'[15]

10.11 The task force finally focussed on 30 conventions as being suitable for ratification. The process of ratification has involved close and 'intense' consultation with the States thus leading to the elimination of a number of objections.[16] The DIR official said that he believed that the exercise was worthwhile and productive in terms of raising the level of awareness and understanding of the instruments amongst governments.[17] He admitted however, that the number of instruments ratified following the task force examination is relatively small.[18]

10.12 The Committee is encouraged that a specifically nominated task force has been set up to deal with the large backlog of ILO instruments. The Committee is concerned, however, that the task force was a Government task force thus excluding parliamentary representation. As the federal system and division of legislative responsibility is a major cause leading to the small number of ratifications of ILO instruments, the Committee is of the view that parliamentary representation on the task force would have been appropriate. (See Chapter 3 for arguments on parliamentary consultation)

REGIONAL LABOUR CONDITIONS

10.13 In its submission to the Committee, the ACTU drew attention to the International Confederation of Free Trade Union's (ICFTU) *Annual Survey of Violations of Trade Union Rights* which expressed concern about worker's rights in the Asia Pacific region in the following terms:

13 DIR submission, p. S1666.

14 Evidence, 4 February 1994, p. 995.

15 ibid.

16 ibid.

17 ibid.

18 ibid.

> some uncertain signs of improvement in some country situations, the fundamentals of the most important problems have not changed, and there is reason to fear deterioration in some cases.[19]

10.14 According to the ACTU submission, the ICFTU survey explained the decline in labour standards:

> in a significant number of other countries where democracy prevails to greater or lesser degrees, the imperatives of rapid development and industrialisation are used as the pretext and justification of serious violations of trade union rights. It is particularly in Asia that governments have put forward fully developed arguments to the effect that international labour standards do not reflect or take account of the reality of their social and economic conditions, and that they cannot therefore be expected to observe them.[20]

10.15 A number of governments in the Asia-Pacific region, namely Indonesia, Malaysia, Philippines, Singapore and Thailand are well known for expounding these views. The ACTU's submission asserted that at the 1993 ILC these governments proposed the following:

> Considering that a review of existing labour conventions and standards, which is timely and necessary, should seriously consider the difficulties faced by many developing countries in complying with such standards (many of which were formulated on the basis of world conditions prevailing as far back as seven decades ago) as well as the various socio-economic and cultural backgrounds, development experiences and aspirations of the countries concerned, while at the same time maintaining social justice and the quality of life, particularly for workers and employers:
>
> 1. Decides that:
>
> (a) the ILO should immediately review and update existing labour conventions and standards, to enable flexible implementation of such conventions and standards in labour administration and

19 ACTU submission, p. S1426.

20 ibid., p. S1427.

their more meaningful and pragmatic application...[21]

10.16 The question of custom and practice for labour standards was canvassed by the Committee with DIR officials. They said that this issue was so diverse that it is hard to identify areas where the ILO has developed a labour standard which could be said to have become part of customary international law.[22]

10.17 A DIR official informed the Committee during evidence that labour standards in the region are a cause for concern. He said not only were regional labour standards of concern to the Australian Government, but also to the ILO.[23] He noted that few standards have been ratified by countries in the region and suggested that the low level of ratifications, in part, reflects the level of economic development and that only recently some countries have come into the ILO.

10.18 The official intimated that a number of countries are endeavouring to build up their capacity to deal with ILO conventions in order to bring the law and practice into conformity before moving to the ratification stage.[24] This area, he noted, is where Australia has been playing an active and positive role.

AUSTRALIAN REGIONAL TECHNICAL ASSISTANCE PROGRAM

10.19 In the last three to four years, a number of technical cooperation programs have been developed. One, still in progress in China, Indonesia, Vietnam, Thailand and Malaysia, is the Australian support for ILO objectives in Asia, or ASILO. Areas of focus are occupational health and safety followed by labour relations and international labour standards.[25] Also, Australia has provided funds as well as consultancy and training services to the ILO Employment and Labour Administration (EMPLA) Project for South Pacific countries.[26]

10.20 In evidence, a DIR official informed the Committee that Australia, in conjunction with New Zealand, had developed a program to aid the small countries of the Pacific, known as the Paclab project. This project, which is being funded out

21 ibid., p. S1427.

22 Evidence, 4 February 1994, p. 998.

23 Evidence, 4 February 1994, p. 1001.

24 Evidence, 4 February 1994, p. 1002.

25 Evidence, 4 February 1994, p. 1002.

26 DIR submission, pp. S1672-73.

of the AIDAB aid budget at $1.2 million, is designed to assist the labour administration of these small Pacific island states.[27]

10.21 The Committee agrees that the current Australian policy of making ILO technical assistance to countries in the region conditional upon their achieving particular labour standards is a negative approach and could be in the longer-term counterproductive. Mr Alan Matheson of the Australian Council of Trade Unions told the Committee that it was to Australia's advantage that we belonged to the Asia group within the ILO. It was both appropriate geographically and to our benefit in forging regional links by which technical assistance could be provided to the regional labour movement. The Australian union movement sought, through union to union links, to assist in the democratisation of the union movement in Asia. There is a cooperative effort on the part of unions internationally and within the region to develop charters or codes of conduct relating to workers rights.[28] The Committee agrees with the current approach adopted by Australia that assistance, directed at programs which focus on labour reform and thereby lead to social and economic development, as the more desirable approach.

FORCED LABOUR IN CHINA AND BURMA

10.22 The Committee received submissions and a number of exhibits on the question of Chinese corrective service and its philosophy of 'reform through labour' or *Laogai*, commonly known as China's gulag. According to the literature provided by the Laogai Research Foundation (an organisation established in the United States of America) the 'Laogai Camps' include a network of some 1,000 prisons, detention centres, 'reform through labour' centres and disciplinary productive brigades. These institutions include juvenile offenders.[29] The foundation has stated that it does not know definitively how many Laogai camps exist, nor are they 'totally clear' about past and present living conditions, forms of punishment, human rights violations and other associated matters.[30]

10.23 The Laogai Research Foundation in its submission to the Committee asserted that there is evidence that Laogai products can be 'easily purchased in Australia'.[31] According to the foundation some of the products consist of steel

27 Evidence, 4 February 1994, p. 1002.

28 Evidence, 15 October 1993, pp. 435-7.

29 Exhibit No. 61d, p. 3.

30 ibid.

31 Attachment to the Laogai Research Foundation submission, p. S578.

pipes, handtools and machinery which are imported by Australian companies and by agents in Hong Kong and China.[32]

10.24 In reply to questions, a DIR official said there was awareness of the existence of the so-called system of 'education through labour' or *laojiao*. He noted that the issue had been raised in the context of freedom of association with the ILO and that the ILO had made some recommendations to the Chinese Government to which they have not responded.[33]

10.25 The Committee also received a report from the Australia-Burma Council on the question of forced labour. The report was critical of the Australian Ambassador's attitude to forced labour which the report claimed parallelled those of the State Law and Order Restoration Council (SLORC). The report further asserted that innocent villagers are forced at gun point to work on various enterprises such as rail and roadways and gas pipelines. They are given little, if any, food and the women are vulnerable to rape.[34]

10.26 Professor Creighton informed the Committee that under international law, it is difficult to accuse countries such as China of violations of the law. China, for example, has not ratified any of the forced labour conventions or the child labour conventions, nor are there any mechanisms for doing anything about infractions of ILO principles[35] The Committee notes that Burma, also, is not a party to any of these conventions and therefore cannot be accused of breaching the relevant international instrument.

10.27 Professor Creighton, suggested, however, that all members of the ILO are automatically bound by the freedom of association standards by virtue of their membership. The dilemma therefore, is how to ensure that goods produced under such unacceptable standards could be boycotted without hurting those the boycott is trying to help.[36] Professor Creighton said finding the balance was difficult. Condemnation of standards' violators would prevent dialogue and opportunities for exerting influence, whereas the provision of technical assistance 'keeps bridges open'. However, using Burma as an example, he said, in his experience, it was not possible to have a dialogue with a government which was totally insensitive to labour standards.[37]

32 ibid., p. S579.

33 Evidence, 4 February 1994, p. 1003.

34 Australia-Burma Council Report, 29 April 1994.

35 Evidence, 14 October 1993, p. 269.

36 Evidence, 14 October 1993, p. 270.

37 Evidence, 14 October 1993, p. 273-4.

10.28 A further problem identified by Professor Creighton was the question of possible criticism by developing countries about the Eurocentric standards being applied across the board. In pointing out serious violations of labour standards in the region, Australia should be cautious. On the other hand, in cases where violations are so offensive, a country which takes human rights seriously should respond 'in a very strong and dramatic manner'.[38]

CHILD LABOUR

10.29 As noted in Chapter 9, the question of child labour is a worrying problem in the region and beyond. The International Confederation of Free Trade Unions estimates that between 100 million and 200 million of the world's children between the ages of four and fourteen are 'labouring in mines, making matches, selling gum in the streets, cooking, washing clothes, working as domestic servants, weaving carpets, making clothes, sewing underwear, and working in the fields, at the plantations and on building sites around the world.'[39] Many of these children are in the employ of multinationals or through sub-contractors. The first ICFTU Report on child labour details appalling practices in India, Bangladesh, Nepal, the Philippines and Mexico and is continuing its survey.[40]

10.30 DIR informed the Committee that this question has been a preoccupation of the ILO also. Intensive efforts in the form of a special project have been run by the ILO in certain countries designed to address the issue of child labour and how this problem could be overcome.[41] DIR understands that a number of Asian countries are troubled about the growing trend in the employment of child labour, but that there are no labour inspection mechanisms to address the problem.[42] The Committee was advised that child labour was raised with Indonesia and Australia offered to train Indonesian labour inspectors.[43]

10.31 DIR officials which regional countries put forward as justification for child labour are well known to the Committee. Developing countries claim that child labour is a product of poverty, poor educational standards and the need for both individuals and countries to find a competitive edge in developing industrial economies. Furthermore, Western demand for products made by child labour, especially such products as carpets, ensure its continuation. On this question the *Far*

38 Evidence, 14 October 1993, pp. 272-73.

39 Exhibit No. 155 p. 2.

40 ibid., p. 2.

41 Evidence, 4 February 1994, p. 1004.

42 Evidence, 4 February 1994, p. 1004.

43 Evidence, 4 February 1994, p. 1004.

Eastern Economic Review argued that 'The tiny wages actually drawn by the children make little difference to family income; child workers not only seem to displace the adult workers but also seem to depress the incomes of adults of adults doing similar work'.[44]

10.32 DIR officials said that arguments of poverty and economic necessity were usually put forward by developing countries, whenever that issue was raised, but they assured the Committee that Australia was very strongly supportive of the ILO putting resources into the examination of child labour. Initially, and within its limited resources, the ILO was focussing on getting rid of the worst abuses of child labour by taking a practical and pragmatic approach of overcoming the most hazardous, the most dangerous and the youngest.[45] DIR believes the answer to overcoming the problem of child labour is very much tied up with economic development and 'it will very much be a medium to longer term answer'.[46]

10.33 The President of the ACTU, Mr Martin Ferguson, has been forthright on the issue of child labour saying, 'I think the Commonwealth Government should be more aggressive on these issues.' and calling on the Government to 'take a stronger line with Australian companies not observing basic workers' rights and international labour conventions overseas'.[47]

10.34 The Committee is gravely concerned over the issues of forced prison labour and child labour and is aware from advice sought from the Attorney-General's Department that it is very doubtful that the *Customs Consolidation Act 1876(UK)* and the *Foreign Prison-made Act 1897(UK)* apply to Australia.[48] The Committee is of the view that the Australian public would find it unacceptable to have the Australian markets infiltrated by these products.

The Committee recommends that:

- **appropriate legislation be enacted to ensure that goods made in prison under conditions of forced labour are prohibited entry into Australia: and**

- **Australia initiate, through the UN and, as necessary and appropriate in the future, the World Trade Organisation, a campaign to introduce international standards of minimum age and minimum conditions of work for the employed.**

44 *The Far Eastern Economic Review*, 9 July 1992.

45 Evidence, 4 February 1944, p. 1005.

46 Evidence, 4 February 1994, p. 1005.

47 *Sydney Morning Herald*, 18 August 1994.

48 Letter dated 13 May 1994 from the Criminal Law Division, Attorney-General's Department.

10.35 The Committee is disturbed that some countries in the region, amongst which number the newly industrialised states, have acted in contradiction to the objectives of the ILO and the Charter of the United Nations which reflects those aims.

10.36 The Committee commends activities of the Australian Government through AIDAB to assist regional governments, employers and workers groups to promote the observance of human rights and occupational health and safety and notes that its budget for East and Southeast Asia in this area is $A1.05 million. The Committee encourages the Australian Government to continue its work through ASILO in order to promote wider observance of international labour standards and human rights of workers.

Chapter Eleven

THE RIGHTS OF ASYLUM SEEKERS

The 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol, defines a refugee as a person who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such fear, is unwilling to return to it. (Article 1A(2))

One of the most indicative signs of human rights abuses, whether they be economic, social and cultural or civil and political is the extent of refugee flows. The efforts of the Australian Government in supporting UNHCR refugee placement programs are generous and consistent with its foreign policy goal of contributing to a more just international order.

However, on the question of detention in Australia of those claiming asylum the situation is less clear. The Committee understands the importance and desirability of maintaining the integrity of the immigration system and notes that rights are never absolute. Furthermore, the Committee understands that Australia's detention policies for illegal entrants are not technically in breach of international law. The Committee is of the view, however, that the spirit of these obligations has been breached and that Australia should act with probity and explore means by which 'unlawful non-citizens' can be dealt with in a more humane fashion. The Committee believes there may well be a role for appropriate non-government organisations in this effort. The length of detention is viewed with real concern. Australia gives mixed signals to the international community by endeavouring to be a good international citizen and neighbour on the one hand but having to maintain people in detention for a long term on the other.

INTRODUCTION

11.1 The question of refugees, asylum seekers and illegal entrants is vexed and complex and has been the subject of two comprehensive parliamentary committee reports.[1] As well as a detailed analysis of detention practices of asylum seekers and illegal entrants in Australia, these reports surveyed the nature of the refugee problem world-wide and the responses of asylum destination countries, including their detention practices. The reports concluded that as far as Australia's detention practices and procedures were concerned, the release from detention of unauthorised border arrivals into the community with a bridging visa, should be a decision left to the Minister for Immigration and Ethnic Affairs personally. Also, this authority should not be delegated and that Ministerial discretion should be exercised without inviting judicial review of that decision, save for the right of access to the High Court which is guaranteed constitutionally.[2]

11.2 It is not proposed in this chapter to revisit the extent of this work, but to report on the evidence which was submitted to this Committee on the question of Australia's detention practices and policy.

THE INTERNATIONAL ENVIRONMENT

11.3 The easing of Cold War global tensions has created in its wake the disintegration of nation states accompanied by resurgent nationalism or ethnic separatism. This trend has increased the frequency of internal armed conflict and imposed immense political and economic instability on the civilian population. Developments on other fronts have included the global economic recession; the widening economic gap between industrialised and developing countries (as well as between the various levels of society), environmental degradation and recurrent natural disasters. These upheavals have caused a migratory and refugee flow more complex than hitherto experienced.[3]

11.4 In the 1970s, the United Nations High Commissioner for Refugees estimated that some 8 million people were being cared for as refugees. By 1993, UNHCR was responsible for the protection and assistance of an estimated 23 million persons in 143 countries. Out of a global population of 5.5 billion, the UNHCR has estimated that one in every 130 people has been forced to flee.[4]

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1 Joint Standing Committee on Migration Regulations, *Australia's Refugee and Humanitarian System*, August 1992 and Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, February 1994.

2 ibid, p. 104.

3 *Note on International Protection*, submitted by the High Commissioner for Refugees, A/AC.96/799 of 25 August 1992.

4 *Populations of Concern to UNHCR: A Statistical Overview*, 1993, p. 3.

11.5 The total 1993 annual budget to fund general and special programs was US$1.27 billion. Contributions to fund refugee programs for 1993 totalled US$889,402,707. With the exception of the United States of America and Japan all funds came from European countries, the highest contributor being the European Union.[5]

AUSTRALIA AS A DESTINATION COUNTRY

11.6 Because Australia is a politically stable and economically prosperous country, asylum seekers and displaced persons seek refuge here. However, people arriving at Australian borders without authorisation are subject to mandatory detention under the *Migration Act 1958* pending outcome of their claims for refugee status. When it came into force on 1 September 1994, the *Migration Reform Act 1992*, removed the legal distinction between unauthorised boat arrivals and illegal entrants, who are now known as 'unlawful non-citizens'. Detention will be mandatory for all persons so classified.[6]

11.7 Some 447 illegal and unauthorised entrants were held in detention as at 1 July 1993.[7] For the 1992-93 financial year, the general cost of detention spent by Australia (including expenditure on detainees and detention facilities) for illegal entrants and unauthorised arrivals was $A18.43 million.[8]

Refugee Law

11.8 It is generally held, including by Amnesty International, that state sovereignty entitles governments to determine the condition of entry into their borders. Exceptions are not made for unauthorised entrants seeking refugee status or asylum. Granting asylum is a "discretionary right of status' which a state may grant or withhold.'[9]

11.9 International law does not grant explicit right to refugee status on those seeking it. Nor does the 1951 refugee convention and protocol impose such obligations on signatory states. International law, does however, impose legal norms

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5 Source: UNHCR at a Glance.

6 Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, February 1994, p. 87.

7 ibid., p. 13.

8 ibid., p. 40.

9 Cited in *Australia's Refugee and Humanitarian System*, op. cit. p. 68.

on a contracting state which provides protection for asylum seekers, namely by the conjunction of Articles 31, 32 and 33 of the convention.[10]

11.10 Article 31 states that no penalties shall be imposed on refugees on account of their illegal entry or presence, provided that they report to authorities without delay and show good cause for their illegal entry or presence.[11] Article 32 provides that an asylum seeker can only be expelled on grounds of national security or public order and only after due process of law and allowance made for a reasonable period during which the refugee might seek legal admission to another country. Article 33 of the convention states:

- No Contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
- The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

11.11 According to the recently published Government's National Action Plan on human rights, Australia offers protection to asylum seekers and refugee status to those who come within the definition of the *1951 Convention Relating to the Status of Refugees* and its 1967 modifying Protocol (the Convention).[12] The determination procedure takes into account the claims of the applicant, conducts interviews and assesses the human rights situation of the country of origin, including reports from NGOs.[13]

Human Rights Law

11.12 General human rights law can be characterised as those rights outlined in the Universal Declaration on Human Rights and translated into binding form, on contracting parties, in international instruments such as the ICCPR and the ICESCR. Australia is a contracting party to these instruments and in determining

10 ibid., p. 69.

11 ibid, p. 69.

12 *National Action Plan Australia*, AGPS, Canberra 1994, p. 77.

13 ibid, p. 77.

the status of illegal entrants and asylum seekers is obliged to consider Article 9 (1) of ICCPR which reads:[14]

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

11.13 The Convention on the Rights of the Child 1989 confers further obligations regarding juvenile refugee applicants in detention under the following article:

> Article 22(1): States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are parties.

11.14 Other relevant articles include:

> Article 24 requires: 'highest attainable standard of health and access to facilities for the treatment of illness and rehabilitation of health;'
>
> Article 28 recognises the right to free and compulsory primary education; and
>
> Article 31 acknowledges the right of the child to rest and leisure, to engage in play and recreational activities and to participate freely in cultural life and the arts.[15]

11.15 Also relevant are the conclusions of the Executive Committee of the High Commissioner's Programme (EXCOM). The Committee was formally established in 1958 by a resolution of the United Nation's Economic and Social Council (ECOSOC). EXCOM passes annual conclusions based on consensus resolutions on refugee protection. Of relevance to this chapter is Conclusion No.44, 1986 which notes 'with deep concern that large numbers of refugees and asylum seekers ... are [in] detention' and expresses 'the opinion that in view of the hardship which it involves, detention should normally be avoided', but adds that 'detention may be resorted to

14 Joint Standing Committee on Migration, op. cit., submissions, Vol. 3, pp. S824-25.

15 ibid., p. S827.

only on grounds prescribed by law.'[16] In themselves the conclusions are not binding on states, but they contribute to the development of international refugee law.[17]

Australia and the UNHCR

11.16 Mr Pierre-Michel Fontaine, Regional Representative for Australia, New Zealand and the South Pacific Office of the UNHCR recalled that Australia was one of the main supporters of the UN General Assembly resolution creating UNHCR and one of the main drafters of the 1951 Convention Relating to the Status of Refugees.[18] He congratulated Australia for its active association with the executive committee of the UNHCR, as a donor country, and in promoting and implementing the 1989 Declaration and Comprehensive Plan of Action on Indo-Chinese Refugees.[19] Mr Fontaine also commended Australia for 'accepting a rather substantial percentage' of refugees from Africa, particularly Somalis and for the help it gave to the former Yugoslavia from where people sought temporary protection. However, Mr Fontaine was critical of Australia's detention practices and modest contribution to the UNHCR refugee program.[20]

11.17 Figures sought by the Committee from AIDAB show that, in the 1993-94 financial year, Australia contributed $13,348,000 to UNHCR. The Committee is of the view that Australia's contribution to the UNHCR is appropriate but should continue to be reviewed on a regular basis.

Detention Practices: Community Criticism

11.18 Community concerns over Australia's detention practices have been widespread. The Committee received a number of submissions and heard evidence from representatives of various organisations. The Senate was petitioned by 338 people.[21]

11.19 The Federal Human Rights Commissioner, Mr Brian Burdekin submitted to the Committee that Australia's detention practices were in breach of the ICCPR and the Convention on the Rights of the Child. Australia's present detention

16 ibid., p. S823.

17 ibid.

18 United Nations High Commissioner for Refugees submission, p. S1829.

19 Evidence, 6 December 1993, p. 783.

20 Evidence, 6 December 1993, p. 790.

21 Senate Hansard, 7 February 1994, pp. 446-47.

practices, he said, are anomalous with Australia's generally enlightened approach to human rights.[22] To bring us in line with the less rigid detention practices of Canada, the UK or the United States, Mr Burdekin recommended provision be made for people seeking asylum or refugee status to live in the community with some recording or monitoring mechanism and with their basic human rights respected.[23]

11.20 This practice, he believed, was all the more important in the case of children, some of whom had been locked up for three or four years behind barbed wire. These children could be left in the community - perhaps with their own ethnic communities - or at least given some contact with people of varying national background. He thought that such measures would not strain the system, nor prejudice good order and good government.[24]

11.21 Mr Peter Bailey, from the Australian National University Law Faculty, acknowledged many of the points raised by Mr Burdekin. Mr Bailey told the Committee that he was disappointed with the High Court's decision which dismissed a test case (the Lim case) by finding in favour of executive power to detain refugees for any given period, thereby endorsing the present *Migration Act.* Mr Bailey suggested that with respect to human rights, the principle was not purely a question of constitutional or legal power, or whether one has power, but how that power is used.[25]

11.22 The evidence submitted to the inquiry from the Refugee Council of Australia reaffirmed these views. The Refugee Council submitted that the rights of asylum seekers do not arise merely from domestic policy, but are protected under a number of international instruments, which Australia may have breached.[26] They maintained that other western countries have a right to detain, but that it is common for an independent review body to approve appeals for release from detention. In such circumstances detention applied to those who were a threat to public order or national security.[27] Yet, despite the high cost of maintaining people in detention, Australia pursued the practice not because of some wrong doing, but to curb the unevidenced potential of opening the 'flood gates'.[28]

11.23 Australian Catholic Relief was another organisation critical of the treatment by Australian authorities of Cambodian asylum-seekers being held in

22 Evidence, 1 June 1993, p. 43.

23 Evidence, 1 June 1993, p. 36.

24 Evidence, 1 June 1993, p. 44.

25 Evidence, 30 November 1993, pp. 636-37.

26 Evidence, 4 March 1994, p. 1051.

27 Evidence, 4 March 1994, p. 1052.

28 Refugee Council of Australia submission, p. S1996.

detention in northern Australia, citing alternatives that some Western countries use as alternatives to detention.[29] Although such critics suggest that current practice concerning the detention in Australia of asylum-seekers breaches several UN protocols, both DIEA and the Attorney-General's Department are confident that Australia's policy in this area breaches neither the *Migration Act* nor Australia's international treaty obligations, 'providing such detention is not categorised as arbitrary'.[30]

11.24 The Committee is concerned that Australian policy on the detention of asylum-seekers and other refugees may have the appearance of severely curtailing the human rights of detainees, particularly when such detention extends over a number of years. As mentioned above, different policies such as those used in Canada and the United States may offer better alternatives. In the case of Canada, detention is carried out purely for establishing the identity of the individual, after which the individual is given a conditional removal order and released on a bond. Abuse of this system has apparently been rare. In the United States, refugees and asylum-seekers who have been detained are released on parole if they can establish their true identity, guarantee that they will not abscond, pay a bond, will not pose a threat to public safety and agree to certain conditions laid down by immigration authorities, including appearing at an immigration office every month.[31]

11.25 The Committee believes that aspects of Canadian and United States' policies appear to address refugee and asylum-seekers' human rights concerns more effectively than the current Australian policy and it urges a review of that policy. Detention in excess of six months pending the clarification of someone's refugee status represents a significant curtailment of that individual's human rights, in the view of the Committee.

The Committee recommends that the Government review its current policy for the detention of refugees and asylum-seekers.

Rationale for Detention

11.26 During a Senate Estimates hearing, the Minister for Immigration and Ethnic Affairs, Senator the Hon Nick Bolkus defended the Government's detention practices. Senator Bolkus stressed that in legislating in this area, the Parliament 'was to invoke a clause that it was legislating in the national security.'[32] Senator

29 Australian Catholic Relief submission, pp. S2463-S2464. See paragraph 11.26-11.31 below for further explanation of the legal basis of Australia's detention practices.

30 Evidence, 4 March 1994, pp 1061-1064.

31 These details of the Canadian and United States policies come from the Joint Standing Committee on Migration's report *Asylum, Border Control and Detention*, AGPS, February 1994, appendix four, p. 237.

32 Senate Hansard, Estimates Committee F, 11 May 1993, p. F23.

Bolkus pointed out that this particular legislation had received bipartisan endorsement, although Senator Harradine, Senator Chamarette and the Democrats are on record as having opposed the legislation when it came through Parliament in November 1992.[33]

11.27 The Department of Immigration and Ethnic Affairs submitted that Australia's detention policy and practices did not contravene international law. The Assistant Secretary, Advising, Legislation and Legal Policy informed the inquiry that advice from the Attorney-General's Department suggests that providing detention is not arbitrary, the legislative and administrative arrangements complied with international law.[34] Moreover, the Attorney-General's Department advised that no particular time limit would be regarded as amounting to arbitrary. The DIEA spokesperson said that his Department was obviously counselled to ensure that in each case the conditions of individuals do not amount to arbitrary detention.[35]

11.28 The Committee had sought clarification from the Attorney-General's Department as to whether Australia's detention practices and laws fulfilled or violated Australia's obligations under the various international instruments.[36] The Department replied in general terms as follows:

> This Department understands that the administration of the detention regime implemented for persons coming within the relevant legislation is as relaxed as possible within the requirements of the law. It is not equivalent to detention in a prison. Strenuous efforts have been made, we understand, by Immigration officials to provide protection and humanitarian assistance to persons detained, particularly to children. In particular, in relation to children detained, we understand this has been done in the best interests of the child, in the sense of their being kept with their parents, which is what the Convention on the Rights of the Child requires.[37]

11.29 On the specific obligations with regards the law on the rights of a minor seeking refugee status, the Attorney-General's Department was asked if Australia's obligations under Article 22 (1) of the Convention on the Rights of the Child had been breached.[38] The departmental reply was:

33 Senate Hansard, Estimates Committee F, 11 May 1993, p. F19.

34 Evidence, 4 March 1994, pp. 1061-62.

35 Evidence, 4 March 1994, p. 1062.

36 Evidence, 1 June 1993, p. 99.

37 Attorney-General's Department submission.

38 Evidence, 1 June 1993, p. 98.

while minors seeking resettlement in Australia are considered on a case-by-case basis against the specific criteria of the Refugee and Humanitarian Programs, unaccompanied minor cases receive a high priority within our refugee/humanitarian caseload. To assist minors who enter with, or join, more distant relatives, administrative procedures have been established so that children who enter with, or join, a person other than a close relative over 21 years of age, come within the *Immigration (Guardianship of Children) Act 1946*. The purpose of the procedure is to ensure that such children receive the same care and supervision as other children in Australia under State care. The Department of Immigration and Ethnic Affairs administers a number of programs which focus specifically on the settlement needs of refugee children. These programs include: Commonwealth/State cost sharing program for the supervision and support of refugee minors; maintenance allowance for unattached refugee minors who are under 16 years of age and full time students; and the Grant-in-Aid scheme, which provides financial assistance, towards, *inter alia*, employing workers providing services to refugee youth.[39]

11.30 DIEA informed the Committee subsequently that it is currently considering the release of children from custody where this is found to be in their best interest and where adequate care arrangements can be found.[40]

11.31 Adults in detention would remain in detention in accordance with present laws and Government policy until such time as their legal status has been determined.[41] DIEA informed the inquiry, however, that it had trialled the release into the community of 37 cases in 1993 while these awaited the review process. Those involved all reported to prefer residence within the community to detention. Nevertheless, the Secretary of DIEA emphasised that this trial should not be seen as setting precedents.[42]

Provision of Services

11.32 The inquiry was told by DIEA that provision of services differed between centres. In Port Hedland, for example, where unauthorised boat arrivals are held, a psychiatrist from the State multicultural service had visited the detention centre.

39 Attorney-Genaral's Department submission.

40 Evidence, 4 March 1994, p. 1064.

41 Evidence, 4 March 1994, p. 1064.

42 Report by the Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, February, 1994, p. 147.

The visiting specialist made a number of suggestions which have since been implemented, including the appointment of a psychiatric nurse to supplement the general nurse currently on the staff. In addition, special arrangements are made for survivors of torture and trauma. Two staff interpreters are also appointed at Port Hedland in addition to bilingual welfare officers. If bilingual health professionals are available they are used also.[43]

11.33 In reply to a question on legal representation, the Secretary DIEA advised the Committee that Government policy since 1992 has been to fund legal assistance to applicants for asylum who are in detention and/or who arrive without authority. DIEA is funded to enable the process of determining the merits of their claims at the administrative stage and as far as the review decision. If at that point an applicant has been rejected and seeks a judicial review of that decision in the courts, the matter becomes the responsibility of the person concerned, who may apply for legal aid.[44]

Cost of Detention

11.34 Cost of detention compared with release into the community was examined extensively in the recent report of the migration committee. As noted in paragraph 10.7 above, in 1992-93 a total of $18.43 million was spent on detention. No comparable figures are available on cost of release into the community. However, the Society of St Vincent de Paul estimates the cost in a boarding style arrangement would be $95.00 per person per week; in a hostel, $83.50 per person per week including food, cleaning, and other personal costs. No estimation has been made of the capital costs of accommodation, or on-going maintenance of that accommodation. Nor were estimates made of costs associated with such services as medical requirements, counselling, education and recreation, all of which are available at the detention centres.[45]

Comparable International Practices

11.35 Detention practices differ amongst a number western European countries which are asylum destination. For example, Austria, Germany and Greece as well as two Scandinavian countries, Norway and Sweden, carry out detention 'purely for deportation purposes.'[46] Generally, detention practices in Western Europe are for

43 Evidence, 4 March 1994, pp. 1069-71.

44 Evidence, 4 March 1994, p. 1077.

45 Report by the Joint Standing Committee on Migration, *Asylum, Border Control and Detention*, February, 1994, pp. 39-45.

46 *Report on Overseas Detention Practices: Executive Summary* by Saraswathi Karthigasuin Asylum, Border Control and Detention, op. cit., p. 235.

short periods. However, as the number of asylum seekers grows, a number of EU countries, for example Italy, Germany and Ireland, have tightened their laws. Canada's detention practices are carried out to establish the identity of the individual after which the individual is released into the community.[47]

PLIGHT OF RETURNEES

Chinese Boat People

11.36 During evidence, the Human Rights Commissioner, cast doubt on the ability of Australian officials to determine the status of returnees to China. Mr Burdekin argued that as most came from remote areas, Australian officials are not in a position to determine the returnees' status or whether they had well-founded fear of persecution or maltreatment. He told the Committee that:

> the countries the detainees have come from are hardly ones which you could be confident about saying they could go back to without some well-founded fear of persecution or maltreatment. ... I guess I am ... drawing on my experience in the foreign service, which I joined 20 years ago. Our ability to determine whether somebody from one of the southern provinces of China or somebody from the hills of Ethiopia depends on a number of things, including whether or not we send a Third secretary down there to have a look and find out. ... I do not know how we expect him or her to come out with a sensible report on that.[48]

11.37 This assertion was contested by both DIEA and DFAT. The Secretary DIEA stated that he had received assurances at the highest level when he was in the People's Republic of China (PRC) that unsuccessful applicants who returned would not be punished.[49] In a supplementary submission, DFAT noted similar Chinese assurances. The assurances were confirmed by evidence, for instance, in the case of the returned seven 'Jeremiah' boat people. DFAT stated that the Red Cross Society in China had carried out health and welfare checks some weeks after the arrival of the seven, all of whom seemed in good health and in their homes.[50] The Secretary DIEA admitted that the size of China, and the resources available to the Department, made it 'quite impossible' to maintain a constant monitor on each

47 ibid., pp. 237-38.

48 Evidence, 1 June 1993, p. 36.

49 Evidence, 4 March 1994, p. 1065.

50 DFAT supplementary submission, p. S446.

individual who returned, but to the extent that it is possible, DIEA will address claims made about the situation of individuals.[51]

Chinese Students

11.38 DFAT submitted to the Committee that most of the students returning to China would not be discriminated against for their political activities while living in Australia. DFAT also noted that the Australian Embassy in Beijing had confirmed that the PRC authorities had not 'treated harshly people who merely participated in demonstrations and rallies or undertook other non-leadership protest activities.'[52] DFAT assured the inquiry that they were aware of at least ten documented individual cases of students who played more than a participatory role in pro-democracy activities in Australia but who were not held accountable in China. Chinese newspapers in China and Chinese language newspapers in Australia tell of students who have returned to the PRC to become successful entrepreneurs and businessmen and that the Australian Embassy in Beijing and Consulate in Shanghai have confirmed these reports.[53]

The Cambodians

11.39 Similar assurances were given to a Senate Estimates Committee by the Secretary DIEA with regard to Cambodian returnees. He stated that the Australian Embassy in Phnom Penh together with the UNHCR representative was involved in a monitoring program for all returnees. This program was part of a package of assistance that DIEA provided and involved the returnees in continuing contact with the Australian mission either in Phnom Penh or through visits by the post to the primary cities to where these people had returned. So far, DIEA was 'fully satisfied' that all of the returnees were going through a successful process of reintegration.[54]

ILLEGAL TRAFFICKING IN PEOPLE

11.40 The Committee explored the question of illegal and criminal trafficking of people from the People's Republic of China through an organised exit route. The Refugee Council replied that they were aware of organised existing routes but

51 Evidence, 4 March 1994, pp. 1066-68.

52 DFAT supplementary submission, p. S445.

53 ibid.

54 Senate Hansard, Estimates Committee F, 11 May 1993, p. F40.

thought that this did not necessarily constitute trafficking. Even in such circumstances, the perpetrators and not the victims should be punished.[55]

11.41 DIEA acknowledged the existence of illegal trafficking of people from the People's Republic of China to the USA and to Australia. The Assistant Secretary, Compliance Branch, said that the character of the organisation behind the movement to the USA was not replicated in the movement to Australia; there was not the level or scale of organisation. Also, the cost per traveller to the US was of the order of $30,000, whereas the cost of travellers to Australia was significantly lower.[56]

11.42 A spokesperson for the UNHCR, Mr Fontaine, confirmed DIEA's assessment. He said that UNHCR was aware of illegal departures from China but believed the problem was the responsibility of the state of origin. Mr Fontaine suggested that the UNHCR could have discussions with the country of origin regarding appropriate measures aimed at discouraging people from leaving illegally. He also suggested that this course be taken up by other states individually and collectively and not left to the UNHCR.[57]

11.43 Mr Fontaine admitted, however, that UNHCR programs aimed at preventing Vietnamese refugees who had been granted asylum in China from leaving for Japan, Korea or Hong Kong had proved unsuccessful. Equally, he doubted the success of programs designed to deter the Chinese from leaving China illegally.[58] Mr Fontaine noted that Chinese departures were primarily from Fujian, Guandong and Hainan provinces. These, he said, have been the traditional exit routes of Chinese migration for the past 200 years, therefore, the current trend, or pattern, was not new, but merely interrupted by the revolution.[59]

11.44 The Hon Justice Marcus Einfeld of the Federal Court of Australia expressed a familiar maxim well when he stated human rights are not absolutes. One person's right is another person's obligation. Granting one person a right may remove or qualify the right of another.[60] The Committee is of the view that Australia's important obligation is the protection of the rights of those awaiting decisions to applications made through the legal channels. To this end, the Committee urges the Government to investigate allegations of traffic in illegal

55 Evidence, 4 March 1994, p. 1057.

56 Evidence, 4 March 1994, pp. 1060-61.

57 Evidence, 6 December 1993, p. 788.

58 Evidence, 6 December 1993, pp. 788-89.

59 Evidence, 6 December 1993, p. 789.

60 The Hon Justice Marcus Einfeld, *The New World Order Redefining Refugees: A Report on Three Asian Refugee Trouble Spots, Hong Kong, Bangladesh, Thai/Burmese Border*, p. 3.

departures to ensure that scarce resources are not used up for this category of entrants.

The Committee urges the Australian Government to recommend that the UNHCR conduct an investigation into the allegations of organised international traffic in illegal departures with a view to getting international agreement on the means to prohibit or limit such practices.

Chapter Twelve

CIVIL AND POLITICAL RIGHTS

> *To renounce one's liberty is to renounce one's quality as a man, the rights and also the duties of humanity. For him who renounces everything there is no possible compensation. Such a renunciation is incompatible with man's nature, for to take away all freedom from his will is to take away all morality from his actions. In short, a convention which stipulates absolute authority on the one side and unlimited obedience on the other is vain and contradictory.*[1]

The Committee continues to be concerned at human rights abuses in many parts of the world. However, this report can only deal with situations which have been the subject of direct representations to the inquiry. This chapter examines civil and political rights issues in a number of countries, even if such issues related to countries outside Australia's area of primary foreign policy focus. Accordingly, allegations of human rights abuses in China and Tibet, Kenya, the Sudan, Sri Lanka, the Balkans, and Israel and the Occupied Territories are examined, as well as the situation in countries closer to Australia's doorstep such as Vietnam, Burma and Indonesia. Regrettably, the human rights situation in a number of the countries examined has not improved since the Committee's last report in 1992, although progress has been made in others.

In addition, the Committee has addressed the issue of religious discrimination in a number of countries, and a relatively new human rights issue - the impact of global economic and industrial practices on the rights of our children and grandchildren to clean air and an unpolluted environment.

1 Jean-Jacques Rousseau, 1762.

INTRODUCTION

12.1 This chapter focuses on the civil and political rights climate in a number of countries, not all of which are in Australia's region. The following chapter, which is closely related to this one, looks at minority rights in a more general sense. In any review of human rights it is hard not to be selective, if only because resources do not permit a universal examination of human rights. It is impractical to attempt to look at every country. Accordingly, the Committee has confined itself to significant issues that were brought to its attention, even if those issues may be outside the region of Australia's primary foreign policy focus.

12.2 Australia is, legitimately, concerned with violations of human rights wherever they may occur. Human rights are universal rights and, as such, this review is not limited by concerns of geography or national self-interest. The order in which countries, regions and issues are mentioned in this chapter does not, in any way, reflect any ranking in terms of either their intrinsic importance or their relative importance to Australia.

BURMA

12.3 The Committee regrets that the human rights situation in Burma shows no convincing evidence of having improved since the publication of the last Review in 1992. It is evident that international condemnation, including the UNHCR's comprehensive resolution in 1993, has failed to halt the human rights abuses that are seemingly the norm in Burma, despite some progress having been made.[2] The SLORC commuted all death sentences imposed since it came to power in 1988, over 700 political prisoners were released, foreign visitors were allowed to see political prisoners for the first time, and Aung San Suu Kyi was allowed additional family visits.[3] Nevertheless, the continuing use of torture during interrogations, the denial of rights to fair and public trials, widespread disappearances, forced resettlements, denial of freedom of speech, assembly and movement, and the continuing use of forced labour put Burma at the forefront of those nations that continue to violate human rights seriously.[4]

12.4 These continuing patterns of human rights violations, while widely noted internationally, have not received the publicity that has been given to the detention of opposition leader Aung San Suu Kyi. Her continued house arrest is intolerable

2 In 1993 the UNHCR passed a resolution calling for an end to human rights violations in Burma, the unconditional release of opposition leader Aung San Suu Kyi and all other political prisoners, and the implementation of the 1990 election results.

3 *Country Reports on Human Rights Practices for 1993*, United States' State Department report to the Committee on Foreign Affairs, US House of Representatives, and the Committee on Foreign Relations, US Senate, February 1994, p. 587.

4 ibid., pp 587-596.

and the Australian Government should continue to press for her unconditional release in all suitable forums, including directly with Burmese authorities. Key Burmese officials met Aung San Suu Kyi in September and October 1994, although at the time this report was written, the reason remained unclear. Hopefully it represented a genuine desire for rapprochement, rather than a mere propaganda exercise associated with the meeting of the UN General Assembly.[5]

12.5 In addition, the Committee is concerned about the traffic in women and children across the Thai-Burma border, many of whom are believed to be being forced into prostitution in Thailand. This is a gross violation of human rights, and a related public health issue, deserving of urgent attention. The Committee feels that representations should be made by Australia to Thailand urging the authorities in that country to do more to stem the exploitation of these Burmese women and children.

12.6 After the overwhelming support given to the National League for Democracy at the 1990 elections, and while martial law continues to prohibit opposition to the military regime behind the SLORC and hundreds of opponents of the regime remain imprisoned, many without a trial and most after clearly unfair trials, Australia should not let up in the pressure it brings to bear on Burma.[6]

12.7 The Committee believes that the Burmese regime cannot defy the tide of history. Recent years have seen the dissolution of previously immovable totalitarian regimes in a number of parts of the world. It is only a matter of time before similar forces to those that have swept eastern Europe and southern Africa reach Burma. The Committee is pleased to note that the 1994 ASEAN conference in Bangkok set a series of benchmarks which the Burmese regime must meet to trigger closer relations with the region. The Committee accepts that the Australian Government is working hard to achieve positive change inside Burma, while noting that the ASEAN countries have the greatest leverage over that country.

TIBET AND CHINA

12.8 The Committee received a number of submissions on China and Tibet, including an detailed overview of the situation in Tibet from the Tibetan Information Office.[7] Other submissions included one from Chinese students in Australia at the time of the Tiananmen massacre, making representations about

5 See article "Burma Grabs Tiger's Tail of Democracy" by Philip Smyth, secretary of the Overseas Burma Liberation Front and council member of the ICJ (Australian section) in *The Australian*, 29 September 1994. Another meeting took place in late October.

6 *Amnesty International Report 1994*, p. 217.

7 Exhibit No. 136, *Situation in Tibet*, Tibetan Information Office. More detailed discussion of this exhibit is in Chapter 13 below.

their rights to on-going residency in Australia.[8] Once again, the Committee must state that it is unable to comment on the veracity of the allegations in the submissions.

12.9 In August 1994 the Vice President of the Tibetan Womens' Association (TWA) visited Australia and made a series of disturbing allegations about human rights abuses directed at Tibetan women.[9] The allegations concerned the population policies of the Chinese government and the ways in which these policies were imposed on the Tibetan community. Allegations of infanticide, forced sterilisation, forced abortion, employment discrimination based on family size, and reduced access to health and welfare services based on family size greatly concerned the Committee.

12.10 The TWA Vice President expressed concern also that her organisation would be denied accreditation to the World Conference on Women in Beijing in September 1995, with Tibetan womens' interests instead being represented by a Chinese womens' association sanctioned officially by the Chinese government. The Committee would be concerned if the TWA were not allowed to attend the conference and raise issues of particular concern to Tibetan women; it would be very regrettable if the actual situation of Tibetan women was not represented at this conference.

12.11 The Committee received a number of submissions regarding the human rights situation in China, including submissions on forced labour which is dealt with in Chapter Ten on *The Rights of Workers*.[10] The China Study Institute of Australia made a submission on the media and publishing in China, alleging that the 'control of news media and publications in China through the regime's propaganda system is the most prevalent, the most extensive and most serious form of mental persecution by which the regime seriously violates the freedom and rights of its people'.[11] The Committee believes that the global 'information revolution' must soon envelope China, particularly as its population becomes more affluent and its middle class more numerous, with many of the same social and political ramifications that caused the collapse of communism in eastern Europe in the late 1980s. The Chinese authorities may not be able to control the sources of information to their people for very many more years.

8 Chinese Students Human Rights Organization submission, pp. S1796-S1811.

9 For instance, see the article in *The Bulletin* on 22 August 1993 by Ms Tsering Norzon Thonsur, Vice President of the TWA, a group which promotes the political and social cause of Tibetan women both in Tibet and in exile.

10 See pages 171-175.

11 China Study Institute of Australia submission, p. S1574.

12.12 Another submission on China came from Wen Jin Chen and Feng Ye.[12] They alleged a range of serious human rights abuses by the Chinese authorities and called for the international community to maintain pressure on China on human rights issues by maintaining dialogue with the authorities in Beijing, disseminating democratic ideas through 'free radio' broadcasts, and closely monitoring specific human rights cases.

12.13 A case which is of particular concern to the Committee concerns an Australian national, Mr James Peng, who has been held in detention without trial or charges having been laid since October 1993. It is believed that Mr Peng was detained on matters relating to alleged financial irregularities. The Australian Government has made numerous representations to Chinese authorities on Mr Peng's behalf, asking that he be accorded a fair trial which meets internationally accepted standards of judicial practice, including having access to legal counsel of his own choice. While not in a position to comment on Mr Peng's innocence or otherwise, the Committee is greatly concerned by the fact that he was held in detention for a lengthy period without charges being laid.

The Committee recommends that:

- **in the eventuality of the Tibetan Womens' Association being denied accreditation to the World Conference on Women in Beijing in 1995, the Australian delegation to that conference be briefed fully on issues of specific concern to Tibetan women, with a view to ensuring that those issues are raised at the conference; and**

- **the Australian Government keep Mr James Peng's case under close review and keep making representations to Chinese authorities until such time as Mr Peng is given a fair trial and legal representation of his own choice.**

VIETNAM

12.14 Submissions to the Committee about Vietnam fell into two categories: those about alleged human rights violations inside Vietnam; and those about human rights violations in detention camps for asylum seekers, or 'boat people', in countries such as Hong Kong, Indonesia, Thailand, Malaysia and Australia.[13] The Committee is concerned about violations of human rights in both categories.

12.15 The Committee received a submission from the Vietnam Committee on Human Rights which spoke of widespread persecution of religious communities

12 Wen Jin Chen and Feng Ye submission, pp. S831-S850.

13 The issue of the human rights of asylum-seekers in Australia was discussed in the previous chapter.

inside that country, particularly Buddhist communities.[14] The Committee is concerned about such restrictions on religious freedom in Vietnam and asks the Australian Government to monitor the situation through the embassy and other appropriate avenues and bring all necessary pressure to bear on the Vietnamese government to allow complete freedom of religious assembly and worship.

12.16 Another disturbing submission was from an Australian resident who claimed to have spent over ten years in solitary confinement in Vietnam, without trial, during which time he was tortured.[15] Amnesty International reported that there were at least 60 prisoners of conscience in Vietnam in 1993 and, although 13 such prisoners were released, some political trials during the year 'appeared to fall short of international fair trial standards'.[16] Amnesty International also expressed concern about the arrests of Buddhist monks.[17] The US State Department made similar comments about Vietnam's human rights record in 1993, noting that Vietnamese authorities 'continued to limit severely freedom of speech, press, assembly, and association, as well as worker rights and the right of citizens to change government'.[18]

12.17 The Committee does, however, note that restrictions on travel have eased, contact with foreigners is more accepted, and there appears to be a slow separation of party and state in Vietnam.[19] While these are welcome developments, the Committee nevertheless feels that the Australian Government should continue to press for access to Vietnam for an Australian parliamentary delegation to foster a dialogue between the two governments on a range of issues, including human rights, in lieu of the visit that was cancelled in 1994.

The Committee recommends that:

- **the Australian Government continue to make representations to the Vietnam Government asking it to allow an early visit by an Australian parliamentary delegation to foster a dialogue between the two governments on a range of issues, including human rights; and**

- **the Australian Government closely monitor allegations of religious discrimination in Vietnam and bring all necessary pressure to bear on the Vietnamese government to allow complete freedom of religious assembly and worship.**

14 Vietnam Committee on Human Rights submission, pp. S787-S808.

15 Vo Dai Ton submission, p. S757.

16 *Amnesty International Report*, op.cit., p. 315.

17 ibid., p. 316.

18 *Country Reports on Human Rights Practices for 1993*, op.cit., p. 758.

19 ibid.

ISRAEL AND THE OCCUPIED TERRITORIES

12.18 There were claims of widespread violations of human rights in Israel and the Occupied Territories in the period under review, allegedly carried out by both Israeli authorities and Palestinian groups.[20] However, the Committee is gratified that there have, equally, been major improvements in the human rights situation in the region in the period due, largely, to the signing of the Israeli-PLO agreement. Notably, restrictions have been lifted on membership of or contact with the PLO, house demolition procedures have been curtailed, prisoners' rights have been expanded and the Israeli government is moving to increase spending on education and infrastructure in the areas newly controlled by the PLO.[21] Autonomy for the Palestinians over large parts of their lives will greatly improve their human rights, allowing Israel to enhance its reputation as a model democracy in the region.

12.19 Israel's key human rights problems arose largely from its policies and practices in the Occupied Territories. The submission by Mr Ali Kazak, the PLO's official representative in Australia, provides considerable detail of a range of human rights abuses perpetrated against the Palestinian people.[22] The Committee is greatly disturbed by his claims of indiscriminate killings, torture and deaths in detention, land confiscation, demolition of houses, attacks on Palestinian educational, cultural and social institutions, and imposition of curfews. The Committee trusts that the good record of civil and political rights enjoyed by Israeli citizens within Israel will soon be enjoyed by the Palestinians within the Occupied Territories as well. Progress since Mr Kazak lodged his submission in July 1993 is encouraging. The Committee commends the Australian Government for its efforts to bring about a lasting peace in the Middle East and, therefore, improve the human rights of all residents of that region. The Committee also notes with satisfaction the agreement between Israel and the Palestine Liberation Organisation, between Israel and Jordan and the potential for resolution in the conflict with Syria. The recent outbreak of terrorism is disturbing; however the Committee remains optimistic that the Middle East is working towards peace and stability.

20 Specific allegations of human rights abuses are set out in both the Amnesty International and Congressional reports referred to above (see pp. 170-172 and 1194 respectively). Allegations include administrative detention without trial, torture and extra-judicial executions.

21 *Country Reports on Human Rights Practices for 1993*, op.cit., p 1194.

22 Palestinian Liberation Organization submission, pp. S707-S729.

LEBANON

12.20 The Committee received representations on the arrest and imprisonment in the Lebanon of Dr Samir Geagea, charged with the killing in 1990 of a rival Maronite Christian politician, Mr Dany Chamoun, his wife and two sons following the defeat of the anti-Syrian Christian forces in Lebanon's civil war. A number of other members of the Lebanese Forces have been arrested since 1990. According to the last report from Amnesty International on the subject in August 1994, the organisation was not able to confirm whether charges had been laid against Dr Geagea. There were further reports of torture and ill treatment of a number of people, particularly those held at the Ministry of Defence, and the death in custody of one of those arrested.[23]

12.21 The Committee is concerned about the lack of information available about Dr Geagea and the other detainees. It urges that the prisoners should have access to members of the International Red Cross or Red Crescent societies; that international standards for the treatment of prisoners will be observed; that proper legal process will be followed in trials; that trials will be open to observers; and that legal counsel will be available.

KUWAIT

12.22 On 2 August 1990, Iraq invaded the Emirate of Kuwait. When the Iraqis were driven out seven months later they took with them 625 prisoners of war which included 617 males and eight females. The Kuwaitis numbered 558 and other nationalities 67. It is only in the past few months that Iraqi officials have admitted taking any prisoners of war.

12.23 The total population of Kuwait is estimated at approximately 1.4 million with 600,000 being Kuwaitis and the remainder expatriates of many nationalities. When considered as part of the total Kuwaiti population, the number of prisoners of war is a significant percentage and as yet nothing has been heard of the majority of them.

12.24 The Kuwaiti people and Government since the end of the Gulf War have sought the release, or even news, of the prisoners of war. On a recent visit to Kuwait by visiting Australian Parliamentarians, help was sought by His Highness the Emir, Sheikh Jaber Ahmed Al Jaber Al Sabah, His Highness the Crown Prince and Prime Minister, Sheikh Saad Abdallah Al-Salem Al-Sabah, the Hon Sheikh Salem Sabah Al-Salem Al-Sabah and a number of parliamentary members and relatives of the prisoners of war to have the POWs released and those deceased identified and the location of their remains passed on to their families.

23 Exhibit No. 157 p. 4.

The Committee recommends that the Australian Government seek the release of the Kuwaiti prisoners held in Iraq and the identification of those deceased through every avenue available.

SUDAN

12.25 Arguably, Africa is the continent which has suffered the longest and most consistently from human rights abuses. There can be no more fundamental human right than the right to food and water, yet, as our television screens have shown for many years, there seems to be always a part of Africa where that fundamental right is denied to thousands of people. On occasions, as in Rwanda in 1994, the world community eventually rallies, its collective conscience stirred by images of mass starvation and death. On other occasions, the suffering is less publicised and the help less forthcoming. One such instance which concerns the Committee is Sudan.

12.26 As the last review pointed out, the record in the Sudan in recent years has been one of appalling human rights abuses.[24] Comparatively unheralded in the outside world, there has been a civil war in the Sudan since its independence in 1955, broken only by a period of relative peace and stability from 1972 to 1983. The conflict has been between the largely Islamic/Arabic north and the Christian/black African south. The ruling regime, which took over after a military coup in 1989 and which represents the numerically larger northern community, has been ruthless in its prosecution of the civil war.

12.27 Again this year the Committee was presented with a submission by Mr Mariano D. Ngor, the representative in Australia of the Sudan Relief and Rehabilitation Association and the Friends of African Children Educational Foundation (SRRA/FACE Foundation).[25] While the Committee is mindful that it is unable to independently verify the allegations made by Mr Ngor, it is felt that there is enough supporting evidence of severe human rights abuses in the Sudan from organisations like Amnesty International to give cause for grave concern. The crisis there demands more attention from the international community. The absence of media coverage of the situation in the Sudan is a symptom of the problem, not a reason for indifference.

12.28 According to the SRRA/FACE Foundation, 'the military regime in Khartoum [is] determined to decimate the non-Arab population of the Sudan as a part of its strategic objectives to win the civil war'.[26] There is allegedly a policy of

24 *A Review of Australia's Efforts to Promote and Protect Human Rights*, AGPS, 1992, p. 109.

25 SARA/FACE Foundation submission, pp. S1062-S1066.

26 ibid., p. S1065.

massive ethnic cleansing carried out by Islamic fundamentalists.[27] Thousands of southern Sudanese are being abducted, enslaved and forced to work in the economy of the north, according to the SRRA/FACE Foundation, while some women and girls are being kept as concubines.[28] 'Sometimes slaves are killed when they cannot be sold, accept forced Islamisation or when their labour is no longer required by their masters.'[29]

12.29 The last Review noted the widespread use of detention without trial, the lack of freedom of speech and association, the harassment of trade unions and professional associations, the use of torture, the introduction of an Islamic penal code with punishments including amputation, stoning and public floggings and the mass displacement of people.[30] The Committee has no reason to believe that the situation in the Sudan has improved since 1992.[31] Accordingly, the Committee reiterates its recommendations from December 1992 that the situation in the Sudan must be raised again in the General Assembly.[32] As Australia was a signatory to the anti-slavery convention in 1926, the first international convention it signed, the Australian Government should draw the attention of the international community to the revival of slavery in the Sudan, resulting from the civil war there.

The Committee recommends that:

- **the Australian Government use the forums of the General Assembly of the UN to publicise the human rights abuses in the Sudan, specifically highlighting the revival of slavery in that country;**

- **the relevant Australian diplomatic post be asked to report, as a matter of urgency, on the human rights situation in the Sudan, particularly regarding the allegations about the revival of slavery in that country; and**

- **independent organisations, such as Amnesty International, be encouraged to continue to scrutinise and report on the human rights situation in the Sudan.**

27 ibid., p. S1064.

28 ibid., p. S1063.

29 ibid.

30 *A Review of Australia's Efforts to Promote and Protect Human Rights*, op.cit., pp. 109-110.

31 *Country Reports on Human Rights Practices for 1993* op.cit., p.277 suggests that there has been no progress in the past two years.

32 *A Review of Australia's Efforts to Promote and Protect Human Rights*, op.cit., p. 111.

KENYA

12.30 The Australian Human Rights Foundation made a joint submission with the Union for Democracy and Development in Kenya regarding human rights abuses in that country.[33] The submission alleges that, despite being widely held up as an African success story, Kenya is effectively a repressive one party state. Abuses of human rights such as the widespread use of torture, arbitrary arrests, detention without trial and unfair trials have been documented by organisations like Amnesty International.[34]

12.31 It is alleged that the Kenyan government initiated a campaign to incite the tribes loyal to the ruling party to attack people from tribes that were calling for democracy.[35] Around a thousand people may have died as a result of these clashes and thousands more made homeless.

12.32 According to this particular submission, 'Torture is so common in Kenya that anybody who is arrested as a suspect automatically expects it. It is not uncommon to hear people crying for mercy as you pass by police stations.'[36] The Committee is deeply disturbed by these allegations. Similar allegations were made by Amnesty International[37] and the US State Department's report spoke of serious setbacks in the Kenyan government's commitment to human rights, ethnic and political tolerance and the rule of law, despite 'a modest strengthening of democratic institutions' after the December 1992 elections.[38] Societal discrimination and domestic violence against women, especially rape and female genital mutilation, remained widespread.[39]

12.33 The Committee has a number of recommendations to improve the human rights situation in Kenya, which flow from those it made in its last Review.

The Committee recommends that the Australian Government make representations to the Kenyan government asking it to:

33 Australian Human Rights Foundation supplementary submission, pp. S890-S897.

34 *Amnesty International Report*, op.cit., pp. 182-184.

35 Australian Human Rights Foundation supplementary submission, p. S893.

36 ibid.

37 *Amnesty International Report*, op.cit., pp. 182-184.

38 *Country Reports on Human Rights Practices for 1993*, op.cit., p. 129.

39 ibid.

- **bring to an end human rights abuses in Kenya, including physical and psychological torture, detention without trial and state-sanctioned tribal fighting;**
- **restore the rights of assembly and freedom of expression under Kenyan law;**
- **treat all Kenyans equally before the law, regardless of ethnic background, and outlaw discrimination by any individual or body against any Kenyan on the basis of ethnic background; and**
- **improve physical standards inside Kenyan prisons, including medical care facilities, so that they accord with international standards and Kenyan law.**

INDONESIA

12.34 The Australia-Indonesia relationship is one of the most complex of all Australia's foreign relationships - yet it is among Australia's most important bilateral relationships.[40] The two countries are vastly different in culture and historical experience which has necessarily coloured the way the countries' respective legal, administrative and governmental institutions have developed.

12.35 The Committee certainly shares the view of the Australian Government that good relations between Australia and Indonesia are fundamental to regional stability and the security and prosperity of both countries. From time to time there will be disagreements between the two countries, as happened most notably in recent times following the Dili massacre in November 1991.[41] Such disagreements are to be expected in any mature bilateral relationship.

12.36 Nevertheless, the Committee is of the opinion that Australia should continue to voice its concerns about Indonesia's human rights record whenever warranted. The Committee is concerned particularly about the use within Indonesia of the Anti-Subversion Law, an issue which was highlighted in the last Review.[42]

40 For example, Mr Keating said at the second Australia Indonesia Ministerial Forum in Canberra on 23 August 1994 that no other country was more important to Australia than Indonesia. He went on to say, 'That's not to say that we won't encounter problems from time to time, or that we don't have to work hard to make the relationship work. Nor is it to understate the differences between our societies.' See *The Australian*, 24 August 1994, p.3.

41 The human rights implications of the Dili massacre were dealt with thoroughly in the Committee's last Review, published in December 1992 (pp. 69-76). Therefore, it is not intended to reiterate the points made in that Review.

42 *A Review of Australia's Efforts to Promote and Protect Human Rights*, op. cit., pp. 78-79. See recommendation at paragraph 6.32.

It seems that this law is used too often in an arbitrary manner to attempt to silence critics of the ruling regime, with little regard for the human rights of those charged under the law. The Committee asks that the Australian Government make representations to the Indonesian government seeking to have the implementation of the Anti-Subversion Law reviewed by an independent body such as Indonesia's Human Rights Commission or the International Commission of Jurists.

12.37 Many of Indonesia's human rights problems relate, either directly or indirectly, to the dominant role of the military in that country. The Committee appreciates that Indonesia's history has given the military a primacy not matched in westernised countries like Australia. Also, it is appreciated that close bilateral relations between Australia and Indonesia can serve to strengthen democratic forces and institutions in the latter. Nevertheless, the Committee urges the Australian Government to continue to press Indonesia to strengthen its democratic structures, reduce the role of the military in civil life in Indonesia and develop a greater respect for human rights. In this context, the Committee commends the Foreign Minister for rejecting Indonesian pressure to curb anti-Indonesian protests by East Timorese activists in Australia.[43]

12.38 A number of submissions received concerning Indonesia focused on the situation in East Timor.[44] A key issue arising out of the East Timorese situation since the Committee's first report in December 1992 is the trial and imprisonment of Timorese nationalist movement leader Xanana Gusmao. Although, ironically, Gusmao's trial had the beneficial effect of focussing international attention on the problems in East Timor, the Committee is concerned that his trial did not meet accepted standards of fairness, he was not permitted to choose his own lawyer, and he was not allowed to address the court because he wished to do so in Portuguese.

12.39 However, the Committee agrees with Foreign Minister Evans that the fact that the trial was open to diplomatic observers, to local and foreign media and

43 See the *Financial Review* of 25 August 1994, 'Evans Won't Bow to Indonesia on E Timor', quoting Senator Evans' response at a press conference the previous day to suggestions from Indonesia's Foreign Minister, Mr Ali Alatas, that Australia should move against the 'small but vocal group' of East Timorese who were allegedly harassing Indonesian diplomats in Australia.

44 Notably from the Australia-East Timor Association, Anthony Burke of the Department of Journalism and Social Analysis at the University of Technology, Sydney, and the East Timor Talks Campaign (prepared by Dr Herb Feith of Monash University). An official Indonesian view of the situation in East Timor was in *The Age* on 30 September 1994, when Mr Irawan Abidin, director of Indonesia's Department of Foreign Affairs, was reported as saying the province receives the largest amount of Indonesian development funds on a per capita basis compared with the other 26 provinces. He said this has produced hospitals, schools, roads and commercial activities where little or none existed under Portuguese rule.

to domestic and international human rights organisations, including Asia Watch, the ICJ and a UN observer, was a 'welcome development'.[45]

12.40 The Committee is concerned that the Red Cross has been denied access to Gusmao since the trial, despite the Indonesian government agreeing officially to allow such access.[46] The Committee regrets the way in which he was treated, particularly as he could be an important player in any long-term solution to the East Timor situation. The Committee notes unconfirmed but encouraging press reports that Indonesia may be thinking of starting direct negotiations between Gusmao and Indonesian authorities in 1995.[47]

12.41 The Committee urges the Australian Government to continue to monitor the situation of Xanana Gusmao closely and to urge Indonesian authorities to release him from custody to enable effective dialogue and negotiation on achieving a peaceful settlement to all those issues which relate to the East Timorese.

12.42 As well as continuing human rights problems in East Timor, there were on-going problems in the region of Aceh which received less publicity. Amnesty International reported that at least 2,000 civilians in Aceh had been extra-judicially executed between 1989 and early 1993, with very few official investigations into the killings being instituted.[48] Reports of torture and ill-treatment of political detainees, peaceful protesters and criminal suspects in Aceh and other parts of Indonesia concern the Committee greatly, and the Committee asks the Australian Government to continue to monitor such allegations closely and to make direct representations vigorously, as appropriate. [49]

12.43 The Committee welcomes the creation of a Human Rights Commission in Indonesia. Indications to date are that it is endeavouring to operate effectively, which is a significant advance in the human rights climate in that country. There are, of course, limitations on its ability to freely criticise the ruling regime. If the Indonesian Human Rights Commission proves to be a valuable instrument, this will represent a significant advance of the human rights climate of that country.

45 Senator Gareth Evans, Minister for Foreign Affairs, in the Senate on 24 May 1993, quoted in evidence given by the Department of Foreign Affairs and Trade, 1 June 1993, pp 60-61.

46 Australia-East Timor Association submission, page S1137.

47 See *The Australian*, 26 August 1994, 'Gusmao in Talks with Jakarta'.

48 *Amnesty International Report*, op.cit., p. 162.

49 ibid., p. 160.

The Committee recommends that:

- **the Australian Government make representations to the Indonesian government seeking to have the implementation of the Anti-Subversion Law reviewed by an independent body such as Indonesia's Human Rights Commission or the International Commission of Jurists; and**

- **the Australian Government continue to monitor the situation of Xanana Gusmao closely and to urge Indonesian authorities to release him from custody to enable effective dialogue and negotiation on achieving a peaceful settlement to all those issues which relate to the East Timorese.**

SRI LANKA

12.44 The Australian Human Rights Foundation presented the Committee with a joint submission on Sri Lanka with the Australian Tamil Association, about what is termed an 'horrendous situation which is usually ignored by the world'.[50] The submission commenced by thanking the Committee for its assessment of the history and responsibilities for the conflict in Sri Lanka, as set out in the last Review, but alleged that the human rights situation in Sri Lanka had since deteriorated sharply.

12.45 The core problem is the status of the Tamil people, who reside largely on the Jaffna Peninsula. The region, which is a traditional Tamil homeland with specific linguistic characteristics, is being gradually taken over by force by Sri Lankan authorities for the Sinhalese people.[51] In furtherance of this campaign, there is an economic blockade, including an embargo on food and medicine which, according to *Time* magazine, is causing the death of hundreds of people every month from malnutrition and disease.[52] This allegation is supported by a submission received from the Australasian Federation of Tamil Associations.[53]

12.46 The US State Department noted that although the Sri Lankan government took steps to institutionalise the protection of human rights in 1993, the pace of their efforts slowed in the second half of the year. More than 80 people died or disappeared after being taken into custody, and at least 250 civilians were killed by government forces during military actions.[54] Amnesty International reported continued torture and ill-treatment in custody and extra-judicial killings in the

50 Australian Human Rights Foundation supplementary submission, p. S882.

51 ibid., p. S885.

52 *Time*, 'Beyond Hell', 9 November 1992, quoted in Australian Human Rights Foundation supplementary submission, p. S883.

53 Australian Federation of Tamil Associations submission, pp. S1003-1007.

54 *Country Reports on Human Rights Practices for 1993*, op.cit., p. 1387.

northeast and south of the country.[55] In addition to abuses by official forces, the Liberation Tigers of Tamil Eelam, the key rebel group, were responsible for 'grave' human rights abuses.[56] The Committee condemns all human rights abuses in Sri Lanka, whether carried out by government or rebel forces.

THE BALKANS

12.47 A major European region that has been the focus of significant human rights problems in recent years has been in that area of the Balkans that was formerly known as Yugoslavia. The problems of ethnic minorities there and the violations of their human rights are examined in some detail in the following chapter. It is not intended to go into detail here about violations of social and political rights in the Balkans beyond saying that the Committee is greatly disturbed by atrocities such as summary executions and mass rape that were carried out in that region during the period under review. In addition, there were other types of discrimination, such as repression of trade unions, educational discrimination, and repression of legal rights which made the lot of minorities in the Balkans utterly intolerable. The situation is continuing.

12.48 The Committee does not intend to itemise particular human rights abuses, nor attempt to apportion blame to one group or another. In the Committee's view, a measure of blame lies on all sides and the only lasting solution is likely to come through internationally supervised negotiations, a willingness on all sides to compromise and the construction of a just and enduring peace. Such a willingness may take a long time to manifest itself, although eventually a weariness with conflict and a desire for peace is likely to overcome the intensity of even the oldest of hatreds. This has been the lesson of the 1990s in a number of places around the world, and the Committee is hopeful that the Balkans will, eventually, be no different.

RELIGIOUS, RACIAL AND OTHER DISCRIMINATION

12.49 The Committee was made aware of discrimination on religious and other grounds in a number of countries through several submissions. Buddhists in Vietnam and Burma, Jews in Syria, Christians in the Sudan, the Baha'is in Iran and Ahmadi Muslims in Pakistan are some of the groups that claimed to have been actively discriminated against.

12.50 The submission from the National Spiritual Assembly of the Baha'is in Australia claims that Iranian authorities are 'engaged in a systematic effort to oppress and persecute the Baha'is in Iran, with the ultimate objective of eliminating

55 *Amnesty International Report*, op.cit., p. 269.

56 ibid., p. 272.

them as a viable community'.[57] The Baha'is asked that the Australian Government monitor the human rights situation inside Iran with specific regard to people of their faith.[58] The Committee endorses this course of action, but with regard to all persons subject to human rights abuses in Iran, not just the Baha'is.

12.51 The Executive Council of Australian Jewry made a submission to the Committee urging the Australian Government to take a more active international advocacy role 'in support of victims of human rights abuses, particularly those resulting from racism, racial vilification, anti-semitism, xenophobia and intolerance and discrimination based on religion or belief', while noting that Australia's internal human rights performance must be above reproach.[59]

The Committee supports the ECAJ's call and urges the Australian Government to continue its condemnation of 'Holocaust denial', which the European Parliament has identified as a feature of contemporary European racism.

12.52 The ECAJ raised two specific matters which it said were worthy of the Committee's attention. Firstly, the ECAJ urged the Australian Government to make representations to Russian authorities on behalf of Mr Semyon Livshits, who is being held in Vladivostock and denied the opportunity to join his family in Israel. While the Committee is unable to vouch for the veracity of the ECAJ's claim that Mr Livshits' detention on criminal charges is a case of pure anti-semitism, it does urge the Australian Government to check on Mr Livshits' case through diplomatic channels.[60]

12.53 The second matter which the ECAJ urged the Committee to consider specifically is the alleged denial of human rights to Syrian Jews by Syrian authorities.[61] The Committee recommends that the Australian Government use diplomatic channels to get an up to date assessment of the human rights situation of Syrian Jews and, if necessary, make representations to the Syrian government on their behalf.

12.54 The Ahmadiyya Muslim Association of Australia provided the Committee with a submission detailing a decision of the Supreme Court of Pakistan prohibiting Ahmadis from using Islamic terminology in their religious observances.[62] The Committee, while not in a position to evaluate the propriety of a decision of such a

57 National Spiritual Assembly of the Baha'is of Australia submission, p. S695.

58 ibid., p. S697.

59 Executive Council of Australian Jewry submission, pp. S1157-S1158.

60 ibid., p. S1163.

61 ibid., p. S1164.

62 Ahmadiyya Muslim Association of Australia submission, pp. S1517-S1566.

learned bench, notes that this is another allegation of religious intolerance and discrimination.

The Committee recommends that:

- **the Australian Government use diplomatic channels to check with Russian authorities on the situation of Mr Semyon Livshits, currently in detention in Vladivostock;**

- **the Australian Government use diplomatic channels to get an up to date assessment of the human rights situation of Syrian Jews and, if necessary, make representations to the Syrian government on their behalf; and**

- **the UN Human Rights Commissioner monitor the human rights situation inside Iran, with particular reference to any restrictions on religious freedom in that country, especially regarding the Baha'is.**

ENVIRONMENTAL RIGHTS

12.55 It can be argued that the state of the environment is now on the human rights agenda. If the right to existence is the most basic of all human rights, that right may well be under threat in specific places as well as in a global sense when phenomena such as global warming and the 'greenhouse effect' are considered. As the Australian Democrats argued in their submission, the right to existence is 'intrinsically related to the need to protect the world environment'.[63] The Committee concurs with the view that the right to breathe fresh air and enjoy an unpolluted living environment is a fundamental right which is being widely ignored in many countries due to global economic and industrial practices. The Committee recognises that everyone should have the right to economic development, but believes the costs of global environmental degradation should be weighed carefully against short-term economic gain. Increasingly, we must all be aware of the world we leave to our children and grandchildren.

63 Australian Democrats submission, p. S680.

Chapter 13

MINORITY RIGHTS AND SELF-DETERMINATION

States should increasingly replace coercive power with responsibility and accountability, which are the essence of democracy. This should be done by accommodating all groups on a basis of equal respect for their identity, allowing for effective participation and ensuring consultation whenever their interests are affected by decisions made at the centre.
Asbjorn Eide[1]

This chapter examines, in the light of situations brought to the attention of the Committee, the problems that arise for states because of the demands by minority groups for self-determination and independence. The Committee believes that governments cannot maintain national cohesion by force and the continual oppression of minorities. And it supports the proposition that effective and successful multi-racial/multi-ethnic states need to express their diversity in institutions and political structures which genuinely accommodate the aspirations of their minorities. Failure to make that accommodation, and worse, abuse and oppression of minorities, gives moral force to claims for independence and secession.

THE CONTEXT

13.1 The final chapter of this report is long, and rightly so, as it deals with what is becoming the central, most vexed and urgent issue facing the UN and a major threat to world security - the burgeoning claims of minorities around the world for recognition and a voice.

13.2 The tension which pervaded the world during the Cold War has, with the end of that struggle, paradoxically, been replaced by even greater uncertainty, unrest

1 Eide, Asbjorn, *New Approaches to Minority Protection*, Manchester Free Press, December 1993, p. 11.

and violence. What has emerged are struggles for self-determination or independence of ethnic, nationalist or minority groups, freed from the constraints of strong authoritarian states.

13.3 The majority of the material placed before the Committee in this inquiry concerns complaints about the persecution of minorities. The conflicts are usually on the grounds of race or religion and, although each situation has an individual history, a similar pattern does emerge. The national government denies the existence of the separate identity of the minority, it refuses to allow the teaching of the minority language, there is no right to assembly or ethnic press, there are restrictions on entry into tertiary institutions or public service employment, there are restrictions or prohibitions on the acquisition of land and on religious practice and protest is treated as subversion.

13.4 The status of minorities within the United Nations treaty system has been a contentious one. While the UN recognises a right to self-determination and acknowledges that colonial empires left legacies of unfulfilled nationalist aspirations with which its pronouncements on self-determination attempt to deal, it also recognises the importance of maintaining the sovereignty of states and their existing national borders as a vital element of international security. In the light of the current ferment over minority rights, this Committee believes the debate on self-determination will be one of the most important debates for the members of the United Nations in the coming years.

13.5 In Europe, the evolution of borders throughout the nineteenth century, based as they so often were on claims of nationalism, inevitably, because of the movement and mix of people over time, created minorities. And these minorities were created in a climate where the notion that states should contain national groupings and that each national group had a right to a separate state appealed strongly. The appeal of nationalism in the nineteenth century lay in the fact that it was combined with liberalism which thereby assumed that the new states would be self-determining in the sense that government institutions would be responsive to the people, reflect their wishes and govern in their interests. This was never achieved in any pure form.

13.6 Borders throughout the rest of the world were often the product of empire building. They reflected the military power of particular states or the diplomatic deals done between powerful states. They paid little heed to the ethnicity or religion of the people they encompassed. The decolonisation process which broke up the European empires after the Second World War maintained those borders largely as a matter of custom and administrative convenience, so that in Asia, Africa and the Pacific the relationship between national borders and the racial, ethnic, tribal or religious groupings is very tenuous. The idea of the nation was overlaid on the new states.

13.7 Therefore, national borders have not been established in a pure form and governments have not proved to be responsive to all groups in their states. In the twentieth century the idea of nationalism has been brought into disrepute by the

extreme interpretation placed on it by those advocating racial purity and ethnic cleansing. In practice nationalism has not preserved the rights of individuals or groups nor has it ensured peace and stability. Any attempt to redraw borders to reflect national groupings would seem to be fraught with the danger of endless disputes leading to the inevitable and continuous creation of new minorities.

13.8 Consequently, this Committee believes it is time to reassess the concept of the modern nation as something different from the traditional idea of a group of people with common racial, linguistic, religious or cultural heritage. It would seem to be more realistic to strengthen the idea that state borders are historical accidents and matters of convenience and, far from being nation states, most states are multicultural, multinational organisms which, in the interests of justice and harmony, must find ways of including all their people in the processes of government.

13.9 Internationally, there is a long-standing recognition that oppression and inequality are the basis of much conflict and that persecution, far from making a state homogeneous, strengthens the idea of separateness in the minority and encourages demands for secession. The United Nations recognised the linkage between the protection of human rights and the preservation of peace in the Charter and elaborated the idea in the two covenants. However, the UN also based its right to action almost exclusively on the basis of external disputes. Rights to self-determination were mostly to be interpreted in the context of decolonisation, and then the decolonisation of European empires. The integrity of the new states was to be preserved.

13.10 However, post Cold War disputes are often internal and they often involve the minorities' claims to independence in the face of oppression and persecution. Many of these claims are based on legitimate grievances caused by partisan or ill-advised policies which exclude significant groups of people from full participation in the national life or which prevent reasonable expression of cultural heritage in the name of national homogeneity or majority hegemony. There is, of course, a danger in blanket explanations for conflicts and each circumstance and claim for self-determination must be judged on its merits; its historical context, its development and the nature of the conflict.

13.11 Nevertheless, such conflicts are rarely tales of simple oppression. Agitation against the government on the part of opportunistic politicians exploiting the fears of minorities is not unknown. Where manipulation of a minority occurs and particularly where it is accompanied by violence, the outcomes are often to the detriment of the whole society, the minority and the majority. There are also notable examples of minority oppression of majorities. As with all rights, finding the balance between the rights of one group and another is a matter of fine judgement; a judgement whether the demands of particular groups for their rights represent the legitimate and enriching demands for cultural diversity or the destructive and disintegrating policies of separatists.

THE ROLE OF THE UN

13.12 In the light of this shift in the cause of much of the world's conflict to internal ethnic and nationalist disputes, the orientation of the United Nations needs to change. There are a number of changes already taking place: peacekeeping has broadened into humanitarian missions and into the settlement of long, internal struggles such as Cambodia; the definition of self-determination is undergoing reassessment with greater emphasis on the link between self-determination and government based on the popular will of the people; and there have been moves to strengthen the mechanisms for monitoring and enforcing the human rights regime within the UN through the creation of monitoring committees, special rapporteurs, individual complaint mechanisms and thematic working groups.

13.13 There is a further need to improve the coordination of the various agencies of the United Nations especially where the dissemination of information will allow, in the early stages of a conflict, assistance to states experiencing unrest. Preventive action and peacebuilding measures before disputes reach intractable levels are important and they will cost less than the massive peacekeeping operations the UN has launched to meet the disasters which have developed in places like Somalia or the former Yugoslavia.

13.14 Of equal importance, the international community, through the United Nations, should stress the seminal importance of the protection of human rights for international peace and security. Leaving aside the more contentious philosophical debate on whether rights are inherent, this linkage between the protection of human rights and international peace and security makes human rights a universal concern. While it is the responsibility of governments to ensure the human rights of their citizens, that does not make human rights an internal matter. The standard of human rights to which all people are entitled is set out and agreed to by international treaty because the violation of human rights affects international security.

13.15 Human rights, therefore, place limitations on national sovereignty because the abuse of human rights brings into question the ability of a government to govern for all its people. Governments are destructive of their own sovereignty when they abuse their populations. In particular the abuse of minorities creates demands for separation thereby undermining both the nation state and international order. In these circumstances, regional countries and the international community have both a right and a responsibility to act. Asbjorn Eide, the Director of the Institute of Human Rights and member of the United Nations Sub-Commission on the Prevention and Protection of Minorities, wrote on the question of sovereignty:

> [States] enjoy sovereignty basically in the same way and to the same extent that individuals enjoy freedom; that is, to the extent compatible with equal enjoyment of sovereignty with other states. ... Freedom for individuals cannot exist without some form of organised order administered by the state; nor can the enjoyment of sovereignty by states exist without some degree of international order. ... States have responsibilities under international law in regard not only to other states but also to the individuals under their jurisdiction.
>
> Sovereignty is therefore both necessary and limited. It is necessary so that states can organise their internal protective order without interference from other states, and also to ensure their territorial integrity and political independence. Sovereignty is limited however by the obligation to cooperate in building a global order.[2]

13.16 There is a series of measures within the UN which address the rights of minorities: the Universal Declaration of Human Rights (Article 26), the International Covenant on Civil and Political Rights (Article 27), the International Covenant on Economic, Social and Cultural Rights (Article 13), the Convention against Genocide, and the International Convention for the Elimination of all Forms of Racial Discrimination. Minority rights are also dealt with in a number of declarations: the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religious Belief and the UNESCO Declaration on Race and Racial Prejudice.

13.17 These measures have been consolidated in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UNGA in Resolution 47/125 1992. (See Appendix 10 for the full text). The Declaration stresses:

- the relationship between this declaration and the other human rights treaties in the overall protection of rights;
- the obligation of states not only to protect the existence and identity of minorities but also to promote them positively ;
- the right of minorities to full inclusion and participation in the life of the nation, particularly its political and economic activity;
- the importance of balancing the rights of minorities with the principle of equality; and
- the importance of balancing the rights of minorities with the rights of states to preserve territorial integrity.

2 Eide, Asbjorn, *New Approaches to Minority Protection*, A report of Minority Rights Group International, London, 1993-94, p. 9-10.

13.18 Evidence brought before the Committee outlined numerous instances of the abuse of minorities. In terms of which rights are affected, there is considerable overlap in the evidence as many of the complaints can be defined as abuse of civil and political rights, racial discrimination, religious discrimination or matters relating to indigenous people. These issues are be dealt with in Chapters 6, 8, 9 and 12 of this report. Furthermore, the Committee is not able to verify any of the matters brought before it on ethnic disputes in other parts of the world; very often only one side of a story is presented to it. Therefore any presentation of situations involving minority rights in this report is descriptive rather than analytical and the Committee directs readers to the accompanying volumes of submissions and evidence for details of the cases presented to it.

13.19 Nevertheless the Committee believes that information concerning conflicts and human rights abuses brought to such forums as the human rights committee of a national parliament is valuable insofar as it alerts the international community to problems and provides important avenues for the dissemination of information about such problems.

13.20 **At this point in the report the Committee wishes to make particular note that with all submissions on disputes in other parts of the world, it is difficult from the distance of Australia and without the capacity to make a thoroughgoing investigation of claims and counter-claims to decide where the balance of the truth lies. Both in this chapter and in Chapter 12 information is presented with confirmation as far as possible from reputable international human rights agencies.**

THE BALKANS

13.21 It would appear from the weighty submissions made to the Committee from the Balkans that the problems of minorities in this area are acute. It is also remarkable and ironic that the complaints of one group are so often mirrored by others. The minority in one country is very often the majority in a neighbouring country.

13.22 The **Macedonian Australian Human Rights Committee of New South Wales** wrote to the Committee about the position of the Macedonian minority in Bulgaria.[3] In this instance no numbers are available. It is claimed that since the 1950s the Bulgarian Government has denied the existence of the ethnic Macedonian minority and has instituted a system of Bulgarisation. According to the submission, in Bulgaria, as in Greece, claims of Macedonian ethnicity are seen as separatism and subversion. Those involved in Macedonian human rights organisations working for

3 For the purpose of this report and in discussing the claims of the various ethnic groups made in submissions to the Committee, the Committee will use the word Macedonian as it is used in the submissions.

minority recognition, the use of language, religion and freedom of culture and employment, have been attacked by police for anti-Bulgarian activities.[4]

13.23 The Macedonian Human Rights Committee of NSW sought recognition of the Macedonian Orthodox Church, inclusion of Macedonians in the political life of Bulgaria, education in the Macedonian language for ethnic Macedonians, a cessation of discrimination in areas of education, employment, cultural, social and political life and the freedom of movement and freedom of association of Macedonians in Bulgaria. They also sought an independent census to determine the numbers of ethnic Macedonians in Bulgaria.

13.24 The Committee also heard from the **Pan Macedonian Association of Melbourne and Victoria** about concerns for the Greek people living in the Former Yugoslav Republic of Macedonia (FYROM). They estimated the number of people of Greek origin at 250,000 although they said that the Government of FYROM acknowledged only 100,000. The Committee was told that these people were denied use of Greek Orthodox Churches, their own schools, the use of the Greek language and freedom of expression.[5]

13.25 This organisation also claimed that there were other substantial minorities in FYROM: 17 per cent Serbs, 28 per cent Albanians, 10 per cent Bulgarians and 11 per cent Greeks and an unspecified number of Gypsies.[6] They were also concerned about the position of Greek children taken to Yugoslavia during the Greek Civil War 1946-1949 who had never returned to Greece and had, they claimed, been forcibly made Slavic in name and language.[7] The Pan Macedonian Association impressed upon the Committee that an independent census was a necessary basis for better policies in relation to the ethnic minorities of FYROM. The European Union conducted a census in November 1993.

13.26 The **Aegean Macedonian Association of Australia** represented the concerns of the Macedonian people living in Greece. The numbers were not known. The Greek Government, they said, denied that they existed at all. Representatives of the Association claimed not only that they existed as a distinct group but that there was no freedom of expression, that the use of the Macedonian language and attendance at the Macedonian Orthodox church was restricted and that there were no schools teaching in the Macedonian language.[8]

4 Macedonian Australian Human Rights Committee submission, p. S766.

5 Pan Macedonian Association submission, p. S645.

6 Evidence, 14 October 1993, p. 293.

7 Evidence, 14 October 1993, p. 294.

8 Evidence, 29 October 1993, p. 525.

13.27 They provided volumes of material which can be accessed in the volumes of evidence and submissions. Much of this material recounted particular incidents and cases involving human rights campaigners working on behalf of the Macedonian minority in Greece. Amnesty International Reports have been cited in support of a number of these cases, particularly on matters relating to freedom of expression in the case of Hristos Sideropoulos and Tasos Boulis.[9] The representatives of the association claimed at the public hearing that 'the changing of borders is really not something we are concerned with.'[10]

13.28 The Aegean Macedonian Association also brought up the question of the child refugees from the Civil War. They described the plight of Macedonian children, numbering 28,000, exiled into Czechoslovakia, Hungary, Poland, Yugoslavia, Rumania, Bulgaria and Albania during the Civil War. They told the Committee that, while in 1990 the Greek Government sponsored the return of 100,000 refugees from the former Eastern Bloc countries, they precluded through Law 10684/82 and Law 1540/85 the refugees of Macedonian origin.[11]

13.29 The **Committee for the Support of the Rights of the Greeks of North Epirus** presented to the Committee information about the minority of ethnic Greeks living in Albania. They estimated the number at approximately 200,000, a number considerably reduced, they said, since the First World War when there were 400,000. They claimed that under the communist regime, since 1944, this minority had been persecuted: they were restricted in the use of their language and their religion, prevented from standing candidates for the 1991 elections in the Greek political organisation, Omonia, and that Greeks in villages had been terrorised and pressured to leave.[12]

The Committee suggests that the Australian Government make representations to the Governments of Greece, Macedonia, Bulgaria and Albania concerning the rights of minorities within their states, to freedom of speech and association, rights to use their own language, practice their own religion, preserve their culture and rights to full participation in educational and employment opportunities within the state.

13.30 The complex difficulties of ethnic and national mix are also evident in Greece and Turkey. The **Hellenic Council of New South Wales** submitted that Greek minorities in Albania and Turkey suffered discrimination. In Albania they repeated the views expressed by the Committee for the Support of the Rights of the Greeks of North Epirus. There, and in Turkey, it is notable that the complaints also echoed the complaints of the Macedonian minority in Northern Greece: harassment by police, denial of free expression, denial of equality of education and control of

9 Aegean Macedonian Association submission, p. S661-2.

10 Evidence, 29 October 1993, p. 530.

11 Aegean Macedonian submission, p. S668-70.

12 Evidence, 14 October 1993, p. 299-301.

schools, denial of religious freedom, expropriation of community property, denial of ethnic identity, pressure on the group to leave the area (ethnic cleansing) and restrictions on the teaching of history, language and culture.

13.31 In Cyprus, the problems were more acute. Turkey invaded Cyprus in 1974 and after twenty years the United Nations, including Australia, continues to supply peacekeeping forces (police) to maintain the separation of the Greek and Turkish communities. Of particular concern was the fate of 1,619 missing Cypriots who had disappeared at the time of the invasion.

The Committee urges the Australian Government, through agencies such as the International Committee of the Red Cross and the Red Crescent or the Commonwealth Human Rights Unit in London, to encourage the Turkish Government to trace the missing Greek Cypriots and provide information to their relatives on their fate.

13.32 The situation in Kosova, presented to the Committee by the **Albanian Democratic League for Democracy**, represents a denial of majority rights through military occupation. It has been well documented by reputable human rights organisations, Amnesty International, the Congressional Human Rights Foundation and Helsinki Watch. The US State Department has described it 'as one of the worst human rights problems in Europe.' Resolutions have been passed both by the CSCE and the UN Human Rights Commission calling for action.[13] It seems to the Committee that the situation in Kosova is one where the warning signs of pending danger are clear and where peace would be served by pre-emptive action by the UN.

13.33 Kosova was the eighth province of Yugoslavia; however it is 90 per cent ethnic Albanian. In 1990 the Parliament was suspended after it voted for Kosova's independence and a state of emergency was declared. Dr Ibrahim Rugova was elected President by 88 per cent of the one million eligible voters in internationally supervised elections in 1992. This outcome has been rejected by Belgrade. In presenting the problems of Kosova to the World Conference on Human Rights in Vienna, the Prime Minister (in exile), Dr Bujar Bukoshi said:

> There are now at least 40,000 Serbian soldiers and 25,000 heavily armed Serbian police in Kosova. Local Serbs who represent eight per cent of the population have been heavily armed. Serbian paramilitary units roam freely throughout the region, intimidating Albanians daily. Serbian warplanes regularly overfly Prishtine, harassing and frightening civilians. Serb militia men block roads throughout Kosova, stopping and searching Albanians with impunity. ... Such martial laws are necessary to enforce Serbia's blatant apartheid, which since 1989 has closed our schools and universities, decimated our hospitals and medical facilities,

13 Albanian Democratic League of Kosova submission, p. S975.

> forced hundreds of thousands of Albanians into jobless citizens and ruined our economy and infrastructure.[14]

13.34 The problems of Kosova have been clear to the international community for some years now. Kosova is a situation where the UN should take preventive action in monitoring human rights abuses and intervening early to facilitate negotiation over the status of the province. The Committee believes this would be beneficial in both the immediate protection of rights and in the longer term preservation of peace. Therefore, the Committee urges the Australian Government to press for UN and European Union intervention to seek to resolve the conflict between the people of Kosova and the Serbian authorities.

The Committee believes the situation in Kosova requires urgent attention from the international community, both in identifying human rights abuses and in seeking negotiations between the Government of Serbia and the representatives of the majority of the people of Kosova. The Australian Government should urge the European Union and the United Nations towards these processes.

13.35 If Kosova is a potentially explosive situation, Bosnia-Herzegovina embodies the worst features of ethnic and nationalist conflict. Since the last report of the Committee in mid 1992, the war in the former Yugoslavia has spread into Bosnia-Herzegovina with disastrous results for the people of that region. The Committee received evidence on the war from the **Australian Croatian Community Council, the Republic of Croatia** and the **Serbian National Federation of Australia.** The Committee is grateful for the very large amounts of material supplied, containing details of all aspects of the war. Again the Committee directs readers to the volumes of evidence and submissions for much of this detail.

13.36 Many of the documents supplied were reputable reports from the United Nations Special Rapporteur of the Commission on Human Rights, the International Committee of the Red Cross, Helsinki Watch and the Conference on Security and Cooperation in Europe. The Committee gives considerable weight to the findings in such reports, although it acknowledges that the final truth of the war will probably not be known, if at all, until distance and thoroughgoing investigation can provide some perspective.

The Process of 'Ethnic Cleansing' in the Former Yugoslavia Republic

13.37 In this chapter dealing with minority rights, the Committee was most concerned with the process of 'ethnic cleansing'.

13.38 If the world is to understand anything about the evil associated with extreme nationalism and cultural intolerance, and the importance of ensuring minority rights, the war in the former Yugoslavia provides graphic evidence. Ethnic cleansing is an intolerable process in every aspect. It represents a gross violation of human rights and a crime against humanity. The Committee acknowledges that although the term is new, the process is as old as history and widespread in many parts of the world. It was practised on a massive scale during the Second World War and it underlies, to some extent, problems in many other parts of the world.

13.39 Most reports presented to the Committee saw the prime perpetrator of ethnic cleansing in the war in the former Yugoslavia as the Serbian forces. The International League of Human Rights is quoted:

> 'Ethnic Cleansing' is a policy goal and not just the result of the conflict ... the Serbs in Croatia and Bosnia and Herzegovina are overwhelmingly responsible for the forced displacement of people. ... The fact that cleansing has not been confined to Serbian majority areas suggests that the goal is not just Serbian homogeneity, but control over territory and institutions.[15]

Human Rights Watch agreed:

> The Serbian policy of ethnic cleansing involves the summary execution, disappearance, arbitrary detention and forcible displacement of hundreds of thousands of people on the basis of their religion or nationality ... the goal is to rid all Serbian controlled areas of non-Serbs, or at least to diminish their number significantly.[16]

The process itself was described in United Nations Security Council documents in the following terms:

> The initial attacks on cities and towns by Serb forces involves a massive and disproportionate use of force leading to their capture. The basic scenario following the occupation by Serb forces of a village or town involves the establishment of so-called 'military authorities' often consisting of local chetniks who know both the area and the people. These 'authorities' then prepare lists of non-Serbians. Following this, there are arbitrary arrests, beatings, summary executions, destruction of property, internment of men into concentration camps and the rape of women. Finally the remaining non-Serb population is expelled.[17]

14 Albanian Democratic League of Kosova submission, p. 976.

15 Quoted from Australian Croatian Community Council submission, p. S1620.

16 ibid.

17 ibid., pp. S1620-21.

13.40 The Special Rapporteur of the Commission on Human Rights, Mr Tadeusz Mazowiecki, interviewed large numbers of people who had been displaced by this process. 'Over and over again,' he said 'witnesses express their incomprehension at what has happened between neighbours who previously had not made distinctions based on nationality.'[18] These kinds of comments suggest that ethnic cleansing is in part the result of hostilities, deep-seated but not naturally felt, deliberately and consciously whipped up by political forces.

13.41 The Serbian military forces have made large territorial gains occupying three-quarters of Bosnia-Herzegovina and one-third of Croatia. The Special Rapporteur commented on the systematic nature of ethnic cleansing as:

> Methods by which a violent change in the demographic map of Bosnia-Herzegovina has been achieved, leaving 810,000 people displaced internally and 700,000 refugees in other countries.[19]

The Special Rapporteur in his report also stressed that Croats and Muslims were not the only victims of ethnic cleansing.

> Serbs who refuse to cooperate with this policy have also been victimised. There are reports of arbitrary executions of such Serbs, for example, in Teslic, on 2 June 1992 when three Serbs were reportedly killed for refusing to cooperate with the Yugoslav National Peoples' Army (JNA) and the Serbian Democratic Party militia in persecuting Muslims and Croats.[20]

Furthermore, he reported:

> There are accounts of ethnic cleansing being carried out by Croat forces in the area of Prozor towards the end of 1992. Clashes between Muslims and Croat forces resulted in as many as 3,000 Muslims fleeing into the mountains in October 1992. There are reports of large scale arbitrary detention of Muslim men, women and children by Croat forces.[21]

18 Exhibit No. 72, *Situation of Human Rights in the Territory of the Former Yugoslavia*, Report of Mr Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, E/CN.4/1993/50, p. 8.

19 ibid., p. 7.

20 ibid.

21 ibid., p. 9.

13.42 However, as the war has progressed throughout 1993, ethnic cleansing involved Croatian and Muslim forces in their battle for control of central Bosnia-Herzegovina. A major Muslim offensive in 1993 'cleansed' 187 Croatian villages and created 100,000 displaced people and refugees. In Bosnia-Herzegovina the number of Croatian refugees created by Serbian attacks numbers 210,000.[22]

13.43 The numbers of displaced persons and refugees in Croatia as a result of the war were reported to the Committee as:

Registered displaced persons	- 252,964 (29 April 1993)
Registered refugees	- 271,272 (18 June 1993)

13.44 At this time, in Croatia, it was claimed, eighty per cent of the refugees were Muslim.[23]

13.45 In its submission to the Committee, the Republic of Croatia emphasised that it gave a high priority to human rights and to minority rights. The submission listed a number of facts in support of this:

- Croatia has become a party to the main human rights treaties (ICCPR, ICERD, CAT).
- Fundamental freedoms and respect for individual and minority rights are embedded in Croatia's constitutional practice and forms a cornerstone of its democratic system.
- Croatia has sheltered over half a million refugees from Bosnia Herzegovina, mainly Muslims.
- It has sponsored joint initiatives and meetings designed to end tensions and normalise relations.[24]

13.46 As in the first inquiry the **Serbian National Federation of Australia** sought to redress the balance on what it believed was biased and partisan reporting of the war. The Federation presented to the Committee both video (a BBC Channel 4 program on the distorted Western media coverage of the break up of Yugoslavia) and academic analysis (See List of Exhibits, Appendix 3). The Serbian National Federation presented a large amount of information, much of it historical, which gave background to the conflict between Serbs and Croats. They drew attention to 'the plight of Serbian people from those regions [within Bosnia and Croatia which]

22 Exhibit No. 72e, p. 10.

23 Australian Croatian Community Council submission, p. S1619.

24 Republic of Croatia submission, p. S1725-26.

has received little attention from the international community.'[25] They claimed that:

> Serbs have been vilified and proclaimed aggressors in both Croatia and Bosnia, plus accused of all terrible acts against humanity. ... [They described] the wilful destruction of Serbian Orthodox Churches, forced evictions, detention and imprisonment of Serbs. ... Village after village has been completely destroyed and inhabitants killed by either mass execution or in other barbaric ways, but the silence from the international community is deafening.[26]

13.47 The Federation put the proposition to the Committee that the dispute had its origins in the premature recognition of the new states emerging from the former Yugoslavia, Slovenia, Croatia and Bosnia-Herzegovina. This, they said, was in contradiction of the principles of the United Nations to uphold the territorial integrity of member states.[27] They further put to the Committee that the United Nations had a humanitarian role in the conflict and that there was a place for the war crimes tribunal so long as it retained its objectivity and outcomes were not prejudged by the media.[28]

13.48 A further problem, particularly for the Serbian community in Australia, related to the sanctions regime.

> [T]he way in which the sanctions operate means that, unlike sanctions which operate in other countries in the world - for instance, Libya or Iraq - we have a situation where last April the existing sanctions on Serbia were tightened to the point where even humanitarian aid is denied access into Serbian Montenegro unless there is specific approval from the United Nations Sanctions Committee. ... We have had, in the last two months, a series of complaints from citizens who are trying to send medicine by mail into Serbian Montenegro.[29]

13.49 The Committee notes with concern that the situation in the Balkans has worsened since its last report: the war has produced death and destruction on a huge scale; human rights abuses pervade every aspect of the conflict and no side is innocent, although the scale of aggression and ethnic cleansing, from all reports, appears to have been much greater on the part of the Bosnian Serbs; progress towards a negotiated settlement seems still to be elusive; agreements continue to be made and broken before they can be implemented; and the European Union and the international community is as paralysed as before, unable either to intervene or to effect a solution diplomatically. Had the Europeans intervened earlier, this terrible war may not have occurred.

13.50 There are lessons to be learned for the process of international action and peacekeeping. However, the most significant long term lessons are in preventive diplomacy and peacebuilding, particularly where that can be achieved through the protection of minority rights. If the current situation in Kosova, Macedonia, Greece and the remaining states of the Balkans as presented to this Committee are any indication, the lessons on the importance of early peacebuilding action have not been learned.

KURDISH MINORITIES

13.51 The situation of the Kurdish people is particularly difficult as there is no state of Kurdistan. All Kurdish people are minorities. There are Kurdish minorities in Iran, Iraq, Syria and Turkey. In the submission of the **Kurdish Institute of Australia**, the numbers of Kurds were estimated unofficially at 30-35 million[30]. *Time* magazine in an article on the Kurds in April 1991 stated that the estimates varied widely from 14 to 28 million.[31] There is no separate Kurdish state, although since 1991 the Kurdish people above the 36th parallel in northern Iraq live in a UN protected zone.

13.52 The story told by the Kurdish Institute of Australia and the **Kurdistan Information Centre of Australia** is one of severe oppression. They listed the following as applying to all four sectors where the minority existed:

- denial of language;
- lack of citizenship (in Syria);
- denial of services and racist abuse by public servants;
- suppression of religion - the banning of the Alevi religion until 1992 in Turkey, the persecution of Kurdish Sunni muslims in Iran and suppression of the Zoroastrian religion in Iran, Iraq and the former USSR;
- the banning of newspapers, books, publications, radio and television programs in Kurdish and the persecution and intimidation of Kurdish

25 Serbian National Federation of Australia submission, p. S1821.

26 ibid.

27 Evidence, 28 January 1994, p. 968.

28 ibid., p. 969.

29 ibid., pp. 971-72.

30 Kurdish Institute of Australia submission, p. S740.

31 Exhibit No 39b.

writers and journalists - 15 Kurdish journalists killed by sniper attack in two months in 1993 in Turkey[32];

- the expulsion of six Kurdish representatives from the Turkish Parliament and prosecution for links with separatist rebels;
- restrictions on the freedom of movement - in Turkey constant states of emergency, the appointment of special governors and armed civilians as 'village guards';
- the confiscation of land, burning of crops and the reduction of villages to rubble;
- arbitrary arrest, detention and exile;
- torture in gaols and police stations;
- lack of fair trials for Kurdish people; and
- the use of mines and chemical weapons and bombing raids against villages.[33]

13.53 Ms Babacan also described the killing by Turkish police of 380 Kurdish people attending a Kurdish new year celebration in 1991-92. She believed the treatment of the Kurds in Turkey was analogous to the treatment of the Armenians.

> Turkey has the third largest army in the world and 80 per cent of that army power is based in eastern Turkey. It is an undeclared war zone.[34]

13.54 The chemical attacks on the Kurdish population of northern Iraq have been well documented. Representatives of the Kurdish Institute of Australia also described the finding in 1993 of a mass grave in northern Iraq of 200,000 people thought to have been killed systematically during 1991 as part of the genocidal attacks by the Iraqi Government on the Kurdish people.[35]

13.55 An eyewitness account of one incident was presented to the Committee at the public hearing in Melbourne:

32 Evidence, 14 October 1993, p. 339.

33 Kurdish Institute of Australia submission, pp. S742-50.

34 Evidence, 14 October 1993, p. 350.

35 Evidence, 14 October 1993, pp. 342-44.

> I spent all my life in Iraq. During two years of the Iran-Iraq War and the Kuwait Gulf War I have been in Kuwait as an Iraqi soldier. I saw many things. I have a lot of experience about the Iraqi regime's violation and brutality. I cannot tell you everything here. However, I will speak briefly. It will be something like taking a drop of water from the sea.
>
> One day when I was a student in university, they forced us to come and see this situation where they killed people. They killed five people. They were deserters from the army. One of them was my second cousin. We went there, and a lot of people came there who were in high positions in government in the city, and other people. They collected about five hundred people, many of whom were university students. They killed them. I saw that my cousin did not die from the first shot. They shot him again and again ... Many people fell down, because they could not resist the situation. It was very hard for them. After that they were supposed to have taken the price of the bullets they had used against them from their families.[36]

13.56 The submission from the Kurdish Institute of Australia provided a number of reputable assessments on the Kurdish situation in support of their case. These came from Amnesty International, the European Parliament, the US Congress and Helsinki Watch, including a report by Human Rights Watch, *Genocide in Iraq*.[37]

13.57 The Turkish Government sees the Partiya Karkeren Kurdistan (PKK) or the Kurdish Workers Party as a terrorist organisation and justifies the raids on villages as part of a legitimate attempt on the part of the government to control terrorist attacks. Amnesty International has noted incidents of violence perpetrated by the PKK in its 1993 annual report:

> During the year there were more than 100 apparently deliberate and arbitrary killings attributed to guerillas of the PKK. Many of the victims were civilians, killed for allegedly assisting the security forces or passing information to them. PKK guerillas also captured and then 'executed' members of the village guard corps [in October 1993 in the village of Cervizdali].[38]

36 Evidence, 14 October 1993, p. 354.

37 Exhibit No. 86.

38 Exhibit No. 39b, Quotation from the annual report of Amnesty International, p. 292.

The Committee, while noting with real concern the claims of terrorism and human rights abuse, urges the Australian Government to monitor the circumstances of the Kurdish people closely, in particular to monitor the trials of the Kurdish representatives who have been expelled from the Turkish Parliament.

THE SUDAN

13.58 The Committee received only two submissions dealing with Africa, one on the civil and political rights in Kenya (see Chapter 12) and one from the **Sudan Relief and Rehabilitation Association (SRRA).** In the Sudan and Sri Lanka violent civil wars have been waged for a long time. The SRAA put a submission to the Committee's last inquiry in which it outlined the causes and effects of the civil war which broke out in the Sudan in 1983 largely between the Islamic/Arabic north and the Christian/black African south. The Government in Khartoum is dominated by an Arabised group representing 40 percent of the population. A further 30 per cent of the population are northern Africans of mainly Muslim religion. The remaining 30 per cent of the population are southern Christian Africans.[39] The situation has worsened since 1989 when the Government of Omar Ahmed al-Bashir suspended constitutional guarantees. The problems of a lack of civil and political rights in the Sudan are dealt with in Chapter 12.

13.59 In the Sudan, neglect, severe oppression based on a legal delineation of religious, racial and cultural differences, war-induced famine, the revival of slavery, execution, torture and detention and the imposition of a penal code incorporating Islamic punishments have led to demands for either confederation or self-determination from the Sudan Peoples' Liberation Movement (SPLM).[40] The SPLM want an internationally supervised referendum to allow the people of Sudan to choose. The Committee was told that the SPLM was committed to 'a peaceful process aimed at creating a secular, democratic New Sudan of political pluralism, a multinational and multireligious country where state and religion are constitutionally separated. ... A new Sudan where there shall be no discrimination among the citizens on the basis of perceived race, religion, sex or area of origin under a confederation system of governments.'[41]

13.60 A number of peace initiatives have been put forward since 1986: - the Koka Dam Declaration 1986 which was ignored by the Government in Khartoum; the 1988 talks which broke down in inter-party wrangling; peace talks in Addis

[39] Sudan Relief and Rehabilitation Association (SRAA) supplementary submission, p. S2086.

[40] The Committee notes, however, that, according to Amnesty International, a breakaway faction of the Sudan Peoples' Liberation Army (SPLA) has been responsible for gross human rights abuses, including the massacre of over 2,000 villagers near the town of Bor in the south in late November 1991.

[41] SRAA submission, p. S2087.

Ababa and Nairobi in 1989 failed as the Government was an unwilling participant; in an agreement in Frankfurt in January 1992 the Khartoum Government conceded the right to self-determination through a referendum, but this was repudiated by June 1992. Further negotiations in June 1993 put self-determination back on the agenda.[42] No workable solution has yet been found.

The Committee asks the Australian Government to make representations to the Government of Sudan concerning the treatment of the people of southern Sudan and to urge the United Nations to provide monitors in the Sudan, to maintain an effective ceasefire and to encourage either the resumption of negotiations on a peaceful settlement to the civil war or to encourage the United Nations to hold a referendum on the status of the south and in the interim to place an arms embargo on the Sudan.

SRI LANKA

13.61 In Sri Lanka, the Tamil minority has fought for greater recognition of its civil and political rights and for self-determination since 1983 when the Tamils refused to take their seats after which the Government declared them vacant effectively disenfranchising the Tamils in the national Parliament. A civil war of intensifying violence and with little possibility of resolution either militarily or diplomatically has continued for the last 12 years. Mrs Mary Ranee from the **Australian Human Rights Foundation** told the Committee:

> Since 1990, the war has escalated with the use of supersonic jets and the Sri Lankan security forces totalling 100,000 at a cost of $US1.5 million per day, made possible mostly because of the annual $US800 million that is given by the donor countries supposedly for rehabilitation and development, Australia included. The Tamil guerillas number about 10,000. A third of these are 14 and 15 year old boys and girls who have to fight for their survival. ... Since 1990, 200,000 distraught Tamils have fled from the [Jaffna] peninsula to Colombo to escape aerial bombardment and economic blockade.[43]

13.62 It is one of the forgotten wars as far as the international community is concerned. Sri Lanka does not have strategic significance. Furthermore, the intractable nature of the dispute with a number of peace initiatives collapsing and violence perpetrated by both sides appears to have bred disinterest. As with all these disputes, this understanding offers little consolation to people suffering from blockades, pass laws, bombing raids and terrorist attacks.

[42] Exhibit No 152. p. 14-16.

[43] Evidence, 15 October 1993, p. 380-1.

13.63 The Committee recognises the injustice to the Tamil people that existed at the inception of the conflict.[44] The Committee also notes the international efforts that have been made so far to find a solution:

- Australia's efforts to bring about negotiations through the Commonwealth in 1990;
- The Canadian Human Rights Commission delegation and report, 1992;
- Intervention of four Nobel Prize winners seeking UN involvement, 1993;
- Informal moves by the Quaker peace movement and the Swedish and Norwegian Governments; and
- Investigation by a parliamentary committee of the Sri Lankan Parliament.[45]

13.64 The UN has also passed and/or considered a number of resolutions on the matter since 1987:

- 1987 - UN Commission on Human Rights (CHR43) unanimously adopted a resolution asking the parties to pursue a negotiated political solution based on the principles of respect for human rights and fundamental freedoms.
- 1990 - At the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, 22 NGOs called for steps to satisfy the aspirations of the Tamil people within the framework of human rights and the right of self-determination.
- 1992 - UN Commission on Human Rights (CHR48) reiterated the need for a negotiated political solution based on principles of respect for human rights and fundamental freedoms leading to a durable peace in the north and east of Sri Lanka.
- 1993 - UN Commission on Human Rights (CHR49) 15 NGOs put forward a resolution stating that the Tamil population of the north-east of the island of Sri Lanka are a people with the right to freely choose their political status.[46]

44 For details see Chapter 7 of the Committee's first report, *A Review of Australia's International Efforts to Promote and Protect Human Rights*, 1992.

45 Evidence, 28 January 1994, p. 962.

46 Evidence, 28 January 1994, p. 956.

13.65 The **Australasian Federation of Tamil Associations** put the minimum demands of the Tamil people as:

- recognition that there are two peoples on the island;
- recognition that the Tamil people have a homeland of their own in the north-east of the province;
- recognition by the Sri Lankan Government that the Tamil people have a right to self-determination; and
- recognition by the Sri Lankan Government that the Tamil people should be treated equally.

13.66 The association went on to stress that any solution would have to address the need for continuing protection of minorities - Tamil minorities in Sinhala and Sinhala and Muslim minorities in Tamil areas.[47]

13.67 The Committee recognises that situations where civil war has broken out and where significant minorities, 30 to 40 per cent of a population, are in dispute with a central government are often the most difficult to resolve.

13.68 Given the failure of all previous efforts and the continuing toll of violence on the island, the Committee endorses the view put to it by the Australasian Federation of Tamil Associations that there might need to be 'new ways of thinking on how to be involved, how to participate in the political process of a country'.[48] Mr Pararajasingham, the secretary of the association, also noted that in March 1993, the Liberation Tigers of Tamil Eelam (LTTE) leader, Mr Prabhakaran, stated on the BBC that he is prepared to examine the concept of federalism, provided it acknowledges the Tamil homeland autonomy and self-determination.[49] Mrs Eliezer, from the Australian Human Rights Foundation, confirmed this:

> [T]he LTTE has suggested for the last three years that regional autonomy within the federal state with as many powers as possible would be considered but Premadasa or the other people have not bothered to listen.[50]

13.69 Since the end of the Committee's hearings a new government has been elected in Sri Lanka. This Government proposed peace talks for the end of October, a proposal taken up by the LTTE. It appeared to be the most hopeful sign yet for

47 Evidence, 28 January 1994, p. 961.

48 Evidence, 28 January 1994, p. 963.

49 Evidence, 28 January 1994, p. 958.

50 Evidence, 15 October 1993, p. 385.

genuine talks to end the conflict. There has already been an agreement for the restoration of electricity and the repair of irrigation systems on the Jaffna Peninsula. Talks took place on 13 and 14 October 1994. They were open, not secret, and included the parameters for further talks and for the achievement of a ceasefire. It was the most hopeful sign for a settlement to date. Such progress as had been made was shattered by the assassination of the Opposition Leader, Mr Gamini Dissanayake, at a presidential election rally for the United National Party on 24 October 1994. Responsibility for the bomb blast which killed a large number of people, is unclear. However, peace talks have been suspended.

TIBET

13.70 The conflicts in Tibet and East Timor have a number of similarities. They are not conflicts of minorities except insofar as the Tibetans or the Timorese are judged in relation to the larger society into which they have been incorporated. The nature of the acquisition has a significant effect on the conflict. In both East Timor and Tibet the demand for self-determination is strengthened by a strongly held sense of injustice resulting from military invasion and occupation. In each case, Tibet in 1959 and Timor in 1975, it was the invasion of a much more powerful neighbour against which there could be little resistance other than an appeal to international law and continuing protest and demonstration by local people, usually at very great expense to themselves. In East Timor there is also an armed guerilla resistance in the mountains.

13.71 In each case, China and Indonesia, has resolutely refused to consider independence for the territories. On Tibet, there has been no discussion between the parties at a national or an international level; on East Timor, talks have taken place between the Indonesians and the Portuguese under the auspices of the Secretary General of the UN.

13.72 The **Tibet Information Office** in Australia provided the Committee with an update on the situation in Tibet. They described the situation in Tibet as one of 'occupation' or 'colonial rule'.[51] They stated that only half of traditional Tibet is in what China describes as the Tibet Autonomous Region (TAR); the other provinces have been directly incorporated into the Chinese provinces of Gansu, Sichuan and Yunnan. Despite the obvious improvements in the building of roads, airfields, power stations, bridges, schools and hospitals, they characterised the colonial nature of the relationship by listing the exploitative practices of the Chinese Government and the continuing poverty and decline of the Tibetan population:

- There are few middle schools (58) and only 2,451 primary schools, of which 451 are funded by the Government.
- The literacy rate is very low (21.7 per cent).

51 Exhibit No. 136, p. 1-2.

- Unemployment among Tibetans is very high - jobs that are generated by development policies are given mainly to Chinese.
- Tibetans are subjected to coercive birth control policies.
- Peaceful demonstration or protest is forbidden.
- Detention, torture and summary execution is applied to those seeking Tibetan independence.[52]

13.73 The most serious complaint of all, according to the Tibetan Information Office, was the policy of population transfer by which the local Tibetan population was being swamped by Chinese immigrants, brought in as workers on projects or given incentives, in the form of high wages or other economic concessions, to settle.

> The Chinese population of Lhasa is now over 120,000 and some estimates put it at 170,000. The Tibetan population is not more than 50,000. A similar situation exists in Shigatse, Tsethang, Chamdo, Nyingtri, and Powo Tramo ... Increasingly Tibetan cities and towns are becoming Chinese cities and towns with quaint Tibetan ghettos for tourists to enjoy.[53]

13.74 The unwillingness of the Chinese Government to countenance discussion of the status of Tibet is steadfast. The Dalai Lama, however, in the last seven years has proposed negotiations on a much modified set of conditions. He appears to have changed his emphasis on claims for unconditional independence for Tibet but seeks ways to protect the Tibetan people from the most destructive effects of Chinese policies. In particular:

- ways to end the population transfer policy;
- improvement in the human rights and democratic freedoms of Tibetans;
- demilitarisation and de-nuclearisation of Tibet;
- the restoration of Tibetan control over their own affairs; and
- the protection of the environment.[54]

52 ibid., pp. 3-14.

53 ibid., p. 5.

54 Exhibit No. 136a, p. 2.

EAST TIMOR

13.75 There was a detailed account of the problems in East Timor in the last report of this Committee in 1992. Further background information is available in the submissions supplied to this inquiry.

13.76 The status of East Timor remains unresolved. The United Nations has not recognised the incorporation of East Timor into Indonesia. However, Australia has given *de jure* recognition to the incorporation.[55] On the basis of this uncertainty Portugal has challenged the validity of the Timor Gap Treaty between Australia and Indonesia at the World Court. Portugal supports the right of the East Timorese to self-determination and has encouraged the European Union to maintain its veto over the EU-ASEAN economic cooperation agreement. Both the Japanese and the United States Governments have raised the matter of East Timor with Indonesia and at a Diet and Congressional level have jointly asked the UN Secretary General to be more active on East Timor.[56]

13.77 Both in 1992 and 1993, the UN Commission on Human Rights passed resolutions on the human rights situation in East Timor. The stronger of these, in March 1993, expressed concern and regret at the continuing human rights abuses in East Timor and at the failure of the Indonesian Government to identify clearly those responsible for the Dili massacre or to address fully the questions of just and fair treatment for the victims *vis a vis* the perpetrators of the Dili Massacre. The resolution called on the Indonesian Government to respect the rights of and to treat humanely those in custody; to release those not involved in violent activity; and to ensure that all trials were fair, just, public and recognised the right to proper legal representation. This resolution also welcomed the resumption of talks on East Timor.[57]

13.78 Indonesia is not a signatory to any of the main human rights covenants, but it is a member of the Human Rights Commission, and, as a member of the United Nations, has accepted both the Charter and the Universal Declaration on Human Rights. Furthermore, Indonesia places great importance on the principles of non-intervention. On 24 September 1992, President Suharto as Chairman of the Non-Aligned Movement, informed the General Assembly of the United Nations that the Non-Aligned Movement 'reaffirms the inadmissibility of aggression and of the acquisition of territory by force and calls for full respect for the sovereignty, independence and territorial integrity and cultural identity of Bosnia-Hezegovina.'[58] Such a principle applied to East Timor would be a useful starting point for discussions.

55 It is a policy supported by the Government and the Liberal-National Party Coalition.

56 Dr Herb Feith submission, p. S1843-45.

57 Dr. Herb Feith submission, p. S1862-3.

58 Australia-East Timor Association submission, p. S1139.

13.79 According to Xanana Gusmao, the leader of the East Timorese nationalist movement, East Timor is the responsibility of the international community. In a statement, prepared but ruled irrelevant and not delivered fully at his trial, he rejected the incorporation of East Timor into Indonesia and asserted that the annexation by force was illegal. He did not recognise the jurisdiction of the court to try him. He sought support from the international community for the UN resolutions, for negotiations between the Portuguese, the Timorese people and the Indonesians and for a referendum.[59]

13.80 The Committee was informed of a number of proposals for a resolution to the conflict:

- The resumption of talks, begun in 1982 and broken off after the Dili Massacre, between the foreign ministers of Portugal and Indonesia. The Portuguese have sought to include representatives of the Timorese in these talks. As at September 1993, the Secretary General reported seven areas of agreement, including promotion of respect for human rights, a non-confrontational atmosphere, the facilitation of access for humanitarian and human rights organisations and a balanced exchange of journalists.

- Proposals put forward by the National Council of Maubere Resistance (CNRM) presented by Jose Ramos Horta in April 1992. This proposal is a three phase process over five to ten years. It calls for a ceasefire, immediate release of all political prisoners, reduction of troops in East Timor to 1,000 within two years and the operation of UN agencies in the province. After two years a UN supervised election for a provincial assembly, with Indonesia retaining control of foreign policy. After five or ten years a referendum to be held on the status of the province, with independence as one option.

- A proposal put forward by Bishop Belo, the Catholic bishop of East Timor, in February 1993. It calls for special status or a form of autonomy for the province, beginning with the cultural and religious areas and extending to the economic and financial. He also embraces the necessity of a UN conducted referendum.[60]

13.81 These proposals, generally not insistent on independence in the first instance, put forward in relation to East Timor accord with the direction in thinking that is emerging at the United Nations. This is true of the work of the Sub-Commission on Prevention of Discrimination and the Protection of Minorities. As Asbjorn Eide says,

59 Dr Herb Feith submission, p. S1857-8.

60 ibid., p. S1849-50.

The controversies over alleged rights to self-determination of groups living within sovereign states have severely obstructed peaceful solutions to contemporary ethnic conflicts.

13.82 A history of oppression often creates fear, suspicion and demands for independence. The reports of continuing human rights violations in East Timor ensure, not the integration of the province, but a strengthened motive for separation. Also of relevance to the resolution of disputes such as exists between the people of East Timor and the Indonesian authorities is the interpretation of self-determination suggested by the Working Group on Indigenous Peoples' Rights. This interpretation recognises the importance of degrees of autonomy for groups of people of different ethnic or racial background. It also acknowledges the importance of political participation as a means of satisfying the particular social, cultural and economic aspirations of minorities.

The Committee believes that, in relation to East Timor, if there is to be any prospect of peace, there should be an enduring and just resolution of the Dili massacre - the release of political prisoners and those detained as a consequence of peaceful demonstration, devolution of appropriate powers to the province and the reduction of the combat military forces.

BOUGAINVILLE

13.83 In August 1993, the Committee received a substantial submission from the Bougainville Freedom Movement which presented case studies and affidavits on human rights abuses on Bougainville. The cases presented to the Committee were of a very serious nature and some of them accorded with the 1993 Amnesty International Report on Bougainville. They are matters which, in the interests of justice, will need investigation. However, since the submission was received, members of the Committee have visited Bougainville as part of a Parliamentary Delegation sent to assess the prospects for peace and the needs of the province. While the Delegation had no opportunity to investigate specific allegations of human rights abuse, questions about human rights were discussed with Bougainvilleans, their leaders and the leaders of Papua New Guinea. However, the Delegation was unable to speak to the leaders of the Bougainville Revolutionary Army (BRA).[61]

13.84 Since the visit there have been moves towards peace negotiations by both the Government of Papua New Guinea and the BRA. Preliminary talks were held in Honiara and a Ceasefire Agreement was signed on 3 September 1994 by the Prime Minister of Papua New Guinea, Sir Julius Chan, GCMG, MP and Mr Sam Kauona, Commander of the BRA. It was agreed that negotiations were the only solution to the conflict on Bougainville. The settlement also agreed to the introduction of a South Pacific Peacekeeping Force to supervise the ceasefire and provide security for the Bougainville Peace Conference. Neutral zones in Arawa, Panguna, Wakunai and Buin were agreed and cooperation assured by the parties to the agreement. The Committee commends the work of the ADF in preparing for the conference; their contribution to training and their logistical support in bringing together a large number of people, peacekeepers and participants.

61 A full report, *Bougainville: A Pacific Solution,* was made in June 1994 to the Australian Parliament and the Papua New Guinea Parliament on the Delegation's visit.

13.85 The Peace Conference opened on 10 October 1994; however, at the time of writing neither Francis Ona nor Sam Kauona had attended and the planned peace ceremony had been postponed. The Prime Minister of Papua New Guinea decided that the South Pacific Peacekeeping Force would remain in place on Bougainville for a short period.

13.86 The Committee believes this was an opportunity squandered and regrets that the effort and good will which had been put into the process appears to have lost impetus. It reiterates the views of the Parliamentary Delegation to Bougainville that there can be no military solution to the conflict on Bougainville.

The Committee believes that, in relation to Bougainville, despite the failure of the peace conference, there should be no return to violence and both parties should maintain the ceasefire. The Committee hopes that the peace process can be resumed as soon as possible and in particular, that both parties will accept the movement of people within the island so that humanitarian assistance might be freely distributed to all Bougainvilleans. Finally, the Committee urges that the PNG Government and the PNG Defence Forces should continue to give assurances that, in any reconvening of the peace talks, free passage for the leaders of the Bougainville Revolutionary Army be guaranteed and, possibly, that talks should be held on neutral ground.

ETHNIC MINORITIES IN BURMA

13.87 The diverse cultural, religious and linguistic composition in Burma constitutes one of the most complex ethnopolitical situations in South East Asia today. This 'strength through diversity', as one writer put it, has also created a melting pot of Southeast Asian cultures making Burma a, 'zone in which it is difficult to find large groups of people who shared the same ethno-linguistic identity and occupied a territory large enough to be called a country.'[62]

13.88 The political landscape of the country has also been diverse, if not tumultuous, with sovereignty changing hands from one ruler to another. The ancient Buddhist kingdoms and mandalas were finally over run by the British Empire in 1824 who then annexed the country to India in 1937. The Japanese Empire ruled throughout World War II until their defeat by the allies resulting in a period of post-

62 Leach, E, 'The Frontiers of Burma', *Comparative Studies in Society and History,* vol 3:1, 1960. Cited in McKinnon, J. 'The Political Future of Burma Revisited', *Journal of Interdisciplinary Peace Research,* vol 5:2, Oct/Nov 1993, p. 4.

colonial democratic independence from 1948. A coup in 1962 brought almost thirty years of socialism under the leadership of General Ne Win. Recent political changes culminating in a public uprising in 1988 resulted in Ne Win's resignation and transferred power to the military junta known as the State Law and Order Restoration Council (SLORC). In September 1988 the Parliament was dissolved and the constitution suspended, ostensibly for the purposes of creating a stable environment to conduct multi-party elections. In May 1990 these elections were held; however, SLORC refused to relinquish power to the democratically elected National League for Democracy which secured 80% of the national votes. The SLORC remains in power and is currently holding a National Convention to draft a new constitution.

13.89 In terms of ethnic composition, the indigenous *Burmans* are the dominant political and religious (Theravada Buddhism) group and have, since the eleventh century, assimilated others into their culture. Consequently they now comprise approximately seventy per cent of the total population of Burma and inhabit the resource rich central and southern lowland regions encompassing the major urban centres: Rangoon, Mandalay and the ancient capital of Pegu. The other significant ethnic minorities are also indigenous to the land. They include the *Karen* (10.2%), the *Shan or Tai* (7.7%), the *Arakanese* (3.7%), the *Mons* (2.5%), the *Chin* (2.4%), the *Kachin* (1.1%), the *Kayah or Karenni* and other smaller indigenous groups (2.5%).[63] The ethnic minorities mainly inhabit the frontier areas bordering Thailand, Laos, China, India and Bangladesh. In addition to this ethnic diversity another demographic cleavage exists between highland peoples - who tend to form more scattered communities - and the lowland peoples - who have traditionally ruled the kingdoms and empires in the past.[64]

13.90 Ethnic 'insurgency' between the frontier communities and Rangoon has been a feature of Burmese politics since 1949 in some regions. Organized armies such as the Karen Liberation Army (KNLA), the Kachin Independence Organisation (KIO) and the Shan State Army (SSA) have sustained ongoing campaigns against the SLORC since it assumed power. Whilst the ethnic 'states' within Burma seek terms which will ensure their cultural integrity and enhance their self-determination, it is important to recognise that their political goals are not aimed at secession from the country. Thus for example the political aim of the umbrella organization, the Democratic Alliance of Burma (DAB) is directed towards regional autonomy within a federalist state:

> To establish a federal union of Burma where all ethnic nationalities have equality and the right of self determination

63 1990 figures for the estimated proportion of the total population. Source Gurr, T.R *Minorities at Risk*, Washington, D.C., United States Institute of Peace Press, 1993, p. 330.

64 In fact the Burman derivation of terms Chin, Kachin and Karen have been identified as anglicised versions of the Burman word, *Ka yin* meaning `slave barbarian'. See McKinnon *op. cit.*, p. 5.

> with genuine democratic system of government. Contrary to propaganda by the military, the DAB has never been and is not, a secessionist movement.[65]

13.91 The SLORC Government has been widely criticised for its systematic discrimination against ethnic minorities. Of particular relevance to the ethnic minority groups on the frontiers are issues of forced relocation, forced labour, the seizure and pillaging of land and the environmental degradation caused by SLORC-controlled logging and infrastructural developments. Furthermore, as many of the main political opponents to the SLORC regime are ethnic minority representatives; individual dissidents and their families suffer from the more widespread problems such as extrajudiciary executions, unfair, cruel or inhumane detainment, torture and rape.[66] Perhaps the most overt international repercussion of ethnic discrimination is the burgeoning refugee problems, particularly those spilling out over the borders into Bangladesh and Thailand.

13.92 The Committee's attention was drawn to reports of 240,000 Muslim Rohingyan refugees in Bangladesh awaiting repatriation but anxious about the conditions of their return. In particular the report by Professor Yozo Yakota, Special Rapporteur to the UN Economic and Social Council, was concerned with the progress of the repatriation process of these refugees back to Burma. There was some discrepancy between the number of refugees in Bangladesh and the number of Burmese citizens recognised by SLORC. The Special Rapporteur recommended that there be a revision of the 1982 Citizenship Law which currently applies 'categories of second-class citizenship in a manner which has discriminatory effects on racial or ethnic minorities, particularly Rakhine Muslims.'[67]

13.93 Much of the evidence supplied by the Australia Burma Council related to conditions for Burmese ethnic minorities on the Thai-Burma border.[68] Many Burmese students who had fled from the SLORC regime were detained in Thai camps. Others were arrested in Bangkok by Thai immigration officers and police. One description of this relationship with Thai authorities by a Burmese student suggests that there is a degree of collusion between Thai and Burmese military personnel.

> Sometimes the immigration officers and police beat the students because we belong to the political and human rights democracy [movement] in Burma. They did not like us because the immigration officers and police are under the National Security Council of Thailand...The national security

65 Exhibit 53b. p. 16.

66 ibid.

67 Exhibit 53b, para 74(h)

68 Evidence, 4 March 1994, p.1081, Exhibit No. 53b and Submission, p. S1346.

council and the Burmese military have a good relationship and that is why they did not like us.[69]

13.94 Another respondent referred to the deteriorating conditions of the Burmese villagers in the Thai-Burma border areas. Accounts such as these would seem to confirm allegations by International Organisations such as Amnesty International and Asia Watch.

> Conditions are worsening for people who serve as porters in the battlefield against their will; these innocent people became victims of war after being seized at their homes. They did not break any law or regulations. However, they have been captured at their places, then sent to the intensive war zone. Villagers have faced many kinds of violations such as relocation, arbitrary arrests and execution by the Burmese army. They are being held and have become victims of SLORC without knowing anything about rights. Many villages were forced to relocate to SLORC controlled areas, and were given a deadline to move. Villagers have no compensation from SLORC and stay without shelter...When the troops reached the village, they destroyed the houses, killed livestock for their food, robbed gold, money and clothes, pillaged anything of value. The men, villagers, went to hide before troops arrived in village because they were frightened of being taken as porters. Soldiers ordered the villagers to gather...At night soldiers came to snatch the women and rape them. They faced inhuman harassment by the soldiers. Every woman from the villages was raped whether old or young. Some heads of villages were killed in front of the villagers.[70]

13.95 Amanda Zappia, central co-ordinator of the Australia-Burma Council, was critical of the continued presence of Austrade and the resumption of visits by Australian military attaches to Rangoon. Ms Zappia expressed concerns about an apparent inconsistency in Australian policy between DFAT on the one hand, and AIDAB on the other, a sentiment echoed elsewhere in the inquiry as a whole.[71] Specific concerns were also raised over the implications of Australia's contribution of $200,000 developmental assistance given to SLORC (specifically for AIDS research). It was argued that this precedent would encourage other countries in the region to provide further aid fuelling the international legitimation of the SLORC Government.

69 Evidence, 4 March 1994, p. 1079.

70 ibid., p. 1080.

71 Amnesty International submission p. S1014.

> The warning we gave was that it would send a signal to other nations to do the same thing. Now you see that Japan has followed with $US360,000. Japan could have given $1 or $1 million. It is so significant to the ASEAN region that Japan has seen fit to give some humanitarian aid. That is the real issue with that. That is what we were afraid of; that is what happened...These developments are setting that aside and are going one step further toward a normalisation policy with the SLORC, which is really unacceptable at this time and it is not in the interests of the country. The pressure must be kept up on this Government.[72]

13.96 The Government's bilateral aid program has been suspended as part of a wider strategy to pressure the Burmese Government to improve its human rights performance. More specifically the AIDAB strategy includes:

- assistance to dissident Burmese students in Thailand to study in Australia;
- encouraging the early and safe return of Rohingyan refugees;
- embargo on defence exports and contracts;
- support for strong UN General Assembly and Commission on Human Rights resolutions on Burma;
- urging arms supplying countries (China, Poland and Portugal) to implement arms embargoes;
- a ban on Austrade visits to Burma but maintenance of an Austrade office at Rangoon under 'neither encourage nor discourage' guidelines;
- urging ASEAN and Japan to use their influence with the SLORC to promote positive change; and
- support for the aims of the International Committee of the Red Cross, including access to political prisoners.[73]

13.97 In response to motions by Senator Chamarette on 23 November 1993 and Senator Reid on 2 March 1994, the Committee is conducting an inquiry into the human rights situation and the lack of progress towards democracy in Burma.[74]

72 Evidence, 4 March 1994, p. 1085.

73 AIDAB submission, p. S1080.

74 Senate Hansard, 2 March 1994, p. 1217.

Hearings will be conducted nationally through the early part of 1995 and, depending on the volume of material it receives, the Committee should report before mid-1995.

CONCLUSION

13.98 Human rights standards are aimed at improving the quality of life for ordinary people. They should be the central driving force of all governments' policies. As this report testifies, this is patently not so. Governments are often the perpetrators of abuses and they hide behind a concept of national sovereignty whenever criticised despite the fact they have previously acknowledged the universality of the rights in question. A Canute-like adherence to isolationist nationalism is futile in any aspect of modern life, but especially on questions of human rights abuses as they are so intricately linked to national and international security. Respect for human rights inhibits mass refugee flows, makes states less inclined to go to war with each other and alleviates the poverty and inequality which breed terrorism, a force that knows no national boundaries. Moreover, states can be strengthened not diminished by the adherence to international standards, which, arrived at by international consensus, represent a form of collective wisdom and best practice in government. Such practices preserve the nation, its cohesion and stability. The lack of them fragment it.

13.99 In this report, the Committee has stressed those aspects of the human rights agenda which can make a difference, both in our domestic and in our foreign policy. In conclusion, a number of points should be reiterated:

- Peacebuilding, a process which integrates the human rights standards, both civil and political and economic, social and cultural, must inform policy, whether it is aid or trade policy, defence cooperation or bilateral or multilateral arrangements.

- Universal ratification of the major human rights conventions should be encouraged.

- Internationally, the trigger for action must be abuse not conflict. Rwanda demonstrates this most forcefully. Early preventive action is essential.

- Continuous open and free dialogue and debate between nations on human rights must be maintained and the structures which facilitate it need to be developed and improved.

- Where human rights abuses have become endemic, reintroduction of states into the community of nations should depend on real and verifiable improvements, targeted to the nature of the abuses.

- Australia's commitment to human rights, widely supported in the community as it is, should be further enhanced by refined and improved processes at all levels of government and in non-government organisations.

- There is room for greater Parliamentary involvement. Parliament, the expression of the democratic will, is the body most suited to the oversighting, the preservation and the enhancement of rights in Australia.

Senator Stephen Loosley
Chair

Appendix One

List of Submissions

No.	Name of Person/Organisation	Exhibit No.
1.	Department of Foreign Affairs and Trade	24a-n,41,46,90
1a.	Department of Foreign Affairs and Trade	
2.	Hon E G Whitlam, AC, QC	12,13
2a.	Hon E G Whitlam, AC, QC	
2b.	Hon E G Whitlam, AC, QC	
2c.	Hon E G Whitlam, AC, QC	
3.	The Laogai Research Foundation	52a-f
4.	Ms Jean Hale	
5.	Ms Margaret Michael-Johanson	
5a.	Ms Margaret Michael-Johanson	
6.	Professor Hilary Charlesworth	
7.	Dr A T Kenos	
8.	South Australian Multicultural & Ethnic Affairs Commission	
9.	Mr C Quealy	
10.	Pan-Macedonian Association of Melbourne & Victoria	59
11.	Aegean Macedonian Association of Australia	14,60,143
11a.	Aegean Macedonian Association of Australia	
11b.	Aegean Macedonian Association of Australia	

11c.	Aegean Macedonian Association of Australia	
12.	Mr David Pfanner	15
13.	Australian Democrats	
14.	Cyprus Hellene Club Ltd	
15.	National Spiritual Assembly of the Baha'is	93a
16.	Mr N T Sims & Ms E Studer	16
16a.	Mr N T Sims & Ms E Studer	
17.	West Papua Association	
17a.	West Papua Association	
18.	Palestine Liberation Organisation	17
18a.	Palestine Liberation Organisation	
19.	Confidential	
20.	Leigh Fulton	
21.	Mr C M Friel	
22.	Mr Peter Breen	
23.	Kurdish Institute of Australia	39a-b,86a
24.	Dr David Kingley	18
25.	Mr Vo Dai Ton	19a
25a.	Mr Vo Dai Ton	
25b.	Mr Vo Dai Ton	
26.	Macedonian Australian Human Rights Committee of New South Wales	20a-f
27.	The Hellenic Council of New South Wales	91,91a
27a.	The Hellenic Council of New South Wales	
27b.	The Hellenic Council of New South Wales	

28.	Vietnam Committee on Human Rights	
29.	Dr T D Kieu	
30.	Ms Christine Stewart	
31.	East Awin Refugee Camp	
32.	Committee for the Support of the Rights of the Greeks of North Epirus	21
33.	Wen Jin Chen & Feng Ye	
34.	The Electoral Reform Society of South Australia	
35.	Hungarian Human Rights Foundation of Victoria Inc.	22a-c
36.	Croatian Community Welfare Association of Victoria	
37.	Australia/Israel Publications	23b-m
38.	Australian Human Rights Foundation/Rev Wootton	25a-f
38a.	Australian Human Rights Foundation - Bosnia	
38a1.	Australian Human Rights Foundation - Bosnia	
38b.	Australian Human Rights Foundation - Tamils	
38c.	Australian Human Rights Foundation - Palestine	
38c.1	Australian Human Rights Foundation - Palestine	
38d.	Australian Human Rights Foundation - Kenya	
38d.1	Australian Human Rights Foundation - Kenya	
38d.2	Australian Human Rights Foundation - Kenya	
38e.	Australian Human Rights Foundation - Aborigines	
38f.	Australian Human Rights Foundation - Sri Lanka	
39.	East Awin Refugee Central Committee	
40.	Mr Julian Prior	
41.	Sakyamuni Buddhist Centre	83a

42.	Hon Doug Everingham MB BS	26
43.	Mr Rolando Aguilar and Andres Ruz	27a
44.	Albanian Democratic League of Kosova in Australia (LDK)	28a
45.	Mr H Granek	
46.	Dr T J Horr & Ms N A Brittain	
47.	Mr Peter Bailey	
48.	Australian Electoral Commission	
48a.	Australian Electoral Commission	
48b.	Australian Electoral Commission	
48c.	Australian Electoral Commission	
49.	Australasian Federation of Tamil Associations	30a,48
49a.	Australasian Federation of Tamil Associations	
50.	Amnesty International Australia	51
51.	Council to Homeless Persons Victoria	
51a.	Council to Homeless Persons Victoria	
52.	Confidential	
52a.	Confidential	
53.	Lennox Street Ad Hoc Human Rights Collective	
54.	Professor Breen Creighton	31a
55.	SRRA/FACE Foundation	32
55a.	SRRA/FACE Foundation	
56.	AIDAB	33a-e,77
57.	CARE Australia	
57a.	CARE Australia	

58.	Department of Defence	
58a.	Department of Defence	
58b.	Department of Defence	
59.	Australian Federal Police	
60.	Commissioner for Equal Opportunity	
61.	Australia-East Timor Association	34a
61a.	Australia-East Timor Association	
62.	South Africa Training Trust	
63.	Diplomacy Training Program	35
64.	Executive Council of Australian Jewry	38a
65.	Tasmanian Gay and Lesbian Rights Group	
65a.	Tasmanian Gay and Lesbian Rights Group	
66.	D A Ellinson & A M MacLeod	
67.	Mr Mark Plunkett	
68.	Australia-Burma Council	53
69.	Federation for a Democratic China (Sydney Branch)	61a-d
69a.	Federation for a Democratic China (Sydney Branch)	
70.	Attorney-General's Department	
71.	Human Rights Council of Australia	74,88
72.	Vietnamese Friday Club	
72a.	Vietnamese Friday Club	
73.	World Vision Australia	
74.	Australian Council of Trade Unions	
75.	Mr Alan Harris	

75a	Mr Alan Harris	
76.	Ms Rosemarie Gillespie Appendix 1, Confidential	
77.	Law Institute of Victoria	
78.	Mr Anthony Burke	43
78a.	Mr Anthony Burke	
79.	Ahmadiyya Muslim Association of Australia Inc.	44,92a-b
79a.	Ahmadiyya Muslim Association of Australia Inc.	
79b.	Ahmadiyya Muslim Association of Australia Inc.	
79c.	Ahmadiyya Muslim Association of Australia Inc.	
79d.	Ahmadiyya Muslim Association of Australia Inc.	
80.	The China Study Institute of Australia	45
81.	Australian Croatian Community Council	
82.	Asian Development Bank	
83.	Mr Alan Stevenson	
84.	Mr Justin Butler	
85.	Department of Industrial Relations	96a-d
86.	Mr Marjan Bosnjak	
87.	Australian & Torres Strait Islander Commission	71a-c
88.	Mr Michael Becker	
89.	Premier of Victoria	
90.	Premier of Western Australia	
91.	Ms Carole A Bennetts	
92.	Ms Pauline Martin	
93.	The Republic of Croatia	72a-g

94.	Mr Charles Bowers	
95.	Community Aid Abroad	
95a.	Community Aid Abroad	
96.	Ms Nonie Atkinson	
97.	Mr W Stephen	
98.	Mr William A Woodhouse	
99.	Australian Council For Overseas Aid	79
100.	Ms Robyn Bates	
101.	Ms Fiona R Clarke	
102.	Ms Caroline Nolan	
103.	Mr Frederik von Altenstadt	
104.	Vyvyan Rodnight	
105.	Mr Y Warren	
106.	Mr Martin Hastings	
107.	Ms Jean Moffet	
108.	Justice Elizabeth Evatt AO	
108a.	Justice Elizabeth Evatt AO	
109.	Chinese Students Human Rights Organisation	
110.	United Nations Association of Australia Incorporated	
111.	Serbian National Federation of Australia Inc.	66a-e,81a-e
112.	Ms Jennifer Mazzeo	
113.	United Nations High Commissioner for Refugees	84a-e
114.	Dr J L Lee	
115.	East Timor Talks Campaign	

116.	Chao Phagna Louang Muangchanh Outhong Souvannavong	85
117.	David Young	
118.	Australian Institute of Aboriginal and Torres Strait Islander Studies	
118a.	Australian Institute of Aboriginal and Torres Strait Islander Studies	
118b.	Australian Institute of Aboriginal and Torres Strait Islander Studies	
119.	Senator Rod Kemp	
120.	All Party Indian Parliamentary Forum for Tibet	
121.	Ms Sally Burdon	
122.	Ms Karen McWhirter	
123.	Senator Sid Spindler	
124.	National Farmers' Federation	
125.	Refugee Council of Australia	
126.	Ms Marianne Wiseman	
127.	Confidential	
128.	Department of Immigration and Ethnic Affairs	
128a.	Department of Immigration and Ethnic Affairs	
129.	Senator Jim McKiernan JP	xx
130.	Australian Catholic Relief	
131.	Ms Liz White	
132.	Queensland Government	
133.	Danila Dilba Biluru Butji Binnilutlum Medical Service	
134.	Institute for Aboriginal Development Inc.	129a-g
135.	Transgender Liberation Coalition Inc.	
136.	Mr Bo Ren	

137.	Tribal Refugee Welfare - K W Allmark, Chairman	70
138.	Ms Clair Kay - Year 12 Student	
139.	Mr Jeff Dobell - Director, Red R	
140.	Deborah Durnan - Alice Springs Friends of East Timor	

Appendix Two

List of Public Hearings and Witnesses

1 JUNE 1993 - CANBERRA

Amnesty International
Mr Andre Frankovits, Campaign Director
Mr Harris van Beek, National Director

Attorney-General's Department
Mr Henry Burmester, Principal International Law Counsel, Office of International Law
Ms Joan Sheedy, Senior Government Counsel

Australian Council for Overseas Aid
Mr Russell Rollason, Executive Director

Australian International Development Assistance Bureau
Mr Bruce Davis, Asst Director-General, Policy Branch
Ms Beris Gwynne, Director, North Asia Branch
Mr Rodney Irwin, A/g Deputy Director-General, Pacific & International Programs Division
Mr Keith Joyce, A/g Director, Economic & Rural Development Section, PNG Branch
Ms Miranda Rawlinson, Director, International Issues & Ministerial Services Section, Policy Branch
Mr Robert Stensholt, Assistant Director-General, South-East Asia Branch
Mr Peter Versegi, Country Program Manager, PNG Branch

Department of Foreign Affairs and Trade
Dr Leanne Kerr, Executive Officer
Mr Chris Moraitis, Executive Officer, Human Rights Section
Mr Peter Woolcott, Director, Human Rights Section

Human Rights and Equal Opportunity Commission
Mr Brian Burdekin, Human Rights Commissioner

Human Rights Council of Australia
Mr James Dunn, Convenor
Mr Jeffrey Kildea, Member
Mr Eric Sidoti, Executive Director

10 AUGUST 1993 - CANBERRA

Australian Electoral Commission
Mr David Baynton, Assistant Director, Election Operations
Dr Robin Bell, Deputy Electoral Commissioner
Mr Brian Cox, Electoral Commissioner

Australian Federal Police
Mr James Allen, A/g Deputy Commissioner, Operations
Mr Christopher Eaton, Head, UN Support Branch, General Policing Policy & Arrangements Division
Mr John Ireland, Asst Secretary, General Policing Policy & Arrangements Division

Care Australia
Mr Ian Harris, National Director

Department of Defence
Air Vice-Marshal Leslie Fisher, Assistant Chief Defence Force Operations
Mr James Alexander, Assistant Secretary, Asia
Mr Robert Wylie, Assistant Secretary, Exports & International Programs

Mr Mark Plunkett, Barrister (private)

5 OCTOBER 1993 - CANBERRA

Mr Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Commission on Human Rights, United Nations Centre for Human Rights

14 OCTOBER 1993 - MELBOURNE

Albanian Democratic League of Kosova in Australia
Mr Sezar Jakupi, President, Albanian Democratic League of Kosova in Australia

Australian Human Rights Foundation
Reverend Richard Wootton, Chief Executive Officer

Committee for the Support of the Rights of the Greeks of North Epirus
Mr Kyriakos Amanatides, Secretary
Mr Peter Petranis, Public Relations Officer

Prof. William Creighton (private)

Croatian Community Welfare Association
Mr Marjan Bosnjak, Member

Croatian Community Welfare Association of Victoria
Ms Linda Paric, Chairperson

Croatian Information Centre
Miss Slavka Jureta, Office Manager

Mr Sperez Dosky (private)

Kurdish Institute of Australia
Ms Behice Bagdas, Secretary
Ms Hurriyet Babacan, Member
Mr Hasan Bagdas, Member

Pan-Macedonian Association of Melbourne and Victoria
Mr Dimitris Constantidinis, Public Relations Officer
Dr Dimitri Iakovidis, Representative
Mr George Tsaprounis, Deputy Secretary

Vietnamese Friday Club
Dr Nguyen Trieu Dan, President

15 OCTOBER 1993 - MELBOURNE

Australia-East Timor Association
Mr Jamie Chancellor, Treasurer
Mr Nelson Santos, Member
Mr John Sinnott, Secretary

Australian Council of Trade Unions
Mr Alan Matheson, International Officer

Australian Human Rights Foundation
Mrs Mary Eliezer, Member, Board of Director
Reverend Richard Wootton, Chief Executive Officer

Islamic Council of Victoria
Mr Ifet Mustafic, Imam

Kenya Union for Democracy and Development
Mr Ndungi Wa Mungai, Interim President

Ministerial Advisory Committee on the Supported Accommodation Assistance Program
Ms Cassandra Austin, Project Officer
Mr Hal Bissett, Chairperson

Palestine Human Rights Campaign
Mr David Spratt, National Secretary

Victorian Aboriginal Health Service
Mr Graeme Austin, Chief Executive Officer
Dr William Roberts, Medical Director
Ms Alma Thorpe, Member

29 OCTOBER 1993 - SYDNEY

Aegean Macedonian Association of Australian
Mr Victor Bivell, Member
Mr Paul Stephen, Vice-President
Mr Michael Veloskey, President

Alliance for a Democratic China
Mr Yu Tang Han, Vice-Editor Chief

Amnesty International Australia
Mr Andre Frankovits, Campaign Director

Australian Croatian Media Organisation
Mr Miles Beretin, Chairman

Australian Croatian Community Council
Mr Ivan Nimic, Assistant Secretary

Diplomacy Training Program Ltd
Mr Christopher Scott-Murphy, Coordinator

Federation for a Democratic China
Mr Zhao Bang Huang, Chairman, Sydney Branch

Colonel Vo Dai Ton (Rtd) (private)

World Society of Victimology
Professor Zvonimir Separovic, Permanent Representative to the OUN

5 NOVEMBER 1993 - ADELAIDE

Attorney-General's Department (SA)
Ms Margaret Doyle, Director, Policy and Research

Professor Hilary Charlesworth, Law School, University of Adelaide (private)

Department of the Premier and Cabinet
Ms Carol Treloar, Director, Inter-Government Relations

Equal Opportunity Commission
Ms Margaret Heylen, Assistant Commissioner, Policy Planning & Resources
Mr Darren McGeachie, Solicitor

Sudan Relief and Rehabilitation Association & Friends of African Children Educational Foundation
Mr Mariano Ngor, Australian Representative

23 NOVEMBER 1993 - CANBERRA (in camera)

Community Aid Abroad
Mrs Shanthi Sachithanandam, Program Officer, Sri Lanka Field Office in Colombo

30 NOVEMBER 1993 - CANBERRA

Aboriginal and Torres Strait Islander Commission
Mr Michael Davis, Senior Officer, International Issues & Human Rights
Mr Anthony Hanrahan, Manager, Legal Aid & Social Justice
Ms Rosemary Littlewood, Legal 1
Mr Peter Schnierer, Assistant General Manager, Strategic Development
Dr Peter Shergold, Chief Executive Officer
Ms Libby Smith, Manager, International Issues & Human Rights
Mr Milen White, Assistant General Manager, Social Justice Branch

Law Faculty, Australian National University
Mr Peter Bailey, Visiting Fellow, Law Faculty
Dr David Kinley, Senior Lecturer in Law, Law Faculty

Mrs Xiaotian Hou (private)

Hon Edward Gough Whitlam (private)

6 DECEMBER 1993 - CANBERRA

Australian Council for Overseas Aid
Mr William Armstrong, President
Mr Eric Sidoti, Project Researcher
Mr Roger Walker, Convener, Human Rights Committee
Mr Patrick Walsh, Director, Human Rights Program

AIDAB
Hon Gordon Bilney, Minister for Development Cooperation & Pacific Island Affairs
Mr Anthony Dawson, A/g Asst Director-General, Community & Refugee Programs
Mr Laurence Engel, A/g Asst Director-General, PNG Branch
Mr Trevor Kanaley, Deputy Director-General, Corporate Development & Support Division
Mrs Miranda Rawlinson, Director International Policy & Ministerial Services Section, Development Issues & Corporate Policy Branch
Mr John Russell, Asst Director-General, Asia, Africa & Food Programs Branch
Mr Charles Terrell, Deputy Director-General, Asia, Africa & Community Programs
Dr Helen Ware, Asst Director-General, Program Development & Review Branch

Justice Elizabeth Evatt (Private)

China Study Institute in Australia of Alliance for a Democratic China
Mr Zhiming Chen, Research Fellow
Mr Lei Chen, Research Fellow
Mr Duan Lin He, Researcher
Mr Yong Huang, Research Fellow
Mr Lian Chai Jiang, Research Fellow
Mr Tianfu Li, Research Assistant
Dr Hao L Sun, Reader
Mr Rong Sheng Wang, Director

Community Aid Abroad
Mr Patrick Kilby, Coordinator, Government Liaison
Ms Gillian Moon
Dr Douglas Porter, Program Adviser

Office of the UN High Commissioner for Refugees
Mr Pierre-Michel Fontaine, Regional Rep. for Australia, NZ & the South Pacific

United Vietnamese Buddhist Congregation of Canberra & Surrounding Districts
Venerable Thich Quang Ba, Chairman

27 JANUARY 1994 - SYDNEY

Baha'i National Spiritual Assembly
Mr Pieter de Vogel, Director of Government Affairs & National Treasurer

Mr Charles Bowers (private)

Mr Peter Breen (private)

East Timor Talks Campaign
Mr Anthony Burke, Sydney Coordinator

Hellenic Council of New South Wales
Mr Akis Haralabopoulos, Secretariat Member
Mr George Karagiannakis, General Secretary

International Commission of Jurists, Australian Section
Mr David Bitel, Secretary-General
The Hon. John Dowd, AO, QC, Chairman of Council
Mr Rodney Lewis, Convenor, Indonesia Subcommittee
Professor Garth Nettheim, Council Member

Justice for Cyprus Committee
Mr Nick Angelos, President (Australia)
Mr Panayiotes Yiannoudes, President (Victoria)

Kyrenia District Refugees Association of New South Wales
Mr Andreas Trichina, Secretary

28 JANUARY 1994 - SYDNEY

Ahmadiyya Muslim Assoc. of Australia
Mr Mahmood Ahmad,President
Mr Nasir Kahlon, General Secretary
Mr Saifullah Khalid, National Vice-President

Australian Israel Publications & Executive Council of Australian Jewry
Mr Jeremy Jones, Director & Executive Vice-President respectively

Australasian Federation of Tamil Associations
Mr Ananda Pararajasingham, Secretary

Eelam Tamil Association
Mr Vaheisvaran Sureshan, Secretary

Human Rights Council of Australia
Mr Andre Frankovits, Project Director
Mr Christopher Sidoti, Chairperson
Mr Eric Sidoti, Executive Director

Serbian National Federation of Australia
Mr Randon Ilic, Treasurer
Mr Ilija Vickovich, Committee Member

4 FEBRUARY 1994 - CANBERRA

Bougainville Freedom Movement
Mr Moses Havini, Human Rights Advocate
Ms Rosemarie Gillespie, Spokesperson

Department of Industrial Relations
Mr William Dejong, International Branch
Mr Robin Stewart-Crompton, Legal and International Division

Senator Rodney Kemp

Palestine Liberation Organisation
Mr Ali Kazak, PLO Representative in Australia

United Nations Association of Australia
Mr David Purnell, National Administrator
Mr Roger Shipton OAM, President

4 MARCH 1994 - CANBERRA

Australian Institute of Aboriginal and Torres Strait Islander Studies
Dr Mary Edmunds, Visiting Research Fellow, Native Titles Research Unit
Dr James Fingleton, Visiting Research Fellow, Native Titles Research Unit
Dr William Jonas, Principal

Burma Australia Council
Mr Win Aung
Mr Myo Aye
Mr Kyaw Swar
Mr Zaw Tun
Mrs Amanda Zappia

Department of Immigration and Ethnic Affairs
Ms Jennifer Bedlington, First Assistant Secretary, Onshore Refugee Division
Mr Christopher Conybeare, Secretary
Ms Sara Cowan, A/g Director, Asylum Section, Refugees Asylum & International Branch
Ms Sue Ingram, Assistant Secretary, Compliance Branch
Mr Andrew Metcalfe, Asst Secretary, Advisings, Legislation & Legal Policy Branch
Ms Ann Smith, Director, Social Justice Coordination Section

National Farmers' Federation
Mr Ian Booth, Research Officer
Mr Robert Skeffington, Industrial Officer

Refugee Council of Australia
Ms Margaret Piper, Executive Director

Refugee Advice and Casework Service (NSW)
Mr Nicholas Poynder, Coordinator

18 MARCH 1994 - MELBOURNE

Department of Premier and Cabinet
Ms Fiona Hanlon, Assistant Secretary, Legal

Scrutiny of Acts and Regulations Committee of the Victorian Parliament
Mr Victor Perton, Chairman

Senator Sid Spindler

Tasmanian Gay and Lesbian Rights Group
Mr Rodney Croome, Campaining Manager
Mr Wayne Morgan, Lecturer in Law, Law School, University of Melbourne

31 MAY 1994 - CANBERRA

Human Rights and Equal Opportunity Commission
Mr Mick Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner

25 AUGUST 1994 - CANBERRA

Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia
Hon. Justice Michael Kirby AC CMG

1 SEPTEMBER 1994 - CANBERRA

Father Frank Brennan, SJ

5 OCTOBER 1994 - CANBERRA

Attorney General's Department
Ms Joan Sheedy, Senior Government Counsel
Mr Henry Burmester, Principal International Law Counsel
Ms Maggie Jackson, Deputy Government Counsel, Civil Law Division
Ms Kathy Leigh, Senior Government Counsel, Civil Law Division
Ms Deborah Nance, Counsel, Civil Law Division
Ms Carolyn Adams, A/g Principal Counsel
Mr Owen Walsh, Principal Government Lawyer, Criminal Law & Justice Branch
Ms Maureen Kelleher, A/g Assistant Secretary, Criminal Law & Justice Branch

Department of Foreign Affairs and Trade
Mr Bill Barker, Director, Human Rights & Indigenous Issues Section
Mr Luke Buckmaster, Internship Student, Human Rights & Indigenous Issues Section

Australian International Assistance Bureau
Mr Trevor Kanaley, A/g Director-General
Mr Tim Terrell, Deputy Director-General, Asia, Africa and Community Programs Division
Mr Murray Proctor, A/g Director-General, Corporate Development and Support Division
Dr Helen Ware, A/g Director-General, Corporate Development and Support Division
Ms Deborah Stokes, Assistant Director-General, Development Issues and Corporate Policy Branch
Mr Bob Stnesholt, Assistant Director-General, East Asia Branch

13 OCTOBER 1994 - CANBERRA

Human Rights and Equal Opportunity Commission
Federal Commissioner, Mr Brian Burdekin

Appendix Three

Human Rights Exhibits List

1. *United Nations Conference on Human Rights*: working papers for Australian NGO participants in regional preparatory meetings - supplied by ACFOA

2. *United Nations Conference on Human Rights - Report on the Bangkok Preparatory Meetings:* supplied by ACFOA

3. *New Rights of Review*: List of new rights 1992-93 - supplied by DFAT & Attorney-General's Department

4. *Foreign Assistance to Coercive Family Planning in China*: A response to Recent Population Policy in China by Terence Hull - supplied by Senator Brian Harradine

5. *Documentation - Coercive Family Planning and Australian Aid Policy*: Selected documents October 1987-October 1992 - prepared by the Office of Senator Harradine - supplied by Senator Brian Harradine

6. *CHINA: Human Rights continue to be seriously infringed:* a report of the Chinese Human Rights Observation 4 June 1993 - supplied by Wen Jin Chen & Feng Ye

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14b. *The Case of Michael Papadakis*

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17f *We dare call it "the money of the Israeli taxpayer"*

17g. *Horrors Endorsed by the Physician*

17h. *Human Rights update*

17i. *Arab Association for Human Rights,* Letter

17j. *Supplementary attachments*

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24j. *UN Committee Against Torture:* questions asked of Australia

24k. *World Conference on Human Rights Agenda Item 12:* recommendations

24l. *World Conference on Human Rights Agenda Item 12 of the provisional agenda*

24m. *Initial response on non-governmental organisations to the draft Vienna declaration:*

24n. *Speech by Miss Lois O'Donoghue:* Chairperson of the Aboriginal & Torres Strait Islander Commission

24o. *List of Australian Non-Government Organisations*

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106d. *Information on the International Conference of North West Kurdistan:* organised by the Kurdistan Human Rights Project and Medico International

107. *Euthanasia: Human Rights and Inalienability:* paper by Dr John Fleming - supplied by Senator B Harradine

108. *Native Title Act 1993:* supplied by the Attorney-General's Department

109. *Letter and information regarding the newly built maximum security jail:* from Adepu, Chile

110. *Various documents from the Department of Industrial Relations as requested at the public hearing of 4 February 1994:* supplied by the Department of Industrial Relations

111. *Material on the present situation in Sri Lanka:* from Australian Catholic Relief - supplied by Senator B Harradine

112. *Submission to the Joint Standing Committee on Migration - inquiry into detention practices:* from the Refugee Council of Australia

112a. *Asylum, Border Control and Detention - RCOA Response to the Joint Standing Committee on Migration's Report:* supplied by the RCOA

113. *Strangers at the Doorstep - What do we do with them?:* A report on overseas detention practices regarding immigration offenders by Saraswathi Karthigasu - supplied by Senator Jim McKiernan

114. *Northern Ireland - fair trial concerns in Casement Park Trials:* Amnesty International Report - supplied by Senator Jim McKiernan

115. *Eye Services in the Top End of Australia:* background paper - supplied by Mr Alan Harris

115a *Survey on Aboriginal Housing:* supplied by Mr Alan Harris

116. *Northern Territory Visit by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade:* briefing papers - prepared and supplied by the Northern Territory Government

117. *NT Department of Health and Community Services Corporate Plan 1993/95:* supplied by the NT Department of Health and Community Services

118. *Submission the NT Dept of Industry, Technology and Regional Development on social strategies for the Northern Territory:* from Peter Conran, Secretary, Department of the Chief Minister

119. *Australian Government Submission to the UN Human Rights Committee:* supplied by the Tasmanian Gay and Lesbian Rights Group

119a. *Correspondence from Mr Simon Allston, Office of the Solicitor-General of Tasmania to Mr G Mowbray, Attorney-General's Department:* regarding communication under the First Optional Protocol to the ICCPR

119b. *The United Nations and Gay Law Reform in Tasmania:* paper prepared by the Tasmanian Gay and Lesbian Rights Group

120. *Boletin, February 1994:* newsletter of the Committee for Human Rights in Guatemala

120a. *Comprehensive Human Rights Accord:* supplied by the Committee for Human Rights in Guatemala

121. *Scrutiny of Acts and Regulations Committee Alert Digest Updates:* supplied by the Scrutiny of Acts and Regulations Committee of the Parliament of Victoria

122. *Report on the Human Rights Situation in Vietnam by Professor Doan Viet Hoat:* supplied by the Vietnamese Friday Club

123. *The Ogaden After 1991 - What are the Options?:* an academic paper by Martin Doornbos and response to the above paper by Adbullah Adheis and Ahmed Abdela from Ogaden - supplied by the Ogaden Relief Association of Australia

124. *East Timor A land of Crosses:* article by John Pilger from the New Internationalist, March 1994 - supplied by the Parliamentary Library

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126. *Strange Bedfellows: The UN Human Rights Committee and the Tasmanian Parliament:* current issues brief no.6 1994, Parliamentary Research Service - supplied by the Parliamentary Library

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128. *Back to Hell:* a report on a raid of three brothels in Ranong, Thailand, July 1993 - supplied the Burma Information Group

129. *Institute for Aboriginal Development Concise Report of Darwin Trip, 7-11 February 1994:* supplied by the Institute for Aboriginal Development

129a. *Institute for Aboriginal Development Supplement to Operational Plan 1994-1995 Biennium*

129b. *Critical Analysis of the 1992-93 Annual Report for the Office of Aboriginal Development:* prepared by Tricia Smith

129c. *Institute for Aboriginal Development - A Concise History*

129d. *Performance Indicators for the NT Aboriginal Education Policy Strategic Plan Report 1993:* NT Department of Education, 10 February 1994

129e. *The Institute for Aboriginal Development's Draft Response to the Strategic Plan for the NT 1993-95 Triennium:* prepared by Tricia Smith

129f. *Institute for Aboriginal Development: proposed indigenous university campus*

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130. *Situation of human rights in Iran:* supplied by the Department of Foreign Affairs and Trade

131. *The External Affairs Power: Another Province for Law and Order?* by the Hon J T Ludeke, QC - supplied by the Parliamentary Library

132. *Australia's Defence Cooperation Program:* research paper no. 4 1993, by Allan Shephard - supplied by the Parliamentary Library

133. *Population Policies - Family Planning and Reproductive Rights:* current issues brief no. 7 1994, Parliamentary Research Service - supplied by the Parliamentary Library

134. Material supplied by Justice Michael Kirby:
    - Report on Cambodia to the Human Rights Commission, including conclusions and recommendations;
    - speech in presenting the report;
    - resolution of the Human Rights Commission as adopted;
    - speech made at the conclusion of the constitutional conference in Malawi, chaired by Justice Kirby;

- article from the University of NSW Law Journal on the inter-relationship of international human rights law and domestic law;
- speech given at Parliament House, Melbourne, on leadership; and
- article from the New Zealand Law Journal on human rights: 'An Agenda for the Future'

135. Papers from the IGADD Peace Talks on the Sudan supplied by the Kenyan High Commissioner:
- agreement on relief supplies and humanitarian assistance to the war affected areas;
- agenda for the IGADD Peace Talks on the Sudan Conflict; and
- press statement

136. *Situation in Tibet, an update:* from the Tibet Information Office

136a. *An update on our relations with the People's Republic of China with respect to the future of Tibet:* from the Tibet Information Office

136b. *Tibet - Proving Truth from Facts:* Dept of Information & International Relations, Central Tibetan Administration of H.H. the Dalai Lama - supplied by the Tibet Information Office

137. *Human Rights and East Timor, International Law and International Politics:* prepared and supplied by Garth Nettheim, University of New South Wales

138. *Advisory Report:* Standing Committee on Legal and Constitutional Affairs, International War Crimes Tribunal (Consequential Amendments) Bill 1994 - war crimes in Bosnia-Herzegovina

139. *Composting Toilets:* (possible solution to toilet facilities in Arnhem Land) - supplied by Smart Alternatives, Dowmus Waste Management Systems

140. *Submission of Michael Dodson:* at the inquiry into Commonwealth's Annual Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody

141. *Why Amnesty International Opposes the Death Penalty:* from Hon. Barry Jones, MP

142. *The Marsh Arabs of Southern Iraq:* a briefing note from the Foreign and Commonwealth Office, London

143. *Denying Ethnic Identity : The Macedonians of Greece:* supplied by Aegean Macedonian Association of Australia

144. *Australian Children's Rights News:* Defence for Children International - supplied by Helen Bayes, National Convenor

145. *Asia-Pacific NGO Declaration:* for the World Summit on Social Development - supplied by ACFOA

146. *Address by Harris Van Beek:* at the launch of the 1994 Amnesty International Report, 7 July 1994 - supplied by Amnesty International

147. *Final form of Lebanese national accord document:* approved by Lebanese deputies in Al-Ta'If, Saudi Arabia, on 22 October 1989

148. *Kurdistan Human Rights Bulletin:* supplied by Kurdistan Information Centre of Australia

149. *Material on Human Rights in Asia:* written by Yash Ghai, University of Hong Kong

150. *Native Title Newsletter:* supplied by Australian Institute of Aboriginal and Torres Strait Islander Studies

151. *FACT - A book on the human rights status in China*

152. *The Political Conceptualisation of the Sudan Conflict:* a paper supplied by: Sudan People's Liberation Army SPLM/SPLA-United

153. *Struggle of the Kurds:* an article taken from National Geographic, August 1992

154. *State Rights Versus Human Rights:* an address given by the Hon E G Whitlam, AC QC at a conference organised by the Aboriginal and Islander Commission of the Australian Council of Churches

155. *Exploitation of Children Must be Stopped:* a press release by Senator Sid Spindler

156. *The Justice Package Project:* submitted by Mr Mark Plunkett

157. *Extracts from Amnesty International's 1994 Report on the situation in Lebanon:* supplied by Amnesty International Australia.

Appendix Four

Principles and Procedures for Commonwealth - State Consultation on Treaties

These principles and procedures are adopted subject to their operation not being allowed to result in unreasonable delays in negotiating, joining or implementing of treaties by Australia.

In this document the term "State" means a State or Territory.

CONSULTATION

i) The States and Territories will be informed in all cases and at an early stage of any treaty discussions in which Australia is considering participation. Where available, information on the long term treaty work programs of international bodies is to be provided to the States.

ii) There will be a Standing Committee of senior Commonwealth and State/Territory officers to provide timely and co-ordinated assistance to the Commonwealth on the negotiation and implementation of international treaties.

The Standing Committee will meet twice a year, or more often if required, to:

- identify treaty and other international negotiations of particular sensitivity or importance to States, and propose an appropriate mechanism for State involvement in the negotiation process;
- monitor and report on the implementation of particular treaties where the implementation of the treaty has strategic implications, including significant cross-portfolio interests, for States;
- co-ordinate as required the process for nominating State representation on delegations where such representation is appropriate.

iii) Information about treaty discussions is forwarded to Premiers'/Chief Ministers' Departments (or Cabinet Offices) on a regular basis through the Department of the Prime Minister and Cabinet. One vehicle for making information about current treaties and negotiations available to the Commonwealth-State Standing Committee and to States generally will be this Treaties Schedule.

To enable the States to identify treaties of strategic significance to them, the Commonwealth will provide to the States on a regular basis (generally for meetings of the Standing Committee) such forward information as is available covering a 12 month period on forthcoming treaty negotiations.

iv) Subject to any recommendation of the Standing Committee of officials, as a general practice consultation is conducted by the functional Commonwealth/State Ministers or Departments concerned.

v) Existing Commonwealth/State Ministers' consultative bodies (such as the Standing Committee or Attorneys-General, the Australian Fisheries Council, etc.) may be used as the forums in which detailed discussions of particular treaties take place.

vi) Functional Departments keep Premiers'/Chief Ministers' Departments, State Crown Law Offices, the Commonwealth Attorney-General's Department and the Departments of Foreign Affairs and Trade and Prime Minister and Cabinet informed of the treaty matters under consideration.

vii) When issues are to be discussed that are of particular significance to either State or Commonwealth authorities other than those directly represented on the Commonwealth/State consultative bodies, representatives of such authorities might be invited to attend the meetings in an observer role.

viii) The procedures outlined complement the operation of the Standing Committee of officials described above, there may from time to time need to be direct communications between Premiers/Chief Ministers (and their Departments) and the Prime Minister (and the Department of the Prime Minister and Cabinet) on particular treaties.

ix) The consultative process needs to be continued through to the stage of implementation where treaties bear on State interests. Prior to the Commonwealth becoming a party to any international agreement of strategic significance to States, the commonwealth and the States will consult in an effort to secure agreement on the manner in which the obligations incurred should be implemented. Where the preparation of reports to international bodies on implementation action takes place, States should be consulted and their views taken into account in the preparation of those reports. In particular the Commonwealth will take into account the views of States prior to entering into any international commitments which impose significant additional costs or obligations on the States.

x) The States will establish and advise the Commonwealth on the appropriate channels of communication, and persons responsible for consultation, to ensure that the Commonwealth can discharge its international responsibilities in a timely manner.

TREATY NEGOTIATION PROCESS

i) Where State and Territory interest is apparent, the Commonwealth should, wherever practicable, seek and take into account the views of the States in formulating Australian policy and keep the States informed of the determined policy.

ii) In appropriate cases, a representative or representatives of the States are included in delegations to international conferences which deal with State subject matters; subject to any special arrangements, the purpose is not to speak for Australia, but to ensure that the States know what is going on and are always in a position to put a point of view to the Commonwealth. However, State representatives are involved as far as possible in the work of the delegation.

iii) It is normally for the States to initiate moves for inclusion in a delegation, but the Commonwealth should endeavour to keep State interests in mind.

iv) Unless otherwise agreed, the costs of the State representatives are a matter for State Governments.

FEDERAL STATE ASPECTS

i) The Commonwealth does not favour the inclusion of federal clauses in treaties and does not intend to instruct Australian delegations to seek such inclusion. The pursuit of federal clauses in treaties is generally seen by the international community as an attempt by the Federal State to avoid the full obligations of a party to the treaty. Experience at a number of International Conferences has shown that such clauses are regarded with disfavour by almost the entire international community. Experience has also shown that a Federal clause tailored to the needs of one federation will be unacceptable to other federations. Instructing an Australian Delegation to press for a federal clause only diverts it s resources from more important tasks.

ii) The Commonwealth sees no objection to Australia making unilaterally a short "Federal Statement" on signing or ratifying certain appropriate treaties, provided that such a statement clearly does not affect Australia's obligations as a party. An "appropriate" treaty would be one where it is intended that the States will play a role in its implementation. An appropriate form for such a statement is attached.

iii) The normal practice is that Australia does not become a party to a treaty containing a federal clause until the laws of all States are brought into line with the mandatory provisions of the treaty. However, where a suitable "territorial units" federal clause is included in a treaty, the possibility of Australia acceding only in respect of those States which wish to adopt the treaty might be considered on a case by case basis where appropriate, perhaps in some private law treaties.

iv) The Commonwealth will consider relying on State legislation where the treaty affects an area of particular concern to the States and this course is consistent with the national interest and the effective and timely discharge of treaty obligations However, the Commonwealth does not accept that it is appropriate for the Commonwealth to commit itself in a general way not to legislate in areas that are constitutionally subject to Commonwealth power.

FEDERAL STATEMENT

Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between its central, State and territory authorities.

The implementation of the treaty throughout Australia will be effected by the Federal, State and Territory governments having regard to their respective constitutional powers and arrangements concerning their exercise.

Appendix Five

Annex
Principles Relating to the Status of National Institutions Competence and Responsibilities

Drawn up at the Paris Conference, October 1991

Endorsed by CHR in March 1992

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and

professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliament;

(e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commission, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

1992/55. Establishment of an emergency mechanism of the Commission on Human Rights

The Commission on Human Rights

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for the promotion and protection of human rights and fundamental freedoms,

Determined to achieve still further progress in the implementation of the principles and rights enshrined in those instruments,

Convinced that the reinforcement of special procedures and mechanisms established or applied by the Commission on Human Rights to promote, protect and implement international human rights guarantees will contribute towards strengthening the role and enhance the effectiveness of the United Nations in human rights fact-finding, reporting and implementation of existing standards,

Considering that an emergency mechanism of the Commission on Human Rights will enable the United Nations to react appropriately and immediately to acute situations arising from gross violations of human rights wherever and whenever they occur,

Recognizing that such a mechanism should reflect the relevant fundamental principles embodied in the Charter of the United Nations, in particular the sovereignty of States and the need to protect and enhance human rights.

Appendix Six

Australia's Participation in UN Peacekeeping Operations 1946-1993

Peacekeeping Operations	Dates	Mandates and Total Nos. Deployed	Average No. of Australians deployed
UNTSO (UN Truce Supervision Organisation)	1948-	Supervise the truce in Palestine; supervise the observance of armistice agreements between Israel and Egypt, Jordan, Lebanon and Syria; observe cease fires in the Golan Heights and the Suez Canal; assist and cooperate with UNIFIL and UNDOF (600)	13 in 1993
UNMOGIP (UN Military Observer Group in India and Pakistan)	1949-	Supervise cease fire between India and Pakistan in the state of Jammu and Kashmir (100)	up to 18
ONUC (UN Operation in the Congo)	1960-64	Ensure withdrawal of Belgian and other forces; assist law and order; maintain Congo's territorial integrity; provide technical assistance (20,000)	several
UNTEA (UN Temporary Executive Authority)	1962-63	Administer West New Guinea in the transition to its transfer to Indonesia; including a UN Security Force (UNSF) to maintain law and order (1,500 - UNSF)	7
UNYOM (UN Yemen Observation Mission)	1963-64	Monitor disengagement agreement between Saudi Arabia and the United Arab Republic (200)	2
UNFICYP (UN Peacekeeping Force in Cyprus)	1964-	Maintain law and order; from 1974, secure a buffer zone, monitor the *de facto* cease fire and provide humanitarian assistance (6,500)	20-35 AFP and State police
UNIPOM (UN India-Pakistan Observation Mission)	1965-66	Monitor cease fire along border, except the state of Jammu and Kashmir, supervise withdrawal of all armed personnel to positions held by them before 5 August 1965 (100)	4

UNEF II (UN Emergency Force II)	1973-79	Supervise the cease fire and redeployment of Egyptian and Israeli forces and control the buffer zones in the Suez Canal sector and later the Sinai (7,000)	46 RAAF personnel
UNDOF (UN Disengagement Observer Force)	1974-	Supervise the cease fire between Israel and Syria in the Golan Heights; supervise disengagement and separation of forces (1,500)	several
UNIFIL (UN Interim Force in Lebanon)	1978-	Monitor withdrawal of Israeli troops from southern Lebanon; assist restoration of government authority (7,500)	several
UNIIMOG (UN Iran-Iraq Military Observer Group)	1988-91	Supervise the cease fire; monitor withdrawal of all forces to recognised boundaries (400)	15
UNTAG (UN Transition Assistance Group)	1989-90	Supervise transition of Namibia to independence; organise and supervise election (8,000)	about 300
MINURSO (UN Mission for the Referendum in W Sahara)	1991-	Conduct referendum on independence or integration with Morocco (500)	45
UNAMIC (UN Advanced Mission in Cambodia)	1991-92	Advance mission for UNTAC	65
UNTAC (UN Transitional Authority in Cambodia)	1992-93	Supervise government functions and elections; supervise disarmament and demobilisation of rival armies; supervise repatriation and rehabilitation of refugees; monitor human rights (22,000)	over 500
UNPROFOR (UN Protection Force) *Croatia Bosnia-Herzegovina, and Former Yugoslav Republic of Macedonia*	1992-	Monitor ceasefire in Croatia; supervise withdrawal of Yugoslav forces; ensure UN Protected Areas demilitarised and inhabitants protected. Support UNHCR delivery of humanitarian relief in Bosnia-Herzegovina; ensure the security and functioning of Sarajevo airport; protect UN personnel including in the six safe areas in Bosnia-Herzegovina (Ch VII mandate). Preventive deployment in the Former Yugoslav Republic of Macedonia (26,500)	1
UNOSOM I (UN Operation in Somalia)	1992-93	Monitor the cease fire, assist provision of humanitarian relief (1000)	30

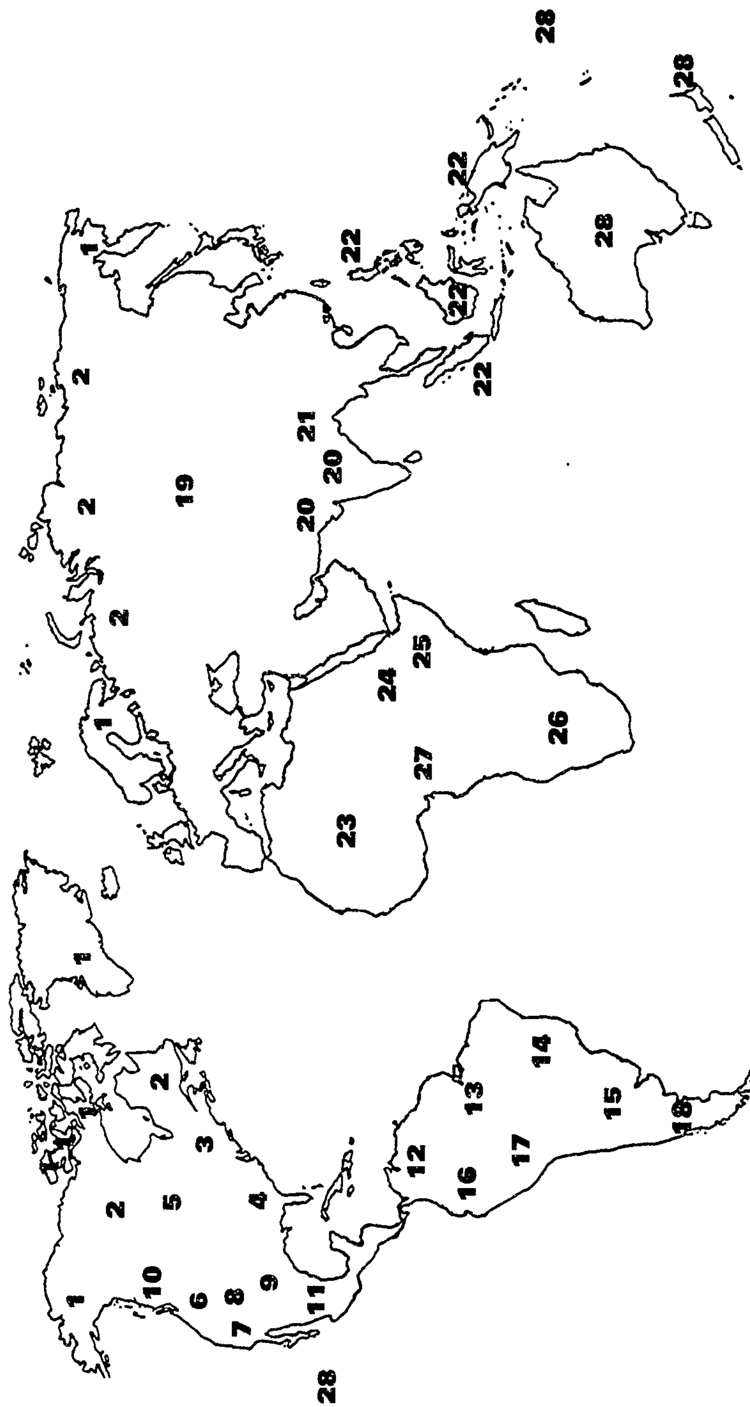
UNOMOZ (UN Operation in Mozambique)	1992-	Verify demobilisation and disarmament of forces, and withdrawal of foreign troops; assist and monitor organisation of elections; coordinate humanitarian assistance (7000)	16 AFP in 1994
UNOSOM II (UN Operation in Somalia)	1993-	Ensure the maintenance of a secure environment for humanitarian relief operations (authorised under Chapter VII), including by disarmament; foster national reconciliation and restoration of national institutions (25,000)	38
UNAMIR (UN Assistance Mission for Rwanda)	1993-	Incorporating UNOMUR and in cooperation with the Organisation of African Unity (OAU) Neutral Military Observer Group (NMOG II), supervise the implementation of the peace agreement in Rwanda (authorised to 2,548)	308 in 1994

Note: UNOSOM II has a Chapter VII peace enforcement mandate; part of UNPROFOR's mandate is explicitly based on Chapter VII; UNIKOM has a Chapter VII mandate, as it was established to monitor the Gulf War ceasefire agreement resulting from a UN-endorsed enforcement action: all are treated as if they were peacekeeping for UN budgeting and administrative purposes.

Note: Numbers deployed are indicative only. Data on civilian elements are not available in all cases.

Source: Department of Foreign Affairs and Trade, Submissions Vol III, pp.S418-421.

WHERE INDIGENOUS PEOPLES LIVE



1. Arctic
2. Sub-Arctic
3. Eastern Woodlands
4. Southeast
5. Great Plains
6. Northwest-Plateau
7. California
8. Great Basin
9. Southwest
10. Pacific Northwest Coast
11. Central America
12. Circum-Caribbean
13. Amazonia
14. Mato Grosso
15. Gran Chaco
16. W. Andean Lowlands
17. Andean Highlands
18. Patagonia-Pampas
19. North and Central Asia
20. South Asia
21. Chittagong Hill Tract Peoples
22. South East Asia
23. Sahara and Sahal
24. Southern Sudan
25. The Horn and East Africa
26. Kalahari Desert
27. Ituri Forest
28. Australia and the Pacific

Appendix Seven

Where Indigenous Peoples Live

The following listing of indigenous peoples is not comprehensive, nor exclusive, but instead representative of peoples living worldwide.

1. Arctic

Aleut
Chipewyan
Inuit
Saami

2. Sub-Arctic

Cree
Dene
Naskapi
Ojibwa

NORTH AMERICA

3. Eastern Woodlands

Algonquin
Haudenosaunee (Six Nations)
Huron
Micmac
Potawatomi
Shawnee

4. Southeast

Cherokee
Chickasaw
Creek
Seminole

5. Great Plains

Arapaho
Cheyenne
Pawnee
Sioux

6. Northwest-Plateau

Nez Perce
Wasco
Yakima

7. California

Cahuilla
Pomo
Serrano

8. Great Basin

Shoshone
Ute

9. Southwest

Apache
Dina (Hopi)
Navajo
Zuni

10. Pacific NW Coast

Bella Coola
Chinook
Haida
Kwakiuti
Salish
Tingit

11. Central America

Bribri
Cakchiquel
Chol
Chuj
Cora
Guaymi
Huichol
Ixil
Kekchi
Kuna
Lacandon
Lenca
Maya (descendants)
Miskito
Nahua
Pipile
Quiche
Rama

Seri
Sumu
Tarahumara
Yaqui
Yucatec

12. Circum-Caribbean

Akawalo
Bari (Motilones)
Choque
Guajiro
Karina
Kogi
Otomac
Paez
Yarawato
Yukpa

SOUTH AMERICA

13. Amazonia

Aguaruna
Amarakaeri
Amuesha
Arara
Arawak
Ashaninca
Asurini
Gaviao
Kayapo
Kreen-Akarore
Matsigenka
Mundurcu
Nambikwara
Parakana
Quichua (Oriental)
Senema
Secoya
Shipibo
Shuar (Jivaro)
Tukano
Ufaina
Waimira-Atroari
Waorani(Auca)
Wayana
Xavante
Yagua
Yanomami

14. Mato Grosso

Borbaro
Botocudo
Ge (Central)
Guato
Kadeveo
Kaingang
Karaja
Kayapo (Southern)
Turpi

15. Gran Chaco

Ache
Ayareo
Chamacoco
Chiriguano
Guana
Mataco
Mbaya
Toba-Maskoy

16. W Andean Lowlands

Cayapas
Colorados

17. Andean Highlands

Aymara
Huancas
Kolla
Maja
Otavalo
Quechua
Salasaca
Uros

18. Patagonia -Pampas

Aracuanian
Mapuche
Ranquel
Tehuelche

ASIA

19. North and Central Asia

Ainu
Hul
Manchu
Miao
Mongolian
Taiwan Aboriginies
Tibetan
Uighur
Yi
Zhuang

20. South Asia

Bhils
Chenchus
Dafflas
Dandami
Gadabas
Garos
Gond
Hos
Irula Kurrumbas
Juangs
Kadras
Kameng
Khassis
Khonds
Kolis
Lohit
Mundas
Naga
Oraons

Pathan
Santal
Savaras
Sholegas
Toda Kotas
Vedda

21.Chittagong Hill Tract Peoples

Chakma
Marma
Tripura

22. South East Asia

Chin
Hmong
Kachin
Karen
Kedang
Lisu
Semai
Shan

AFRICA

23. Sahara, Sahel

Fulani
Tuareg

24. S. Sudan

Dinka
Hamar
Kawahla
Lotuko
Mondari
Nuba
Nuer
Rashaida
Shiluk
Zande

25. The Horn and East Africa

Barabaig
Eriteran
Maasai
Oromo
Somali
Tigrayan

26. Kalahari Desert

San

27. Kuri Forest

Efe
Lese
Mbuti

28. Australia and the Pacific

Aboriginals
Arapesh
Asmat
Bangsa
Bontoc
Chamorro
Dani
Dayak
Hanunoo
Hawian
Iban
Ifugao
Kalinga
Kanak
Kayan
Kedang
Mae-Enga
Maori
Numdugumur
Penan
Rapa
Nui
Tahitian
Torres Strait Islanders
Tsembaga

Appendix Eight

Draft Declaration on the Rights of Indigenous Peoples

Draft declaration on the rights of indigenous peoples
Revised working paper submitted by the Chairperson-Rapporteur, Ms Erica-Irene Daes, pursuant to Sub-Commission resolution 1992/33 and Commission on Human Rights resolution 1993/31

INTRODUCTION

In its resolution 1992/93 of 27 August 1992, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Ms Erica-Irene Daes, be entrusted with the tasks of further elaborating the paragraphs of the draft declaration on the rights of indigenous peoples which were agreed upon at second reading and circulating these paragraphs to the members of the Working Group for their comments. In the same resolution the Sub-Commission requested the Secretary-General to transmit the revised and reorganized text of the draft declaration, prepared pursuant to paragraph 5 of the resolution, to Governments, indigenous peoples, and intergovernmental and non-governmental organizations. The Commission on Human Rights, in its resolution 1993/31 of 5 March 1993, welcomed the recommendation of the Sub-Commission that the Chairperson-Rapporteur be entrusted with the task or further elaborating the paragraphs of the draft declaration which were agreed upon at second reading, taking into consideration, inter alia, the comments of Governments, indigenous people's organizations and other interested parties. The text which follows constitutes the revised working paper submitted by the Chairperson-Rapporteur, Ms Erica-Irene Daes.

PREAMBULAR AND OPERATIVE PARAGRAPHS OF THE DRAFT DECLARATION AS AGREED UPON BY THE MEMBERS OF THE WORKING GROUP AT FIRST READING AND REVISED BY THE CHAIRPERSON-RAPPORTEUR, MS ERICA-IRENE DAES

First preambular paragraph

Affirming that indigenous peoples are equal in dignity and rights to all other peoples, while recognizing the right of all individuals and peoples to be different, to consider themselves different, and to be respected as such,

Second preambular paragraph

Considering that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Third preambular paragraph

Reaffirming that all doctrines, policies and practices based on racism and racial, religious, ethnic or cultural superiority are scientifically false, legally invalid, morally condemnable and socially unjust,

Fourth preambular paragraph

Reaffirming also that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Fifth preambular paragraph

Concerned that many indigenous peoples have been deprived of their human rights and fundamental freedoms, resulting, inter alia, in the dispossession of their lands, territories and resources, as well as in their poverty and misery,

Sixth preambular paragraph

Recognizing the urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their cultures, spiritual traditions, histories and philosophies, as well as from their political, economic and social structures,

Seventh preambular paragraph

Welcoming the fact that indigenous peoples are organizing themselves in order to bring an end to all forms of discrimination and oppression wherever they occur,

Eighth preambular paragraph

Convinced that increasing the control of indigenous peoples over development affecting them and their lands, territories and resources will enable them to continue to strengthen their institutions, cultures and traditions, as well as to promote their development in accordance with their aspirations and needs,

Ninth preambular paragraph

Recognizing also that respect for indigenous knowledge and practices contributes to sustainable development and management of the environment,

Tenth preambular paragraph

Emphasizing the need for demilitarization of the lands and territories of indigenous peoples, which will contribute to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Eleventh preambular paragraph

Reaffirming the importance of giving special attention to the rights and needs of indigenous elders, women, youth, children and disabled,

Twelfth preambular paragraph

Recognizing in particular that it is in the best interests of indigenous children for their families and communities to retain shared responsibility for their upbringing, training and education,

Thirteenth preambular paragraph

Believing that indigenous peoples have the right freely to determine their relationships with States in a spirit of coexistence,

Fourteenth preambular paragraph

Considering that treaties, agreements and other constructive arrangements between States and indigenous peoples continue to be matters of international concern and responsibility,

Fifteenth preambular paragraph

Noting that the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Sixteenth preambular paragraph

Bearing in mind that nothing in this Declaration may be used as a pretext to deny any peoples their right of self-determination,

Seventeenth preambular paragraph

Encouraging states to comply with and effectively implement all international instruments as they apply to indigenous peoples, in consultation and cooperation with the peoples concerned,

Eighteenth preambular paragraph

Believing that this Declaration is a first step in the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Nineteenth preambular paragraph

Solemnly proclaims the following Declaration on the Rights of Indigenous Peoples:

PART 1

Operative paragraph 1

Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations and in international human rights law;

Operative Paragraph 2

Indigenous peoples are free and equal to all other human beings and peoples in dignity and rights, and have the right to be free from discrimination of any kind based on their indigenous origin or identity;

Operative Paragraph 3

Indigenous peoples have the right of self-determination, in accordance with international law, subject to the same criteria and limitations as apply to other peoples in accordance with the Charter of the United Nations. By virtue of this, they have the right, inter alia, to negotiate and agree upon their role in the conduct of public affairs, their distinct responsibilities and the means by which they manage their own interests.

An integral part of this is the right to autonomy and self-government;

Operative paragraph 4

Indigenous peoples have the right to participate fully in the political, economic, social and cultural life of the State while maintaining their distinct political, economic, social and cultural characteristics;

PART 11

Operative paragraph 5

Indigenous peoples have the collective right to exist in peace and security as distinct peoples and to be protected against any type of genocide.

Consequently, they have the individual rights to life, physical and mental integrity, liberty and security of person;

Operative paragraph 6

Indigenous peoples have the collective and individual right to be protected against ethnocide and cultural genocide, including the prevention of and redress for:

(a)Removal of indigenous children from their families and communities under any pretext;

(b)Any action which has the aim or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities;

(c)Any form of forced assimilation or integration by imposition of other cultures or ways of life;

(d)Dispossession of their lands, territories or resources;

(e)Any propaganda directed against them;

Operative paragraph 7

Indigenous peoples have the collective and individual right to maintain and develop their distinct characteristics and identities, including the right to identify themselves as indigenous;

Operative paragraph 8

The right of an indigenous person to belong to an indigenous nation or community as a matter of his or her individual choice and no disadvantage of any kind may arise from the exercise of such a choice;

Operative paragraph 9

Indigenous peoples shall not be forcibly removed from their lands or territories. Where relocation occurs, it shall be with the free and informed consent

of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return;

Operative paragraph 10

Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a)Recruit indigenous people against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b)Recruit indigenous children into the armed forces under any circumstances;

(c)Force indigenous people to abandon their lands and territories and means of subsistence and relocate them in special centres for military purposes;

Part 111

Operative paragraph 11

Indigenous peoples have the right to revitalize and practise their cultural traditions. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites and structures, artefacts, designs, ceremonies, technologies and visual and performing arts and literatures, as well as the right to the restitution of cultural, religious and spiritual property taken without their free and informed consent or in violation of their laws;

Operative paragraph 12

Indigenous peoples have the right to manifest, practise and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains. States shall take effective measures to preserve, respect and protect the sacred places and cemeteries of indigenous peoples;

Operative paragraph 13

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their languages, oral traditions, writing systems and literatures, and to designate and maintain their own names for communities, places and persons. States shall take effective measures to ensure that indigenous peoples can understand and be understood in political legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means;

PART 1V

Operative paragraph 14

Indigenous peoples have the right to all levels and forms of education, including access to education in their own languages, and the right to establish and control their educational systems and institutions;

Operative paragraph 15

Indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories and aspirations reflected in all forms of education and public information. States shall take effective measures, in consultation with indigenous peoples, to eliminate prejudice and to promote tolerance, understanding and good relations;

Operative paragraph 16

Indigenous peoples have the right to the use of and access to all forms of media in their own languages;

PART V

Operative paragraph 17

Indigenous peoples have the right to participate fully at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures;

Operative paragraph 18

Indigenous peoples have the right to participate fully, through procedures determined in consultation with them, in devising legislative and administrative measures that may affect them. States shall obtain the free and informed consent of the peoples concerned before implementing such measures;

Operative paragraph 19

Indigenous peoples have the right to maintain and develop their economic and social systems, to be secure in the enjoyment of their own means of subsistence, and to engage freely in their traditional and other economic activities, including hunting, fishing, herding, gathering, forestry and cultivation. Indigenous peoples who have been deprived of their means of subsistence are entitled to just and fair compensation;

Operative paragraph 20

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, health and social security.

Attention shall be paid to the special needs of indigenous elders, women, youth, children and disabled;

Operative paragraph 21

Indigenous peoples have the right to determine and develop priorities and strategies for their development. In particular, indigenous peoples have the right to determine and develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions;

Operative paragraph 22

Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals, and minerals;

PART V1

Operative paragraph 23

Indigenous peoples have the right to recognition of their distinctive and profound relationship with their lands and territories. The use of the term "lands and territories" in this Declaration means the total environment of the lands, air, water, sea, sea-ice, flora and fauna and other resources which indigenous peoples have traditionally owned or otherwise occupied or used;

Operative paragraph 24

Indigenous peoples have the collective and individual right to own, control and use their lands and territories. This includes the right to the full recognition of their laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective measures by States to prevent any interference with or encroachment upon these rights;

Operative paragraph 25

Indigenous peoples have the right to the restitution of lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent and, where this is not possible, to just and fair compensation.

Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands and territories at least equal in quality, size and legal status;

Operative paragraph 26

Indigenous peoples have the right to the recreation and protection of the total environment and the productive capacity of their lands and territories, as well as to assistance for this purpose from States and through international cooperation. Military activities and the storage or disposal of hazardous materials shall not take place in the lands and territories of indigenous peoples, unless otherwise freely agreed upon by the peoples concerned;

Operative paragraph 27

Indigenous peoples have the right to special measures to protect, as intellectual property, their sciences, technologies and cultural manifestations, including genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts;

Operative paragraph 28

Indigenous peoples have the right to require that States obtain their free and informed consent prior to the commencement of any projects on their lands and territories, particularly in connection with natural resource development or exploitation of mineral or other subsurface resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact;

PART V11

Operative paragraph 29

Indigenous peoples have the right to autonomy and self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as internal taxation for financing these autonomous functions;

Operative paragraph 30

Indigenous peoples have the right to determine the structures and to select the membership of their autonomous or self-governing institutions in accordance with their own procedures;

Operative paragraph 31

Indigenous peoples have the right to retain and develop their customs, laws

and legal systems, in a manner not incompatible with universally recognized human rights and fundamental freedoms, and to have these recognized in the legal system and political institutions of the State;

Operative paragraph 32

Indigenous peoples have the right to determine the responsibilities of individuals to their communities in a manner not incompatible with universally recognized human rights and fundamental freedoms;

Operative paragraph 33

Indigenous peoples have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other indigenous peoples across borders;

Operative paragraph 34

Indigenous peoples have the right to the observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original intent. Upon the request of the indigenous peoples concerned, States shall provide for the submission of disputes which cannot otherwise be settled to competent international bodies;

PART V111

Operative paragraph 35

States shall take effective and appropriate measures, in consultation with the indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights contained herein shall be adopted and included in national legislation in such a manner that indigenous peoples can avail themselves of such rights in practice;

Operative paragraph 36

Indigenous peoples have the right to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development, and for the enjoyment of the rights and freedoms contained in this Declaration;

Operative paragraph 37

Indigenous peoples have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights;

Operative paragraph 38

The organs and specialized agencies of the United Nations system shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia of financial and technical cooperation;

Operative paragraph 39

The United Nations shall monitor the implementation of this Declaration through a body at the highest level with special competence in this field and with the direct participation of indigenous peoples. United Nations human rights bodies shall promote respect for the provisions of this Declaration;

PART 1X

Operative paragraph 40

The rights contained herein constitute the minimum standards for the survival and well-being of the indigenous peoples of the world;

Operative paragraph 41

Nothing in this Declaration may be interpreted as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire;

Operative paragraph 42

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

Appendix Nine

ILO Conventions Ratified by Australia as at June 1994 (Total number of Conventions ratified by Australia: 54)

ILO Convention No 2	*Unemployment* (1919)
ILO Convention No 7	*Minimum Age (Sea)* (1920)
ILO Convention No 8	*Unemployment Indemnity (Shipwreck)* (1920)
ILO Convention No 9	*Placing of Seamen* (1920)
ILO Convention No 10	*Minimum Age (Agriculture)* (1921)
ILO Convention No 11	*Right of Association (Agriculture)* (1921)
ILO Convention No 12	*Workmen's Compensation (Agriculture)* (1921)
ILO Convention No 15	*Minimum Age (Trimmers and Stokers)* (1921)
ILO Convention No 16	*Medical Examination of Young Persons (Sea)* (1921)
ILO Convention No 18	*Workmen's Compensation (Occupational Diseases)* (1925)
ILO Convention No 19	*Equality of Treatment (Accident Compensation)* (1925)
ILO Convention No 21	*Inspection of Emigrants* (1926)
ILO Convention No 22	*Seamen's Articles of Agreement* (1926)
ILO Convention No 26	*Minimum Wage Fixing Machinery* (1928)
ILO Convention No 27	*Marking of Weight (Packages Transported by Vessels)* (1929)
ILO Convention No 29	*Forced Labour* (1930)

ILO Convention No 42	*Workmen's Compensation (Occupational Diseases) (Revised)* (1934)
ILO Convention No 45	*Underground Work (Women)* (1935) Denounced in 1988
ILO Convention No 47	*Forty Hour Week* (1935)
ILO Convention No 57	*Hours of Work and Manning (Sea)* (1946)
ILO Convention No 58	*Minimum Age (Sea) (Revised)* (1936)
ILO Convention No 63	*Statistics of Wages and Hours of Work* (1938)
ILO Convention No 76	*Wages, Hours of Work and Manning (Sea)* (1946)
ILO Convention No 80	*Final Articles Revision* (1946)
ILO Convention No 81	*Labour Inspection* (1947)
ILO Convention No 83	*Labour Standards (Non-Metropolitan Territories)* (1947)
ILO Convention No 85	*Labour Inspectorates (Non-Metropolitan Territories)* (1947)
ILO Convention No 86	*Contracts of Employment (Indigenous Workers)* (1947)
ILO Convention No 87	*Freedom of Association and Protection of the Right to Organise* (1948)
ILO Convention No 88	*Employment Service* (1948)
ILO Convention No 92	*Accommodation of Crews (Revised)* (1949)
ILO Convention No 93	*Wages, Hours of Work and Manning (Sea) (Revised)* (1949)
ILO Convention No 98	*Right to Organise and Collective Bargaining* (1949)
ILO Convention No 99	*Minimum Wage-Fixing Machinery (Agriculture)* (1951)
ILO Convention No 100	*Equal Remuneration* (1951)

ILO Convention No 105	*Abolition of Forced Labour* (1957)
ILO Convention No 109	*Wage, Hours of Work and Manning (Sea) (Revised)* (1958)
ILO Convention No 111	*Discrimination (Employment and Occupation)* (1958)
ILO Convention No 112	*Minimum Age (Fishermen)* (1959)
ILO Convention No 116	*Final Articles Revision* (1961)
ILO Convention No 122	*Employment Policy* (1964)
ILO Convention No 123	*Minimum Age (Underground Work)* (1965)
ILO Convention No 131	*Minimum Wage-Fixing* (1970)
ILO Convention No 133	*Accommodation of Crews (Supplementary Provisions)* (1970)
ILO Convention No 135	*Workers' Representatives* (1971)
ILO Convention No 137	*Dock Work* (1973)
ILO Convention No 142	*Human Resources Development* (1975)
ILO Convention No 144	*Tripartite Consultation (International Labour Standards)* (1976)
ILO Convention No 150	*Labour Administration* (1978)
ILO Convention No 156	*Workers with Family Responsibilities* (1981)
ILO Convention No 158	*Termination of Employment* (1982)
ILO Convention No 159	*Vocational Rehabilitation and Employment (Disabled Persons)* (1983)
ILO Convention No 160	*Labour Statistics* (1985)
ILO Convention No 173	*Workers' Claims (Employer's Insolvency)* (1992)

Appendix Ten

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The General Assembly, *Reaffirming* that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming 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,

Desiring to promote the realization of principles contained in the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is carried out by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognising the need to ensure even more effective implementation of international instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.

2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

3. Persons belonging to minorities have the right to participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

4. Persons belonging to minorities have the right to establish and maintain their own associations.

5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group, with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights including those as set forth in this Declaration individually as well as in community with other members of their group, without any discrimination.

2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights as set forth in this Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

3. States should take appropriate measures so that, wherever possible, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.

5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, including exchange of information and experience, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights as set forth in this Declaration.

Article 8

1. Nothing in this Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.

2. The exercise of the rights as set forth in this Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.

3. Measures taken by States in order to ensure the effective enjoyment of the rights as set forth in this Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The organs and specialized agencies of the United Nations system shall contribute to the full realization of the rights and principles as set forth in this Declaration, within their respective fields of competence.

MINORITY REPORT - SENATOR DEE MARGETTS

I agree with the majority of the report and the direction and intent of its recommendations. It would be difficult not to agree with any report of an inquiry made primarily from the perspective of human rights.

Nevertheless, the report is a political document, and as such is a compromise between the views and priorities of the Committee's members. It is apparent that at least some of the compromises have been with those having strong positions in support of (export) trade, military defence, military co-operation, and defence exports. Since these positions as goals show little compromise with human rights perspective within their own spheres, I find the kind of attention given them in this report regrettable. Support of such goals in the report have resulted in qualifications of stronger statements supporting human rights objectives, rather than vigorous critique of the way pursuit of such goals have been implemented. Advocates of these goals would promote them as the primary means of generating human rights.

It is noted that the issue of "sovereignty" in relation to Human Rights Conventions has been raised here in chapter 2 as a concern of some members. However there is significant leeway allowed in the interpretation and implementation of rights under the convention, and there is little power to enforce such a convention, other than moral censure in the eyes of the international community. International and national actions based on human rights abuses generally require that the abuses be widespread, flagrant and dramatic, such as cases of genocidal polices, structurally entrenched racism (e.g. apartheid), or massive abuse of civil and political rights. In spite of clear evidence and UN resolutions existing for decades, no effective action was taken against Israel in spite of its treatment of the indigenous Palestinian people. Many cases of flagrant violation of human rights, such as the murder of street children in Rio, the death squads under Marcos, Samoza, or in El Salvador, the treatment of the Nagas in India, gain even less attention or commitment to action. The cry of sovereignty should have been clearly identified in this case as an excuse to justify persisting in racist and sexist practices without being subject to question or review.

I have strong reservations about the unquestioned support of trade, and support of defence trade and defence co-operation that is conveyed by the report. I take particular exception to 4.29 promoting defence co-operation rather than peace-making. Australia's policies of defence co-operation are given far more resources than the promotion of human rights. Most of the regimes we provide with such co-operation do not have unblemished rights records, some being under sanctions for human rights abuse. Under the regimes involved the defence forces are nearly always implicated in the abuses, as they take a high-profile domestic role in national politics. While

some would argue that we could be training them to respect human rights, it could also be said, in the case of some forces that we may be training them to be more effective human rights abusers.

It is unfortunate that the struggles of several groups, and violations in several nations were not given more attention here. Little note was made of the treatment of the Arakan Muslim population by Myanmar and Pakistan. Little note was made of the desperate situation of the Karen in Thailand and Myanmar. No attention was given to the plight of the Nagas and other ethnic groups in India where government action is resulting in flagrant human rights violations. Little attention has been given to the situation in Bougainville or Timor, where Australia should be active in defence of rights. It appears that the committee is willing to compromise on addressing human rights issues rather than compromise Australia's reputation by openly bringing up diplomatic failure to act effectively in defence of human rights. I find that unfortunate, and to an extent, unacceptable.

The committee should also have recognised that support of regimes violating human rights by nations, especially economically developed nations seen as world leaders, must be challenged. Nations such as the US have actively supported repressive regimes, including giving military support, defence loans, and providing advisers on interrogation and torture. While the US is an ally, and an important voice in publicly supporting human rights in some contexts, this cannot exempt them from criticism when their actions actively contradict human rights goals. Other nations such as France and the UK are equally guilty of active support of repression or repressive and non-democratic regimes. Australia has already been mentioned in this context in relation to Indonesia and PNG/Bougainville, and its lack of action or active support elsewhere should also be openly challenged.

Less attention than I would have liked was given to the plight of women, and indigenous people internationally and in Australia. While the report notes that mainstream human rights bodies have lagged behind on women's issues (8.1) and the women are consistently under-represented in the UN and a program of gender equity is needed (8.3), and that women's issues should be brought into mainstream forums (8.6-8.7) the report fell short of actually making any effective recommendations for Australian action on these issues. It did not suggest that Foreign Affairs actively promote or initiate such moves. I would have preferred a far stronger stand taken on rape and violation of women in war, in detention camps, by police, and in refugee camps than was taken in the report. I would have liked a stronger stand taken on women's legal and economic position taken and believe it was appropriate to have stated that various legal measures such as CEDWAW (8.18) are not sufficient to eliminate sexual discrimination.

I also note that the entire issue of gender preference, homosexuality and bisexuality was ducked by the committee in spite of its high prominence as a human rights issue in Australia.

In relation to indigenous people, various international issues have been overlooked such as the sitution of the Nagas, the Gorkas, the Penan, the Tibetans, the Ainu, and various native American peoples, including those regularly victims of racism in "developed countries". Issues of importance such as the protection, including under intellectual property regimes, of indigenous culture and knowledge, issues of cultural rights and issues of "development" in relation to indigenous peoples were overlooked. In relation to Australia's indigenous people, 9.15 should have been far stronger, and have noted that the problems have not gone away. 9.16 suggests setting standards, but falls short of recommending an adequately-funded program to implement these standards. There should have been explicit mention of the WA Crimes (Serious and Repeat Offenders) Sentencing Act 1992 and subsequent changes such as those to the WA Bail Act in relation to worsening the situation for Aboriginal justice (9.18-9.19).

In relation to child refugees in detention centres, the statement in 9.26 that the Committee accepts the advice of the Attorney-General's Department that the current practice is legal ignores the fact that there is a diversity of views in the legal profession about the matter. The Committee is too easily reassured and in any case does not appear to adequately address the issue of human rights as opposed to strict legality. While the committee does note that long detention is unacceptable, this is not supported by any recommendation for change of Government policy.

One area where the issue of sovereignty could legitimately have been raised is in relation to the World Trade Organisation, which has significant power to impose economic penalties against nations and does not incorporate human rights considerations into its policies to any effective extent. To have such an organisation explicitly working against inclusion of human rights considerations in trade works diametrically against international moves to promote such rights. Likewise the support of the IMF, World Bank and other international development banks for policies of "structural adjustment" works against human rights support. These institutions have far more power than any human rights measures or agreements, and actively seek to prescriptively intervene in the legal and institutional frameworks of nations. That little criticism was levelled at these institutions for violation of sovereignty, or at the Australian Government for actively supporting the exclusion of human rights from trade and supporting the imposition of prescriptive intervention into other nations by multilateral development agencies shows the essential hypocrisy of the current debate on sovereignty and treaties. It is also a substantial failing in the report in relation to addressing the issue of human rights and development.

The entire issue of development and human rights went largely unchallenged. This is a significant, a huge, oversight. It is frequently assumed that the objective of economic growth justifies various human rights abuses as "temporary" and "necessary". "Development" justifies the destruction of the Amazon and the relocation or destruction of tribal peoples there. Development justifies the huge dam projects in India and China which will see millions relocated, often at gunpoint, often without adequate compensation. It justifies the Khor Jor Kor program in Thailand, and the moving of villages and clearing of forest for replanting as pulpwood plantations. It justifies support of military dictators who "support business" and will use torture, imprisonment and death squads to suppress dissent. It justifies overlooking "domestic problems" such as internal conflicts or ruthless suppression of minorities. It allow us to pass off rampant and aggressive sexism, racism, or ethnic and religious persecution as "moral relativity".

The report has not examined the effect of development in the current context on promotion and support for the violation of human rights. It does not look at the increasing gulf between rich and poor nations, or between the rich and poor within nations. It does not look at the impact of the development push on rural and indigenous populations, the impact of loss of land and resources, the way in which they are lost, and the treatment and conditions that result from its loss. It does not look at the need for investment security and the need to protect those with economic power from those without, and the relation of this need to repression. It did not examine the mining push that lay at he heart of the Bougainville dispute, the winners and losers, the disenfranchisement of people, the pollution and destruction of resources, the repression required to make them live with this. It does not examine the selectivity of benefit in development, and the impact in terms of re-enforcing disproportionate patterns of power and resource access, and the often brutal conditions that result. It does not look at the way debt is promoted and facilitated. It does not look at the solutions imposed in relation to debt, the resulting policies of "austerity" applied to the already impoverished. It does not examine the move to "development" in terms of creation of industrial ghettos in which workers live in tin shacks amidst toxic and industrial waste, with extreme rates of birth defects and industrial diseases. These are violations of human rights as surely as those produced by interrogators with cattle prods.

I welcome the recommendation to have the next inquiry on the human rights implications of the WTO. However, I regret that this report has not touched on the effect of current trade regimes, intimately connected with current development patterns, on human rights. It has not examined the effect of liberalising trade on supporting disequity through keeping wages low while allowing prices to rise. It has not examined the impact of allowing corporations, with huge markets in developed nations, to compete directly for resources with individuals in developing countries, and the

subsequent siphoning off of resources from those developing nations. It has not examined how the need to attract foreign capital means nations compete against each other for low wages and low environmental and health standards. It has not examined how the push for deregulation of investment facilitates capital transfers that siphon money out of nations without creating the famous multiplier effect. It has not examined how demands for convertibility coupled with global speculation and skews in value against developing nations result in massive currency fluctuations, and the consequent impact on the people of that nation. It has not examined how internationally imposed intellectual property regimes can rob nations of the benefit of their genetic resources, and their traditional knowledge. It does not examine how intellectual property acts as a monopoly on ideas, denying technology at reasonable cost, denying rights to real innovators, and exacting monopoly rents from developing nations, with the effect of denying the world of ideas, denying the developing world of medical and other products, and supporting a system which further concentrates power and wealth.

In summation, the report is reasonable as far as it goes. While there are advantages to having the obvious stated, and actually having recommendations that everyone knows should be made given the weight of a committee report, there is really little here that is surprising or new. This report does not challenge the status quo in any way. In my opinion it does not go far enough.

Senator D Margetts