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# **National Human Rights Consultation**

**15 June 2009**

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Submission to the Independent Consultation  
Committee

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*This submission was written by Sarah Winter, Human Rights Advisor at ACFID. It is an ACFID submission but the analysis and/or opinion presented does/do not necessarily reflect the views of all ACFID member agencies.*

## **1 Introduction**

1. The Australian Council for International Development (ACFID) welcomes the opportunity to make this submission to the Independent Consultation Committee (the Committee) regarding the National Human Rights Consultation (the Consultation).
2. ACFID is the national association of Australian non-government organisations (NGOs) working in the field of international aid and development. ACFID has 74 full members operating in 120 developing countries.
3. ACFID administers a voluntary, self-regulatory Code of Conduct (ACFID Code). The ACFID Code represents the active commitment of overseas aid agencies or non-government development organisations to conduct their activities with integrity and accountability. The ACFID Code aims to enhance standards throughout aid and development NGOs to ensure that public confidence is maintained in the way that community contributions to overseas aid are used to reduce poverty through effective and sustainable development. There are 112 signatories to the ACFID Code.
4. Since 1965, ACFID has assisted the Australian aid and development sector to promote sustainable human development so that people can enjoy the full range of human rights, fulfill their basic needs free from poverty and live in dignity. Several of ACFID's members explicitly integrate human rights into their aid and development activities, many more implicitly promote human rights.
5. ACFID is interested in the role the Australian government plays in protecting and promoting human rights in an international development context.

## **2 Scope of this submission**

6. On 10 December 2008, the Federal Attorney-General, Hon Robert McClelland MP launched the Consultation to promote discussion and listen to the views of Australians on the promotion and protection of human rights.
7. The Committee was established to conduct the Consultation and to provide a comprehensive report to the Australian government on the Consultation.
8. The Committee's terms of reference include consideration of the following questions:
  - a. Which human rights (including corresponding responsibilities) should be protected and promoted?

- b. Are these human rights currently sufficiently protected and promoted?
  - c. How could Australia better protect and promote human rights?
- 9. As the national independent association for the aid and development sector in Australia, ACFID represents the experience and expertise of civil society operating in development contexts around the world.
- 10. ACFID's submission to the Committee focuses on how the Australian Government can better protect and promote human rights in a development context.

### **3 Recommendations**

- 11. ACFID believes a number of strategies are required to adequately protect and promote human rights in a development context.
- 12. Most importantly, ACFID recommends that:
  - a. the Australian Government adopts a definition of human rights that encompasses all rights as articulated in binding international human rights laws, international humanitarian law and refugee law (**Recommendation 1**)
  - b. the Australian Government further recognises and supports the important relationship between human rights and development and the role that official development activities play in the promotion and protection of human rights (**Recommendation 2**)
  - c. the Australian Government considers how to further assist in raising awareness of human rights, particularly through civil society in developing countries in our region (**Recommendation 3**)
  - d. any enhanced promotion or protection of human rights by the Australian Government specifically addresses the activities of Australia in a development context and apply beyond its territorial borders. (**Recommendation 4**)
- 13. In addition, this submission makes a number of other recommendations in order to ensure the Australian Government promotes and protects human rights in a development context, including:
  - a. enhancing human rights protection in law (**Recommendations 6, 7, 8 and 16**)
  - b. developing new national policies and practices for the promotion and protection of human rights in a development context,

including by further entrenching human rights in the aid program  
**(Recommendations 5, 9, 10, 11, 12, 13, 14 and 15)**

- c. enhancing regulation of non-government actors operating in a development context **(Recommendations 9, 16 and 17)**
- d. Parliamentary scrutiny of Australian government human rights activities **(Recommendation 18)**
- e. further supporting civil society organisations in promoting and protecting human rights **(Recommendations 19 and 20)**

## **4 Which human rights and responsibilities should be protected and promoted?**

### **4.1 What are human rights?**

- 14. From a development perspective human rights are people-centred and aimed at promoting well-being and freedom. Human rights are inherent to all human beings and derive from the inherent dignity of the human person. Human rights are interrelated, interdependent and indivisible.
- 15. Importantly, human rights are non-discriminatory and require that those who are marginalised and persecuted in society be treated equitably. Focusing on the rights of the marginalised and persecuted ensures that development is sustainable and that the underlying causes of poverty are addressed.
- 16. Human rights have been articulated in international human rights laws and lay down the obligations of governments regarding the protection and promotion of certain human rights of individuals and groups. Australia has ratified 7 of the 9 core human rights treaties.<sup>1</sup>
- 17. In addition to these specific human rights treaties, international refugee law and international humanitarian law also impact on human rights in a developing context, especially on civilians in armed conflict. ACFID notes that Australia has ratified the United Nations (UN) *Convention*

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<sup>1</sup> *International Covenant on Civil and Political Rights*, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), *International Covenant on Economic, Social and Cultural Rights*, adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), *International Convention for the Elimination of All Forms of Racial Discrimination*, adopted 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), *Convention of the Elimination of All Forms of Discrimination against Women*, adopted 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), *Convention on the Rights of the Child*, adopted 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), *Convention of the Rights of Persons with Disabilities*, adopted 13 December 2006, (entered into force 3 May 2008).

*relating to the Status of Refugees*<sup>2</sup> and several treaties related to international humanitarian law, including the *Geneva Conventions*<sup>3</sup> and the *Rome Statute*.<sup>4</sup>

18. ACFID supports a definition of human rights that encompasses all civil, political, economic, social and cultural rights as articulated in the UN *Universal Declaration on Human Rights*,<sup>5</sup> the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and other binding international human rights laws, humanitarian law and refugee law.
19. ACFID believes that economic, social and cultural rights are of equal importance to civil and political rights. ACFID's mission statement reflects this interrelated view of human rights, linking sustainable human development with people enjoying the *full range* of human rights. The Australian Agency for International Development's (AusAID) statement on development and human rights also maintains that there is no hierarchy amongst human rights.<sup>6</sup>
20. ACFID recommends that the Australian Government adopts a definition of human rights that encompasses all rights as articulated in binding international human rights laws, international humanitarian law and refugee law. (**Recommendation 1**)

#### **4.2 What is the link between human rights and development?**

21. ACFID and its members recognise that the achievement of human rights is crucial to sustainable human development and the eradication of poverty. ACFID and its members support the linking of development objectives or poverty reduction with increased human rights.

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<sup>2</sup> Convention relating to the status of refugees, adopted 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954)

<sup>3</sup> *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 75 UNTS 31 (entered into force 21 October 1950), *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 75 UNTS 85 (entered into force 21 October 1951), *Geneva Convention relative to the Treatment of Prisoners of War*, 75 UNTS 135, (entered into force 21 October 1950), *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 75 UNTS 287, entered into force 21 October 1950, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1125 UNTS 3, (entered into force 7 December 1978), *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 1125 UNTS 609, (entered into force 7 December 1978).

<sup>4</sup> *Rome Statute of the International Criminal Court*, adopted 17 July 1998, 2187 UNTS 90, (entered into force 1 July 2002).

<sup>5</sup> *Universal Declaration of Human Rights*, adopted 10 December 1948.

<sup>6</sup> AusAID human rights framework, available at <  
<http://www.ausaid.gov.au/keyaid/humanrights.cfm>>

22. AusAID's human rights statement maintains that sustainable development requires individuals in developing countries having secure and long-term access to the resources required to satisfy their basic needs, be they economic, social, cultural, civil or political.<sup>7</sup>
23. In 2008-2009, Australia's level of official development assistance (ODA) was 0.32% of gross national income. The UN Committee on Economic, Social and Cultural Rights recently affirmed the important role Australia must play in promoting human rights through the aid program and recommended that Australia increase its ODA to meet the UN target of 0.7% of gross national income.<sup>8</sup> The Development Assistance Committee of the Organisation for Economic Co-operation and Development has also encouraged Australia to meet the 0.7% target after it achieves its 0.5% commitment by 2015.<sup>9</sup>
24. In recent years, there has been an acknowledgement by Western donors of the role human rights play in promoting good governance and building democratic institutions in developing countries.<sup>10</sup> Marginalisation and exclusion of certain groups are now recognised as human rights violations that compound poverty and must be addressed.
25. For example, in 2008, with much support from the Australian Disability and Development Consortium,<sup>11</sup> the Australian Government launched the Australian aid program's (AusAID) disability-inclusive strategy, *Development for All*.<sup>12</sup> *Development for All* guides the Australian aid program in meeting the needs and priorities of people with disabilities who are often the poorest and most vulnerable members of a community. *Development for All* also supports Australia in meeting its international obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD).<sup>13</sup>

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<sup>7</sup> Australian govt, available at < <http://www.ausaid.gov.au/keyaid/humanrights.cfm>>

<sup>8</sup> *Concluding Observations Australia*, UN Committee on Economic, Social and Cultural Rights, May 2009, available at <

<http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc>>

<sup>9</sup> *Peer Review Australia*, Development Assistance Committee, Organisation of Economic Co-operation and Development, 2009, available at <

<http://www.oecd.org/dataoecd/38/29/42019772.pdf>>

<sup>10</sup> See Piron, L and O'Neil, T, *Integrating Human Rights into Development: A synthesis of donor approaches and experiences*, 2005, available at

<[http://www.odi.org.uk/rights/Publications/humanrights\\_into\\_development.pdf](http://www.odi.org.uk/rights/Publications/humanrights_into_development.pdf)> and *The Link between Aid and Human Rights*, Australian parliament, 2001, available at <

[http://www.aph.gov.au/house/committee/jfadt/HR\\_Aid/HRRptindex.htm](http://www.aph.gov.au/house/committee/jfadt/HR_Aid/HRRptindex.htm)>.

<sup>11</sup> For more information see <[www.addc.org.au](http://www.addc.org.au)>

<sup>12</sup> *Development for All*, AusAID disability inclusive strategy, 2008, available at < <http://www.ausaid.gov.au/keyaid/disability.cfm>>

<sup>13</sup> Preamble and Article 32, CRPD, notes the importance of strategies of sustainable development to address issues of disability and the importance of international cooperation to achieve the purpose and objectives of the CRPD.

26. In line with a rights-based approach adopted by the CRPD, AusAID's disability strategy focuses on inclusion; building the capacity of people with a disability and their organisations, supporting meaningful participation and recognising and respecting the rights of people with a disability.
27. ACFID welcomes AusAID's increasing recognition of the links between human rights and good development outcomes. ACFID believes that all human rights are needed to adequately address poverty for people with disabilities. Piecemeal recognition of human rights threatens the achievement of human rights. For example, in a development context, it is not useful to have a right to vote if children do not reach the age of majority because of preventable illness or if people with disabilities are excluded from public life.
28. ACFID recommends that the Australian Government further recognises and supports the inherent relationship between human rights and development and the role that official development activities play in the promotion and protection of human rights. (**Recommendation 2**)

29. **The socio-economic impact of cataract surgery in Vietnam**

One of ACFID's members believes that everyone has the right to quality and affordable eye care. In working to enact these rights, this member currently supports 10,000 cataract surgeries per year in Vietnam.

Mrs Huong lives in Vietnam, and was blind from cataract at only 49 years of age. Mrs Huong was a tailoress before she became blind from cataracts. After becoming blind, she had to stop work and stay at home.

Blindness is an underlying cause of poverty for many people across the world. Blindness affects not only a person's ability to work and provide for their household, but also creates a high burden of care on their family. For some, this means that family members stay home from work or school to care for them. Where so many live close to the poverty line, this lost income has a real impact.

After the surgery, Mrs Huong was able to return to work as a tailoress, providing valuable income for her family. Studies from ACFID's member's local partner show that for patients such as Mrs Huong, the average monthly income following surgery was in most cases equivalent to the cost of cataract surgery subsidy for the individual, suggesting that cataract surgery is highly cost effective in Vietnam.

### **4.3 What responsibilities attach to human rights?**

30. Human rights do not solely concern individual rights. In order for human rights to be achieved, the corresponding responsibilities of individuals and other non-government actors, including business, must be acknowledged.
31. Governments bear the ultimate responsibility for the realisation of human rights. However, in order for human rights to be achieved, individuals and other non-government actors are also required to respect and not breach the human rights of others. Therefore, governments have a further obligation to ensure that individuals and non-government actors are aware of human rights and can discharge their responsibilities in accordance with their obligations.
32. The universal nature of human rights requires the Australian Government to ensure that Australians and other Australian non-government actors are adequately held to account wherever breaches occur, including beyond Australia's borders.
33. ACFID recommends that the Australian Government increase its assistance in raising awareness of human rights, particularly through civil society in developing countries in our region. (**Recommendation 3**)

## **5 Are human rights currently sufficiently protected and promoted?**

### **5.1 What are the different ways that the Australian Government currently protects and promotes human rights in a development context?**

34. A key way in which the Australian Government promotes and protects human rights is through its work in developing countries.
35. The Australian Government acts in a development context in a number of capacities, including through:
  - a. AusAID by:
    - i. funding contractors, non government organisations and multilateral organisations to deliver aid projects in developing countries;
    - ii. providing staff to assist in providing support in response to emergencies;
    - iii. working with governments of neighbouring countries to deliver services;

- iv. funding multilateral development banks to provide loans to developing countries to undertake development projects;
  - v. cancelling the debts of developing countries consistent with internationally agreed schemes or in exchange for debt being invested into development programs.
- b. the Department of Foreign Affairs and Trade (DFAT), including by engaging in bilateral and multilateral initiatives and providing diplomatic support on development related issues, such as issues of trade and development;
  - c. the deployment of Defence personnel<sup>14</sup> and Australian Federal Police to developing countries, those emerging from conflict and in response to emergencies and humanitarian crises;<sup>15</sup>
  - d. other government departments responsible for delivering ODA, in particular, the Department of Health and Ageing, Department of Immigration and Citizenship, Department of Agriculture, Fisheries and Forestry and the Attorney-General's Department.<sup>16</sup>
36. Some of the measures the Australian government utilises to promote and protect human rights in these contexts include:
- a. AusAID's Human Rights Fund,<sup>17</sup> which provides funding for the Office of the High Commissioner for Human Rights (OHCHR),<sup>18</sup> the Asia Pacific Forum of National Human Rights Institutions (APF)<sup>19</sup> and the Human Rights Small Grants Scheme;<sup>20</sup>
  - b. AusAID's aid program supports a framework of six human rights principles which address specific human rights issues and encourage the creation institutional capacity by other governments to promote and protect human rights;<sup>21</sup>

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<sup>14</sup> ACFID notes that only capacity building activities are considered ODA. However, Defence personnel do operate in development contexts besides that which is considered ODA.

<sup>15</sup> For example, Australia has provided military and police to the Regional Assistance Mission to Solomon Islands. More information available at <  
[http://www.ramsi.org/files/cn/australia\\_fact\\_sheet.pdf](http://www.ramsi.org/files/cn/australia_fact_sheet.pdf)>

<sup>16</sup> The majority of the ODA delivered through the Attorney General's Department is for the Australian Federal Police, however, approximately \$5 million is used for other development activities.

<sup>17</sup> The current budget for the Human Rights Fund is \$4 million. ACFID acknowledges that the 2009/10 Federal Budget includes a \$1.8 million increase of funds for the Human Rights Fund.

<sup>18</sup> For more information, see <http://www.ohchr.org>

<sup>19</sup> For more information, see <http://www.asiapacificforum.net/>

<sup>20</sup> For more information, see [http://www.ausaid.gov.au/business/other\\_opps/humanrights\\_scheme.cfm](http://www.ausaid.gov.au/business/other_opps/humanrights_scheme.cfm)

<sup>21</sup> AusAID human rights framework, available at <  
<http://www.ausaid.gov.au/keyaid/humanrights.cfm>>

- c. AusAID specific strategies to target vulnerable populations in the aid program by focusing on issues such as disability,<sup>22</sup> gender,<sup>23</sup> and child education;<sup>24</sup>
  - d. Facilitating and participating in official bilateral human rights dialogues and technical cooperation schemes;
  - e. Involvement in multilateral efforts to promote and protect human rights, such as engagement in multilateral forums including the United Nations.
37. In addition, according to AusAID, the Australian Government provides approximately 7% of its aid budget to Australian NGOs to deliver development programs.<sup>25</sup> All Australian NGOs that receive AusAID funding must be signatories to ACFID's Code,<sup>26</sup> which specifically links the achievement of human rights with development objectives.<sup>27</sup> By requiring development NGOs to adhere to the ACFID Code, the Australian government ensures that tax dollars are used to protect and promote human rights in development work.
38. For example, the respected Overseas Development Institute (ODI) recently issued a report on the *Australian Partnerships with African Communities* program between AusAID and Australian NGOs.<sup>28</sup> The ODI report demonstrates positive advancements in achieving long-term and sustainable empowerment of marginalised groups by using a human rights-based approach to development. A human rights-based approach aims to empower communities, not just meet basic needs.

## **5.2 Are human rights sufficiently protected and promoted by the Australian government in a development context?**

39. Australia currently undertakes a number of worthwhile activities aimed at protecting and promoting human rights in a development context.

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<sup>22</sup> *Development for All*, AusAID disability inclusive strategy, 2008, available at < <http://www.ausaid.gov.au/keyaid/disability.cfm>>

<sup>23</sup> *Gender equality in Australia's aid program - why and how?*, AusAID gender equality policy framework, 2007, available at < [http://www.ausaid.gov.au/publications/pubout.cfm?Id=39\\_3102\\_3439\\_6270\\_8533](http://www.ausaid.gov.au/publications/pubout.cfm?Id=39_3102_3439_6270_8533)>

<sup>24</sup> *Better Education: A Policy for Australian Development Assistance in Education*, AusAID education strategy, 2007, available at <

[http://www.ausaid.gov.au/publications/pubout.cfm?Id=7331\\_3301\\_1176\\_5126\\_9027](http://www.ausaid.gov.au/publications/pubout.cfm?Id=7331_3301_1176_5126_9027)>

<sup>25</sup> AusAID statement on NGOs, available at <<http://www.ausaid.gov.au/ngos/default.cfm>>

<sup>26</sup> AusAID Accreditation Policy, available at <

[http://www.ausaid.gov.au/ngos/pdfs/accreditation\\_policy.pdf](http://www.ausaid.gov.au/ngos/pdfs/accreditation_policy.pdf)>

<sup>27</sup> ACFID Code of Conduct, available at < <http://www.acfid.asn.au/code-of-conduct/acfid-code-of-conduct>>.

<sup>28</sup> Samuels F., James, V., and Sylvester, K., *ODI Project Briefing: Beyond Basic Needs*, 2009. Available at: <http://www.odi.org.uk/resources/details.asp?id=3185&title=beyond-basic-needs-marginalised-vulnerable-african-communities>

However, Australia's current commitment to protecting and promoting human rights in a development context does not comprehensively or adequately address all key human rights issues.

40. For example, although AusAID has identified child education as a key issue, this does not adequately address the full range of child rights issues in a development context, such as ensuring meaningful participation of children and youth. Several of ACFID's members have adopted a 'child rights' approach to programming that better addresses the human rights of children and young people in a development context.

**41. The right to participate in Timor-Leste.**

One of ACFID member's commissioned participatory research to investigate youth perspectives on the East Timor conflict and on their own futures. The research found positive engagement of youth was needed so that youth were better able to present their ideas and needs to government and therefore contribute to addressing the under-investment in youth at the district level.

These findings were used to design an AusAID funded program incorporating youth livelihoods and youth participation in order to develop life skills, leadership and empower youth to make their opinions known to government and their communities. Youth groups were supported to identify, plan and implement activities to engage their peers and provide focus to their daily lives through music groups, sport and youth media, which youth groups organised and ran.

Participation was identified by youth involved in the initial research as an important component as they were concerned by the lack of suitable activities and the dearth of forums to share ideas, influence government and voice perspectives. The project empowered youth to fill the gaps they themselves identified and to strengthen civil society to engage with local government and councils. Through newsletters, sports competitions, radio shows and the successful completion of a youth-produced CD youth felt their voice would influence the community to understand youth presence, and increase the opportunities they had to positively raise youth issues in the community.

42. Further, Australian human rights and development work is largely unregulated by law and is contained in government departmental policies and practice.
43. Existing domestic legislative and constitutional protections for human rights do not comprehensively apply to a situation when Australia, an Australian citizen or an Australian non-government actor breaches the human rights of those outside Australia.

44. There are regular laws that relate to Australian activities overseas that also have human rights implications such as the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth) (Child Sex Tourism Act). The Child Sex Tourism Act applies extraterritorially so that Australian citizens, who sexually abuse minors overseas, regardless of the local laws, can be held criminally responsible in Australia. However, there are no specific domestic human rights laws that directly relate to the protection and promotion of human rights by Australia in a development context.
45. Government policies and practices lack a comprehensive and accountable whole-of-government approach to protecting and promoting human rights. In particular, the current Australian government has not updated the National Action Plan for Human Rights since assuming office.
46. Despite the Foreign Affairs Minister's recent Policy Statement accompanying the 2009-2010 Federal Budget that the Australian Government is committed to fair development and promoting and protecting all human rights,<sup>29</sup> AusAID does not have an overarching human rights policy. The Parliamentary Secretary for International Development also recently made similar comments regarding Australia's human rights commitments and in being a regional and international leader on human rights.<sup>30</sup>
47. This lack of a comprehensive approach is compounded by the lack of transparency regarding Australian government human rights activities in a development context. Several Australian parliamentary inquiries have found that there is a lack of publicly available information regarding the activities of Australia in a development context.<sup>31</sup>
48. In addition, AusAID delivers a majority of its aid program through private business contractors. Unlike non-profit Australian aid and development NGOs, private business contractors are not regulated in a manner that creates express obligations to promote and protect human rights in the delivery of development contracts for the Australian government.

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<sup>29</sup> *Policy Statement on Australia's international Development Assistance* by Hon Stephen Smith, 15 May 2009, available at <[http://www.budget.gov.au/2009-10/content/ministerial\\_statements/ausaid/html/ms\\_ausaid-03.htm](http://www.budget.gov.au/2009-10/content/ministerial_statements/ausaid/html/ms_ausaid-03.htm)>

<sup>30</sup> *10<sup>th</sup> Session of the UN Human Rights Council*, speech by Hon Bob McMullan, 3 March 2009, available at <<http://www.geneva.mission.gov.au/gene/statement060.html>>

<sup>31</sup> *Report of Inquiry into Australia's Human Rights Dialogue Process*, Australian parliament, 2006, available at <<http://www.aph.gov.au/house/committee/jfadt/hrdialogue/report.htm>>, *The Link between Aid and Human Rights*, Australian parliament, 2001, available at <[http://www.aph.gov.au/house/committee/jfadt/HR\\_Aid/HRRptindex.htm](http://www.aph.gov.au/house/committee/jfadt/HR_Aid/HRRptindex.htm)>.

### **5.3 Do Australia's human rights obligations extend beyond Australia's borders?**

49. In ACFID's view, Australia's obligations to protect and promote human rights do not end at its borders. Rather, the Australian Government has an obligation to promote universal respect for, and observance of, human rights and freedoms, including through its official development assistance program. Fulfilling these obligations also assists Australia in its desire to be a good international citizen and demonstrating regional human rights leadership.
50. Under international law, governments have an obligation to promote and protect human rights for all people subject to its jurisdiction or within its territory or control. A 1997 United Kingdom (UK) House of Lords decision found that the UK *Human Rights Act 1998* was capable of applying outside of the UK when an Iraqi civilian was arrested and tortured (and subsequently died) in a military prison occupied and controlled by agents of the UK.<sup>32</sup>
51. Government obligations arising out of 'jurisdiction' based on 'effective control' are particularly important when considering the increasing role that Australia plays in peacekeeping, humanitarian response and post-conflict reconstruction. Increase of natural disasters due to climate change and the trend for intra-state conflict will only further increase the role of the Australia government and other actors acting in development contexts.
52. In particular, there appears to be a disconnect between Australian Government commitments and implementing strategies to adequately protect and promote human rights in a development context. For example, the Attorney-General recently noted that respect for fundamental human rights and international security are interrelated.<sup>33</sup> However, the Australian Government's Defence White Paper 2009 contains no specific references to how it will promote and protect human rights as part of Australia's defence and security strategy.<sup>34</sup>
53. ACFID and its members remain concerned that the Australian Government's defence and security strategy does not include reference to 'human security'. Human security is an emerging paradigm which complements state security, and recognises the importance of human rights and human development.

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<sup>32</sup> *Al Skeini and others v. Secretary of State for Defence* [2007] UKHL 26

<sup>33</sup> *Human rights: a moral compass*, speech by Hon Robert McClelland, 22 May 2009, available at

<[http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Speeches\\_2009\\_22May2009-HumanRights-aMoralCompass](http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/Speeches_2009_22May2009-HumanRights-aMoralCompass)>

<sup>34</sup> Department of Defence, Defence White Paper, 2009, available at <<http://www.defence.gov.au/whitepaper/>>

54. The link between human rights and security has also been noted by the Australian Parliament. The 1997 Parliamentary Inquiry into Australia's involvement in Peacekeeping recommended that peacekeeping must be accountable to universally accepted human rights standards.<sup>35</sup>

55. **Peace-keeping in Timor-Leste**

In 1999, Australian forces first engaged in peacekeeping in Timor-Leste under the International Force East Timor (INTERFET). Although not without shortcomings, INTERFET made an important contribution during the 1999 post-referendum violence and tenuous security situation in 2000. In May 2006, Australian military personnel were again deployed to Timor-Leste in the International Stabilisation Force (ISF).

In 2007, a truck driven by the ISF collided with a Timorese man riding a motorbike. A UN Police investigation found that although the rider was rounding the corner on the inside lane, the ISF driver bore greater responsibility for the accident as he was speeding.

The ISF refused to meet with the victim's family. No apology or compensation has been given. Condolences were noted in a press release but not in a language the victim's family could understand or through a media they could access. The victim's family has no formal means of addressing their complaints in the Timorese justice system or the UN system.

*This case-study is taken from the submission of La'o Hamutuk to the Australian Inquiry into Human Rights Mechanisms in the Asia-Pacific, 2008.*<sup>36</sup>

56. In light of the existing and increasing role played by Australia for the promotion and protection of human rights in developing countries, it is crucial that Australia abides by the same human rights obligations whether undertaking activities in Australia or elsewhere.
57. ACFID recommends that any enhanced promotion or protection of human rights by Australia specifically addresses the activities of Australia in a development context and apply beyond Australia's territorial borders. (**Recommendation 4**)

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<sup>35</sup> *Report of Inquiry into Australia's involvement in peacekeeping operations*, Australian parliament, 2007, Recommendation 3, available at <  
[http://www.aph.gov.au/Senate/committee/FADT\\_CTTE/peacekeeping/report/index.htm](http://www.aph.gov.au/Senate/committee/FADT_CTTE/peacekeeping/report/index.htm)>

<sup>36</sup> For further information see <  
[http://www.aph.gov.au/house/committee/jfadt/asia\\_pacific\\_hr/subs/Sub%2011.pdf](http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/subs/Sub%2011.pdf)>

58. ACFID recommends that the Australian Government ensures that human security is included in Australia's defence and security strategy. **(Recommendation 5)**

**5.4 *How do the activities of non-government organisations impact on the promotion and protection of human rights in a development context?***

59. It is increasingly being recognised that NGOs and business also impact on the realisation of human rights in a development context.
60. Although governments have ultimate responsibility for promoting and protecting human rights, it is important to consider the role that non-government actors, such as non-profit Australian aid and development NGOs and businesses, play in assisting in the realisation of human rights.
61. **Civil society organisations**
62. The protection and promotion of human rights does not simply relate to the ratification of international human rights treaties at the UN. Australian aid and development NGOs play a crucial role in building the capacity of communities in a development context regarding their rights.
63. ACFID's members and ACFID Code signatories voluntarily agree to abide by the ACFID Code. The ACFID Code ensures that its signatories aim to build creative and trusting relationships with people of developing countries and that their program respect and foster internationally recognised human rights.<sup>37</sup>
64. Several of ACFID's members use a human rights-based approach to development that focuses on empowering communities to hold their governments to account for human rights. When aid and development programs are delivered in a way that empowers individuals, individuals have the capacity to engage in dialogue with their governments about rights promotion and protection and to discharge their individual and collective responsibilities towards others.
65. Importantly, a human rights-based approach to development ensures aid and development NGOs are accountable to aid beneficiaries and ensuring that development is driven by the needs of the community and not imposed by donors.

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<sup>37</sup> Preamble, ACFID Code of Conduct, available at < <http://www.acfid.asn.au/code-of-conduct/acfid-code-of-conduct>>

66. **Private businesses**

67. Private Australian businesses can play a crucial role in economic growth, job creation in developing countries and improved development outcomes. The acceptance of corporate responsibility by a number of private businesses also supports the promotion and protection of human rights in a development context. The UN Global Compact is capitalising on the efforts of businesses to align their operations with human rights principles.<sup>38</sup>

68. Australian businesses also have an impact on the human rights of individuals in developing countries. ACFID's members remain concerned about reports that Australian companies, particularly mining companies, sometimes breach the human rights of local populations when operating outside of Australia.

69. A recent report of the UN Special Representative for Human Rights and Business provides a framework for governments,<sup>39</sup> business and other social actors to have a positive role to play in the protection and promotion of human rights.<sup>40</sup> That report details that:

- a. governments have a duty to protect human rights;
- b. businesses have a responsibility to respect human rights, by exercising due diligence to avoid infringing the rights of others, and by establishing company-level grievance mechanisms;
- c. governments have a duty to enable access to an effective remedy for breaches of human rights by third parties (such as businesses).

70. **Non-judicial grievance mechanisms**

One of ACFID's members works with communities who allege human rights violations due to the operation of Australian mining companies overseas. This member's work provides a forum where community members, often indigenous people, are empowered to give voice to their grievances against companies and seeks to facilitate, through conciliation the negotiation of mutually agreeable outcomes.

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<sup>38</sup> For more information, see <http://www.unglobalcompact.org/>

<sup>39</sup> The terminology used in the report refers to states. In this submission, we use the term governments as opposed to states as the technical difference between the terms is not crucial to this Consultation.

<sup>40</sup> *Protect, Respect and Remedy: a Framework for Business and Human Rights*, UN Special Representative for Human Rights, 2008, available at < <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>>

This member calls for Australian government support for the mining companies to establish their own company-level, rights-compatible complaints mechanisms, design to address community grievances. This member also seeks the establishment of an independent rights-compatible complaints mechanism for the overseas operations of the Australian mining industry.

Non-judicial mechanisms for the resolution of complaints are an important remedy, which aids in the realisation of human rights. Any independent industry-wide complaints mechanism could have three key functions; complaints handling, advisory and policy formulation, and compliance. These three functions are comparable to those of the Compliance Adviser Ombudsman of the World Bank, which acts as a useful model of non-judicial complaints mechanisms in a development context.<sup>41</sup>

## **6 How could Australia better protect and promote human rights in a development context?**

### **6.1 Does Australia need to specifically consider protecting and promoting human rights in a development context?**

71. Australia's obligations to protect and promote human rights do not end at its borders. Despite the increasing activity of the Australian Government and Australian non-government actors in developing countries, the protection and promotion of human rights in this context remains piecemeal, insufficient and largely unregulated by statute.
72. The range of activities undertaken in a development context require the Australian government to adopt several strategies to adequately protect and promote human rights.
73. Legislated protection of human rights must be complemented by appropriate government regulation, policy and practice and an emphasis on building the capacity of individuals in order to protect and promote human rights.
74. ACFID recommends that the adequate protection and promotion of human rights in a development context requires several approaches:
  - a. enhancing human rights protection in law
  - b. developing new national policies and practices for the promotion and protection of human rights in a development context
  - c. further entrenching human rights in the aid program

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<sup>41</sup> For further information, see <<http://www.cao.ombudsman.org/index.htm>>

- d. enhanced regulation for non-government actors working in a development context
- e. Parliamentary scrutiny of Australian Government human rights development activities
- f. further supporting civil society organisations in promoting and protecting human rights.

## **6.2 What enhanced laws are needed to protect human rights in a development context?**

75. ACFID recommends that a comprehensive human rights act binding the Australian Government and public authorities be enacted, which:
- a. expressly applies extraterritorially
  - b. includes a definition of public authority that expressly includes Australian public servants, such as Defence personnel and Australian Federal Police personnel when working overseas
  - c. enables non-citizen victims of breaches of the human rights act to bring a claim in Australian courts
  - d. enables Australian companies the opportunity to choose to be bound by the human rights act.

### **(Recommendation 6)**

76. ACFID recommends that the Australian Government undertakes further legislative efforts to enhance the domestic protection of rights consistent with obligations under international refugee and international humanitarian law. **(Recommendation 7)**
77. ACFID recommends that the Australian Government ratifies and implements the UN *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, the UN *International Convention for the Protection of All Persons from Enforced Disappearance*, the *Optional Protocol to the Convention against Torture*,<sup>42</sup> the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* and the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*. **(Recommendation 8)**

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<sup>42</sup> ACFID notes that the Australian government has recently signed the *Optional Protocol to the Convention Against Torture* and encourages the Australian government to become a full party to the Optional Protocol.

### **6.3 *What new national policies and practices for the promotion and protection of human rights in a development context are needed?***

78. ACFID recommends that the Australian Government develops a comprehensive and accountable approach to protecting human rights in a development context. (**Recommendation 9**)
79. ACFID recommends that the Australian Government develops a comprehensive human rights training program for public servants and public authorities. (**Recommendation 10**)
80. ACFID recommends that the Australian Government amends the Australian Public Service Code of Conduct to emphasise that government employees protect and promote all human rights as part of their work. (**Recommendation 11**)
81. ACFID recommends that the Australian Government seeks a seat on the UN Human Rights Council. (**Recommendation 12**)
82. ACFID recommends that the Australian Government encourages human rights adherence and treaty ratification through bilateral and multilateral processes and through diplomatic support. (**Recommendation 13**)

### **6.4 *How can human rights be further entrenched in the aid program?***

83. ACFID recommends that AusAID adopts a comprehensive human rights policy to guide the aid program and that human rights education is a cross-cutting theme. (**Recommendation 14**)
84. ACFID recommends that AusAID adopts a human rights-based approach to development, with specific strategies for addressing vulnerable or marginalised groups such as women, people with disabilities, children and young people. (**Recommendation 15**)
85. Several of ACFID's members are available to assist AusAID in developing its understanding of incorporating a human rights-based approach to development.

### **6.5 *What enhanced regulation of non-government actors operating in a development context is needed?***

86. ACFID believes that the regulation of non-government activities in a development context must be enhanced to better promote and protect human rights.
87. ACFID recommends that the Australian Government ensures that Australian businesses respect human rights, regardless of whether the

business operates within Australia or overseas. (**Recommendation 16**)

88. To ensure the above, the Australian Government should consider requiring business to report on their human rights due diligence. Other measures, such as the establishment of industry specific, independent complaints mechanisms or Parliamentary oversight of business activities, should also be considered.
89. ACFID recommends that the Australian Government requires that independent contractors delivering development contracts for the Australian Government are:
  - a. specifically covered by the proposed human rights act, in that they are performing public services, or
  - b. required to meet specific human rights objectives in delivering services under the aid program.

(**Recommendation 17**)

### **6.6 *What role should the Australian parliament play in ensuring the promotion and protection of human rights in a development context?***

90. Various pieces of domestic legislation have the ability to impact on the human rights of individuals in developing countries. Parliament should have a role in ensuring that attention is given to the international human rights impact of any new laws.
91. ACFID recommends Parliamentary oversight, perhaps through a Standing Parliamentary Committee, in scrutinising legislation for adherence with human rights principles. (**Recommendation 18**)

### **6.7 *How can civil society organisations be further supported in promoting and protecting human rights in a development context?***

92. ACFID encourages the Australian Government to support the work of civil society in protecting and promoting human rights in a development context.
93. ACFID recommends that the Australian Government increases AusAID's human rights fund to augment funding for the Asia Pacific Forum and OHCHR. (**Recommendation 19**)
94. ACFID recommends that the Australian Government increases assistance to civil society abroad in building knowledge about human rights by expanding the human rights small grant scheme. (**Recommendation 20**)

