



Submission to the Human Rights Sub-Committee

of the

Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Human Rights Mechanisms and the Asia-Pacific (November 2008)

Introduction

The Australian Council for International Development, ACFID, is the national association of Australian non-government organisations (NGOs) working in the field of international aid and development. It has 74 full members operating in 120 developing countries. Virtually all ACFID members work in more than one country in Asia and in the Pacific region. Since 1965, ACFID has assisted member agencies to promote sustainable human development so that people can enjoy the full range of human rights, fulfil their basic needs free from poverty and live in dignity.

ACFID commends the Sub-Committee's decision to proceed with this Inquiry and wishes to contribute both observations and some constructive recommendations for action by Government.

Given the tendency for some Australians, including in government, to believe that there is such an entity as the "Asia Pacific" or a single "Asia Pacific region", it is necessary to clarify this concept and language before considering what future actions may be desirable or possible in relation to human rights mechanisms.

None of the 40 governments to which "Asia Pacific" or "an Asia Pacific region" could readily refer¹ regard themselves in any meaningful sense as being part of a single broader region. In contrast to Europe, the absence of a shared sense of regional identity helps to explain why there remains no momentum from across the whole group to form a regional consultative or deliberating group at government level. It is notable too that civil society collaboration across the four main regions identified has been weak until now. Despite their engagement in global civil society activities, civil society leaders from each of the four regions have yet to initiate substantive cross-region collaboration. For example, Pacific Island civil society leaders focus principally on intra-Pacific collaboration and do not look to South Asia, South East Asia or North Asia.

¹ This includes the 8 members of the South Asian Association for Regional Cooperation; the 10 members of ASEAN; the 16 Pacific Forum Island members and the countries of North Asia – Japan, North Korea, South Korea, China, Taiwan and Mongolia.

At government level, there is no common view within North Asia, South Asia and South East Asia on the ratification of the United Nations' core International Human Rights Treaties. It is only among the Pacific Island countries that most have not ratified many of the existing International Human Rights Treaties and other agreements. It is a reflection of the underlying political circumstances within and between this very diverse group that the most significant mechanisms created to date are an informal network of national human rights bodies (i.e. the Asia Pacific Human Rights Network) and a seven year-old ASEAN working group on human rights which has, by any description, achieved little.

The absence of current political momentum within each of the regions for a regional human rights commission or court is notable given that there are many democratic political cultures involved. JFADT Inquiry reports over the last 20 years into North Asia, South and South East Asia and on country-specific matters provide a valuable analytical basis for the Sub-Committee to assess why the four sub-regions are unlikely in the coming decade to identify themselves in any meaningful sense as being a single geographic entity for political or other purposes. The generally negative response by most Asian governments this year to Australia's recent proposal for an over-arching consultative mechanism for leaders is a further reminder of the need to base Australian proposals on a sound assessment of political realities across the four regions.

For effective policy development at a regional level, it is important to distinguish between what may be feasible within individual countries and what may be feasible across a whole region. A key factor is the spoiling role of authoritarian regimes, especially in South East Asia and North Asia, is noteworthy. In South East Asia, the consistently ineffectual ASEAN political engagement in influencing Burma's government since 1987 highlights how little can be achieved where there is no shared concept of human rights or, indeed, of the role of external parties commenting on the internal affairs of one of the group.

It is consistent with domestic politics that the governments in Cambodia, Laos, Singapore, Vietnam and Burma would not support the promotion of any human rights mechanisms that had the potential to cause them discomfort over time. In South Asia and North Asia, the juxtaposition of very different forms of government and no substantial sense of shared identity or values presents similar challenges.

It is also the case that many of the 40 countries to which we have referred have given a greater emphasis since achieving independence to economic and social rights. While it is not surprising that most authoritarian regimes tend to reject the human rights advocacy taken by successive Australian governments, even those with democratic political systems, such as Malaysia, have been critical of "Western" approaches.

Towards a regional system?

Regional human rights mechanisms are generally successful where there is both a significant degree of self-identification as members of a region and where there is a sufficient minimum commonality of view about the role of the state and citizen. As noted above, neither of these conditions currently exists across the 40 countries. With the exception of the Forum Island governments, nor do they currently exist in the other three regions. However, by considering the most successful Asian mechanism to date (the ASEAN human rights network), it is possible to consider the types of Australian policy ideas which could be most viable for promoting respect for human rights.

The ASEAN human rights network arose from a series of workshops held in the mid-1990s including representatives of governments, national human rights institutions, NGOs and academics. The impetus to establish a regional, intergovernmental human rights system was apparently provided by the World Conference on Human Rights in Vienna in 1993. This conference agreed, “regional arrangements play a fundamental role in promoting and protecting human rights”. The Conference declaration further stated that regional and subregional arrangements need to be considered where they do not already exist.²

The ASEAN working group contributed to the establishment of a number of national human rights institutions, namely in the Philippines and in Indonesia. It also led to the establishment of Human Rights Commissions in Thailand and Malaysia. Despite the significant limitations of these bodies, this can be regarded as a considerable step forward in the individual countries.

However, with five of the ten ASEAN members having authoritarian regimes, it has not been possible to develop a South East Asian process, for a substantive human rights mechanism. The ASEAN Charter, signed in November 2007 and referring to a Human Rights mechanism, simply notes that ASEAN will have a human rights body whose terms of reference will be determined by the ASEAN Foreign Minister Meeting.

The Asia Pacific Forum of National Human Rights Institutions (APF) is a second regional system, established in 1996. In contrast to the ASEAN Working Group, APF is a global civil society organisation. Its focus is on supporting the establishment of national human rights institutions, not on establishing a regional human rights system or mechanism.

Amidst this challenging environment, human rights leaders in Indonesia, Philippines, Thailand and Burma have argued strongly for the acceptance by governments across the region of the application of general principles articulated in the Bangkok Declaration (1993). It stated that the Asian region stresses: “the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicisation”.³

² Vienna Declaration, article I.37 in Paul Close and David Askew, “Asia Pacific and Human Rights”, Ashgate, 2004.

³ Regional Meeting for Asia of the World Conference on Human Rights, Bangkok Declaration, 1993 via: <http://www.unhchr.ch/html/menu5/wcbangk.htm>

ACFID believes that, in seeking to promote such a change, policy emphasis needs to be directed to supporting the evolution of civil society, academic, business and parliamentary voices in those countries.

Australian role

ACFID suggests two key roles, which the Australian Government could play:

- Implement a program of active and ongoing assistance to relevant civil society, business and academic groups with a view to promoting domestic debate about human rights;
- Actively encourage governments to ratify and implement the current UN human rights treaties and mechanisms.

The best prospects for sustaining movement on the issue will be where civil society organisations, business, academics and others become ready and able to lead a domestic debate. ACFID suggests that this is likely to achieve the best results where learning and exchange opportunities are implemented over a ten-year period.

ACFID welcomes the Australian Government's commitment to create durable institutional capacity to promote and protect human rights. We also welcome AusAID's commitment to liaise with NGOs and human rights organisations in Australia. Both are funded through a Human Rights Fund under the responsibility of AusAID.

ACFID also commends the Government on the significant commitment it made in the 2008/09 aid budget to expanding the role of education in the overall program. Access to primary education is crucial for personal development and empowerment in any country. The fact that many millions of children in South and South East Asia are not able to gain such access should be a special concern for Australia. An educated and informed civil society has:

- The capacity for a critical appreciation of government policy and action;
- The ability to respond to government decision making;
- Sufficient knowledge and self-confidence to participate in the decision-making process at various levels of government;
- The capacity to form community action groups which will benefit diverse members of the community.

Therefore, ACFID urges the Sub-Committee to note the link between this type of Australian action on education and the likelihood of positive human rights improvements over the medium-term. ACFID also believes that other steps are needed to achieve a positive impact within Australia's limited resources in ten years' time. A number of specific recommendations follow. In translating these ideas into policy design, ACFID urges the Sub-Committee to consider the useful role which Australian civil society organisations could play in support of policy objectives and in program design. For several decades Australians have worked effectively with their counterparts in civil society overseas. This includes overseas organisations which have been active in promoting respect for human rights.

Recommendations

1. Supplement current funding for the Office of the High Commissioner for Human Rights. This Office has an established track record in supporting institutions and in capacity building for civil society on a national level.
2. Make human rights a more explicit focus of the Government's wider good governance agenda.
3. Develop a targeted, five-year human rights exchange program. This would actively draw together selected parliamentarians, academics, civil society people and journalists to promote awareness and networks across the four regions. It could include a specific South-South component, enabling exchanges to occur without visits to Australia.
4. Treat human rights education as a cross-cutting topic across all AusAID country, thematic and regional work. This would enhance other efforts to promote good governance.
5. Expand funding for the Asia Pacific Forum of National Human Rights Institutions, to encourage the establishment of national human rights institutions.
6. Draw on the lessons learned from the Australia-China Human Rights Technical Cooperation Program for application to selected other countries.
7. Expand the small Australian Human Rights Small Grants Scheme.
8. Seek a seat on the UN Human Rights Council.
9. Demonstrate through a pattern of Australian government statements and diplomatic engagement that concern about bilateral sensitivities will not undermine a consistently firm Australian position on raising egregious cases of human rights abuse.