The Parliament of the Commonwealth of Australia

Joint Committee on Foreign Affairs, Defence and Trade

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

December 1992

Australian Government Publishing Service
Canberra

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

December 1992

The Parliament of the Commonwealth of Australia

Joint Committee on Foreign Affairs, Defence and Trade

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

December 1992

Australian Government Publishing Service
Canberra

ISBN 0 644 25571 4

Cover: Goya TAN BARBARA LA SEGURIDAD COMO EL DELITO
'The custody is as barbarous as the crime'
Cat. no. 26 II.1

Printed by R. M. LANSDOWNE, Commonwealth Government Printer, Canberra

This first human rights report to the Australian Parliament is dedicated to

Maung Maung Kywe

who in 1988 at the age of fifteen and a half led his fellow high school students onto the streets of Rangoon to demonstrate for democracy and who at the age of seventeen was killed as a student exile on the Burma/ Thai border.

and

Wang Wei Lin

who, alone, confronted the tanks of the Chinese Government on Chang an Avenue near Tienanmen Square in June 1989 after the demonstrations for democracy had been crushed. His whereabouts is now unknown.

It is the courageous spirit of such ordinary citizens in the face of overwhelming power that most clearly denotes the struggle of the individual against the authoritarian state.

TABLE OF CONTENTS

CONTENTS Page

APPENDICES

TERMS OF REFERENCE

To consider and report on an annual report by the Department of Foreign Affairs and Trade on the Government's international efforts to promote and protect human rights.

JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

MEMBERSHIP OF THE COMMITTEE

36th Parliament

Senator C. Schacht (Chairman)
Hon. M.J.R. MacKellar, MP (Deputy Chairman)

Senator M.E. Beahan
Senator V.W. Bourne (from Oct 91)
Senator D.G.C. Brownhill
Senator C.M.A. Chamarette (from Mar 92)
Senator H.G.P. Chapman
Senator B.K. Childs
Senator N.A. Crichton-Browne
Senator G.N. Jones
Senator D.J. MacGibbon
Senator P.A. McLean*
Senator G.R. Maguire
Senator J. Vallentine**
Mr R.A. Atkinson, MP (from Sept 92)
Mr A.R. Bevis MP
Mr D.M. Connolly, MP (to Aug 92)
Mr S.C. Dubois, MP
Dr H.R. Edwards, MP
Mr L.D.T. Ferguson, MP
Mr E.J. Fitzgibbon, MP
Mr E.L. Grace, MP (from Nov 91)
Mr R.G. Halverson, OBE, MP
Mr N.J. Hicks, MP
Mr C. Hollis, MP
Mr J.V. Langmore, MP
Mr M.J. Lee, MP
Mr E.J. Lindsay, RFD, MP
Hon. J.C. Moore, MP
Hon. G.F. Punch, MP (to Nov 91)
Mr J.L. Scott, MP
Rt Hon. I.McC. Sinclair, MP
Mr W.L. Taylor, MP
Dr A.C. Theophanous, MP

*Resigned from Parliament on 23 August 1991
**Resigned from Parliament on 31 January 1992

Secretary:	Mr P.N. Gibson, MC (to May 91)
Acting Secretary:	Ms J. Middlebrook (from May 91)
	Mrs J. Towner (from Oct 91)
	Ms M.J. Vincent (from Feb 92)
Secretary:	Ms M.J. Vincent (from June 92)

HUMAN RIGHTS SUB-COMMITTEE

MEMBERSHIP OF THE SUB-COMMITTEE

36th Parliament

Senator C. Schacht (Chairman)
Hon. M.J.R. MacKellar, MP (Deputy Chairman)

Senator V.W. Bourne (from Nov 91)
Senator C.M.A. Chamarette (from April 92)
Mr D.M. Connolly, MP (to Aug 92)
Mr L.D.T. Ferguson, MP
Mr E.J. Fitzgibbon, MP
Mr C. Hollis, MP
Mr M.J. Lee, MP
Mr W.L. Taylor, MP (to May 92)

Sub-Committee Staff:

Ms M. Swieringa
Ms D. Picker

ABBREVIATIONS

ACTU	Australian Council of Trade Unions
AIDAB	Australian International Development Assistance Bureau
ASEAN	Association of South East Asian Nations
ATSIC	Aboriginal and Torres Strait Islander Council
BBC	British Broadcasting Corporation
BRA	Bougainville Revolutionary Army
CAT	Convention Against Torture
CEDAW	Committee for the Elimination of Discrimination Against Women
CHR	Commission on Human Rights
DFAT	Department of Foreign Affairs and Trade
DORS	Determination of Refugee Status
GNP	Gross National Product
HREOC	Human Rights and Equal Opportunities Commission
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
ICJ	International Commission of Jurists
ILO	International Labour Organisation
LDC	Least Developed Country
LOAC	Law Of Armed Conflict
NAILSS	National Aboriginal and Islander Legal Services Secretariat
NGO	Non-Government Organisation
NLD	National League for Democracy
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OPM	Organisasi Papua Merdeka
PLO	Palestine Liberation Organisation
PNGDF	Papua New Guinea Defence Force
PRC	Peoples Republic of China
SCAG	Standing Committee of Attorneys-General
SIDCDE	Standing Interdepartmental Committee on Defence Exports
SLORC	State Law and Order Restoration Council
TEAK	Training and Environmental Awareness for the Karen People
TIN	Tibet Information Network
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
VOA	Voice of America

BIOGRAPHICAL NOTES

The following information is supplied on the authors of the quotations used at the beginning of each of the chapters of the report. The quotations were chosen to underline the idea that concern for the dignity and the rights of mankind is beyond time and place.

1. **John Donne (1572 - 1631)**
   Donne was an English metaphysical poet and cleric. The quotation is taken from *Devotions XVII.*

2. **Aristotle (384 - 322 B.C.)**
   A Greek philosopher whose work on metaphysics, politics, poetics and ethics has formed much of the foundation for Western thought.

3. **H V Evatt (1894 - 1965)**
   Australian lawyer and politician. He was President of the UN General Assembly 1948 - 49.

4. **Dalai Lama XIV. Tenzin Gyatso (1935 -)**
   Spiritual leader of the Tibetan people. He fled from Tibet in 1959 to escape the Chinese army. He has espoused non-violence in his opposition to the Chinese rule over Tibet. He was awarded the Nobel Peace Prize in 1989.

5. **Martin Luther King (1929 - 1968)**
   Led the struggle for civil rights and equality for black Americans. He was a Baptist minister and renowned preacher who believed in non-violence and the brotherhood of all races. He was awarded the Nobel Peace Prize in 1964.

6. **Mahatma Gandhi (1869 - 1948)**
   Lawyer and campaigner for Indian independence from British rule. He promoted a campaign of non-violence and non-cooperation. He was assassinated in 1948.

7. **Lin Yutang (1895 - 1976)**
Essayist, critic, translator and novelist who supported reform in the late Qing dynasty.

Zheng Banqiao (1693 - 1765)
A painter of the early Qing dynasty, one of an unconventional and individualistic group known as the 'Eight Eccentrics of Yangzhou'.[1]

8. **Oscar Arias Sanchez (1941 -)**
President of Costa Rica who worked for peace and democracy in Central America. He was awarded the Nobel Peace prize in 1987.

Albert John Lutuli (1898 - 1967)
President of the African National Congress and tribal chief of the Zulus. He adopted Gandhi's policy of passive resistance in the struggle against apartheid. He was awarded the Nobel Peace Prize in 1960.

---

[1] Barme, G and Jaivin, L New Ghosts, Old Dreams, Random House, 1992, p. 198-201

FOREWORD

1. This is the first report of the Joint Committee on Foreign Affairs, Defence and Trade dealing with human rights and as such begins with a brief statement of the Committee's view of the significance of human rights in international relations, and, in particular, in Australia's foreign relations.

2. Human rights is a relatively new concern of foreign relations, at least in the formal sense, and it is an area of great sensitivity in diplomatic relations, coloured as it is by moral values. It is certainly an area of expanding interest since the end of the Cold War. One aspect of foreign policy which has grown in importance and which seemed in the past to get scant, or at best haphazard, attention has been human rights. This was not because human rights was seen to be unimportant. Australian governments have always accorded human rights a high priority and Australia's international reputation as a promoter of human rights through international forums is a good one.

3. The support for a strong human rights stand is bipartisan[2] and broadly based in the community. Australians believe, and the Committee endorses, the view of U Thant, former Secretary General of the United Nations, that human rights is an essential prerequisite for peace at home and in the world. The debate in Australia on the importance and place of human rights is lively and earnest. By any comparisons that might be made with countries around the world, Australia must be seen as a free society which tries to live up to its ideals in human rights.

The Establishment of the Sub-Committee

4. The Human Rights Sub-Committee is a new sub-committee of the Parliament established after considerable discussion. The Joint Committee on Foreign Affairs, Defence and Trade has long been the focus for appeals and representations from many groups within the Australian community which, because of their background, have an interest in the human rights situations in other parts of the world. Many people have come to Australia to escape repression.

---

[2] Support for human rights comes from all parties in the Parliament: the Australian Labor Party, the Liberal Party, the National Party, the Australian Democrats and the independents.

5. In particular, Amnesty International has worked closely with the Committee as a source of information on human rights abuses throughout the world. It was Amnesty which perceived the need for a more focussed and formalised reporting mechanism on human rights issues. They wrote to the Committee in September 1990 proposing that some mechanism be established whereby the Minister for Foreign Affairs and Trade should provide an annual report to Parliament on his Department's work in this field and that this report should be referred to the Joint Committee on Foreign Affairs, Defence and Trade for examination. The intention was to 'expand parliamentary responsibility and community support for the continued development of human rights protection'. The emphasis was to be on the record of the Australian Government in its activities to promote and protect, not an examination either of individual cases or of the human rights records of other countries.

6. The Committee considered the proposal very closely. Members were surveyed as to the best mechanism for such a review. Would it be through the Amnesty International Parliamentary Group, a group that was well established and widely supported on both sides of the Parliament? However, despite the energy and dedication of this group, it did not have the status or the legal authority vested in a parliamentary committee. It was thought best to maintain the process within the committee system.

7. A separate, new joint committee was also considered, but given that the portfolio responsibility for human rights falls to the Minister for Foreign Affairs and Trade and that the issue is often linked with other foreign policy issues, it was decided to create a new sub-committee within the Joint Committee on Foreign Affairs, Defence and Trade.

8. The proposal gained approval and support from the Minister, Senator Gareth Evans, in December 1990 with the proviso that details of individual cases raised with other governments should not be placed on the public record and that the Committee recognise the often delicate nature of human rights negotiations.

9. Resources proved to be another restraint. When the Committee looked at the work of the United States Congressional Committee on Human Rights which considers the annual report of the US State Department, running to 1,700 pages, it was necessary to set our sights somewhat lower than that most comprehensive review of the human rights records of the world. Neither our Department of Foreign Affairs and Trade nor the Joint Committee of the Parliament could produce or review such a report.

10. The Human Rights Sub-Committee of the Joint Committee of Foreign Affairs, Defence and Trade was established in March 1991 and received its first reference from the Minister on 7 May 1991. Its terms of reference are to consider and report on an annual report by the Department of Foreign Affairs and Trade on the Government's international efforts to promote and protect human rights. The Department's first annual report came to the Committee in November 1991.

11. The inquiry received 88 submissions many of which contained voluminous and comprehensive information about human rights situations around the world. Public hearings were held in Sydney, Melbourne and Canberra between December 1991 and June 1992. The first public hearing of the Human Rights Sub-Committee was held on 2 December, made necessary by the tragic situation of the massacre in Dili on 12 November 1991. On that occasion the Committee took oral evidence from Mr Bob Muntz, the Community Aid Abroad worker who was injured during the shooting in Dili, written evidence from Russell Anderson, Amy Goodman and Allan Nairn, three other Western eyewitnesses to the killings, as well as statements from Amnesty International and the Department of Foreign Affairs and Trade.

12. This hearing was an unusual one created by unusual circumstances. The intention was not to conduct a definitive inquiry into what happened in Timor but to place factual information about the events of 12 November 1991 on the public record. The Committee does not expect to conduct hearings of this kind into the many and dreadful human rights abuses that occur in the world. However, it may from time to time have such hearings on matters of public interest to Australians. Timor fell into this category because of its proximity, its historical links with Australia, its sizeable refugee community living here and because of the interest that exists over our policy regarding Indonesia. The Committee was able to send the evidence collected that day to the Djaelani Commission investigating the incident in Indonesia.

13. A further eyewitness account was given to the Committee by Major-General Chamlong Srimaung, the leader of the pro-democracy forces in Thailand. The Major-General was arrested by the military government during the demonstrations in May 1991. He spoke to the Committee about the demonstrations and the shooting of civilians by the army. On 14 May, Lyndal and Sophie Barry and Patricia Garcia gave first hand accounts of the refugee situation on the borders of Burma.

14. All other hearings were conducted in response to the submissions received. A very great volume of material was received by the Committee on the human rights abuses that are occurring in many parts of the world. We were

overwhelmed by the extent and range of the problems described to us. Neither the resources available to the secretariat nor the time frame set for the inquiry have allowed the cases to be examined comprehensively. Nor has the Committee been able to seek information on situations which we know are occurring in other parts of the world, which are as severe as those presented to us, but which for one reason or another were not formally brought to the Committee's attention. Therefore, there is an *ad hoc* list of situations dealt with in the last three chapters of the report. However, given the very great concern of very many people who put this material to the Committee, we have been at pains to portray accurately what has been told to us and to set out the requests for help and the recommendations for action that have been made to us. We do not pretend that this section of the report represents the final analysis of the last year's human rights situation for the world.

15. The Committee is very aware of the delicacy and sensitivity of the issue of human rights. An important function of the Human Rights Sub-Committee is, through debate, to clarify and enunciate the nature and role of human rights in international relations. With the establishment of this Sub-Committee, human rights are on the political agenda and that is important.

16. Finally, the Committee Members extend their appreciation and thanks to the Committee Secretariat for expertly dealing with the extensive range of written and oral submissions received since the formation of the Sub-Committee. In particular, we make special mention of the work of the Sub-Committee Secretary, Margaret Swieringa, whose contribution in public and private hearings, in dealing with the many organisations and individuals who have made submissions, and in helping to prepare the Report has been invaluable.

Senator Chris Schacht
Chairman
Human Rights Sub-Committee

November 1992

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. Global communications in the late twentieth century have made us increasingly aware of our interdependence. We are instantly aware of the cruelties perpetrated by governments in the far flung parts of the globe. We are rightly asked to respond to the famines and floods and earthquakes that devastate people around the world. We must all be concerned about the spread of nuclear weapons, the waste of resources and the accumulation of garbage. The mid-century view that there was a need for an international body to which nations would be answerable on questions of aggression has expanded to encompass these other universal questions. Human rights is one of these universal questions. Nation states have no sovereign right to abuse their own people and they should be answerable to the international community for the treatment of their people. Conversely, the international community has a responsibility to assist those who cannot protect themselves. This is not a luxury to be determined by strategic considerations although it is often used in that way. It is a matter of our intrinsic humanity. Law at its best is a noble conception. Applied equally, without fear or favour, it can be a civilising thing which curbs the cruelties of tyrants. International law should reflect the importance we attach to those interdependent and universal values we have identified.

2. The international mechanisms that are being developed for the protection of human rights have been evolving slowly since World War II. They consist now of a Universal Declaration of Human Rights which sets out the principles, two covenants or treaties which bind the ratifying states to these principles and a series of conventions or treaties which deal with specific aspects of human rights in more detail than the covenants. Although there is an International Court of Justice, its powers are limited. The human rights treaties are supervised by a series of United Nations committees which are set up under each convention. Their powers are limited to persuasion and advice. They set standards and expose injustice.

3. Australia believes in the importance of human rights as defined in the Universal Declaration and supports the United Nations in the protection of them. However, there are gaps in our own practice which diminish our international stance on the question. The Australian Constitution gives treaty power to the Federal Government. Australia has ratified nineteen of the twenty-four human rights conventions, but placed reservations on a number of significant articles in these conventions and has been slow to alter them. These articles, relating to the passing of legislation outlawing racial vilification, the separation of adults and juveniles in gaols and those articles which allow individuals to make complaints to the various human rights committees have detracted from our position, reflect weaknesses in our human rights record and may inhibit the full exercise of rights within Australia.

4. Australia makes numerous representations on behalf of the victims of human rights abuses in other countries. Beyond this, Australia works through the UN agencies to support the organisation in its work. Sanctions - aid, trade or investment - are not favoured as an automatic method to encourage improvement in human rights as economic development itself is often considered the fastest means to redress many oppressive situations. However, if aid, trade and human rights are not to be automatically linked in a punitive way, there are many imaginative and constructive ways in which the aid program can be linked to encourage human rights in recipient countries. Within Australia, there should be more training in human rights law and practice within those departments which are responsible for the implementation of the international treaties.

5. Our domestic record did not come within the terms of reference of this inquiry. Nevertheless, the Committee found it impossible to separate parts of our domestic practice from our international reputation and, therefore, our international credibility. Some issues stood out as ones which the Committee felt it should list as important human rights issues worthy of attention.

6. Chapter Six deals with human rights issues in the immediate region that have been brought to the attention of the Committee. The massacre in Dili on 12 November 1991 confronted this Committee with questions of human rights in East Timor just as the Committee was beginning its first round of public hearings. It is a problem which sorely affects our relationship with Indonesia. Submissions were also received on the situations in Irian Jaya and Bougainville.

7. Chapter Seven deals with submissions on human rights abuses in the wider region. They covered Sri Lanka, Burma, Thailand, Vietnam, the Philippines, China, and Tibet.

8. Only a few of the human rights problems that affect the world at large were brought to the attention of the Committee. Submissions were received on the Balkans, Israel and the Occupied Territories, the Sudan, South Africa and Guatemala.

Recommendations

The first four recommendations of this report deal with the failure of successive Australian governments over a very long period fully to ratify the human rights treaties to which we are a party. An explanation for this is given in Chapter Three. However, the arguments that have been used are usually questions of states' rights and the length of the consultative process with the states. Consultation takes place through the Standing Committee of Attorneys-General (SCAG). It has a regular agenda item on human rights where reports are made on the new instruments that are being developed, on UN meetings that have been held, on our reporting obligations and the need for inputs from the states. The process has proved to be woefully slow, lapses of decades occurring in some cases. It would seem that federal governments in their desire not to upset the states have been as culpable as the states in their willingness to let inertia prevail.

The Committee believes 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 that requires federal legislation to ensure that our treaty obligations are met, it should be passed. The power and responsibility of the Federal Government in respect to treaties is clear since it was upheld by the Franklin Dam case and the Koowarta case. The Committee believes that States' rights and the consultative process, which have been used as delaying tactics, must no longer impede the ratification of outstanding articles on our international human rights treaties.

International Compliance:

> *Recommendation 1:* **(Chapter 3) The Committee recommends that the Australian Government introduce legislation to Parliament to implement the Genocide Convention.**
>
> *Recommendation 2:* **(Chapter 3) The Committee recommends that the declaration regarding Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination should be withdrawn forthwith.**
>
> *Recommendation 3:* **(Chapter 3) The Committee recommends that the Australian Government should act without delay to accept further optional complaint mechanisms provided for under the International Covenant on Civil and Political Rights, the Convention on All Forms of Racial Discrimination and the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.**
>
> *Recommendation 4:* **(Chapter 3) The Committee recommends that the Government review the International Labour Organisation (ILO) Conventions 135, 141, 151 and 169 with a view to ratifying them without delay.**

Reporting:

Recommendation 5: (Chapter 3) The Committee recommends that:

- the annual report from the Department of Foreign Affairs and Trade should include a current list of UN Human Rights Treaties, including the reservations that still apply and those that have been removed in the preceding twelve months; and

- the Committee's role should include scrutiny of Australia's treaties and treaty based machinery by the conduct of regular and formal reviews, which will be incorporated in the Committee's annual report to Parliament.

Recommendation 6: (Chapter 3) The Committee recommends that:

- arrangements be made to facilitate the participation of non-government organisations in further consultations prior to the preparation of Australia's reports under international human rights instruments;

- the Australian Government's reports and the UN Committee's response to them should be presented to the Joint Committee on Foreign Affairs, Defence and Trade as part of the annual report when they occur in that year; and

- these reports should be tabled in Parliament to facilitate public scrutiny of both the reports and the UN response to them.

Recommendation 7: (Chapter 3) The Committee recommends that the Government reinstate the annual human rights reports from Australian diplomatic posts and urges the Government to make provision in resources and training to officers of the Department to enable them to carry out this task.

Recommendation 8: (Chapter 3) The Committee recommends that the Government upgrade the resources formally allocated to human rights within the Department of Foreign Affairs and Trade.

Recommendation 9: (Chapter 3) The Committee recommends that, in relation to Australia's human rights treaty obligations:

- the Government conduct a review of interdepartmental cooperation;

- the departments develop strategies for greater coordination of the implementation and monitoring of international human rights treaties;

- resources be allocated for more effective community consultation and education.

Training:

Recommendation 10: (Chapter 3) While the Committee acknowledges that the Department of Defence is further advanced than other departments in the matter of human rights training, nevertheless, it recommends that the Department review its human rights training with a view to upgrading and expanding it at the non-commissioned officer level and within defence cooperation programs.

Recommendation 11: (Chapter 3) The Committee notes the intention of the Department of Foreign Affairs and Trade to institute a comprehensive course on human rights for its senior officers and looks forward to future reports from the Department on the progress of the application of these courses.

The Committee further recommends that other departments affected by obligations under international treaties on human rights offer suitable and comprehensive training to officers likely to have to deal with such matters.

International Promotion and Protection:

Recommendation 12: (Chapter 4) The Committee recommends that the Australian International Development Assistance Bureau (AIDAB) explore ways to include in their programs aid projects which extend or improve human rights practice in the recipient country.

Recommendation 13: (Chapter 4) The Committee recommends that the Human Rights Fund be classified as Official Development Assistance (ODA) and that significant funds from the ODA budget be made available to projects in support of the development of human rights, especially to countries in this region.

Recommendation 14: (Chapter 4) The Committee recommends that a direct connection be established between military exports and human rights violations so that:

- guarantees are sought from recipient countries that any military equipment they receive will not be used against their own civilian populations;
- where possible, training in the international standards of human rights is provided as part of defence cooperation training; and
- it is made clear to the recipient country that military exports will be cut where persistent and flagrant abuses of human rights occur.

Regional Forum:

Recommendation 15: (Chapter 4) The Committee recommends that the Government examine the possibility of developing a regional human rights forum, with a view to drafting a human rights charter appropriate to this region.

The Immediate Region:

Indonesia (Chapter 6) The Committee urges the Australian Government to support actively a new UN initiative to begin consultations with all the parties to the conflicts in East Timor, Irian Jaya and Aceh with a view to negotiating a settlement; and to draw to the attention of the Indonesian Government the gross injustice of the application of the Anti-Subversion Law to those involved in peaceful protest.

Bougainville (Chapter 6) The Committee urges the Australian Government to encourage Papua New Guinea to make an urgent and full investigation of all the claims of human rights abuses on Bougainville. Furthermore, the Committee reiterates the recommendations made on this issue in the December 1991 Report of the Joint Committee on Foreign Affairs, Defence and Trade, Australia's Relations with Papua New Guinea.

The Region:

Sri Lanka (Chapter 7) The Committee suggests that the Government consider the recommendations made by the Canadian Human Rights Mission to Sri Lanka.[3] In particular, the Committee urges the Australian Government to join with the Canadian Government to seek action from the multinational agencies of the UN and/or the Commonwealth in the form of an international observer team to aid in the establishment of negotiations, to monitor the situation in the northern provinces of Sri Lanka, to supervise the distribution of humanitarian aid, and to verify a complete arms embargo to Sri Lanka.

Burma (Chapter 7) The Committee accepts the proposition that unilateral action on sanctions is ineffective. However, it believes that greater efforts in the multilateral agencies are called for. There are a range of possibilities for Australian action that could include:

- sponsoring a resolution in the United Nations General Assembly to have Burma's seat declared vacant on the grounds that the regime is an illegal one both under Burmese and international law and does not have a mandate of the people;
- calling for Burma's Least Developed Country (LDC) Status to be withdrawn on the grounds that the regime has spent billions on arms and little on improving the lot of its people;
- asking the United Nations General Assembly to instruct the United Nations Development Program and all allied UN agencies immediately to cease all operations in Burma;
- calling for a United Nations trade and arms embargo against Burma;
- seeking assurances from UNHCR and all countries of First Asylum that no further refoulement of Burmese refugees will take place and that adequate care be accorded Burmese refugees and displaced persons until they can return to Burma safely;
- establishing a special Burmese refugee program under the special humanitarian program; and

---

[3] Uniting Church Centre Submission, pp. 2158-62.

- closing the AUSTRADE office in Rangoon until power is handed to the democratically elected government.

Vietnam (Chapter 7) The Committee would hope, in the course of Australia's efforts to aid the reintegration of Vietnam into the regional and broader international community and especially into the international financial institutions such as the World Bank and the IMF, that the Australian Government will encourage the Government of Vietnam to comply with its international obligations under the International Covenant on Civil and Political Rights to which it is a party. In particular, that the Australian Government should raise with the Vietnamese Government the cases of those detainees, religious and political, who are prisoners of conscience. Some names are listed in Submissions 44, 80 and 83 to this inquiry.

Philippines (Chapter 7) The submission [from the Philippines Christian Support Group] calls upon the Australian Government to condemn these abuses and in particular to link Australian aid to groups which support human rights, to cease arms sales to the Philippines and to investigate exploitive practices by Australians in the Philippines. The submission noted two possible areas of exploitation: the exploitation of labour through low wages and poor conditions and the exploitation of women and children in the sex trade. The Committee urges the Australian Government to examine these recommendations.

China (Chapter 7) The witnesses [from the Welfare Committee for Chinese Students] urged the Australian Government, and this Committee endorses their request, to investigate these allegations and to raise the issues with the relevant government department in China and to draw the matters to the attention of the international community.

Tibet (Chapter 7) This Committee believes that the Australian Government should continue to press the Chinese Government:

- to respect the human rights of the Tibetan people, particularly those rights set out in the Universal Declaration of Human Rights which China has signed and the International Convention for the Elimination of Racial Discrimination and the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which China is a party; and

- to enter into earnest negotiations, without preconditions, with the Dalai Lama and his representatives with a view to reducing the tension in Tibet.

The Wider World:

Syrian Jews (Chapter 8) The Committee urges the Australian Government to continue to make representations on behalf of the Syrian Jews.

Salman Rushdie (Chapter 8) It seems to the Committee that Salman Rushdie deserves the same international outcry and international pressure to be brought to bear on the regime that has imposed the death sentence on him as was devoted to the other hostages in the Middle East. Representation might be made to the UN and to the British Government to encourage it to work to obtain Rushdie's release.

Sudan (Chapter 8) The Committee believes that the situation in the Sudan is an issue which must be raised again in the General Assembly and recommends that course to the Australian Government. Australia signed the anti-slavery conventions as the first of the international conventions it signed in 1926. In view of this, the Committee recommends that the Australian Government take extra measures in the United Nations to draw to the attention of the international community the revival of slavery as a result of the civil war.

Guatemala (Chapter 8) This Committee urges the Australian Government to support further action in the United Nations which would seek an improvement in the human rights record in Guatemala.

The Government's International Efforts to Promote and Protect Human Rights

Chapter One

Human Rights and International Relations - Principles and Practice

No man is an island entire of itself; everyman is a piece of the Continent, a part of the main. Any man's death diminishes me, because I am involved in Mankind. John Donne

Global communications in the late twentieth century have made us increasingly aware of our interdependence. We all breathe the same air, use the same water, are instantly aware of the cruelties perpetrated by governments in the far flung parts of the globe. We are rightly asked to respond to the famines and floods and earthquakes that devastate people around the world. We must all be concerned about the spread of nuclear weapons, the waste of resources and the accumulation of garbage. The mid-century view that there was a need for an international body to which nations would be answerable on questions of aggression has expanded to encompass these other universal questions. Human rights are one of these universal questions. Nation states have no sovereign right to abuse their own people and they should be answerable to the international community for the treatment of their people. Conversely, the international community has a responsibility to assist those who cannot protect themselves. This is not a luxury to be determined by strategic considerations although it is often used in that way. It is a matter of our intrinsic humanity. Law at its best is a noble conception. Applied equally, without fear or favour, it can be a civilising thing which curbs the cruelties of tyrants. International law should reflect the importance we attach to those interdependent and universal values we have identified.

Principles

1.1 *Human rights are universal;* the diminution of the rights of any group detracts from the whole. Equally, barbarism is universal. This century alone shows every continent a prey to the worst of human cruelty and the failure of the thin veneer of civilisation. Therefore, all people have a responsibility to preserve and protect the rights enshrined in the Universal Declaration of Human Rights. This declaration, signed by 91 countries, sets the standard by which nations can judge their own and others' performance in the preservation of human rights.

1.2 The members of the Committee believe, as do most Australians, in liberty and the democratic ideal, in a society and a world that promotes justice and equality for all; government can be a civilising power. The protection and promotion of human rights internationally are steps in the direction of extending, beyond the borders of the individual state, the simple expectation that human beings will treat each other well.

1.3 The concept of human rights predates its articulation in the Universal Declaration. The fact that these rights have been most fully set out in that document at a particular point in history does not make them the preserve of the largely Western group of nations which developed that declaration. The Greek idea of the equal worth of individuals within the polis, Cicero's description of the natural law as of 'universal application, unchanging and everlasting', the idea in the Christian gospel of 'individual salvation and the actual or potential unity of all people in Christ' and the humanist view of the dignity of man have all made important contributions to the theory of human rights in Western thought.[1] The West certainly developed a legal framework which recognised the rights of the individual. However, all the major philosophies around the world have adhered to similar principles. Buddhism, as the Dalai Lama impressed on the Joint Committee on Foreign Affairs, Defence and Trade, sought to preserve the 'good human qualities of human affection'. Islam, too, in its basic tenets is democratic and concerned with human welfare. In 1986, Dr Said al-Ashmawy, Chief Justice of Egypt wrote:

> True Islamic Government, if one follows the tradition of the Prophet, is the government of the people; a government which they freely elect and in which they share; a government which they control and supervise; a government which they may change peacefully, without bloodshed and without being denounced as heretics.[2]

1.4 It was Japan which proposed that racial discrimination be outlawed in the Covenant of the League of Nations in 1919. Then, Australia, the United States and Britain used the argument of national sovereignty to oppose its inclusion.[3] The argument was as spurious then as it is now.

1.5 All nations have fallen short of any pure implementation of human rights principles. The European record in the twentieth century is as bad as any other. And it was this failure, the slaughter of World War II and the revelations about the Holocaust, that caused the combined nations to articulate the underlying and universal principles of human rights. It has been only in this century that concerted efforts have been made to develop international institutions with international laws.

---

1 Vincent, R J Human Rights and International Relations, Cambridge University Press, 1986, pp. 19-23.

2 Exhibit No. 25, p. 10.

3 Exhibit No. 25, p. 1.

1.6 These 'laws' are, first and foremost, political and civil in the belief that freedom of expression and association preserve human dignity, human creativity and that the free flow of ideas promotes intellectual growth. The preservation of these rights is therefore the most rapid route to economic and social development.

1.7 The Committee believes that human rights are a necessary part of our democratic political system. The democratic system, with its free press and elected parliament and separate and independent judiciary, offers practical means of monitoring a government's record in preserving the rights of an individual against the power of the state. The tension between order and liberty is a perennial one.

1.8 The greatest conflict arises in the international sphere over the idea of national sovereignty and the principles of non-intervention. Since the Second World War, international relations theorists have been embroiled in a debate on the limits to national sovereignty. It is a lively and significant debate. The idea of national sovereignty accompanied the rise of the nation state as the building block of international order. Non-intervention of one state in the affairs of another was a logical concomitant to liberal democracy. If people were organised into groups of their own free will, then the type of government they wished to give themselves was entirely their own affair. Nation states developed out of the recognition that groups of people with a common cultural, linguistic or religious background therefore had a right to determine the way they should be governed. It was believed that greater peace and prosperity, less oppression and discrimination would result. The movements for national self-determination were largely, though not exclusively, democratic. Principles of not interfering in the internal affairs of such self determined states protected them from larger, dynastic states with imperial ambitions. By the end of the nineteenth century, the principle was largely established that states did not interfere in the internal affairs of one another.

1.9 Therefore, intervention (or aggression) brought the right to international sanction and retaliation, as against Hitler or Saddam Hussein. Although it should be noted that consistency in the application of this principle was never absolute. Size and strategic importance also mattered. For example, Hungary and Czechoslovakia were invaded by the Soviet Union with impunity and Poland and East Germany were suppressed for many years; Chile, the Dominican Republic, Vietnam, Afghanistan and East Timor have experienced considerable interference in their affairs with little international sanction. The constraints here were often the great power politics of the Cold War. With the decline and disintegration of the Soviet Union and the end of the Cold War, the particular competition of East and West has been taken out of the equation.

1.10 Non-intervention remains a valuable principle but it has its limitations - limitations either because the failure of the international community to apply it consistently has undermined it or because a rule against intervention has allowed the world to ignore massive abuses of human rights. There are cases of murderous regimes where power hungry individuals or groups exploit and oppress a population and these require international action and override national sovereignty. The record of action in such cases is, like the truth, rarely pure and never simple.

1.11 Moreover, the world is internationalising as a result of communications technology and the deliberate policy of nations which sought to establish institutions such as the League of Nations, and later the United Nations, to protect the world against the madness of world war. This contracting of the world has brought a greater immediacy and understanding of what is going on in the world. Some events, graphically depicted on our television screens, cannot be ignored. The reason for the significance of human rights in the relations between modern states then, according to an eminent scholar in the field, is practical as well as doctrinal.

> Human rights in foreign policy are not merely about standard setting, public *pronouncements, quiet words with the minister about particular cases,* or finding formulae for the pacification of noisy but unimportant domestic lobbies; they are also matters which affect the great purposes of the state in securing and nourishing its citizens. The concept of security [should be extended] to cover the medium and long term and the unconsidered threat. [For example] the flood of refugees that might result from the denial of human rights ... should focus bureaucratic attention on the practicality of human rights observance as preventive medicine.
>
> There remains the question, under diplomacy, of whether it is possible to maintain *good* relations among governments that draw human rights shortcomings to one another's attention. It adds another matter to those already there to dispute about, and a particularly contentious one because it *touches nerves concerned with the quality of one's domestic government.* So its successful handling is difficult. It tries diplomatic skill. But since it cannot be avoided, it might be better for professionals to regard the inclusion of human rights as a challenge rather than as a recipe for disaster.[4]

1.12 If non-intervention as a principle has its limits, self-determination itself can represent an endless devolution of power, a permanent instability in a region and a preservation of group hatreds, based on ignorance and prejudice. Countries like Australia and the United States with their multicultural melting pots attempt to create states where the criterion is not cultural homogeneity, but cultural diversity, cemented by a common adherence to ideas of tolerance and liberal democracy. The question of whether there is greater instability and violence in the forcible retention of a group within a state or in the breakup of a large multi-national state is a matter of debate.

1.13 However, the Charter of the United Nations is much broader than simply establishing a mechanism against aggression. Support for underdeveloped nations, the protection of children and notably the declaration on human rights, formalised in 1948, are all included.

1.14 These 'other' concerns of the United Nations reflect increasing interest in a minimum standard of justice for all. The inequalities in the world need to be

---

[4] Vincent, R J op. cit., pp. 138, 143.

addressed. Within the UN the wealth of the West and North is set against the poverty of the East and South. A particular tension arises out of decolonisation. Decolonisation has, however, led to contradictory tendencies. Opposition to and sensitivity about all forms of imperialism has led to the assertion of local cultures and systems against Western ones but at the same time Western economy, Western principles of nationalism and self-determination are espoused as useful weapons against their authors.

> Indeed the emergence of a good part of the world from the dominance of European imperialism has carried with it a new emphasis on the plurality of values in world politics and on the rediscovery of indigenous culture. The doctrine of cultural relativism was not invented by nationalists throwing off the yoke of empire, but its popularity has been sustained by these movements.[5]

1.15 Cultural relativism is a doctrine that asserts that the rules of morality emerge from specific cultural and historical contexts and therefore change over time and from place to place. This doctrine says that there are no universal values and the attempt to claim that there are is a form of cultural imperialism. However, the Committee rejects the notion of cultural relativism. There are certain basic aspects of our natures that are our common humanity, that all people share and over which is laid our cultural heritage.

1.16 The doctrine of human rights comes within this argument about what are applicable universal doctrines. It is often asserted that the concept of human rights is a Western construct, part of the cultural imperialism of the West to try and shape developing societies in their own image and likeness. It is seen to relate to the Western political development of liberal democracy where the rights of the individual are enshrined within constitutions and legal systems which seek to protect freedom of speech and association, freedom from arbitrary arrest and the right to a fair trial, free elections and rights to privacy and property. This emphasis on the individual is viewed with suspicion in cultures where communal standards and duties and a concentration on the collective good are more strongly felt. The governments of developing societies fear the 'anarchy' they see as inherent in Western individualism.

1.17 Against this, developing nations assert the primacy of economic and social rights - the right to a standard of living adequate to health and well being, the right to social security and civil order. So the argument is not whether human rights exist but what they consist of. It seems there are different priorities in different societies.

1.18 The Chinese Government's criticism of the United States for the poverty and violence within US society is used as a justification for the priority it chooses to give to economic rights as the most basic human right. It has often claimed that strong government in China is a prerequisite for social order and efficient economic

---

[5] ibid, p. 37.

distribution. The claim has some validity, but it is also a justification of the maintenance in power of the governing elite. Like St Augustine whose cry was 'Give me chastity and continency, but not yet'[6] its cry is liberty, yes, but some time in the future.

1.19 It is possible that economic/social rights and political rights are not so separate. The communist regimes rejected the western view of civil and political rights as being less important than their emphasis on providing equality of material welfare. However, the trade off proved false. Without freedom of speech and association and the free exchange of ideas, economies seem to stagnate.

1.20 In the end, a distinction needs to be drawn between governments and peoples; between the claims that are made by regimes, Eastern or Western, Northern or Southern, which seek to use doctrines of cultural relativism to preserve their own power and to entrench themselves in office, and the aspirations of ordinary people who would choose a different path if given a free choice. The society of all humankind often stands opposed to the club of states.

1.21 The Committee believes Australia should not trespass on the legitimate internal arrangements of nations which choose to organise themselves differently from us. Nevertheless there are situations where all people can find agreement. *Wherever you go in the world, you find that individuals in every society share the* same basic aspirations. The freedom fighter in Eritrea, the peasant farmer in China, the monk in Burma, the black activist in South Africa: they all want the security of food and shelter, and the safety of knowing that they have freedom of expression and association without the fear of being punished, tortured and killed for their views.

1.22 Irrespective of cultural and political heritage, can anyone find a person who likes the idea of being woken up in the middle of the night to be dragged off by a bunch of government thugs and held indefinitely without trial? What people do want is to be able to live with comfortable amenity knowing that their families will be safe, and that their children will have an opportunity in the first place to live, and in the longer term, progress to a higher standard of living.

1.23 The common people of the Third World do not need to know the details of the United Nations Covenant on Political and Civil Rights to know what they want as basic human rights. They know they do not want a corrupt government which will arrest them arbitrarily, or confiscate their property or demand bribes for its services; they know they do not want their teenage children conscripted to fight in wars against their own people; and they know they do not want ruthless, brutal and anti-democratic regimes foisted upon them.

1.24 What they also know is that they would like to live in peace, free from fear; they would like to have a say in who governs them.

---

[6] St. Augustine, Confessions, VIII. 7.

1.25 The Committee believes that Australia, as a democratic, pluralistic and relatively wealthy nation, has an international responsibility to accept its share of the burden in assisting those nations which do not enjoy anywhere near the standard of living to which we have access. Secondly, there is a moral duty to raise our voice on behalf of those peoples throughout the world who have none of the political freedoms or rights to dissent, which we simply take for granted.

1.26 What form should our assistance, our support for international human rights take? A distinction can be drawn between words and action. Debate and argument are the basis of our system. Criticism, therefore, for us, is always a right. It is intrinsic to our culture of free speech, but, of course, it should be accurately based. The Committee believes that human judgement is best informed by debate. We should not hesitate to voice our views or our values where we believe there is abuse of human rights, economic, social or political, either within our own country or in others.

1.27 All theory and practice, including our own, should be subject to scrutiny, both internally and internationally. For this reason, it is fair that Australia's record, especially in respect of our historical relationship with our aboriginal people should be scrutinised and criticised. As one of the fiats of all governments is to protect its citizens, all governments can and should be judged by their success or failure in that.

1.28 At core, there is a common humanity that is reflected in the philosophical theories underpinning all societies. These theories value and respect human life and decry cruelty and tyranny. This is so for Islam and Christianity, Confucianism and Buddhism, as well as Humanism. It is this belief in a core of rights that attach themselves to human beings that gives confidence to the Australian position on human rights.

1.29 Action is more difficult. The imposition of a moral truth is often unwise and usually ineffective. Intervention to redress human rights abuses, either through economic sanctions or military force, should be reserved for conduct that has 'outraged the conscience of the world'.[7] The difficulty is that intervention itself may prove more costly in human lives than the original abuse and it may entrench and prolong the rule of an oppressive regime rather than lessen its hold. Moreover, distinguishing motives for intervention can be difficult. Humanitarian concerns can, and often are, linked to strategic or economic gain.

1.30 There are, however, examples where intervention largely on humanitarian grounds has seemed justified:

- In November 1971, India's invasion of East Pakistan because 10 million refugees had fled to India after Pakistani troops had killed as many as 3 million Bengalis. They left in 1972.

[7] Sohn and Buergenthal, International Protection of Human Rights, p. 124.

- In 1978 when Vietnam invaded Kampuchea after a quarter of the population had been murdered by Pol Pot. They finally left in 1989.

- In 1979 when Tanzanian troops invaded Uganda to prevent the continuing slaughter of the population by Idi Amin. They withdrew in June 1981.

- In 1992, the creation of a Kurdish enclave in Northern Iraq.[8]

1.31 Actions such as these are taken in extreme cases. For the most part, Australia makes representations through the various human rights organisations in the world. The new Human Rights Sub-Committee of the Joint Committee on Foreign Affairs, Defence and Trade in the Australian Parliament is another avenue.

The DFAT Report: The Work of the Government 1990-91

1.32 The Department of Foreign Affairs and Trade begins its first annual report on human rights with a policy statement which asserts the high priority accorded by the Australian Government to human rights. The Committee endorses the principles set out in the policy statement. The Department says that it chooses to take a leading role in the international promotion of human rights because it 'is conscious of its moral obligation to reflect in its foreign policy the democratic and individual values of Australian society.' Furthermore, the Department notes:

- that the observance of the rights and principles of the Universal Declaration of Human Rights would result in a more just international order;

- that the application of these standards transcends national borders; and

- therefore they are a legitimate subject for international scrutiny and concern.[9]

1.33 While there is a recognition and an appreciation of the different interpretation that countries in the region with different historical and cultural experiences and different stages of development have of human rights, this understanding, however, does not change the Government's view. Civil and political rights are not to be subordinated to economic and cultural rights. The two sets of rights are not mutually exclusive, and indeed the former are most likely to enhance the latter. That conflict in interpretation and emphasis remains a diplomatic tension for Australia in its relations in this region.

---

8 Exhibit No. 59, p. 6.

9 DFAT Submission, p. S1.

1.34 The work of the Government on human rights is described in two areas of activity: **bilateral** approaches and **multilateral** obligations. The *principles* underlying these approaches are flexibility, consistency, confidentiality, non-discrimination and non-confrontation.[10] The Government prefers to work on a case by case basis, tailoring the response to the specific situation. Although Australia makes many bilateral approaches on behalf of individuals, it generally avoids punitive action in the form of sanctions unless there is strong support from the international community. Australia is a strong supporter of the international institutions and of internationalism as a way of obtaining and maintaining world peace.

1.35 The DFAT report claims that Australia prides itself on its involvement in and support for the United Nations and its instrumentalities. The report lists the conventions and treaties to which Australia is a party - nineteen of the twenty-four, (See Chapter Two for details of the Conventions) and notes the nominations of Australians to serve on the Economic, Social and Cultural Rights Committee, the Committee on the Elimination of Discrimination Against Women and the Human Rights Commission. Details are supplied in the Department's submission of the work that was done in these forums. (See Appendix 10)

1.36 Some of the issues raised in CHR47 (session 47 of the Commission on Human Rights) were the appointment and renewal of Special Rapporteurs, a working group on *arbitrary detention, the need for a Rapporteur on Guatemala, scrutiny of Burma*, the setting up of a working group on a draft Declaration on the Protection of Persons from Enforced or Involuntary Disappearances, work on regional human rights institutions, indigenous peoples' rights and the preparation of a draft Declaration on the Protection of the Rights of Human Rights Defenders.

1.37 In the General Assembly, Australia signed the international Convention on the Rights of the Child, deposited its instrument of Accession on the Second Optional Protocol (on the death penalty), reported on its compliance with the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and participated in the Eighth Session of the UN Working Group on Indigenous Populations.

1.38 Bilateral representations are also listed, 428 in all, and analysed region by *region. To these representations 20 to 25% received responses of which 15% were* considered positive. (See Table 1 in Appendix 10 Australian Government Human Rights Representations: New Cases 1990-91). Monitoring of the human rights *situations in particular countries is carried on by staff at diplomatic posts and* consultations are regularly held (three times a year) with non-government organisations. In July 1991, a government delegation, consisting of parliamentarians, academics, and officials visited the People's Republic of China to establish constructive dialogue on human rights. The report of this visit was a major human rights report for the year 1991. It was tabled in Parliament in September 1991.

---

[10] DFAT Submission, p. S2.

1.39 Finally, the Department reported on the Human Rights Fund totalling $40,000 which is to provide assistance to organisations and individuals involved in the promotion and protection of human rights.

1.40 Most witnesses and most submissions before the Committee approved of and appreciated the work of the Department of Foreign Affairs and Trade in the human rights area. In particular, Hon Justice Elizabeth Evatt, AO, a member and later Chairperson of the Committee for the Elimination of Discrimination of Against Women (CEDAW) for eight years (1984-91) praised Australia's efforts, through the Department of Foreign Affairs and Trade, in supporting the work of the UN in the human rights area. She saw the DFAT officers as 'competent and dedicated'. She set out in detail further activities of the Department which included the following:

- Effectively managing two elections to the Committee. This involved a considerable amount of preparation and negotiation over weeks and months. Australia regards the question of election to human rights treaty bodies as a matter of importance, whether or not Australia has an immediate candidate.

- Keeping me informed of all developments in the UN relevant to the work of the Committee.

- Assisting me in preparation for each Session of the Committee by providing information and advice concerning the states whose reports are to be considered and about issues likely to arise on the agenda.

- Providing assistance, information and advice to me during the Sessions of the Committee. This often requires the relevant officer to take on additional duties during the period when the Committee meets.

- In addition to the functions of special concern to me, the Department actively monitors all UN activities relating to human rights, and contributes to the resolutions of the different organs and agencies of the UN in regard to CEDAW and other treaty bodies. For example, the Department:

  ensures that the work and recommendations of the Committee receive proper support in the UN organs, agencies and committees and in the General Assembly; and

  sponsors and supports UN resolutions dealing with the Committee's work.[11]

[11] Evatt Submission, pp. S975-6.

1.41 However, there were criticisms and recommendations which emerged in the course of the inquiry. These fall into the following categories and they will be dealt with in detail in the subsequent chapters of this report:

- Australia's record of failure in legislating to implement the international treaties it has signed;
- the leverage which aid (or trade) might give in the promotion and protection of human rights - conditionality, training programs, sanctions etc;
- the level of resources set aside by the Department of Foreign Affairs and Trade for the high priority area of human rights;
- the adequacy of mechanisms for monitoring and reporting on the human rights situations around the world;
- questions raised over whether Australia is as non-discriminatory and consistent in the stance it takes on human rights as it claims; and
- Australia's accountability on its own record in human rights, especially in relation to aborigines, refugees and child offenders in Western Australia.

Chapter Two

International Mechanisms - Laws, Conventions and Institutions

Man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all. Aristotle

The international mechanisms that are being developed for the protection of human rights have been evolving slowly since World War II. They consist now of a Universal Declaration of Human Rights which sets out the principles, two covenants or treaties which bind the ratifying states to these principles and a series of conventions or treaties which deal with specific aspects of human rights in more detail than the covenants. Although there is an International Court of Justice, its powers are limited. The human rights treaties are supervised by a series of committees which are set up under each convention. Their powers are limited to persuasion and advice. They set standards and expose injustice.

International Law

2.1 The United Nations was conceived with the noblest aspirations for civilised social organisation, the desire to preserve peace through international cooperation. The Charter of the United Nations was a treaty, but a treaty with a difference. It did not simply conclude a war, it attempted to establish a permanent, standing mechanism for the prevention of wars in the future. It was to build on the experiences of the first attempt at an international organisation, the League of Nations. It was to be partly an international parliament, partly a continuous treaty making organisation, partly an international police force. It has since broadened its scope to provide forums for debate and review on a wide range of subjects of international concern - human rights, the environment, world health, the provision of food etc. Therefore, of its nature it limits national sovereignty, albeit by consensus, in the interests of international good order and the rights of people.

2.2 Despite the recognition at the outset of the principle of the 'sovereign equality'[1] of all peace-loving states, there has been a tendency for the United Nations to limit national sovereignty. This evolution, therefore, increasingly demands a reconsideration of the principle of national sovereignty. United Nations conventions, now covering a wide range of activities, inevitably change the character

[1] Article 2(1) Charter of the United Nations. See Appendix 4.

of domestic institutions, affect domestic legislation and extend accountability beyond the usual domestic constituency. This extension of international accountability is not without its tensions or accusations of unwarranted intrusions into the internal affairs of countries. This is especially so where international judgements are critical.

2.3 The United Nations was established by the signing of the Charter in San Francisco on 26 June 1945. Australia's commitment to the UN is symbolised by the work and involvement of Dr. H.V. Evatt as Inaugural President of the General Assembly. The Charter set out its principles (maintenance of peace and security, justice, social progress and, notably, faith in human rights and the dignity and worth of the human person) and its structure (General Assembly, Security Council and International Court of Justice).

2.4 Human rights figured prominently at the beginning. The Charter itself gave a mandate to the United Nations on human rights. At its first session in 1946, the Economic and Social Council set up the Human Rights Commission. It was this body that set about drafting the specific and detailed Universal Declaration on Human Rights. It was submitted through the Economic and Social Council to the General Assembly in December 1948.

2.5 However, the mechanisms to monitor and give effect to the principles have been slow in coming. The Human Rights Commission was and is an international governmental organisation made up of representatives of governments who vote according to the dictates of their home governments. Therefore, it has been plagued by the political and ideological disputes of the post war years and this has limited its effectiveness. Nevertheless, it can and does appoint special rapporteurs or investigators to examine particular situations that are brought to its attention.

Conventions

2.6 As far as human rights are concerned the Universal Declaration on Human Rights is a manifesto or statement of principles. There are two major covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which set out in treaty form the elements of the Universal Declaration. Specific conventions have followed. These, too, are treaties but they deal with narrowly defined aspects of the Covenants. Each of these instruments has been drafted by the Human Rights Commission. They are adopted when voted for by a majority of the members of the General Assembly. They enter into force when ratified by a certain and specified number of states. This varies according to the covenant or convention. States may ratify treaties with reservations on (exclusion of) particular articles. Implementation of the treaties is dependent on the political systems of individual states. The international instruments that embody human rights protection now are:

- The Universal Declaration of Human Rights, a manifesto setting out the basic rights of mankind, adopted by the General Assembly in 1948

voted for by 48 of the 58 members at the time, and by 1987 signed by 91 nations. (See Appendix 5 for the text of the Declaration)

- The Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty, adopted unanimously by the General Assembly in 1966, binding on those nations which ratify it and monitored by a committee of experts appointed by the Economic and Social Council. It came into force in 1976 after 35 Nations had ratified it. (Appendix 6)

- The Covenant on Civil and Political Rights (ICCPR), a treaty, adopted unanimously by the General Assembly in 1966, binding on those nations which ratify it and monitored by the Human Rights Committee. It also came into force in 1976. By 1992, 120 nations had ratified it, including the United States in June 1992. (Appendix 7)

2.7 Attached to the ICCPR are two optional protocols:

- The (First) Optional Protocol, an optional addition to the ICCPR the ratification of which entitles individuals within a state to file complaints of human rights violations with the Human Rights Committee. By November 1991, 58 states had ratified it. (Appendix 8)

- The Second Optional Protocol, an optional addition to the ICCPR the ratification of which aims at the abolition of the death penalty. By February 1992, 11 states had ratified it.

2.8 These three, the Universal Declaration and the two Conventions (ICCPR and ICESCR) form what is known as the International Bill of Rights. As well as the declaration and the subsequent covenants or treaties a series of conventions has been adopted by the International Committee of the Red Cross and by the UN Specialised Agencies which further specify areas of human rights. They are:

- The First, Second, Third and Fourth Geneva Conventions, adopted August 1949. These conventions deal with the conduct of war, the treatment of prisoners and the protection of civilians in war time. By October 1991, 169 states had ratified them.

- The Convention on the Prevention and Punishment of the Crime of Genocide, adopted 1948, entry into force in January 1951. By March 1990, 101 states had ratified it.

- Convention on the Political Rights of Women, adopted March 1953, entry into force July 1954.

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 1965, entry into force January 1969. By October 1991, 130 states had ratified it.

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 1979, entry into force September 1981. By July 1991, 100 states had ratified it.

- Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), adopted December 1984, entry into force June 1987. By December 1991, 61 states had ratified it.

- International Convention on the Rights of the Child, adopted November 1989, entry into force September 1990. By February 1992, 90 states had ratified it.

2.9 There are three conventions and a protocol relating to refugees:

- The Convention on the Reduction of Statelessness, adopted August 1961, entry into force December 1975. By 1992, 19 states had ratified or acceded to it.

- The Convention Relating to the Status of Stateless Persons, adopted September 1954, entry into force June 1960. By 1974, 45 states had ratified or acceded to it.

- The Convention Relating to the Status of Refugees, adopted July 1951, entry into force April 1954. By 1992, 107 states had ratified or acceded to it.

- The Protocol Relating to the Status of Refugees, adopted January 1967, entry into force October 1967. By 1981, 107 states had ratified or acceded to it.

2.10 There are conventions on slavery, some going back to 1926:

- The Slavery Convention of 1926, signed in Geneva, amended by a Protocol which entered into force, December 1953. By 1987, 87 states had ratified or acceded to it.

- Supplementary Convention on Slavery, adopted September 1956, entry into force April 1957. By 1992, 105 states had ratified or acceded to it.

2.11 Australia has ratified, at least in part, all of the above conventions and covenants. However, for many of them we have placed reservations or failed to make declarations on important articles. The details of these omissions will be discussed in the next chapter.

2.12 There are also a series of ILO Conventions relating to freedom of association. Australia has ratified the first three:

- The Right of Association (Agriculture) (ILO Convention No. 11), adopted 1921, ratified by Australia in 1957.

- Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87), adopted 1948, ratified by Australia in 1973.

- The Right to Organise and Collective Bargaining (ILO Convention No. 98, adopted 1949, ratified by Australia in 1973.

2.13 However other significant ILO conventions have not been ratified including:

- The Workers' Representatives Convention (ILO Convention No. 135), adopted June 1971, entry into force June 1973.

- The Rural Workers' Organisations Convention (ILO Convention No. 141), adopted June 1975, entry into force November 1977.

- Labour Relations (Public Service) Convention (ILO Convention No. 151), adopted June 1978, entry into force February 1981.

- Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169), adopted June 1989, entry into force September 1991.

The Structures for Monitoring Human Rights

2.14 All of the conventions are monitored by particular committees, set up by the articles of that convention. For example, the Human Rights Committee was established by Article 28 of the International Covenant on Civil and Political Rights. This Committee has 18 members elected by secret ballot from states which are parties to the Covenant. They serve in a personal capacity, not as representatives of their governments, for a term of four years with overlapping terms. Therefore there are elections every two years. The monitoring process involves four tasks:

- to examine the reports, produced every five years, by states which are a party to the Covenant on what they have done to implement their obligations;

- to interpret the provisions of the Covenant and to make suggestions on better ways to meet obligations through laws and practice;

- to receive complaints from one state about the performance of another; and

- to receive complaints, under the (First) Optional Protocol, from individuals who claim human rights abuse.

2.15 The Committee meets for three three-week sessions a year either in Geneva or New York.

2.16 Similar committees exist for the monitoring of other conventions. By way of illustration there is a Committee for the Elimination of Discrimination against Women. It has 23 members. Justice Elizabeth Evatt has just completed an eight year term as both member and Chairperson of the Committee for the Elimination of Discrimination Against Women (CEDAW). She described the process of monitoring to our Committee:

> We try to ask probing questions which are designed to reveal areas where things are not as good as they ought to be. In doing that we are very much guided by the information we receive from non-government organisations in the countries concerned ... Approximately a year ahead at one meeting we fix the agenda for the next meeting ... At that stage ... the Committee will try to start collecting information about those states which might suggest there are particular problems ... We do that individually ... [W]e have to be quite active in writing, in our personal capacities, to women's organisations and others in those countries to let them know, firstly, that their state is a party to this convention, secondly, that it has put in a written report that they have probably never seen and, thirdly, that their representative is coming up to be questioned.
>
> This is usually the first they have ever heard of any of this and they get quite interested.[2]

2.17 Justice Evatt saw the demands of the reporting systems for the conventions as quite onerous, especially for developing countries. This view was reiterated by Australian aid agencies who recommended that Australia could expend some of its aid vote to train and assist countries in the fulfilment of their obligations under the conventions. See Chapter Four.

2.18 Ultimately, the committees which monitor compliance with the conventions do not have powers of enforcement. They do not send in the troops. They work by standard setting, by discussion, by information gathering and dissemination, by suggestion and persuasion and by exposure.

> The way it works now is to try to bring people to the bar of the UN and to *continually put pressure on them to bring about the necessary changes*, and gradually the UN system of human rights is being strengthened and is being respected. The Human Rights Committee has pronounced upon breaches of its standards in various countries, and its determinations have, by and large,

---

2 Evidence, 24 April 1992, pp. 492, 498.

been respected and implemented, even though it has no enforcement powers. It is a very slow system lumbering forward slowly.[3]

Mechanisms for Ratifying and Implementing Conventions

(i) Ratification

2.19 If the system for implementation and enforcement has been slow and cumbersome at the United Nations end of the process, problems also exist at the national end. In Australia, implementation is further complicated by the federal structure of our government. Specific problems and delays will be dealt with in Chapter Three. Here, a brief description of the process might be useful.

2.20 In Australia, treaties are the responsibility of the Federal Government. This responsibility is implemented by the Department of Foreign Affairs and Trade through the Treaties and Sea Law Branch. This is the agency within government for the drafting, negotiation, conclusion, publishing and interpretation of treaties. A treaty is binding once the Federal Government has consented to be bound by it, or from a specified time after that consent. Consent may take various forms:

- signature alone;
- signature confirmed later by the exchange of third person Notes;
- the exchange of Notes or Letters which together constitute a treaty;
- signature confirmed by a later step such as ratification or approval;
- accession (also sometimes called acceptance or adhesion).

2.21 Multilateral treaties such as the UN conventions usually follow the last two methods. In Australia for a treaty to be concluded the text must be approved by the Governor-General in Council, acting on the advice of his Ministers, or, if its subject falls within existing policy, by relevant Ministers. Once a treaty is approved by the Governor-General in Council, the Minister for Foreign Affairs and Trade issues a formal instrument for signature, ratification or accession, as appropriate. The specific requirements for ratification of a treaty are usually set out in the final clauses of a treaty. If a country does not deposit the instrument of ratification within a certain specified period, it may accede to it at a later date.

Modern multilateral treaties are typically subject to ratification or similar treaty action described as acceptance or approval. They are usually open for signature only for a specified length of time, or by a specified group of

---

[3] Evidence, 24 April 1992, p. 501.

countries. Countries that have not signed within the time, and countries not specified, may become party to the treaty by the process of accession only.[4]

Treaties also normally require ratification by a minimum number of parties before they enter into force at all.

2.22 It is not necessary for the Parliament to approve a treaty; however, a treaty is not binding in itself in Australian domestic law. If Australian law, State, Federal or Territory, must be altered to give effect to a treaty, the necessary legislation must be passed by Parliament in the normal way.[5]

2.23 It is at this stage, in the passing or failing to pass necessary implementing legislation, particularly at State or Territory level, that Australia has been most criticised by witnesses to the Committee. State governments have used arguments about their rights to untrammelled control of certain jurisdictions not to pass required, or not to repeal hindering, legislation which would give effect to our international treaty obligations. Chapter Three will examine the specific criticisms.

(ii) Implementation

2.24 Listed below is the Federal legislation to implement the international human rights treaties to which we are a party followed by the Conventions to which they apply:

- *Racial Discrimination Act 1975*

  International Convention on the Elimination of All Forms of Racial Discrimination

- *Sex Discrimination Act 1984*

  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

---

4 Exhibit No. 56, The Conclusion of Treaties and Other International Arrangements, p. 46.

5 Exhibit No. 56. op. cit., p. 51.

ILO Convention 111 Concerning Discrimination in Respect of Employment and Occupation

- *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*

  International Convention against Torture and other Cruel, Inhuman and Degrading Forms of Punishment

2.25 Within the Human Rights and Equal Opportunity Commission (HREOC) there are four Commissioners: the Human Rights Commissioner, the Race Discrimination Commissioner, the Sex Discrimination Commissioner and the Privacy Commissioner. The Human Rights and Equal Opportunity Commission is the major instrumentality to ensure the compliance of Australia with its international human rights obligations. In its annual report it stated that its objectives were:

- to increase the understanding, acceptance and observance of human rights and equal opportunity in Australia; and

- to promote a fairer society by protecting basic human rights and ensuring that Australia complies with its human rights obligations under international law.[6]

To achieve these objectives it can conduct inquiries, formulate guidelines, advise governments, intervene, with the leave of the court, in legal proceedings, and undertake research.

2.26 With many conventions, compliance is deemed to occur because of pre-existing legislation or practice. For example, the ratification of the Second Optional Protocol on the abolition of the death penalty would have been covered by the Death Penalty Abolition Act 1973 and the separate legislation passed in the States. Western Australia was the last state to abolish the death penalty for ordinary offences in 1984 and in New South Wales the death penalty for all offences including piracy, treason and arson at military establishments was abolished in 1985. In some cases, implementation is a matter of State legislation not Federal. In those cases the Federal Government relies on individual states to bring their legislation or practice into line with the requirements of the international treaties that have been signed. Where there has been doubt about aspects of Federal or State legislation reservations have been placed on articles in particular conventions. There is a strongly held view that this delay is unnecessary as, since the High Court ruling on

---

[6] Exhibit No. 80, pp. 7-11.

the Franklin Dam Case and the Koowarta Case, the superior right of the Federal Government over the State Governments to ensure compliance with international treaties is assured. The relative powers of the Federal and State governments with regard to treaties will be outlined in Chapter Four.

INTERNATIONAL TREATIES FOR THE PROTECTION OF HUMAN RIGHTS

Title	Adoption by United Nations	Entry into force	Ratifications or Accessions as at August 1992	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 (ICESCR)	1966	1976	115	1975	
International Covenant on Civil and Political Rights (ICCPR)	1966	1976	112	1980	Article 41 (d) Articles 10, p.2(a),2(b),3; 14,p.6; & 20
(First) Optional Protocol	1966	1976	65	1991	
Second Optional Protocol	1989	1991	11	1990	
First, Second, Third and Fourth Geneva Conventions	1949	1950	172	1950 (3 & 4) 1958 (1 & 2)	
Convention on the Prevention & Punishment of the Crime of Genocide	1948	1951	106	1949	
Convention on the Political Rights of Women	1953	1954	98	1974	Article III

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

Title	Adoption by United Nations	Entry into force	Ratifications or Accessions as at August 1992	Ratification or Accession by Australia	Outstanding Declarations or Reservations
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	1965	1969	132	1975	Article 4(a) Article 14
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1979	1981	116	1983	Maternity leave & combat duty
Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)	1984	1987	67	1989	Article 21 Article 22
International Convention on the Rights of the Child	1989	1990	93	1990	Article 37(c)
Convention on the Reduction of Statelessness	1961	1975	16	1973	
Convention Relating to the Status of Stateless Persons	1954	1960	37	1973	
Convention Relating to the Status of Refugees	1951	1954	108	1954	
The Protocol Relating to the *Status of Refugees*	1967	1967	108	1973	

Title	Adoption by United Nations	Entry into force	Ratifications or Accessions as at August 1992	Ratification or Accession by Australia	Outstanding Declarations or Reservations
Slavery Convention	1926	1953	87	1927	
Supplementary Convention on Slavery	1956	1957	107	1958	
Right of Association (Agriculture) (ILO Convention No 11)	1921		107	1957	
Freedom of Association & Protection of the Right to Organise (ILO Convention No 87)	1948	1950	99	1973	
Right to Organise and Collective Bargaining (ILO Conventions No 98)	1949	1951	114	1973	
Workers' Representatives (ILO Convention No 135)	1971	1973	45	---	
Rural Workers' Organisations (ILO Convention No 141)	1975	1977	31	---	
Labour Relations (Public Service) (ILO Convention No 151)	1978	1981	24	---	
Indigenous and Tribal Peoples (ILO Convention No 169)	1989	1991	4	---	

Chapter Three

International Compliance

It is the best presently available instrument, both for avoiding the supreme and avoidable catastrophe of a third world war, waged with all destroying weapons, and also for establishing an international order which can and should assure to mankind security against poverty, unemployment, ignorance, famine and disease. Dr H.V. Evatt 1946 speaking on the United Nations in the House of Representatives.

Australia believes in the importance of human rights as defined in the Universal Declaration and supports the UN in the protection of them. However, there are gaps in our own practice which diminish our international stance on the question. The Australian Constitution gives treaty power to the Federal Government. Australia has ratified nineteen of the twenty-four human rights conventions, but placed reservations on a number of significant articles in these conventions and has been slow to alter them. These articles, relating to the passing of legislation outlawing racial vilification, the separation of adults and juveniles in gaols and those articles which allow individuals to make complaints to the various human rights committees have detracted from our position, may reflect weaknesses in our human rights record and may inhibit the full exercise of rights within Australia.

3.1 Australia evolved to nationhood rather than becoming a nation at a particular point in time. The Constitution gave power over external affairs to the Federal Government Section 51 (xxix) but full international sovereignty did not come until later with the adoption of the *Statute of Westminster Adoption Act 1942*. From then, the power to make treaties has rested with the Executive Council. L. Zines in The High Court and the Constitution states that

> Although the external affairs power in s 51 (xxix) is not expressed to be exclusive, it is clear that it is only the Commonwealth that acts on the international scene. Australia speaks to the world with one voice of the Commonwealth. The States did not develop international personality. Executive power to engage in diplomatic relations, enter into international treaties and conventions and declare war and peace is also an exclusive power of the Commonwealth.[1]

[1] Zines, L. The High Court and the Constitution, pp. 244-5.

3.2 The Koowarta and the Franklin Dam Cases tested this power in relation to the wider treaty obligations that Australia has undertaken and must undertake in the post World War II world. The UN treaty system requires a national focus and a national voice on a wider range of issues than ever before - the environment and human rights in particular. Australia's national evolution to meet this challenge still has some way to go if our record in dealing with UN treaties is a guide.

3.3 Central to Australia's international efforts to promote and protect human rights is our own record in ratifying and implementing the UN's international covenants. The Department of Foreign Affairs and Trade dealt with only one aspect of this question in their annual report, listing for the Committee the international instruments we have ratified in Table 1 on p. 4. (See Appendix 10) Australia, says their report, is party to nineteen of the twenty-four major international treaties. The record sounds impressive.

3.4 However, ratification does not tell the whole story. The Committee received a considerable number of submissions about numerous reservations placed by the Federal Government on some of the basic covenants, their tardiness in reviewing the status of treaties or in gaining State Government acceptance of them, their failure to use Federal power in the absence of State cooperation and the failure of the Parliament to press for necessary implementing legislation. It was said these failures make our outspoken position on the human rights records of other countries particularly hypocritical.

> Australians are prone, as individuals and through their voluntary organisations and their elected representatives, to lecture other nations on human rights. Specifically, the largest nation in the world, China, has received the benefit of our comments over the last fifteen months and our neighbour, Indonesia, the fifth largest, over the last fifteen years.[2]

3.5 A tabulation of the treaties signed and the action taken or needed is given in the Submission No. 64 which is published in the volumes of evidence and submissions that accompany this report.

3.6 Amnesty International, while applauding the Government for acceding to the (First) Optional Protocol, noted the failure to make declarations on many other similar articles:

> Amnesty International believes it logical, consistent and a matter of credibility for Australia to give priority to making the necessary declarations under Article 41 of the International Covenant on Civil and Political Rights, Articles 21 and 22 of the Convention Against Torture and Article 14 of the Convention for the Elimination of Racial Discrimination.[3]

---

2 Whitlam Submission, p. S2323.

3 Amnesty International Australia Submission, p. S780.

3.7 The Committee believes that it is important to our international credibility that Australia removes remaining reservations on human rights treaties, makes declarations and passes implementing legislation where that is needed as quickly as possible. This is particularly important on those reservations which prevent other states from scrutinising our human rights record (Article 41 of the ICCPR, Articles 21 and 22 of the CAT), or which prevent individual complaints (Article 14 of the ICERD). See Recommendation No. 3.

3.8 The difficulty of getting State Government acceptance of certain provisions of the UN treaties is central to the time taken to ratify them fully. It seems that the States are anxious about maintaining their constitutional jurisdiction, they face problems of aligning their laws and practice with the treaty obligations and they fear the costs they face in defending themselves against complaints lodged with the various human rights committees. On this last point, the former Attorney-General of NSW, the Hon. John Dowd, QC, told the Committee:

> I oppose, on behalf of the State, the signature of the Optional Protocol, primarily for the reason that the States are the deliverers of breaches of human rights. It has to defend itself against allegations. The cost of preparing a case against the State is quite massive and it is all very well for the Commonwealth to sign treaties. It does not have to fund the defence ... That can be a massive hole in a tiny budget.[4]

3.9 Mr Dowd acknowledged the constitutional right of the Federal Government to make treaties and enforce their terms, notably because of the Franklin Dam Case. However, he saw it as creating a constitutional dilemma.

> The High Court would uphold Federal legislation under our treaties power to overturn State legislation. That, however, attacks the very nature of the constitutional compact. It was one of my concerns about all international treaties, that federations are uncomfortable with international treaties.[5]

3.10 Justice Elizabeth Evatt agreed that the federal structure of our Constitution was an inhibiting factor in getting swift national action on human rights treaties.

> There is the power to do it [use federal power to override the States], but the political realities of a federation mean that every effort would be made and is made by the Commonwealth to encourage the States to take action which is within their jurisdiction. If the Commonwealth used its power under external affairs, it could, you might say, take over practically every function that is now carried out by the States and it would then have to pay for everything. That would change the balance dramatically.[6]

---

4 Evidence, 24 April 1992, p. 583.

5 Evidence, 24 April 1992, p. 585.

6 Evidence, 24 April 1992, p. 496.

3.11 The Attorney-General's Department explained to the Committee the process by which the Federal Government gained cooperation from the States on international human rights instruments. It is an explanation which illuminated the reason for much of the time lag in ratification. Mr John Broome, First Assistant Secretary of the Civil Law Division, told the Committee:

> Particularly in the area of human rights, the Government has taken the view that we should not take the step of ratification until we are satisfied that domestic law in practice is in accordance with the requirements of the treaty. That has led to substantial delay while States go through a process of satisfying themselves that their relevant laws and practices are in conformity or, if they are not, to what extent they have to be changed.[7]

Further

> Consistently, Federal Governments of whatever political persuasion have taken the view that, because of the constitutional responsibilities that are split between the Commonwealth and the States, we need to rely on the States to put into effect at ground level many of the principles which are involved and, therefore, State cooperation needs to be encouraged rather than discouraged.[8]

3.12 Consultation takes place through the Standing Committee of Attorneys-General (SCAG). It has a regular agenda item on human rights where reports are made on the new instruments that are being developed, on UN meetings that have been held, on our reporting obligations and the need for inputs from the States. The process has proved to be woefully slow, lapses of decades occurring in some cases. It would seem that Federal Governments have been as culpable as the States in their willingness to let inertia prevail.

3.13 The Committee believes 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 that requires Federal legislation to ensure that our treaty obligations are met, it should be passed. The power and responsibility of the Federal Government in respect to treaties is clear since it was upheld by the Franklin Dam Case and the Koowarta Case. States' rights and the consultative process, which have been used as delaying tactics, must no longer impede the ratification of outstanding articles on our international human rights treaties.

---

[7] Evidence, 14 May 1992, p. 630.

[8] ibid, p. 631.

3.14 More detail of the specific issues needing attention is given in the next section of the report.

The Genocide Convention

3.15 The Genocide Convention was adopted in December 1948 and ratified by Australia early in 1949. Under this convention, Australia was required to pass enacting legislation. Both parties of the Parliament at the time expressed willingness to support such legislation but it has never been introduced.

3.16 For the purpose of this Convention, genocide is defined in the following way:

> Article 11
>
> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> a. killing members of the group;
>
> b. causing serious bodily or mental harm to members of the group;
>
> c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> d. imposing measures intended to prevent births within the group;
>
> e. forcibly transferring children of the group to another group.[9]

3.17 The Aboriginal Deaths in Custody Royal Commission drew attention to the fact that this convention may have relevance to the human rights of Aboriginal Australians.

> The applicability of this Convention to the situation of Aboriginal people was raised by a submission made by the National Aboriginal and Islander Legal Services Secretariat (NAILSS) to Commissioner Wootten during the course of his inquiry into the death of Malcolm Smith ... in 1983. The NAILSS submission related specifically to paragraph (e) of Article 11 and argued that the policy and practices of assimilation which were adopted by Australian Governments constituted a breach of the Convention.[10]

---

9 Exhibit No. 56.

10 The National Report of the Royal Commission into Aboriginal Deaths in Custody, Vol. 5, pp. 28-29.

3.18 Whether Australia would be found in breach of the Convention because of our former assimilation policies is a complex matter, dependent on questions of intent. This Committee in this inquiry cannot investigate or decide whether the Genocide Convention has been breached by a particular domestic policy. That is outside the terms of reference and beyond the present resources of the Committee.

3.19 It is difficult to know at this stage whether the failure to legislate has been a matter of neglect or purposeful inaction. The Attorney-Generals' Department stated that Australia has relied on the view that

> the obligation to legislate does not require the creation of a specific offence of genocide, but may be satisfied by the provisions of State and Territory criminal laws. This view apparently accords with the practice of most other State Parties to the Convention and provides no basis for criticism from other countries that Australia is in breach of the Convention. A United Nations survey in 1978 found that most States regarded their constitutional or 'ordinary' laws as sufficient to prevent and punish genocide.[11]

3.20 However, this view has been criticised in a variety of forums. The Gibbs Committee, in its report on the Review of Commonwealth Criminal Law found the lack of legislation unsatisfactory and recommended legislation similar to that enacted in the United Kingdom to implement fully Australia's obligations under the Convention. In 1991, at the Inter Parliamentary Union Conference in Santiago, a resolution was passed requesting all sovereign states to enact the necessary implementing legislation for this Convention.

> ***Recommendation 1:*** **The Committee recommends that the Australian Government introduce legislation to Parliament to implement the Genocide Convention.**

The International Covenant on Civil and Political Rights

3.21 The International Covenant on Civil and Political Rights was adopted by the UN in 1966. It entered into force in 1976. Australia's ratification was lodged in 1980 'accompanied by more and longer reservations and declarations than the Secretary-General has ever received. The Netherlands formally expressed the general view that the reservations and declarations invalidated the purported ratification'.[12]

3.22 Most of these reservations were withdrawn in 1984. However, significant ones remain. There are still reservations on Article 10, paragraph 2a, 2b and 3 dealing with the segregation of convicted and unconvicted persons, juvenile offenders from adults in prisons and the reformation and social rehabilitation of offenders; on

---

[11] Attorney General's Dept Supplementary submission, p. S2529.

[12] Whitlam Submission, p. S2324.

Article 14, paragraph 6 dealing with compensation for miscarriages of justice; and Article 20 dealing with propaganda for war and incitement to national, racial or religious hatred.

3.23 The most significant requirement in relation to the ICCPR is the need to make a declaration on Article 41. Such a declaration would 'recognize 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. There is a similar failure under the ICERD which will be dealt with in subsequent paragraphs of this chapter. This failure to allow for international scrutiny was most severely criticised by Mr Whitlam in his evidence before the Committee.

> Australia has lagged well behind nations whose human rights and peace keeping standards would be admired and emulated by most Australians. However proud Australia may be of its officious bilateral activity on human rights, it has not been a clever country in its multilateral activity on human rights. One can understand that ministers must often find time to tackle sudden crises; one cannot understand why in eight years they have never found enough time to complete constant and enduring objectives. We can[not] afford to have stale concepts of State rights stultify action on human rights.[13]

3.24 The Human Rights Commissioner, also viewed any further delay in making a declaration on Article 41 as unnecessary. He saw this article as less useful than the First Optional Protocol, acceded to in September 1991, because, as he says, 'Experience of other countries to date indicates that the individual communication procedure is likely to be resorted to far more often than the State versus State complaint'[14]; however, he believed that 'no further substantial consideration should be necessary to proceed to make the declaration under Article 41. In my submission, therefore, this declaration should be made without delay'.[15]

International Convention on the Elimination of Racial Discrimination (ICERD)

3.25 The International Convention on the Elimination of All forms of Racial Discrimination (ICERD) was adopted by the UN in 1965. It entered into force in 1969 and was ratified by Australia in September 1975.

3.26 Australia passed the Racial Discrimination Act in 1975 to implement this Convention in domestic law. However, the Senate passed the Act in a form which was not in full compliance with the Convention. Therefore, Australia's ratification

---

[13] Whitlam Submission, pp. S2329-30.

[14] Human Rights & Equal Opportunity Commission Submission, p. S926.

[15] ibid, p. S926.

of the Convention went ahead not with a reservation as such, but with a statement that Article 4(a) was not being ratified at the moment, but that legislation would be introduced as soon as possible to implement it fully.

3.27 The Attorney-General's Department explained to the Committee that few States parties had enacted necessary legislation prior to ratification or accession and there were still fewer whose existing legislation may be said to comply substantially with the provisions of Article 4. They listed three countries, the Netherlands, Italy and Bulgaria as nations that have taken measures specifically to implement it. They concluded 'that countries that have Anglo-American legal systems have not legislated to make racist violence a specific crime. They have relied on their general legal system and existing criminal law which penalises violence in general and assistance or incitement to violence'.[16]

3.28 Article 4 provides as follows:

> States parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and expressly set forth in Article 5 of the Convention, *inter alia*:
>
> (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
>
> (b) Shall declare illegal and prohibit organisations, and also organised and other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law;
>
> (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.[17]

3.29 The statement of the Australian Government on Article 4(a) says:

---

[16] Attorney-General's Dept Supp. Submission, p. S2536.

[17] ibid., p. S2532.

> ... the Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by Article 4(a) of the Convention ... It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of Article 4(a).[18]

3.30 This has not yet been done. The Committee notes that in answer to a question in Parliament by Mr Colin Hollis, MP, on 25 March 1992, the Attorney-General, the Hon. Michael Duffy, stated that the matter of the removal of the reservation on Article 4(a) was under review. Mr Duffy recognised that both the National Inquiry into Racist Violence and the Royal Commission into Aboriginal Deaths in Custody had recommended that the reservation on 4(a) be removed and that State Governments which had not legislated to proscribe racial vilification should do so.[19] On 23 July 1992, the Attorney-General announced that he intended to introduce legislation into Parliament in the next month to amend the Crimes Act to create a new crime of racial vilification. Such legislation would allow for the the removal of Australia's declaration on Article 4(a) of the ICERD.

3.31 Nevertheless, the Committee wishes to stress that it is conscious of the possible conflict of rights involved in such legislation, between the necessity of eliminating racial discrimination and the right to free expression. Therefore, the Committee recommends that, in the drafting of the legislation, the Government ensure that it does not proscribe opinions or inhibit free speech as it is understood in a democracy, especially as it involves humour or satire.

> ***Recommendation 2:*** **The Committee recommends that the declaration regarding Article 4(a) of the Convention on the Elimination of All Forms of Racial Discrimination should be withdrawn forthwith.**

3.32 The more significant omission is the failure to make a declaration on Article 14 of the Convention. Like Article 41 on the ICCPR, this is the article which allows for scrutiny of Australia's record in relation to the convention. Specifically, countries which make a declaration under this article recognise the competence of the Committee on the Elimination of Racial Discrimination to receive communications against a State party by individuals or groups of individuals within that State's jurisdiction.

3.33 The Australian Government under Prime Minister Fraser was not in favour of making a declaration under Article 14. On this matter, as with many of the international treaties relating to the United Nations, Liberal Governments since Menzies have been reluctant to press for ratification where there was State Government opposition or where State Government jurisdiction was involved. They have argued a concern for the preservation of the federal nature of the constitution.

---

[18] Whitlam Submission, p. S2321.

[19] House of Representatives Daily Hansard, Wednesday, 24 June 1992, p. 3860.

This argument was put by Mr David Connolly, MP, in the debate over the prevention of the Franklin Dam by use of the World Heritage Properties Conservation Bill of 1983. Mr Connolly, quoting the Chief Justice of the High Court on the Koowarta Case, told the House of Representatives:

> If section 51 empowers the Parliament to legislate to give effect to every international agreement which the executive may choose to make the Commonwealth would be able to acquire unlimited legislative power. The distribution of power made by the Constitution could in time be completely obliterated.[20]

3.34 The Hawke Government favoured making the declaration to enhance Australia's international human rights reputation but sought the cooperation of the States. The matter was placed on the agenda of the meetings of the Standing Committee of Attorneys-General.[21] In the 19 meetings of this body that have occurred since July 1985, no decision to make the declaration has been made.

3.35 This is an excessively long consultation process. The Committee believes there is no reason to delay this decision further. A consultative process that drags over ten years (since the entry into force of this article) is more than sufficient for the States to make arrangements for compliance. The Human Rights Commissioner told the Committee that

> the position in international law is that a federal state cannot plead its internal constitutional arrangements or difficulties to evade international responsibilities ... Members of the international monitoring bodies to which Australia must report are simply not interested in internal Federal difficulties - not least because they are increasingly aware that the Federal level of government in Australia actually has power to implement international treaty obligations itself.[22]

3.36 This argument was forcefully reiterated by Mr Whitlam in his evidence

> [On implementation] we are quite deficient. We are very free in expressing our views, and on bilateral representations to other countries we are the most effusive in the world. The Government, obviously to placate members of Parliament, does the Amnesty sort of job, but on the thing that only the government can do, that is make Australia's conduct open to supervision by the committees established under these conventions, our record has been very poor.[23]

---

[20] Commonwealth Parliamentary Debates, 5 May 1983, p. 297

[21] Whitlam Submission, p. S2325.

[22] Evidence, 16 June 1992, pp. 756-57.

[23] Evidence, 24 April 1992, p. 524.

3.37 Amnesty International also believed that it was

> logical, consistent and a matter of credibility for Australia to give priority to making the necessary declarations under Article 41 of the International Covenant on Civil and Political Rights, Articles 21 and 22 of the Convention against Torture and Article 14 of the Convention for the Elimination of Racial Discrimination.[24]

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

3.38 On this Convention there is the same failure to make declarations on the articles, Articles 21 and 22, which allow for scrutiny of our record. 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. Like Article 41 of the ICCPR and Article 14 of the ICERD, these articles according to Senator Gareth Evans will be 'actively considered in the near future'.[25]

3.39 It is not in Australia's interests to prolong the debate about making declarations on these articles. They do not extend our obligations.

3.40 Our oft proclaimed support for the UN system in general and the human rights instruments in particular loses credibility when we refuse to support the monitoring mechanisms in relation to our own practice. Any redress of human rights abuses anywhere in the world can only be achieved if the monitoring systems are strengthened. Determinations by any of the monitoring committees of the UN are not binding. They depend on the moral suasion of their pronouncements. They are currently weakened by a lack of commitment and by a lack of resources. Australia, in particular because of its high profile on human rights issues, must not be part of this lack of commitment to the workings of the monitoring system.

3.41 From the point of view of the Department of Foreign Affairs and Trade the continuance of the reservations was unnecessary. Mr Robert Cotton, Acting First Assistant Secretary in the International Organisations and Legal Division of the Department, told the Committee:

---

[24] Amnesty International Australia Submission, p. S780.

[25] Whitlam Submission, p. S2307.

We [the Department of Foreign Affairs and Trade] have expressed the view over a considerable time, and it is a consistent view, that we do not believe these reservations should be put to these international conventions.[26]

Recommendation 3: **The Committee recommends that the Australian Government should act without delay to accept further optional complaint mechanisms provided for under the International Covenant on Civil and Political Rights, the Convention on All Forms of Racial Discrimination and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**

3.42 The Committee notes that the Attorney-General announced on 16 July 1992 the intention of the Government to ratify Articles 41 of the ICCPR and Articles 21 and 22 of the CAT and Article 14 of the ICERD all of which are recommended in Recommendation 3 above.

International Labour Organisation (ILO) Conventions

3.43 A situation similar to that for the ICCPR and ICERD exists with the ILO Conventions which deal with freedom of association. Australia has not ratified ILO Convention No. 135, which seeks to protect workers' representatives in the undertaking of their duties, Convention No. 141, which seeks to protect the rights of rural workers to organise, Convention No. 151, which seeks to protect the rights of public sector workers to organise and Convention No. 169, which seeks to protect the rights of indigenous people in independent countries. In each case, ratification would enable anybody in any country which is a member of the ILO to take Australia before an eminent Committee of Experts if they disapprove of or wish to question what we are doing in relation to matters covered by the conventions.[27]

3.44 Most of these ILO Conventions cover areas that are generally outside Federal power. Action on them therefore falls into the same quandary that bedevils other UN Conventions. In relation to Convention 169, since it affects the rights of Aboriginal people, the Federal Government does not need to consult with the States as the 1967 referendum clearly gave the Federal Government power to legislate for the Aboriginal people. Australia was involved in the drafting of Convention 169. We should therefore ratify it as it seeks to protect indigenous peoples.

3.45 The ratification should take place before 1993 which has been proclaimed as the International Year for the World's Indigenous People. This proclamation seeks to draw attention to the plight of indigenous people around the world, to strengthen international cooperation for the solution of problems faced by indigenous

---

[26] Evidence, 10 June 1992, p. 303.

[27] The membership of this Committee is provided in the Whitlam Submission, p. S2285.

communities in such areas as human rights, the environment, development, education and health.

3.46 Given Australia's principles, we should not recoil from the scrutiny inherent in this convention nor delay its availability to our indigenous people.

> ***Recommendation 4:*** **The Committee recommends that the government reviews the International Labour Organisation (ILO) Conventions 135, 141, 151 and 169 with a view to ratifying them without delay.**

The Need for Review

3.47 There is, then, much to be done. The extraordinary lapse of time between ratification and action on some of the vital aspects of our international obligations indicates that regular and automatic and formal review by Parliament of the action or inaction of the Government on UN Conventions is needed. Parliament has a responsibility to ensure that treaty obligations signed by Australian Governments are honoured.

> There are many fields in the area of human rights where action is not only required by the Australian Government ... but also by the Australian Parliament ... I have never relaxed the belief that Parliament is an extraordinarily effective forum and diligent members of Parliament can make governments act.[28]

3.48 Parliamentary scrutiny should not be left to the chance concern, conscientious though that has been, of individual members. For Parliament to fulfil its role a more thorough review process operating automatically needs to be established. Parliament should be able to debate and scrutinise treaties before they are ratified. This mechanism could most suitably operate through the Joint Committee on Foreign Affairs, Defence and Trade.

> ***Recommendation 5:*** **The Committee recommends that:**
>
> - **the annual report from the Department of Foreign Affairs and Trade should include a current list of UN Human Rights Treaties, including the reservations that still apply and those that have been removed in the preceding twelve months; and**
> - **the Committee's role should include scrutiny of Australia's treaties and treaty based machinery by the conduct of regular and formal reviews, which will be incorporated in the Committee's annual report to Parliament.**

---

[28] Evidence, 24 April 1992, p. 512.

Reporting

3.49 There is a requirement under the covenants and conventions we have signed to make periodic reports to the monitoring committees. This is usually every three to five years although it varies for each and is specified within the articles of the convention. These reports from Australia have been favourably received by the various committees to which they have been made. It seems they have been comprehensive and of a high quality. However, they have not been widely disseminated. Therefore, the procedures for the preparation of reports are being looked at by the Department of Foreign Affairs and Trade.

3.50 There is an expectation on the part of the UN that reporting should not be a purely bureaucratic exercise. A number of witnesses before the Committee thought there was room for improving our reporting system. The system needed to be more open to the Australian public and non-government agencies, to include participation from and consultation with the wider community on the drafting of the reports as well as an opportunity for interested groups to comment on draft reports. Once they are finalised, reports should be widely available and easily accessible to the public.

3.51 The consultations that do occur seem to deal with human rights situations and individual Amnesty-like cases rather than reviews of the status of human rights instruments and our adherence to our international obligations under those conventions.

3.52 There is scope for furthering the community and parliamentary consultation in this area. The Australian Council of Trade Unions (ACTU) in its submission and in evidence given to the Committee thought that there was a need to develop better consultative processes both within the bureaucracy and between the community and government.

> The issue of human rights and worker rights moves across a number of government departments and therefore there would appear to be some need to put in place mechanisms of linkages between those various government departments. For example the government is required to comment and report on the Convention on the Elimination of All Forms of Racial Discrimination. Non-government agencies are not consulted on that government report.[29]

3.53 In particular the ACTU believed that there was scope for improvement in the consultation with them on the promotion of the ILO and UN conventions within the Asia-Pacific region.

---

[29] Evidence, 13 March 1992, pp. 169-70.

Recommendation 6: **The Committee recommends that:**

- **arrangements be made to facilitate the participation of non-government organisations in further consultations prior to the preparation of Australia's reports under international human rights instruments;**
- **the Australian Government's reports and the UN Committee's response to them should be presented to the Joint Committee on Foreign Affairs, Defence and Trade as part of the annual report when they occur in that year; and**
- **these reports should be tabled in Parliament to facilitate public scrutiny of both the reports and the UN response to them.**

3.54 On the question of the assessment of human rights situations abroad, the Department of Foreign Affairs and Trade holds regular briefing sessions with non-government organisations. These usually occur three times a year. The Department reported that there was a jointly set agenda and that the subjects discussed during 1990-91 included United Nations General Assembly (UNGA) 45, Commission on Human Rights (CHR) 47, human rights in Indonesia and Australian defence exports. There is further liaison on an on-going basis with Parliamentary representatives and with the Amnesty International Parliamentary Group.

3.55 Amnesty International expressed regret that the practice of annual reporting on human rights from diplomatic posts seemed to have ceased. They suggested it should be revived and enhanced, perhaps modelling itself along the lines of the Dutch system, where human rights reports are made from all posts by trained officers. These Dutch reports are a thorough analysis, providing a comprehensive picture of human rights in the world on an annual basis.

> *Recommendation 7:* **The Committee recommends that the Government reinstate the annual human rights reports from Australian diplomatic posts and urges 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.**

Resources

3.56 The question of resource allocation to human rights matters was another area where the rhetoric on the importance of human rights to Australia was ahead of the practice. There are seven people in the human rights section of the Department of Foreign Affairs and Trade who are directly involved in human rights work. In reviewing the Department's annual report on human rights Amnesty International commented:

> The disparity in resource allocation is striking when one considers that there is a Division devoted to security and disarmament issues, a Branch devoted

to environmental issues but only a Section devoted to human rights issues.[30]

Recommendation 8: **The Committee recommends that the Government upgrade the resources formally allocated to human rights within the Department of Foreign Affairs and Trade.**

3.57 The Department in its evidence before the Committee pointed out that officers in other areas, both in AIDAB and at the desk officer level, spend a 'considerable amount of their time' on human rights issues and had 'numerous ad hoc discussions in which officers from the human rights section were involved'.[31] However, there was no formal agenda for such meetings and the raising of human rights issues was dependent on the circumstances and day to day issues of the countries under discussion.

3.58 Amnesty International recognised that human rights could not be confined to a core of specialists within a human rights section and that the role of desk officers in monitoring the developments in country was vital. Therefore, Amnesty believed the training of all DFAT officers in human rights was urgently needed. Their experience

> pointed to a wide variance in understanding of and approach to human rights policy amongst desk officers in the overseas missions. At worst it can be a hostility to requests to pursue a human rights request. In some instances there is a disturbing ignorance of Government policy in the area and the implications of that policy for their particular position.[32]

3.59 This ignorance even extended to ignorance of the conventions that Australia has ratified. Mr Harris Van Beek told the Committee:

> We were rather taken aback recently when a relatively senior official came to visit us. In the course of the conversation, it was obvious that he was unaware of the detail or even the existence of the International Covenants.[33]

3.60 Within the Attorney-General's Department there are two areas that deal with human rights. They are the Human Rights Branch and the Office of International Law. The legislation that has implemented our human rights obligations has come from the Human Rights Branch. It has included the Racial Discrimination Act, the Sex Discrimination Act, the Privacy Act, the establishment of the Human Rights and Equal Opportunity Commission (formerly the Human Rights Commission). The Human Rights Branch develops new legislation with a human rights focus. It also

---

30 Amnesty International Australia Submission p. S784.

31 Evidence, 10 April 1992, pp. 312-3.

32 Evidence, 23 April 1992, p. 412.

33 ibid, p. 412.

provides legal advice on the application of the international instruments to domestic law. It also has a unit, the (First) Optional Protocol Unit, set up to meet our obligations under this protocol. In all, the Department had 17 people working full time on human rights. However, it was conceded in evidence that there was a need for greater co-ordination with other departments and with state governments to get agreement over ratification of outstanding articles and for effective monitoring of existing obligations.

> We have sought to put in place the resources to do those things [ratification of outstanding articles and conventions and monitoring of obligations] so that we do not just have a situation of agreeing to a convention or having it passed into domestic legislation and not have the relevant resources to go with it. ... *The broader coordination point is certainly one that I concede is* valid.[34]

3.61 With the accession to the (First) Optional Protocol in September, there is a need for special resources to be allocated to the implementation of its provisions. Justice Evatt also saw the need for better monitoring systems within Australia. In particular, she believed that there was a need for some form of national court or tribunal which could check or monitor our adherence to the standards set by the international covenants we have signed.

> ***Recommendation 9:*** **The Committee recommends that, in relation to Australia's human rights treaty obligations,:**
>
> - **the Government conduct a review of interdepartmental cooperation;**
> - **the departments develop strategies for greater coordination of the implementation and monitoring of international human rights treaties;**
> - **resources be allocated for more effective community consultation and education.**

Training

3.62 The international law on human rights has been evolving since the Second World War. In the last ten years the growth has been dramatic. It has become a thorough legal framework, knowledge of which is vital for those working in foreign policy, defence and aid areas. As Australia believes in promoting and protecting human rights internationally, all such workers must be given adequate training in the law they should be upholding. Regular, mandatory training would not only

---

[34] Evidence, 14 May 1992, p. 643.

inform officers of their obligations and the avenues available to them, it would also raise their consciousness of human rights issues.

3.63 The allocation of resources and the numbers dedicated to human rights issues in the government bureaucracy suggests that the rhetoric about human rights is still largely lip service. Given that the accession to the major treaties took place over twenty years ago, the embryonic stage of training in human rights law within departments is poor and in urgent need of redress.

3.64 Two comprehensive approaches to human rights training were presented to the Committee in the course of this inquiry. One was a four week course offered at the University of New South Wales Law School, called the Diplomacy Training Program. This offered both theory and practice through teaching and role play to participants who came from a variety of countries in the region. They were largely sponsored by non-government organisations and they were people who wished to strengthen their ability to defend human rights in their home countries. This course was supported by a manual, the Human Rights Defenders Manual 1992.[35]

3.65 In 1983 the Dutch Human Rights and Foreign Policy Advisory Committee in a report entitled On Equal Footing: Foreign Affairs and Human Rights[36] made recommendations for the Netherlands' foreign service on methods of strengthening the role of officials in promoting human rights and of integrating human rights as an aspect of foreign policy equally with other policy objectives. Although this document was written a decade ago, it provides a thorough analysis of the position of human rights in the foreign policy of a nation comparable in outlook to Australia. At the time when the inquiry and report were made in the Netherlands, the issue was exactly the same as the one this inquiry has been set i.e. the promotion and protection of human rights. On training, the recommendations seem to be particularly pertinent and useful.

3.66 In a year's course for senior officials of the Dutch foreign service (made up of 13 weeks external and 40 weeks internal) the report recommends the integration of human rights studies. This was to cover such areas as:

- the history of human rights;
- the different viewpoints on human rights;
- causes of violations of human rights;
- the norms laid down in international conventions;
- the monitoring procedures laid down in conventions;

---

[35] Exhibit No. 70.

[36] Exhibit No. 52.

- the promotion and protection of human rights in multilateral organisations and international forums;
- international aid to refugees; and
- the place of human rights in [domestic] legislation.[37]

3.67 The report follows up with considerable detail of rationale, approaches and means. The Committee believes similar training should be made mandatory within Australia's foreign service and, in modified form, in those departments affected by international treaties to which we have become a party.

3.68 The Department of Defence has the most formal arrangements for such training. Although each of the services apparently has its own training manuals in preparation, the Department provided the Committee with extracts from its training manual, The Joint Service Publication No. 1, explaining the four levels at which the training currently takes place. On the whole this remained part of basic training and was generally limited to lectures. It was chiefly directed at officers and those soldiers about to embark on operational duties. Air Commodore B.D. O'Loghlin explained:

> All our officer trainees through the Royal Military College, through the various other service colleges of the Australian Defence Force Academy, would undergo that level (Level A) so that every one coming into the service is exposed to the basic principles of the United Nations expectations and the other salient elements of the law of armed conflict in relation to limitation on the use of force, the concept of proportionality, the proscriptions about targeting and the use of certain weapon systems and the other things like that.[38]

3.69 Further training (Level B) is given to personnel about to go into operational duty. The third level (Level C) is given to those who are going to appointments involving planning or directing of combat operations. No doubt it is most important that officers who are ultimately responsible for the conduct of their men have a very sound knowledge of the covenants. However, both ordinary soldiers who can be held personally responsible for their actions in war and non-commissioned officers who are the most exposed to the immediate decisions likely to lead to human rights abuses seemed to have rather limited exposure to these obligations. To quote Air Commodore O'Loghlin:

> After their [non-commissioned officers] initial training there would be an introductory single lecture probably at their initial introductory training.[39]

---

37 Exhibit No. 52, pp. 13-14.

38 Evidence, 14 May 1992, p. 598.

39 Evidence, 14 May 1992, p. 598.

3.70 Such training as is available to Australians is also offered to those trainees who participate in courses offered as part of defence cooperation programs. This human rights element of training is often used as the justification for the continuance of defence cooperation where human rights abuses have occurred. It would seem therefore to be a very significant part of what we have to offer. However, the Department of Defence reported that

> over the last five years Australia has trained between 813 and 1,113 foreign defence personnel in any one year. The majority of these courses are of a technical or trade nature and do not cover warfare topics. Consequently the percentage of the courses which include specific components on the law of armed conflict (LOAC) is quite low.[40]

Specifically, the Department provided the following figures for the training of regional personnel in Australia over the last five financial years:

1987/88	967
1988/89	1113
1989/90	1063
1990/91	813
1991/92	857

Of these totals approximately 70 people per year are instructed in LOAC as part of structured courses which incorporate this topic in the curriculum. In addition 495 Papua New Guinea Defence Force (PNGDF) personnel were trained in 1991-92 in LOAC. [41] The Committee believes that this training should be upgraded and formalised.

> ***Recommendation 10:*** **While the Committee acknowledges that the Department of Defence is further advanced than other departments in the matter of human rights training, nevertheless, it recommends that the Department review its human rights training with a view to upgrading and expanding it at the non-commissioned officer level and within defence cooperation programs.**

3.71 The Department of Foreign Affairs and Trade has no set human rights training program; however, human rights principles, policies and law are included in the entry training of graduate trainees into the Department. The need for something more formal and structured has been recognised by the Department and the Human Rights Section is currently developing a manual on human rights for the use of all officers in the Department. The Human Rights Manual will contain:

---

[40] Dept of Defence Submission, p. S2821.

[41] ibid., p. S2822.

- a summary account of international human rights instruments and Australia's position on them;
- a full explanation of Australian human rights policy objectives, covering the Government's multilateral and bilateral activities;
- illustrative reference material provided by human rights Non-government Organisations or NGOs;
- material and advice to assist Australia's overseas missions to carry out their monitoring, reporting and representational responsibilities on human rights issues.[42]

It will be offered in conjunction with a short one or two day course. The Department hopes to include officers from ASO 4 to SOG B level involved in foreign and economic policy work and officers proceeding on overseas postings whose direct responsibilities are likely to include significant human rights issues. A longer term objective for this training is to include a broader range of officers, including officers from other departments. The Department will also seek to involve Australian NGOs and other human rights experts in the process as part of its consultative arrangements with the community.[43]

> *Recommendation 11:* **The Committee notes the intention of the Department of Foreign Affairs and Trade to institute a comprehensive course on human rights for its senior officers and looks forward to future reports from the Department on the progress of the application of these courses.**
>
> **The Committee further recommends that other departments affected by obligations under international treaties on human rights offer suitable and comprehensive training to officers likely to have to deal with such matters.**

---

42 DFAT Submission, p. S2818.

43 ibid., pp. S2818-9.

Chapter Four

International Promotion and Protection

Peace, in the sense of the absence of war, is of little value to someone who is dying of hunger or cold. It will not remove the pain of torture inflicted on a prisoner of conscience. It does not comfort those who have lost their loved ones in floods caused by senseless deforestation in a neighbouring country. Peace can only last where human rights are respected, where the people are fed, and where individuals and nations are free. The Dalai Lama 1989

Australia makes numerous representations on behalf of the victims of human rights abuses in other countries. Beyond this, Australia works through the UN agencies to support the organisation in its work. Sanctions - aid, trade or investment - are not favoured as an automatic method to encourage improvement in human rights as economic development itself is often considered the fastest means to redress many oppressive situations. However, if aid, trade and human rights are not to be automatically linked in a punitive way, there are many imaginative and constructive ways in which the aid program can be linked to encourage human rights in recipient countries. The development of regional forums to establish dialogue, exchange skills and ideas and to provide a mechanism to set standards and monitor performance in the region is seen as important. Within Australia, there should be more training in human rights law and practice within those departments which are responsible for the implementation of the international treaties.

4.1 While there is no expectation that any country will achieve a perfect human rights record, nevertheless there can be an expectation that each country will wholeheartedly support the international mechanisms which seek to encourage improvements and to monitor performance. When Australia ratifies the articles which permit scrutiny of our performance, and this should happen without delay, then Australia can consider, with more credibility, what more can be done in the international forums.

4.2 The Department's Annual Human Rights report stressed representation and dialogue as its chief means of addressing human rights abuses. The Committee does not discount the dialogue approach. Consistently putting our case, arguing persuasively for our point of view is the stuff on which our system of democracy is built. It is faith in the power of argument, put repeatedly, set against the constant resort to arms which should distinguish a democratic nation. The Committee

endorses this approach and encourages its continuance. In 1990-91 these representations were widespread and energetic - 428 representations being made last year and dialogue occurring at ministerial level during meetings with senior foreign government representatives abroad and in Australia. Of these 20 to 25 per cent received responses of which 15 per cent were considered to be positive. [1]

4.3 Where human rights abuses are persistent, however, talk often seems to be insufficient. The sense of urgency which attaches to the cruelties of some regimes cannot be denied and the impact is increasingly stark as modern communications bring these situations to our attention daily. The consideration of other means of curbing human rights abuses leads to the debate on the use of aid, trade or investment embargoes.

Aid and Human Rights Linkages

4.4 The Department of Foreign Affairs and Trade stated in their report that further action such as sanctions or aid embargoes were confined to rare or extreme situations, decided on a case by case basis. One criteria for action seemed to be strong support among the international community. Indeed in evidence before the Committee, the Department expressed the view that unilateral action had very limited value. Dr H. Ware from AIDAB told the Committee:

> Clearly one reason why this [tying aid to human rights] is as much a Foreign Affairs as an AIDAB question is [because] Australia is rarely the major donor to a country and, unless we have some concert with other countries which are involved, our cutting off aid may simply reduce the influence that we could possibly have on that country. Where there is agreement amongst countries, South Africa being one of the very notable cases, then it is clearly much easier to pressure the country.[2]

4.5 Nevertheless, in principle there seems to be a strong connection between aid and human rights. The intention of Australian aid or Official Development Assistance (ODA) is:

> To promote the economic and social advancement of the peoples of developing countries in response to Australia's humanitarian concerns, as well as Australia's foreign policy and commercial interests.[3]

4.6 In the broadest sense this aim is in line with the principles of human rights embodied in the International Covenant on Economic, Social and Cultural Rights namely that 'the States Parties to the present Covenant undertake to ensure the

---

1 DFAT Submission pp. S5, S7.

2 Evidence, 10 April 1992, pp. 325-6.

3 Quoted from Campbell, D. Submission, p. S252.

equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant'. Article 3. (See Appendix 6) When discussing rights, the Western nations expand this concept to include the concept of the dignity and advancement of the individual person. The concept is of course basic to many of the other declarations and conventions of the UN.

4.7 This debate between the Western countries and the developing world has been a longstanding one in the international community. It is explained in Chapter One. Many countries have chosen to separate these economic, social and cultural rights from the civil and political rights and have seen the one as precluding the other. However, Australia does not accept that they are separate or that the achievement of one justifies the suspension of the other.

> We do not consider, however, that economic rights should be accorded priority over civil and political freedoms - the two are not mutually exclusive. A society which respects and promotes individual freedoms (with the physical and intellectual mobility and flexibility that involves) is more likely than not to enjoy economic growth. Australia rejects the hypothesis that a State may determine that the pursuit of the collective economic well-being of its citizens can justify the suppression of individual and democratic freedoms.[4]

4.8 The Overseas Services Bureau submitted the same view:

> Aid should not only promote economic rights, but should support all the human rights agreed by the international conventions.[5]

4.9 World Vision Australia also stated that the

> ... two sets of rights documented in the two United Nations Covenants ... cannot be traded off against each other. We maintain that these two sets of rights are intimately related and to further one without the other is to impede true development.[6]

4.10 If human rights (economic and social, civil and political) and development, are linked then our aid program should address the question of development assistance in its broadest scope. That includes the linkage between aid and human rights. This has been acknowledged by an Australian International Development Assistance Bureau (AIDAB) officer, Dr S.K. Phillips in an article entitled Human Rights and Aid Decision Making:

---

[4] DFAT Submission, p. S2.

[5] Overseas Service Bureau Submission, p. S540.

[6] World Vision Australia Submission, p. S1598.

> Insofar as aid is directed towards promoting the full range of human rights and the basic standards of a decent existence for those people who do not have access to them, Australia's development assistance program will continue to be linked inextricably with human rights.[7]

4.11 What the linkage should be was a matter of considerable debate during the inquiry. Amnesty International expressed disappointment that the Department of Foreign Affairs and Trade (DFAT) submission did not give any attention to the policy governing the human rights dimension of Australia's aid program or to the application of that policy during the reporting period.

4.12 This omission seemed surprising considering that the international mood during 1991 was to tie aid and the human rights records of recipient countries directly. The Americans under the new world order, the Canadians as a result of the Winegard Report, the Danes, the Norwegians, the Dutch were all cited as examples where the linkage between human rights and aid had been made. The Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD) has recently added human rights to its agenda for future discussions.[8]

4.13 Australia has made this link on occasions - in the cases of South Africa, China, Burma and Fiji and lately with Serbia. It is not clear what the guiding principles are and it would seem likely that they are not consistently applied. It would be useful to have the guiding principles spelt out more clearly in the next annual report to the Committee.

4.14 Most witnesses to the inquiry, when they talked about aid and human rights, did not simply see it as a punitive measure. Those who came before the Committee to talk about specific abuses in particular countries understandably sought sanctions, even where they recognised that they would have little real effect. The level of frustration and the desire for action, if only symbolic action, is very high in the face of dictatorships. This report will look at specific requests in relation to situations presented to the Committee in Chapters 6, 7 and 8.

4.15 Other agencies and individuals who spoke to the Committee about this issue suggested policy frameworks which dealt with the question broadly and suggested a number of innovative ways to integrate human rights policies with aid.

4.16 Amnesty International, although as a matter of policy they took no position on sanctions, urged the Committee to explore ways of extending the connection between aid and human rights:

---

7 Quoted from Campbell, D. Submission, p. S253.

8 Pfanner Submission, pp. S283-5.

> ... emphasis should be given to adopting a pro-active and constructive approach which does not limit the connection between aid and civil and political rights to the withholding or withdrawal of aid as a punitive measure. [But through seeking] ... the most appropriate methods for incorporating human rights into the design, appraisal and delivery of Australian development assistance.[9]

4.17 The Australian Democrats believed no punitive linkage should be made:

> While the Australian Democrats understand the motivation to link aid with human rights, we do not necessarily accept that aid should be conditional on human rights improvement or that aid should be used as a punitive tool of foreign policy goals.[10]

4.18 The ACTU on the other hand believed there was a strong case for active opposition to the use by Australian employers of an exploited labour force in other countries. Action had been taken over South Africa and considered over Fiji and Indonesia. Such action usually involved the banning of imports of goods made by exploited labour. Mr A. Matheson from the ACTU explained that exploitation did not have to be judged simply by Australian wage rates, but was something that could be judged by the international standards of the ILO. Nevertheless, while punitive action involving a boycott of goods was an established principle of the ACTU, there was a recognition of a need for a more creative role.

> The trade union movement must take a more creative and pro-active role in the establishment of its relationships with the trade union movements in the region in a way that we have not done in the past. From a trade union point of view, we would see ourselves in partnership with the government in the aid program.[11]

Further he said:

> I think our concern is that sanctions are frequently seen as the first and only move in the human rights area. What we have learnt is that there are a whole range of other actions that can be taken before we reach the point of sanctions.[12]

4.19 Mr. David Pfanner also suggested a linkage that was more direct, constructive and effective. This was possible through a policy commitment which included human rights as a factor at the design stage of aid projects. He believed the aid policy was

---

9 Amnesty International Submission, p. S779.

10 Australian Democrats Submission, p. S248.

11 Evidence, 13 March 1992, p. 171.

12 Evidence, 13 March 1992, p. 176.

at present too passive and too reactive, that it should offer incentives before human rights abuses developed rather than punishments afterwards when it was patently too late. In particular, he recommended three levels of possible activity:

- government to government discussions at the time of program negotiations for new commitments;
- at the project level; and
- at meetings of decision makers for international aid organisations such as the World Bank and the United Nations Development Program and at such forums as the Development Assistance Committee.

4.20 World Vision, too, believed there was scope for pro-active aid policies. They felt aid could be targeted to ensure the protection of existing rights and the promotion of as yet unrealised human rights. They supported the current AIDAB review of human rights and thought that AIDAB should adopt a specifically human rights agenda similar to its current commitment to environmental development.[13]

4.21 Mr. Douglas Campbell supported this view in his submission but added that developing countries also needed technical assistance to establish or improve their machinery for the promotion and protection of human rights. Both the Hon John Dowd and Justice Elizabeth Evatt put similar arguments to the Committee. Justice Evatt talked about the difficulty some developing countries had in meeting the demands of the UN monitoring agencies.

> [A]s you might be aware, countries particularly in the Third World - in Africa and to some extent Asia and Latin America - are not very well resourced. It is really quite difficult for them even to get together to get a letter off in English to the [CEDAW] Committee. It is not an easy thing. They may not even have a typewriter.[14]

4.22 Where resources are scarce, John Dowd believed that models of legislation especially human rights acts or documents like Law Reform Commission reports might be offered as an inexpensive service. Further, he believed that Australia possessed a legal resource in the form of retired judges and lawyers who might be available as aid to the region.

> The next matter is the establishment of pools of people, either retired judges or practising lawyers, who would be available to sit on courts of appeal in various nations. It is terribly important that we do not impose our people on

---

[13] World Vision Australia Submission p. S1600.

[14] Evidence, 24 April 1992, p. 492.

them, but it is also important that, if they are stuck, there is a pool readily available and they need only go to a central agency in some nation.[15]

4.23 The International Commission of Jurists (ICJ) has had a tradition of supplying observers to trials. Such observers act as an external presence and therefore monitor human rights observance in a very immediate way. Modest financial support for such activity would be a useful way to expend aid funds in the promotion of human rights.

4.24 Mr. Brian Burdekin, *in evidence before the Committee, also suggested means* of offering 'technical' and financial assistance to the region for human rights *mechanisms.*

> ... I believe that national machinery, including national machinery of countries in our own region, is perhaps of greater importance because, firstly, the international machinery does not have the facilities and, secondly, it is simply beyond the reach of most people whose human rights will be violated.[16]

> ... One of the most important things we could do as a nation ... is to assist other countries in whatever way we can, particularly those in the South Pacific or South East Asia. We need to provide what the UN calls 'technical advice and assistance' ... to set up some kind of independent national human rights machinery ... In the whole of South East Asia and the South Pacific only three countries have independent human rights machinery ... We could certainly encourage and have an effect on the evolution in our region of bodies such as the Commission we have in this country.[17]

> ***Recommendation 12:*** **The Committee recommends that AIDAB explore ways to include in their programs aid projects which extend or improve human rights practice in the recipient country.**

4.25 Aid, then, does not need to be simply a punitive tool in the promotion of human rights. If these sorts of measures were to be seen as part of Australia's aid to developing countries, then finance would have to be forthcoming from the aid budget rather than the minuscule human rights fund ($40,000 in 1990-91) currently administered by the human rights fund of the Department of Foreign Affairs and Trade. A list of projects financed in the last financial year by this fund can be found in Appendix 10 on p. 188 of this report. Douglas Campbell argued that support for activities for the protection and promotion of human rights should be classified as Official Development Assistance (ODA) Therefore the $40,000 should be incorporated into the aid budget adding modestly to it but conversely opening the

---

[15] Evidence, 24 April 1992, p. 579.

[16] Evidence, 16 June 1992, p. 754.

[17] Evidence, 16 June 1992, p. 761.

aid program to claims for assistance for projects in support of human rights development like those mentioned above.

> ***Recommendation 13:*** **The Committee recommends that the Human Rights Fund be classified as Official Development Assistance (ODA) and that significant funds from the ODA budget be made available to projects in support of the development of human rights, especially to countries in this region.**

4.26 If the thrust of our aid/human rights policy is to be a positive and constructive one, that is not to say that the withdrawal of aid or trade and investment links should never take place. However, the Committee believes that the current position of a case by case basis for such decisions is the right one. The Committee would also accept that there is often little point to unilateral action on such withdrawals.

4.27 Nevertheless, the Committee would like to see the Department of Foreign Affairs and Trade set out the principles upon which such decisions are made. One might infer from recent statements of the Foreign Minister that one criterion is whether or not abuses are state sponsored. This and any other criteria should be a matter of public record and the Committee will look forward to such an explanation in the next annual report from the Department.

Military Transfers

4.28 The Department of Defence informed the Committee that the review procedures for defence exports had been reinforced. All goods to sensitive destinations are referred to the Standing Interdepartmental Committee on Defence Exports (SIDCDE). It deals with goods under Schedule 13 to Regulation 13B of the Customs (Prohibited Exports) Regulations. These are the only controlled goods which require a permit of licence for their export. They include military goods and Non-Military Lethal Goods such as sporting rifles or commercial explosives. The SIDCDE meets approximately every six weeks. It deals with applications on which there has been disagreement on the recommendations coming from individual departments. Where there is argeement applications are finalised on on the basis of the documentation. In 1990/91, 60 applications were referred to the SIDCDE. Few applications have been denied because, the Department said, of close consultations with the industry on the defence export guidelines.[18]

4.29 The Committee accepts that both the defence export guidelines and the process of the Standing Interdepartmental Committee on Defence Exports are an important safeguard of human rights in the export of defence equipment. However, where a state abuses the human rights of its citizens so that there is a reasonable and accepted demand for the withdrawal of aid or trade to that regime, the

---

[18] Dept of Defence Submission p. S2828-30.

Committee would put military exports into a different category from aid or normal trade. It accepts the Government's view that sanctions should be applied on a case by case basis but the Committee believes there is a case for a cut in military transfers to countries where persistent and flagrant abuses have occurred and that this should occur automatically and regardless of whether the abuses are state sponsored or aberrant behaviour, or whether Australia's response is to be a multilateral or unilateral action.

Recommendation 14: **The Committee recommends that a direct connection be established between military exports and human rights violations so that**

- **guarantees are sought from recipient countries that any military equipment they receive will not be used against their own civilian populations;**
- **where possible, training in the international standards of human rights is provided as part of defence cooperation training; and**
- **it is made clear to the recipient country that military exports will be cut where persistent and flagrant abuses of human rights occur.**

A Regional Human Rights Forum

4.30 One of the difficulties for Australia in bringing pressure to bear is the reluctance of other powers in the region to act. If Australia believes that unilateral action is futile, then it is important that concerted action be encouraged. That, first and foremost, should include the regional powers. Europe after all monitors its own human rights abuses in the first instance. Unfortunately, the Association of South East Asian Nations (ASEAN) has a policy of choosing to remain silent on human rights abuses. Even where violations have been of a gross kind as in Burma, there seems to be little prospect of concerted regional opposition to that regime. If Australia believes that the systematic or even the incidental abuse of human beings is a moral wrong, is strategically destabilising and economically debilitating, then Australia must work as energetically for the development of a regional human rights forum similar to those existing in Europe, the Americas and Africa as it has worked for the development of economic and political forums in this region.

4.31 Such a forum for this region was suggested by John Dowd in his evidence before the Committee. He believed it could be a small organisation, taking on a form and style appropriate to the region and encompassing countries in the north such as Japan, China and Korea, south through South East Asia to Australia, New Zealand and the Pacific Islands and West to Afghanistan. Its first task would be to develop a Human Rights Charter suitable for the countries involved and to set up

a complaints mechanism as the first point of reference for this area.[19] The 1993 Human Rights Conference to be held in Indonesia would seem to be a good starting point for discussions on such an organisation.

4.32 Furthermore, Australian representatives at multinational aid agencies such as the World Bank should press for the inclusion of human rights criteria in the discussions for the allocation of development loans and aid.

> ***Recommendation 15:*** **The Committee recommends that the Australian Government examine the possibility of developing a regional human rights forum, with a view to drafting a human rights charter appropriate to this region.**

[19] Evidence, 24 April 1992, p. 579.

Chapter Five

Domestic Compliance

> *Mankind's survival is dependent upon man's ability to solve the problems of racial injustice, poverty and war; the solution to these problems is in turn dependent upon man squaring his moral progress with his scientific progress, and learning the practical art of living in harmony. Martin Luther King, 1964.*

Our domestic record did not come within the terms of reference of this inquiry. Nevertheless, the Committee found it impossible to separate parts of our domestic practice from our international reputation and, therefore, our international credibility. Some issues stood out as ones which the Committee felt it should list as important human rights issues worthy of attention.

5.1 The terms of reference for this inquiry limit it to our international efforts to promote and protect human rights. Questions of our compliance are only obliquely related and open up vast questions of broad domestic social policy. This was well beyond the scope of this Committee. The purpose of this chapter is to highlight the issues not to make recommendations. These are complex matters of domestic policy and there are other parliamentary committees which deal with each of them in separate inquiries. They are matters that have been brought to the attention of this Committee but the evidence taken on them has not been thoroughgoing or complete. Therefore this Committee cannot hope to make an objective assessment of the merits of particular policy directions.

Aborigines

5.2 Typical of the views of many witnesses before the Committee was that expressed by the Human Rights Commissioner, Brian Burdekin, when he said in evidence:

> In my view, there is no doubt that the greatest hindrance to our nation being taken seriously or to our efforts to promote human rights in other countries or to protest violations still has to be the position of Aboriginal and Torres Strait Islander people in this country. There is an abundance of evidence that,

in this respect, Australia does not respect and ensure human rights on a basis of equality as we are bound in international law to do.[1]

5.3 The most significant human rights problem in Australia remains the condition of the Australian Aborigines. On the whole our failure to ratify various articles of the international conventions or our failure to comply with aspects of international human rights obligations involves the conditions of the Aboriginal people. This is so whether it be the statement of non-compliance with Article 4(a) of the ICERD which requires the passing of legislation outlawing racial vilification, the reservations on Article 10 of the ICCPR on the segregation of adults and juveniles in detention since Aborigines constitute a disproportionate number of the gaol population, the failure to pass implementing legislation for the Genocide Convention, the reservations on Articles 21 and 22 of the CAT or the failure to ratify ILO Convention 169 dealing with the rights of indigenous people. Rectifying these omissions would be an act of faith in our seriousness in trying to deal with the most difficult human rights problem in this country.

5.4 The condition of the Aboriginal people has been the subject of two major inquiries in the past year, The National Inquiry into Racist Violence (which related to racism generally, not just towards Aborigines), conducted by the Human Rights and Equal Opportunities Commission and the Royal Commission into Aboriginal *Deaths in Custody*.

5.5 The Royal Commission into Aboriginal Deaths in Custody in discussing the extent to which Australia complied with the international conventions noted that much effort had been made in the spirit of Article 2(2) of the ICERD which requires States Parties to take special and concrete measures to guarantee full and equal enjoyment of human rights and fundamental freedoms. It was noted that such measures of positive discrimination were required to neutralise the effects of past discrimination, historical legacies or present attitudes. In this respect the Report cited Federal programs such as ABSTUDY and the Aboriginal Employment Development Policy.[2]

5.6 While this report explained that the reluctance of Australia to introduce legislation on racial vilification was an attempt to balance obligations on freedom of speech guaranteed by other UN conventions, it believed that in the light of the findings of the National Inquiry into Racist Violence that there should be action on this article.

5.7 The National Inquiry into Racist Violence found that, although multiculturalism seemed to be working well in Australia, racist violence and harassment directed against Aborigines and Torres Strait Islanders should be a

---

1 Evidence, 16 June 1992, p. 755.

2 National Report of the Royal Commission into Aboriginal Deaths in Custody, Vol. 5, p. 36.

matter of concern to all Australians. It was described in the report as nationwide and severe.[3]

5.8 The inquiry was instituted as part of the Human Rights and Equal Opportunities Commission's responsibility to ensure that Australia complies with its international obligations. It concluded that current laws were inadequate to deal with the situation and recommended that the Federal Crimes Act be amended to create a new criminal offence of racist violence and intimidation. Similarly it recommended that the Racial Discrimination Act be amended to prohibit racial harassment and outlaw incitement of racial hostility. A number of the States are currently looking at such legislation.[4]

5.9 The Committee is aware that the solution to the serious breaches of the human rights of Aborigines does not lie in the law alone. Indeed, it recognises that the hardest changes to achieve are the changes to attitudes whether that be the prejudices of white Australians or the morale of a whole dispirited Aboriginal community. Nevertheless, while not a panacea, the Committee believes that our society is built on the role of and faith in the law as a starting point for justice.

5.10 From its point of view, it is obvious that there can be no excuse for further hesitation on the various articles of the conventions mentioned above in paragraph 3.7. Therefore, the Committee endorses the views of the Royal Commission into Aboriginal Deaths in Custody on the amendments to the Racial Discrimination Act and further recommends as a starting point the declaration on Article 4a of the International Convention on the Elimination of All Forms Racial Discrimination and the ratification of ILO Convention 169 and draws attention to the other recommendations in Chapter Three.

5.11 Nineteen ninety-three has been set aside as the year of indigenous peoples. Australia is a participant in the Working Group on Indigenous Populations that has been set up by the United Nations Human Rights Commission. The Committee received a submission from the Nugget Coombs Forum for Indigenous Studies which strongly criticised Australia's record with regard to its indigenous people. In particular, Professor David Lea and Mr. Peter Jull believed that Australia's concentration on social programs, even with the current emphasis on administrative streamlining and more efficient and sympathetic service delivery through the creation of the Aboriginal and Torres Strait Islander Council (ATSIC) was not going to solve the development needs of our indigenous people. There was no real devolution of power through local political institutions and without it,

---

3 Annual report of the Human Rights and Equal Opportunities Commission, pp. 52-4.

4 ibid, p. 54.

> the fragmentation of indigenous society, erosion of indigenous culture, powerlessness of individuals and groups and unrest will increase no matter how many social programs are designed to alleviate such problems.[5]

5.12 The submission cited the experience of Canada and the Nordic countries in approaching indigenous rights as examples that Australia should examine. In relation to what was happening in those countries, it was said, Australia for all the effort that was being applied, was liable to be left behind.

5.13 This Committee notes the work of the Department of Foreign Affairs and Trade in the UN Working Group on Indigenous Populations and therefore looks forward to the Department's inclusion of this matter in its next annual report on human rights.

Juvenile Detention

5.14 This issue is related to the previous one in that there is a disproportionate number of Aboriginal people in our gaols. It arose specifically out of proposed legislation in Western Australia dealing with juvenile offenders, *Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill 1992*. It was brought to the Committee's attention by both the Human Rights Commissioner and the International Commission of Jurists.

5.15 The legislation which sought to deal with a very difficult problem of car thefts, hit and run driving and assault made sentencing for repeat offenders automatic. They were to be held at the Governor's pleasure.

5.16 The Hon. John Dowd, QC, told the Committee that the Western Australian bill took away rights that are respected by our laws. It was a breach of the rights of individuals and the rights of the child. It represented the executive removing the power of the courts to exercise discretion in sentencing.

> Although only a small number of people are involved, a significant number of them are Aborigines and this was a power that no executive should take away from the courts. The rule of law in Australia means the courts should ultimately determine penalties, not the fact of an allegation of a second offence taking away the power to sentence.[6]

5.17 The argument that developed between the Human Rights Commissioner and the Western Australian Government over this legislation is a complex one, but a very significant one. It goes to the heart of the conflict between the rights of the individual and the rights of a community (and, in relation to the latter, the role of government), the conflict between the jurisdiction of the State Government and the

---

[5] Nugget Coombs Forum Submission, p. S275.

[6] Evidence, 24 April 1992, p. 586.

Federal Government in administering certain areas of policy and to the tension that exists between various parts of the federation over the fulfilment of our international treaty obligations.

5.18 The Human Rights Commissioner believed that the legislation, even after amendment, continued to offend against our treaty obligations, both the ICCPR and the Convention on the Rights of the Child. He believed that, in the balance of community interests and the rights of the individual, too little recognition was given by the legislation to the latter. The legislation constituted arbitrary and indeterminate detention, prohibited by international human rights law (Articles 37b and 9(4) of the ICCPR). In particular, he deplored the removal of the discretion on the part of judges to apply sentences proportionate to offences (Articles 37 and 40 of the Convention on the Rights of the Child), the failure to separate adults and juveniles in prisons (Article 37a of the ICCPR) and finally the discarding of the role that might be played by family or community organisations in rehabilitating offenders and in finding long term solutions to the problem (Article 5 of the Convention on the Rights of the Child).

5.19 In the course of his evidence, the Commissioner tabled a series of letters to the Western Australian Premier. These letters outline the issues of international law in considerable detail. They are complex issues which would be distorted by a precis here. Consequently the letters are included in full as Appendix 9.

5.20 The Committee found the arguments put by The Human Rights Commissioner and the International Commission of Jurists on this issue persuasive.

Women

5.21 There are other issues where human rights abuses in the form of discrimination or neglect or failure to reach an ideal situation occur in Australia. Pay equity for women is one that has been highlighted by the Human Rights and Equal Opportunity Commission. Violence against women whether through assault, rape, murder or exploitation through prostitution or pornography were alluded to as worldwide phenomena by Justice Elizabeth Evatt.[7]

5.22 Equality for women is an ideal goal which the Convention on the Elimination of Discrimination Against Women (CEDAW) sets for states which ratify it. Implementation of the Convention is progressive; equality for women is seen as an indefinable long term goal. The Committee did not seek nor receive a large amount of evidence on Australia's compliance with the Convention on the Elimination of All Forms of Discrimination Against Women. Australia has established the Human Rights and Equal Opportunity Commission and has passed a Sex Discrimination Act to implement part of the convention.

---

[7] Exhibit No. 51, p. 9.

5.23 Australia has been an active supporter of the CEDAW through the representation of Justice Elizabeth Evatt who has been a member of the CEDAW Committee for eights years and chairperson for two years. Justice Evatt spoke to the Human Rights Sub-Committee in general terms about the workings of the CEDAW Committee and raised with the Committee some of the abuses of women's rights that have come before the CEDAW Committee in her time there. Some issues presented a conflict of rights, the right to equality with the right to freedom of religion. However, both she and Dr. Hilary Charlesworth believed that, despite these cultural complexities, it was not impossible to distinguish where the human rights of women were being abused and where acceptable but different cultural practices existed. Justice Evatt said in evidence:

> [I]f you see a women's rights being abused by violence you can say, 'Well, there is no way religion of any kind is going to be justifying that.' ... What we can condemn is discrimination against women, oppression of women in whatever form it takes and try to just concentrate on that issue.[8]

5.24 In a document presented as an exhibit to the Committee, Eliminating Discrimination Against Women, Exhibit No. 51, she outlined the current focus of the CEDAW on the question of violence against women as a major worldwide problem which needed redress by either a new convention or by a protocol to the existing convention.

5.25 Justice Evatt has completed her period of service on the CEDAW; however this Committee hopes that other Australian women may be able to serve on such UN agencies in the future.

5.26 The issue of the representation of women on UN bodies was brought to the attention of the Committee by Dr Hilary Charlesworth. She believed it would be a fitting starting point to address the inequality and discrimination against women documented in all walks of life in all countries. She wished to see the Department of Foreign Affairs and Trade:

- treat the representation of women in its own department as a human rights obligation;
- ensure that there is equal representation of men and women on their delegations, especially in multilateral forums;
- work actively to diminish sex discrimination within the UN agencies;
- seek to establish a principle of equality of representation of men and women on UN agencies similar to the principle of equal geographical representation that currently operates;

---

[8] Evidence, 24 April 1992, pp. 504-5.

- ensure that the resources allocated to the CEDAW Committee are comparable with those allocated to other committees; and

- criticise and raise objections to the multitude of reservations that other states have placed upon their ratification of the CEDAW (on the grounds that this convention has the highest number of reservations of any convention and that they undermine the States' accession to the treaty at all).

Refugees

5.27 The Department of Immigration, Local Government and Ethnic Affairs reported in their annual review in 1987 that Australia had taken over 450,000 refugees and displaced persons since the Second World War.[9] On a per capita basis, Australia and Canada are two of the largest recipients of refugees.[10] War in South East Asia has created a refugee problem in this region which since the 1970s has placed a strain on Thailand, Malaysia, Indonesia, Bangladesh and Hong Kong as well as Australia.

5.28 Australia has signed the 1951 Convention on the Status of Refugees and the 1967 Protocol. In this Convention a refugee is defined as a person with a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion should they return to their country of nationality/habitual residence. Article 1A (2). Australia has an obligation not to expel or return a refugee in any manner whatsoever to a territory where he/she would face such persecution. Article 33 (1).[11]

5.29 Since the 1970s refugees have arrived in Australia by boat or by entering on valid visas and then seeking asylum or by seeking refugee status under migrant entry from abroad. In 1990 the rapid growth in applications for refugee status led to changes in the methods of processing applicants, including an increase in resources. Australia deals with each application on its merits on a case by case basis against the criteria contained in the definition of the Convention.[12] There is an expectation in the Convention that refugees will be treated individually not collectively and that principle is applied by the Australian Government.

---

9 Department of Immigration, Local Government and Ethnic Affairs, Review of Activities to 30 June 1987, AGPS, p. 65.

10 Hawkins, F. Critical Years in Immigration: Canada and Australia Compared, McGill/Queens University Press, 1989, p. 156.

11 DILGEA Submission, p. S1817.

12 ibid, p. S1817.

5.30 Despite the streamlining of the process, there has developed a delay in processing of over two years. Since 1989, 448 people have arrived by boat. Of these six have received decisions on their cases. There have been 22,000 cases, before the DORS (Determination of Refugee Status) rules came in in 1989, who are seeking refugee status also. However, if, unlike the boat people, they have entered the country legally on valid visas, they are given extended temporary residency while their cases are considered. The boat people are illegal entrants and as such are detained on arrival. It is this detention and the prolonged time it is taking for their applications to be decided that creates the problem.

5.31 Complicating the situation of the Cambodian boat people is the fact that the UN High Commissioner for Refugees made a decision in 1980 that

> the Cambodians were to be regarded as displaced persons, fleeing war, famine and whatever, and generically they were not to be seen as refugees. The whole question of refugee treatment of the Cambodians has been determined by that decision in 1980. It has never changed.[13]

5.32 Furthermore, the current peace process in Cambodia, for all its instability, does not enhance the claims of the boat people to be considered as refugees within the Convention's definition.

5.33 The human rights complaints that were raised this year relate to the changes brought about by the Minister for Immigration in May when he sought to cut short what was perceived to be an endless legal review process. In April applications for refugee status from 37 Cambodian boat people were rejected but their pending deportation was stopped by a legal challenge to the decision making process. The Minister brought legislation into Parliament to block legal attempts to have the people released from detention while their cases were being considered.

5.34 The objection to the legislation is that it breaches Article 9 (4) of the ICCPR which states that 'anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful'. This Committee believes this is an important obligation.

5.35 The paradox of the situation of the boat people is that the adherence to the legal process and the appeals process has been part of the problem in prolonging their detention. When the time delay is then used as an argument in favour of leniency, it is a tactic that undermines public confidence in and sympathy for the people concerned.

5.36 The strain on the system is exacerbated by the large number of People's Republic of China nationals given a four year temporary entry permit in 1989 as a result of the Tiananmen Square massacre. There are an estimated 15,000 to 21,000

---

[13] Evidence, 14 May 1992, p. 675.

in the pre-June 20 1989 category. Australia's approach to these people is similar to that of the USA, Canada and the UK. These measures include the extension of temporary residency permits, the suspension of deportation and the provision of access to health, welfare and education services and family reunion. There are a further 17,000 post-June 20 applications for refugee status from PRC nationals. These people cannot work nor do they have the same access to health and welfare services.

5.37 The Committee received submissions regarding the West Papuans along the Irian Jaya border. They have been classified as displaced persons and Australia has not offered resettlement places. The preferred process for dealing with these people, a decision made jointly by the United Nations High Commissioner for Refugees (UNHCR) and the governments of PNG, Indonesia and Australia, is that of voluntary repatriation. In 1991, 600 were repatriated, 3,000 remain on the border. None have applied for entry on humanitarian grounds.

5.38 Nevertheless, Australia's record as a country of resettlement for refugees is an excellent one. We rank third after USA and Canada in absolute terms.[14] On a per capita basis we rank highest with Canada as a country of resettlement. Since the Gulf War we have taken 2,500 refugees from the Iraqi Kurds, who were offered an unusual protected resettlement model by the UN, and Iraqi Christians.[15]

5.39 Professor J. Crawford, in his evidence before the Committee, put the view that the definition of a refugee was outdated and too narrow. It was created in specific circumstances after World War II and he believed it did not apply to the majority of situations today. He thought it was time to develop another mechanism for dealing with the large scale movements of people across frontiers which occur now, people often fleeing war or famine or poverty.[16] It is obviously an issue that should have to be dealt with at a multilateral level and one that Australia might raise within the appropriate forums.

---

[14] ibid, p. S2652.

[15] DILGEA Submission, pp. S2656, 2658.

[16] Evidence, 21 February 1992, pp. 137-42.

Chapter Six

The Immediate Region

Civil disobedience is the right of a citizen. He dare not give it up without ceasing to be a man. Civil disobedience is never followed by anarchy. Criminal disobedience can lead to it. Every state puts down criminal disobedience by force. It perishes, if it does not. But to put down civil disobedience is to attempt to imprison conscience.
Mahatma Gandhi

Chapter Six deals with human rights issues in the immediate region which have been brought to the attention of the Committee. The massacre in Dili on 12 November 1991 confronted this Committee with questions of human rights in East Timor just as the Committee was beginning its first round of public hearings. It is a problem which sorely affects our relationship with Indonesia. Submissions were also received on the situations in Irian Jaya and Bougainville.

6.1 A very great volume of material was received by the Committee on the human rights abuses that are occurring in many parts of the world. It was overwhelmed by the extent and range of the problems described to it. Neither the resources available to the secretariat nor the time frame set for the inquiry have allowed the cases to be examined comprehensively. Nor has the Committee been able to seek information on situations which it knows are occurring in other parts of the world, which are as severe as those presented to it, but which for one reason or another were not formally brought to the Committee's attention. Therefore, there is an *ad hoc* list of situations dealt with in the last three chapters of the report. However, given the very great concern of very many people who put this material to the Committee, it has been at pains to portray accurately what has been told to it and to set out the requests for help and the recommendations for action that have been made to it. This is done in bold type at the end of each section. The Committee does not pretend that this section of the report represents the final analysis of the last year's human rights situation for the world.

Indonesia: East Timor

6.2 The Human Rights Sub-Committee took evidence on 2 December 1991 on the massacre in East Timor. However, as part of a parallel inquiry of the Joint Committee on Foreign Affairs, Defence and Trade into Australia's Relations with Indonesia, a very large number of submissions and evidence on Timor were made

available. The Foreign Affairs Sub-Committee is considering the Australia/Indonesia relationship and within that inquiry will be looking at East Timor and its effect on the relationship. This Sub-Committee and this inquiry will confine itself to the human rights situation in Timor and Australia's response to it. Evidence was also presented to the Committee on Irian Jaya.

6.3 Over seventy submissions, dealing in whole or in part with the situation in East Timor, were made to the Indonesia inquiry. Some of these submissions were made by individuals, others were made by Timorese support groups and academics. Many had contacts with the Timorese community here and many had travelled in Timor. Almost all of these submissions opposed the Indonesian takeover of East Timor and opposed the Australian Government's de jure recognition of it.

6.4 A number of people who had travelled in East Timor strongly expressed the view that East Timor was a country under occupation with a massive military presence. Mr. Bob Muntz, the Community Aid Abroad witness to the massacre of 12 November, told the Committee when he described the atmosphere in Dili on his arrival that:

> East Timor is a country which is clearly under military occupation by a foreign power. Even the most casual observer would very quickly realise that ... I held discussions with two priests of the Catholic Church in Dili shortly after my arrival. They claimed that the numbers of Indonesian troops in the country were between 40,000 and 50,000.[1]

6.5 It should be noted that the Department of Foreign Affairs and Trade put the number of troops at 15,000 to 20,000.[2] However, Mr Jamie Chancellor of the Australia-East Timor Association told the Foreign Affairs Sub-Committee that:

> travelling around East Timor, and I travelled quite widely, was a shocking experience. I certainly expected to see troops but I did not expect to see them in every village - this is up in the mountains, to the east, to the west, to the north, to the south ... I had to report at every single place that I went to or stayed at.[3]

6.6 Ms Shirley Shackleton in relating her experiences in Timor in 1989 said:

> I would like to say that I was with Peter Philp who was the editor of the Catholic Advocate ... He has been to Ethiopia and every South American country that is suffering under oppression, in his capacity as editor of the Catholic Advocate. He told me he has never seen such palpable fear in any of

---

1 Evidence, 2 December 1991, p. 7.

2 Evidence, 2 December 1991, p. 72.

3 Evidence, 4 February 1992, p. 15.

those countries, even at the height of the death squads in San Salvador and places like that.[4]

6.7 These impressions were corroborated by a number of witnesses who gave *in camera* evidence to the Committee. They too talked of the fear engendered by a military whose presence was all pervasive, which was inclined to use summary detention and arrest. They spoke of a system of surveillance of the population which restricted movement and interrogated youths for speaking to foreigners or for singing pro-independence songs.

6.8 The tension in East Timor, described by the numerous submissions to the Indonesian inquiry, would seem to be the result of a long history of repression of the province since the invasion of 1975. Amnesty International, dealing with the period between 1975 and 1991, listed for the Committee numerous cases of torture in detention, detention without trial, extrajudicial executions and the disappearance of people. Reliable accounts of 550 disappearances had been received by Amnesty International in this period.[5] The situation has remained serious despite the moves since 1988 by the military authorities to open up the province. Both the visit by Pope John Paul 11 in May 1989 and by the American Ambassador in January 1990 were followed by an increase in the arrest, detention and beatings of numbers of young people suspected of involvement in demonstrations and Fretilin sympathies.[6]

6.9 In September and October 1991, expectation and tension rose because of the planned visit of a Portuguese Parliamentary delegation. Rodney Lewis, convenor of the Indonesia sub-committee of the International Commission of Jurists, quotes Kamal Bamadhaj, the young New Zealander killed in the massacre of 12 November:

> Less than a week before the delegation was supposed to arrive, news started filtering in that the Portuguese were not coming. Hearts sank. People cannot believe it. The disappointment here today is not only the deflating of so many high expectations but, more worrying still, the indefinite delay gives the Indonesian military the perfect opportunity to eliminate all those Timorese who had exposed their identity while preparing for the visit.[7]

6.10 On 28 October 1991, two people were killed at the Motael Church where one of them, Sebastio Gomes Rangel, had sought refuge. A memorial mass for Sebastio Gomes was held on 12 November in the church in which he died. It was followed by a procession, part religious and obviously part political, to the Santa Cruz cemetery. Half way along the route there were claims of a scuffle between an Army Major and demonstrators and the suggestion of a stabbing of a soldier. This attack has not

---

4 Evidence, 4 February 1992, p. 26.

5 Amnesty International Submission to the Indonesian inquiry, pp. S577-86

6 Exhibit No. 78 p. 22

7 Exhibit No. 78, p. 27

been confirmed. Some 20 to 30 minutes later, after the procession had reached the cemetery, a truck load of soldiers followed by large numbers of soldiers on foot opened fire on the demonstrators.

6.11 The Committee took detailed evidence on the massacre of 12 November from eyewitnesses who saw the events from a variety of places in the march between the Motael Church and the Santa Cruz Cemetery. Two of the witnesses were Australians, Mr. Russell Anderson, a freelance journalist, and Mr. Bob Muntz, an aid worker for Community Aid Abroad. Two were Americans, journalists Amy Goodman and Allan Nairn. The Committee also received a statement via a Catholic priest from a Timorese eyewitness.

6.12 The march was described as 'orderly' and 'enthusiastic', if 'defiant'. All witnesses stressed that it was at all times under the control of marshals and at no time became riotous. All witnesses testified to the suddenness of the attack by the military, to the complete lack of provocation and to the lack of warning. The witnesses were also of the view that the military operation was not uncommanded.[8] The film taken of the march and shown in full to the Committee confirmed this as it showed lengthy footage of the procession and uniformed and plain clothes men directing the soldiers in the cemetery.

6.13 Amnesty International estimated the death toll that day at approximately 100 and has supplied lists of names in confirmation.[9] There was a report of an alleged second massacre on 15 November of 60 to 80 detainees rounded up in connection with the march on 12 November. No cooperation or access was given for at least twelve days to independent observers such as the International Committee of the Red Cross to check the condition of the wounded or to confirm the names of dead or missing. There are still unresolved questions regarding missing people.

6.14 The Government of Indonesia expressed deep regret and set up a National Investigation Committee (the Djaelani Committee) after the massacre. This was seen as a departure from usual Indonesian practice. The Australian Government condemned the killings but wished to await the outcome of findings of the National Investigation Committee. The Department of Foreign Affairs and Trade told the Committee the members of the Djaelani Committee were reputable and that the Indonesian response to the incident was not monolithic.[10]

6.15 A report from the Australian International Commission of Jurists disagreed. It saw the Djaelani Commission as not meeting the United Nations standards for the investigation of extra-judicial, arbitrary and summary executions. According to these principles, people on investigation commissions should be 'independent of any institution, agency or person that may be the subject of the inquiry'. This report

---

8 Evidence, 2 December 1991 and Submission Nos. 2, 3 & 4.

9 Exhibit No. 10.

10 Evidence, 2 December 1991, p. 74.

listed four of the seven member commission as having close military connections.[11] The report of the Australian International Commission of Jurists analyses further ways in which the Djaelani Commission did not meet UN standards for investigating such massacres as occurred in Dili on 12 November. They include the necessity of seeing such killings as offences under the criminal law; the necessity of determining the 'cause, manner and time of death, and the person responsible' and 'adequate autopsy, collection and analysis of all physical and documentary evidence'; the necessity of ensuring that 'complainants, witnesses ... and their families shall be protected from violence, threats of violence or any other forms of intimidation'.[12]

6.16 The Djaelani Commission conducted its inquiry in private. It rejected the army's estimate of 19 and reported that 50 demonstrators had been killed. Ninety people were said to be missing although no further effort was made to identify or find these people. The further conclusions of the Commission that the demonstration was provocative and violent and that the Army's reaction was spontaneous are not borne out by the eyewitness accounts or by the timing or the film of the events. The Commission did not interview foreign witnesses and claimed that the East Timorese were afraid to talk.[13]

6.17 As a result of the inquiry six officers were removed from active service or discharged. Ten lower ranking soldiers (sergeants, lieutenants and privates) were court martialled. The trials are described in the report of the International Commission of Jurists as being conducted in haste and without international observers:

> According to Army Chief of Staff, General Edi Sudradjat, these men and officers committed command mistakes in the field, violating military ethics and discipline tending towards criminal offences. They are charged under Article 103, Paragraph 1 of the Military Criminal Code, for disobeying orders.[14]

Their sentences ranged from eight months to eighteen months. The demonstrators were tried in the civil courts on charges of subversion. Despite the obviously peaceful nature of the demonstration, they have received sentences ranging from six months to life. Most sentences were over five years. To recapitulate, the soldiers received sentences from 8 to 18 months; whereas those unarmed, non-violent demonstrators who were arrested received sentences from 6 months to life imprisonment. The discrepancy in the treatment of the two groups is against the concept of natural

---

[11] Exhibit No.79, pp. 36-37.

[12] ibid, pp. 36-40.

[13] Exhibit No. 78, p. 40.

[14] ibid, p. 54.

justice and is difficult to justify, certainly by arguments as put by the Indonesian Government about the two groups falling into different jurisdictions.

6.18 The reaction of the military to the situation has been widely reported in the press. Generals Sutrisno, Mantiri and Murdani have approved and continue to approve the military's role. Immediately after the massacre, General Sutrisno spoke of the Army's determination to 'wipe out those who disturb security' and that those 'who refuse to toe the line have to be shot'. After the trials Mantiri stated, 'We don't regret anything. What happened was quite proper. As military, this is so. They were opposing us, demonstrating, even yelling things against the government'.[15]

6.19 There are high ideals expressed in Pancasila which envisages a society based on 'just and civilised humanity' and 'democracy'. It is outside democratic practice and international law to treat peaceful protest as subversion. The constitution of Indonesia also stipulates that, without any exception, all citizens shall be equal before the law. If the Indonesian military offend in their civilian policing role it would seem to this Committee to be more just that they too should come before civilian courts. Indeed the ICJ report stated that the defence case of Da Camara, one of the students arrested in Jakarta after the Dili massacre, in his anti-subversion trial argued that the trials of the military before military courts was an offence against Article 27 of the 1945 Constitution which states that 'all citizens have the same position under the law'.[16]

6.20 The law against subversion under which the demonstrators were tried was also criticised by the UN Special Rapporteur to Indonesia and East Timor, Mr. P. Kooijmans. He said that the definition of subversive activities was very broad, loose and vague and that the powers given to the authorities under this law were too broad.[17] He was also critical of 'the absence of judicial control during the initial period of arrest, since torture usually occurs during the initial phases of an investigation'.[18]

> The Special Rapporteur was also informed that it was not exceptional in areas where there was civil unrest for people to be arrested by the military, kept in detention for a certain period during which they were interrogated (sometimes under torture), and subsequently released ... Under such circumstances access to a lawyer was virtually impossible.[19]

---

15 The Canberra Times, 7 July 1992, p. 4 and 12 July 1992, p. 6.

16 ibid, p. 49.

17 Exhibit No. 33.

18 ibid, p. 10.

19 ibid, p. 11.

6.21 The sharpest dilemma for Australia in dealing with human rights questions in this region is represented by the situation in East Timor. There is a Timorese community in Australia vitally concerned about events there. Many Australians either through personal connection or political sympathy feel strongly about the situation and see it as a test of our principles. Therefore, there is constant constituent pressure for Australian Government action to effect change.

6.22 Almost all of the submissions to the Foreign Affairs Sub-Committee on Timor opposed the Australian Government's response to Indonesia over Timor. They also claimed that, because of the strong antipathy in both Australia and East Timor to Indonesian rule there, Timor would remain an impediment to good relations until some settlement satisfactory to the Timorese people had been achieved.

6.23 At the time of the massacre the Australian Government condemned it, but judged it 'aberrant behaviour' on the part of the Indonesian military. The Australian Government believed that the unprecedented move of an official inquiry and apologies from the President were sufficient cause to withhold action until the outcome of the inquiry. On 16 June 1992 in the Senate, the Foreign Minister stated:

> We do recognise that much of the action taken by the Indonesian Government in response to the Dili killings, particularly the public acknowledgement of wrongdoing by the military, does constitute unprecedented action in Indonesia. But, as I have already said, we do believe it is important that those responsible for the killings be appropriately punished.[20]

From the outset, the Government had said that if the outcome was not satisfactory, it would review the bilateral relationship. When the initial findings of the Djaelani report were announced, Foreign Minister Evans described them as 'credible and reasonable'. He said the report of the Commission 'displayed a clear sense of responsibility on the part of the military for the tragic events in Dili last November' and amounted to 'an appropriate recognition that the military's behaviour was excessive and that those responsible should be penalised'.[21] The remaining concerns of the Australian Government were outlined in the following way:

> That no-one should be detained or otherwise penalised for non-violent political activities, that those detained in Dili, Denpasar and Jakarta be treated humanely and that those brought to court be given proper legal representation and fair trials;
>
> The need for the future policies and practices of the Indonesian security forces in East Timor to be effectively controlled and generally much more sensitive to the needs and aspirations of the East Timorese people; and

---

[20] Hansard, Senate question time, 16 June 1992, p. 3647.

[21] News Release, Minister for Foreign Affairs and Trade, 28 February 1992.

> The need for the Indonesian Government to develop a systematic approach to longer term reconciliation in the province, including improved social and economic development and greater recognition of East Timor's distinctive cultural identity.[22]

Finally, in response to the verdicts of the trials, the Minister for Foreign Affairs and Trade stated that he was 'disturbed at the apparent discrepancies so far in the sentences that have been administered for the civilians and the military'.[23]

6.24 Given the situation in East Timor, its proximity to Australia and its historic and emotional ties for many Australians and, in particular, the scale of the massacre on 12 November and the injustices done to the victims of that incident, it would seem the incident and its outcome deserved much stronger condemnation. Furthermore, it is important that the Australian Government should be consistent in its reaction to human rights outrages of this kind. Australia has a laudable history of promoting human rights and condemning human rights abuses in distant parts of the world. By softening, as Australia did, the strongly worded resolution on the massacre which was drafted by the European Community, we have lessened our credibility and this, finally, is counterproductive to any future human rights responses we make.

Indonesia: West Irian

6.25 A large volume of material was provided to the Committee by Mr Otto Ondewame detailing the claims of the indigenous people of West Irian. West Irian is an area twice the size of the UK. It is a mountainous territory sharing a border with Papua New Guinea. It has a total population of 3.9 million of which 1.5 million are ethnic Papuans and Melanesians. The evidence alleged that 65 per cent of the population cannot read or write, 80 per cent of Papuan primary school children are malnourished, 85 per cent of Papuans live below the poverty line and only 15 per cent of those in formal employment in Irian Jaya are Papuans.[24]

6.26 It was formerly a Dutch colony, ceded to Indonesia in 1963 under an agreement signed by the Indonesians and the Dutch in New York. This agreement promised a UN supervised act of free choice within six years. The conduct of this vote taken in 1969 has been a matter of dispute. It was supervised by Mr Ortiz Sanz as representative of the General-Secretary. He was supported by sixteen staff. The vote in favour if integration was taken by 1,025 representatives of the people, selected by the Indonesian administration. Mr Sanz in his report expressed reservations about the process. These reservations were posed as a series of questions by Mr Davin of Gabon, speaking in the General Assembly in 1969 during

---

[22] ibid., p. 1.

[23] Hansard, Senate 16 June 1992

[24] Exhibit No. 35.

the debate on the act of self-determination. He was one of a number of speakers in that debate who cast doubt on the value of the process.

> We might have asked why the vast majority of deputies were appointed by the Government and not elected by the people; why the United Nations observers were able to be present at the election of only 20 per cent of the deputies ... why the consultative assemblies were presided over by the Governor of the district, in other words, by the representative of government authority; why only government-authorised organisations, and not opposition movements, were able to present candidates ... why the principle of 'one man, one vote' recommended by the Representative of the Secretary-General was not adopted; why there was not a secret ballot, but a public consultation in the presence of the governmental authorities and the army.[25]

6.27 There has been continuing opposition to Indonesian rule of Irian Jaya ever since, centred on the Organisasi Papua Merdeka (OPM). They have fought an on-going war with the Indonesian security forces in the province. It has involved conflict over development, land, transmigration. Much of the detail of this dispute will be dealt with by the current Indonesian inquiry of the Joint Committee on Foreign Affairs, Defence and Trade.

6.28 The opposition to Indonesian rule has led to violent action by the OPM against the security forces and against the transmigration settlements. Amnesty International documented cases in 1988, 1989 and 1990 in which 16 people were killed and six people held hostage for two weeks by the OPM.[26] However, Indonesian rule of the province has also led to a pattern of serious human rights abuses by the Indonesian authorities. In April 1991, Amnesty listed 130 prisoners of conscience held in Irian Jaya and Java. These people were largely arrested for peaceful demonstrations in favour of independence. They were accused of subversion and have been sentenced to gaol terms of two years to life. Amnesty further believed that the trials for subversion worked on the presumption of guilt rather than the presumption of innocence.

> Court officials (judges and prosecutors), who are government employees dare not - and in practice do not - challenge the wisdom of the military intelligence authorities who initiate subversion cases. Amnesty International knows of no case in Irian Jaya in which a person charged with subversion has been found innocent by the courts. Once the police or military authorities have made the accusation and charges have been filed, conviction appears to be a foregone conclusion ... Subversion trials are, in effect, political show trials.[27]

---

[25] Exhibit No. 35, United Nations General Assembly Twenty-Fourth Session Official Records

[26] ibid, p. S849.

[27] ibid, p. S861.

6.29 The political and military pressure on the Papuans has led to an influx of refugees particularly on the Papua New Guinea/Irian Jaya border. There are documented cases of people who were returned by the Papua New Guinea Government to Irian Jaya, being tried and imprisoned for subversion. Mecky Salosa, who was returned by the PNG Government in July 1990, was immediately arrested. It has been claimed that he was tortured while in custody. In March 1991 after a closed trial he was convicted of subversion and sentenced to life imprisonment. Amnesty International believes the trial may not have been fair.[28] In August 1991 he died allegedly after escaping from custody. The circumstances of his death are unclear. Cases such as that of Mecky Salosa have not been isolated occurrences. Reports of torture of political detainees came to this Committee from a variety of sources.

6.30 The human rights situation in Indonesia has been severely criticised by the UN Special Rapporteur, Professor Kooijmans, who was in Dili in November last year, by most of the witnesses to this human rights inquiry and to the Indonesia inquiry and by Amnesty International in its submission to that inquiry and in its annual report published in July 1992. In these reports, details are given of cases of torture, extrajudicial killing, detention without trial and trials without due process and in contradiction of the laws of Indonesia. All is directed to the suppression of dissent.

6.31 For example, an Indonesian witness representing the Indonesian Forum for Human Dignity tabled a statement detailing the arrest of students in Jakarta:

- Mr Beathor Suryadi was gaoled for four and a half years for participating in a peaceful protest concerning the rise in electricity rates; and

- Mr Bonar Tigor Naispospos, Mr Bambang Isti Nugroho and Mr Bambang Subono were gaoled for between seven and eight years for involvement in political discussion groups.[29]

This submission further detailed widespread torture, disappearances and summary killings, especially in Aceh. It quoted the US Senate Report on Human Rights in Indonesia as saying that the death toll in 1991 from army violence in Aceh exceeded 2,000.[30]

6.32 **The Committee urges the Australian Government to support actively a new UN initiative to begin consultations with all the parties to the conflicts in East Timor, Irian Jaya and Aceh with a view to negotiating a settlement; and to draw to**

---

[28] ibid, pp. S866-8.

[29] Fauzi, Indonesian Forum for Human Dignity (INFOHD) Submission, p. S2485.

[30] *ibid.*, p. *S2486.*

the attention of the Indonesian Government the gross injustice of the application of the Anti-Subversion Law to those involved in peaceful protest.

Bougainville

6.33 The Joint Committee on Foreign Affairs, Defence and Trade took considerable evidence on Bougainville in its inquiry last year into Australia's relations with Papua New Guinea. At that time the view was put to the Committee that Australia had a 'strategic interest in the unity of Papua New Guinea, the maintenance of the authority of the central government [and] the restoration of law and order on Bougainville'.[31] That inquiry found that human rights abuses had occurred on both sides of the dispute, by the Bougainville Revolutionary Army (BRA) and the Papua New Guinea Defence Forces (PNGDF). At that time, Amnesty International had details of numerous cases of ill treatment, torture and extrajudicial executions.[32] It was claimed that the blockade was having a very deleterious effect on the health and welfare of the Bougainville people.

6.34 That inquiry recommended that the Australian Government take a more active diplomatic role in trying to find a solution to the impasse, that the Australian Government press the Papua New Guinea Government to lift restrictions on humanitarian aid to Bougainville, that the Australian Government clarify the guidelines for the use of military equipment supplied to the Papua New Guinea Government and that the Australian Government should do more to encourage the Papua New Guinea Government to investigate human rights abuses.

6.35 The Committee received a submission on Bougainville which would suggest that the situation is deteriorating. Ms. Rosemarie Gillespie visited Bougainville in May and June this year and returned with affidavits describing serious human rights abuses by the PNGDF. She claimed that the Papua New Guinea army 'has tortured and assassinated civilians, attacked towns and villages and prevented life saving medicines from coming to central Bougainville'.[33] The allegations refer to names, dates and places. The affidavits cover the period from 1990 to June this year. They describe the shooting of people from helicopters, the rounding up and shooting of unarmed villagers, men, women and children, the torture of captured youths, the disposal of bodies at sea and the burning and looting of villages. The submission also described seven care centres where people made homeless because of the fighting between the BRA and the PNG army are taken. Here it is claimed the people are

---

[31] Joint Committee on Foreign Affairs, Defence and Trade, Australia's Relations with Papua New Guinea, December 1991, p. 191.

[32] ibid, p. 197.

[33] Gillespie Submission, p. S2754.

subjected to intimidation, harassment and punitive action by the PNG armed forces.[34] Details are provided in Submission No. 78 in the volumes of submissions.

6.36 The Committee understands that these are only allegations but they are of such a specific nature and so serious in content that they should not be lightly brushed aside or treated with the sanguine indifference. The unauthorised raid by the PNGDF on the village in the Solomons in September further suggests that the armed forces on Bougainville are out of the control of the civilian government in Port Moresby. They have been able to operate in comparative secrecy because of the blockade. The longer this situation lasts the more difficult it may be for the Government to reassert its control and discipline over its forces. Such behaviour as was described in the Gillespie affidavits will also make it difficult for the PNG Government to reestablish any moral authority over the island or at least any moral superiority even over insurgents whose reputation is not pristine.

6.37 There have also been consistent accusations of abuses in the BRA controlled areas. The Committee is aware that many of the people concerned about the human rights abuses of the PNGDF seem to show little concern about the reported human rights abuses of the BRA.

6.38 The Committee commends the PNG Prime Minister, Mr Wingti's strong reaction to the Solomons raid and would hope that he will expand the investigations of the activities of the PNGDF to include the wider claims of abuse on Bougainville itself. The claim that an investigation of the human rights abuses on Bougainville will have to await the resumption of central government control of the island is an inadequate response. There are areas of Bougainville now under the control of the PNGDF both on Buka and around Buin in the south where there have been claims of human rights abuses. There would seem to be no reason why these and the claimed abuses in the BRA controlled areas could not be investigated immediately.

6.39 Papua New Guinea's reputation as a country with a good record in human rights is at risk if the situation on Bougainville is not investigated and quickly resolved. The Committee notes the resolution in August of the United Nations Subcommission on the Prevention of Discrimination and the Protection of Minorities to 'restore without delay the freedom of movement to the people of Bougainville in the interest of promoting and protecting human rights and fundamental freedoms.' The question of a peace treaty between the Papua New Guinea Government and the Bougainvillians was placed under review by the UN Commission's Special Rapporteur on Treaties. The UN Committee on the Elimination of All Forms of Racial Discrimination has also requested a full report from the PNG Government on the human rights violations on the island.

---

[34] Gillespie Submission, pp. S2767-8.

6.40 The Committee urges the Australian Government to encourage Papua New Guinea to make an urgent and full investigation of all the claims of human rights abuses on Bougainville. Furthermore, the Committee reiterates the recommendations made on this issue in the December 1991 Report, Australia's Relations with Papua New Guinea.

Chapter Seven

The Region

To the east lives a Prole, to the west a Fascist, but I don't care for any of this stuff. If I'm forced to state what 'ism' I'm for, all I can say is that I want to be an individual. Lin Yutang 1934.

I was fifty-two when my first son was born, so of course I love him dearly. But there is a right way to love. Even while playing games, he should be taught care and sympathy, and to avoid cruelty. I've always detested the practice of keeping birds in cages. I think of them imprisoned there whenever I am enjoying myself; it would be so cruel and unreasonable to make another creature suffer so as to please me. I feel the same way about tying a dragonfly with a hair or a crab with a piece of string so they can serve briefly as toys for children before they lie broken and dead ... Zheng Banqiao (1693-1765)

Chapter Seven deals with submissions that were received on human rights abuses in the wider region. They covered Sri Lanka, Burma, Thailand, Vietnam, Philippines, China and Tibet.

Sri Lanka

7.1 The Tamils constitute approximately 3 million in a population of 16 million on the island of Sri Lanka (formerly Ceylon), an island of 25,000 square miles. Approximately 75 per cent of the population are Sinhalese. Most Tamils are Hindus but there are also Christians and Muslims amongst them. The Sinhalese are mostly Buddhists. The Tamils live mostly in the north and east with some living in the central highlands. The Tamils and the Sinhalese speak different languages.

7.2 Universal suffrage was instituted in 1931 under British rule and literacy on independence in 1948 was the highest in Asia. The unitary, centralised government of the newly independent government ensured a permanent Sinhalese majority in Colombo.

7.3 This seems to have been the source of many of Sri Lanka's problems. Democracy not only recognises the rule of the majority but seeks to protect the rights of the minority. In an ideal world the minority always has the prospect, over time, of becoming the majority and so becoming the government. Where ethnic or racial or religious factors divide a population and set the voting patterns into a permanent majority and minority, circumstances require a special arrangement

within the constitution to ensure a proportionality of political representation and therefore of educational places and employment opportunities.

7.4 This is what has happened to the Tamil people of Sri Lanka. Central to the conflict on Sri Lanka is a massive injustice perpetrated and intensified over the years from independence onwards. The Sinhala majority set about confining, disenfranchising and reducing the prospects of the Tamil people:

> through a series of legislative and administrative acts, ranging from disenfranchisement, and standardisation of University admissions, to discriminatory language and employment policies, and state sponsored colonisation of the homelands of the Tamil people, [the Sinhala majority] has sought to establish its hegemony over the Tamils of Sri Lanka. These legislative and administrative acts were reinforced from time to time with physical attacks on the Tamils of Sri Lanka with intent to terrorise and intimidate them into submission. It was a course of conduct which led eventually to the rise of Tamil militancy in the mid 1970s.[1]

7.5 The present civil war, although its origins are deeply rooted, began in 1983 when by amendment to the constitution the seats in parliament held by the Tamil representatives were declared vacant. Details of the escalation of this violence; massacres, torture, disappearances, terrorism, aerial bombardment of cities and settlements, starvation, the burning of houses, temples, schools and libraries can be found in the submissions and evidence from the Australasian Federation of Tamil Associations. Much of the evidence comes from reputable sources: The Commission on Human Rights Report of the Working Group on Enforced or Involuntary Disappearances, 1992.[2] The International Commission of Jurists 1981 and 1984, a UK Parliamentary Human Rights Group Report in 1985, Amnesty International (Australian Parliamentary Amnesty Group March 1986), Amnesty International Report 1990, a report of the UN Sub Commission on the Protection of Minorities 1990, and the Report of the Canadian Human Rights Mission to Sri Lanka 1992.

7.6 Given the severity and the extent of the suffering, it seems to be an issue much neglected by the international community, certainly in terms of UN action. Perhaps this can be explained by the collapse of the peace talks in June 1990 and the increasingly ruthless actions of the Tamils in retaliating against government attacks and in threatening their own followers who were believed to be government sympathisers. Today, the cycle of violence and revenge between oppressed and oppressor is so extreme that moral right in the case is disappearing.

7.7 The conflict on Sri Lanka has developed into a particularly vicious civil war with no prospect of military victory on either side. The most recent Canadian Human Rights Mission stated in February this year that they believed that there

---

1 Australasian Federation of Tamil Associations Submission, p. S507.

2 Uniting Church Centre Submission, pp. S2082-150.

was an urgent need for a negotiated settlement and that only strong external pressure was likely to bring the parties to negotiations.

7.8 For some time, the Australian Government and Parliament have been urging the Sri Lankan Government to use the good offices of the Commonwealth to facilitate negotiations between the parties. Foreign Minister, Gareth Evans, reported to Parliament on 19 September 1990 on talks he had had with President Premadasa making this suggestion. Little seems to have come of this suggestion.

7.9 **The Committee suggests that the Government consider the recommendations made by the Canadian Human Rights Mission to Sri Lanka.[3] In particular, the Committee urges the Australian Government to join with the Canadian Government to seek action from the multinational agencies of the UN and/or the Commonwealth in the form of an international observer team to aid in the establishment of negotiations, to monitor the situation in the northern provinces of Sri Lanka, to supervise the distribution of humanitarian aid, and to verify a complete arms embargo to Sri Lanka.**

Burma

7.10 Burma is a country of over 36 million people. Two-thirds of the population are ethnic Burmans. There are also ethnic minorities, mostly situated around the borders, the Shan, the Arakanese, the Karen, the Mon and the Chin. After independence, the minorities joined the communists in armed struggle against the central Burmese Government. Burma gained its independence from Britain in 1947 and operated under a democratic constitution until a coup d'etat led by Ne Win in 1962. After the long authoritarian rule of Burma by Ne Win ended in 1988, the movement for change and reform gained momentum. Strikes and demonstrations and demands for elections and the end of one party rule continued despite military repression, martial law and the shooting of demonstrators. Amidst the crippling mass uprising of August/September 1988, the Government conceded to the demand for elections but a military coup at the same time established the State Law and Order Restoration Council (SLORC) under General Saw Maung. The elections finally held in May 1990 saw massive support for the National League for Democracy (NLD) which won 392 of the 485 seats, 80 per cent of the vote. However, the SLORC ever since have refused to relinquish power to the elected government.

7.11 Today Burma is a rigidly controlled society. Development assistance, with the exception of some UN projects, has virtually disappeared. Military expenditure has risen to over 30 per cent of the total budget, the army has more than doubled in size and there has been a massive build up of arms. Inflation is high and the trade deficit growing ($US570 million in 1990 with an expected growth of 40% in 1991).[4] The

---

[3] Uniting Church Centre Submission, pp. 2158-62.

[4] Exhibit No. 58, Fact Sheet on Burma, Asian Human Rights Commission.

Committee was told of alleged government involvement in drug trafficking as a means of paying for national debts.

> Bertil Lintner, a journalist who had close dealings with the Kokang, Wa and Shan groups, has said that he now believes these people are involved with the SLORC in heroin production and export from Burma.[5]

7.12 The record of the SLORC Government was detailed for the Committee from a variety of sources: the International Commission of Jurists, the Australia-Burma Council, the National Coalition for the Union of Burma, Austcare, the Training and Environmental Awareness for the Karen People (TEAK), as well as concerned individual people who have had close contacts with the Burmese, Mr Hugh Wood and Ms Lyndal and Sophie Barry. The volume of material is very considerable and details of their evidence and submissions can be found in the bound volumes accompanying this report.

7.13 In summary, however, they told the Committee of tight and unrelenting control of Burma by the SLORC involving massive human rights violations and continuous armed attacks on the ethnic minorities. Curfews are imposed, students and teachers have to sign guarantees they will not protest or demonstrate, there is no freedom of the press. Opposition to the regime is not tolerated. The members of political parties opposed to the regime are in exile or detention, most notably Daw Aung San Suu Kyi. The ICJ Report on Burma made in 1991 after a fact finding mission by its representative Makhdoom Ali Khan, stated:

> Killings, long detentions, torture, summary trials and imposition of stiff sentences continue. Even the smallest disturbance is brutally curbed. [Despite denials by the regime] it has been documented that persons held in detention centres by the authorities have been tortured. The methods have included beatings, electric shock, sleep deprivation, cigarette burns and being forced to stand neck-deep in water.[6]

7.14 For ordinary people the regime's rule has meant forced relocation of half a million people from the cities to the countryside and the conscription of men and women to act as porters and human mine sweepers in the military campaigns on the borders.

> These porters, who include children, pregnant women, and the sick or elderly, carry food, supplies, arms and ammunition for the army. They are paid nothing. They are used as human mine sweepers and to trigger ambushes. They are fed poorly, if at all, and when they fall ill they are left unattended.[7]

---

5 Evidence, 14 May 1992, p. 701.

6 Exhibit No. 48, p. 55.

7 ibid, p. 73.

7.15 Numerous interview reports with individual porters were supplied in confidence to the Committee. They confirmed the ICJ findings of the porters' treatment and spoke of routine cruelty, rape and indiscriminate shooting.

7.16 The maltreatment of the Burmese people and the ethnic minorities has created a massive refugee problem on the borders with both Thailand and Bangladesh. In March 1992 there were 65,631 refugees on the Thai border. For a period in 1988-89, the Thai Government under an agreement with the SLORC repatriated Burmese students and dissidents to Rangoon until international pressure stopped it.

7.17 In Bangladesh over 200,000 Rohingya Muslims were driven out of Arakan by starvation, abduction, rape and violence committed against them by SLORC. Burma has signed a repatriation agreement with Bangladesh but the Rohingyas have been unwilling to return. In June it was alleged that a Muslim member of Parliament was beaten to death by Burmese soldiers when he refused to try to persuade the refugees to return.[8] According to AUSTCARE, the camps along the borders are in urgent need of relief and development programs.

7.18 All submissions to the Committee stressed that the changes announced in April/May 1992 with the resignation of Saw Maung, the announced ceasefire in the offensive against the Karen rebels and the release of political prisoners have been nothing but cosmetic changes aimed at softening the hardline that was developing in the international community over aid and trade. They did not believe them substantial or, in many instances, real. The offensive continued they said, apart from the cessation usually caused by seasonal factors.[9]

7.19 Australia has supplied relief aid of $200,000 delivered through an international consortium in Thailand to assist the refugees on the Burma/ Bangladesh and Burma/Thailand borders but at the same time we have cut our bilateral aid programs to Burma. AUSTRADE maintains a locally engaged staff member in Rangoon. Trade with Burma in 1990-91 was $3 million either way. However, the Department of Foreign Affairs and Trade believed sanctions, even if imposed in conjunction with other Western countries, would be quite ineffective. Most of Burma's trade was with its regional neighbours and it was highly unlikely that ASEAN would impose sanctions. The Department believed that dialogue aimed at strengthening the perceived shift in regional attitudes to the Burmese regime was more likely to be effective.[10]

7.20 **The Committee accepts the proposition that unilateral action on sanctions is ineffective. However, it believes that greater efforts in the multilateral agencies are called for. There are a range of possibilities for Australian action that could include:**

---

[8] Exhibit No. 36 and Submission, p. S2179.

[9] Evidence, 14 May 1992, p. 702.

[10] Evidence, 10 April 1992, pp. 340-1.

- sponsoring a resolution in the United Nations General Assembly to have Burma's seat declared vacant on the grounds that the regime is an illegal one both under Burmese and international law and does not have a mandate of the people;

- calling for Burma's Least Developed Country (LDC) Status to be withdrawn on the grounds that the regime has spent billions on arms and little on improving the lot of its people;

- asking the United Nations General Assembly to instruct the United Nations Development Program and all allied UN agencies immediately to cease all operations in Burma;

- calling for a United Nations trade and arms embargo against Burma;

- seeking assurances from UNHCR and all countries of First Asylum that no further refoulement of Burmese refugees will take place and that adequate care be accorded Burmese refugees and displaced persons until they can return to Burma safely;

- establishing a special Burmese refugee program under the special humanitarian program; and

- closing the AUSTRADE office in Rangoon until power is handed to the democratically elected government.

Thailand

7.21 The events in Bangkok in May this year were reported to the Committee in a briefing by the Department of Foreign Affairs and Trade on 28 May and in evidence given by Major-General Chamlong Srimuang during his visit to Australia in June.

7.22 The appointment of an unelected man, General Suchinda, as Prime Minister led to protests in early May. General Suchinda had reneged on promises that there would be constitutional changes to ensure that the Prime Minister would be an elected member of Parliament. Chamlong Srimuang, one of the major opposition leaders, went on a hunger strike in protest and the demonstrations in the streets of Bangkok became very large (estimated at 100,000)[11] in support of him and in opposition to Suchinda's Government. General Chamlong Srimaung told the Committee that the demonstration, insofar as it was coordinated, was organised by the student federation aided by 'handy phones'. It was a high tech revolution of

[11] DFAT Submission, p. S2602.

largely middle class, affluent citizens of Bangkok.[12] Confrontation with the troops became tense over a number of days. Stones were thrown by the demonstrators and police stations were looted. Troops fired on the crowds on 18 and 19 May killing an as yet unspecified number of people.

7.23 The early estimate of those killed and/or missing was over 500.[13] The Department's latest figure, supplied to the Committee in June, was an official Thai figure of 40 dead and 669 missing and a figure calculated by independent organisations of 52 dead and 775 missing and 789 injured.[14] It was estimated that over 2,000 people were arrested. According to Department of Foreign Affairs sources some of these people were badly beaten while in custody.[15] However, General Chamlong Srimaung had only heard of a few people being maltreated while in custody, and then not seriously. [16]

7.24 The intervention of the King of Thailand on 21 May led to a compromise between the parties and to the resignation of General Suchinda on 24 May. Before his resignation General Suchinda announced an amnesty, agreed to by Cabinet and carrying royal assent, for all people involved in the demonstrations, including the military. These amnesties have been challenged. Suchinda announced the appointment of committees to investigate the killings and to decide upon compensation for the victims. There is also a parliamentary committee which is to conduct its own fact finding inquiry. The committees of inquiry have not yet brought down their findings or made recommendations. In the last week when this report was to go to print, Generals Kasset and Issaparong were removed from active positions in the military.

7.25 However, the constitutional tribunal which is examining reform of the constitution has continued its work to confirm changes of the political system. The Committee was told that the military in Thailand dominate both the political and commercial life of the country. This had been achieved by the strength of a group of high ranking officers in the armed services, Class 5, who had graduated together and whose leader was General Suchinda. These commanders can order their soldiers to 'work for whatever political party they like'.[17] There was also large scale vote buying. The amount paid to buy votes was quite substantial - 100 to 700 baht (when

---

12 Evidence, 25 June 1992, pp. 817-8.

13 Evidence, 28 May 1992, p. 730.

14 DFAT Submission, p. S2601.

15 ibid., p. S2606.

16 Evidence, 25 June 1992, p. 819.

17 Evidence, 25 June 1992, p. 824.

rural incomes are 20 to 50 baht a day) - and it is mostly in rural areas because incomes are low and people are not well educated.[18]

7.26 The Prime Minister now has to be a member of Parliament. The number of senators has been reduced; it is now less than the numbers of members of the House of Representatives. The President of the Parliament will come from the elected House of Representatives not the appointed Senate. The lower house will now have equal powers and responsibilities with the Senate.

7.27 The Australian Government responded to the initial bloodshed in Bangkok by:

- cancelling exercise NIGHT PANTHER and withdrawing troops and aircraft to Australia;
- cancelling the visit to Thailand of the Commander Special Forces;
- Postponing the visit to Australia of Commandant Thai Armed Forces Apprentices School;
- postponing the Bilateral Defence Policy talks; and
- deferral of other planned senior staff visits and conferences.[19]

The whole relationship was put under review awaiting the outcome of the inquiries.

Vietnam

7.28 Vietnam is a country of seventy million people. Australia has a special interest in Vietnam, not only because of our involvement in the war but also because so many people have since come from Vietnam to settle in Australia, many of them as refugees. The Committee received two submissions concerning human rights in Vietnam; one involved the imprisonment of dissidents and the system of legal and administrative controls, the other documented violations of the rights to freedom of worship.

7.29 The Committee was told that in the aftermath of the war an estimated 65,000 people were purged, arbitrarily executed in the countryside. A further 500,000 people, believed to be sympathetic to the previous regime, were arrested and without trial placed in re-education camps. Their period of detention was to be three to fourteen years. There was a campaign for the 'purification of culture' which involved the detention of political opponents, writers, journalists and religious leaders.[20]

7.30 The persecution of the religious groups was set out in more detail for the Committee. The Catholic Church suffered the arrest or expulsion of priests. It was

---

[18] Evidence, 25 June 1992, p. 831.

[19] DFAT Submission, p. S2621.

[20] Trieu Dan Submission, p. S1259.

estimated that at least thirty Catholic priests were still being detained in various camps. In the Evangelical Church, 3,000 members were arrested in the 80s, forty-two summarily executed.[21]

7.31 The Buddhist Church suffered the assassination of its leaders, the detention of monks, the confiscation of its property, the closure of thousands of schools, dispensaries, orphanages and day care centres. Where monks turned to farming, taxes consumed the whole income from their crops. The destruction of temples and the prohibition on Buddhist celebrations and travel restrictions placed on the monks further eroded the formal practice of the religion.[22]

7.32 The Buddhists believed they approached the regime with good will and sought to comply with government instructions:

> Vietnamese Buddhists have repeatedly shown their intention to adapt themselves to the new situation and their readiness to cooperate in the building of socialism. We are used to being poor, we have learned to oppose our oppressors. We are capable of austerity and perseverance ... We believe we can go along with a demanding program for social revolution. We want only to be Buddhist and socialist at the same time. The Communist Party does not seem to understand or tolerate our deepest wishes. And we have lost much of our hope. We have suffered mistreatment, discrimination and oppression.[23]

7.33 However, they were confused by the arbitrary and contradictory nature of the administration.

> Verbal instructions given to governmental agents always contradict the written principle clearly stated by the government, as far as the policy of religion is concerned. Should we obey the written document, or should we obey the government agents?[24]

7.34 The arbitrary and openended nature of the law is at the heart of the human rights abuses in Vietnam. Dr Nguyen Trieu Dan, a Vietnamese lawyer trained in France, told the Committee of vague and general crimes such as 'crimes against the people', 'offences against national security' and 'being counter-revolutionary'. He quoted, among others, the cases of the journalist Tran Nhon Co arrested in 1977, accused of travelling to another province without authorisation and held without trial since, or Dr Ton That Sang, sentenced to thirteen years imprisonment for

---

[21] ibid., p. S1260.

[22] Exhibit No. 68, pp. 5-7.

[23] ibid, p. 7.

[24] ibid, p. 8.

passing information heard on BBC and VOA broadcasts.[25] The government of Vietnam has used detention without trial, trials of short duration (one or two days), no legal counsel of choice and harsh sentences to persecute political opposition.

7.35 The reforms of the Criminal Code in 1986 and the Criminal Procedure Code in 1989 were aimed at guaranteeing the rights of citizens and, no doubt, at improving Vietnam's human rights reputation. The government claimed that by 1988 all political prisoners detained in re-education camps without trial had been either sentenced or released. Dr Nguyen Trieu Dan believed the re-education camps still operated and still contained large numbers of people.

> According to the February 1990 Amnesty International report, 'in each of Vietnam's 40 provinces there is at least one main re-education camp divided into several sub camps'. Even if we were to understand the term several as meaning only 3 sub camps, then there are 120 sub camps in the 40 provinces. As one sub camp (here again I quote the Amnesty International report) 'has the capacity to hold 1,000 prisoners', if all 120 sub camps were full, there would be 120,000 detainees. If they were only half full, that would still mean 60,000 prisoners, even at a quarter full, the figure still reaches 30,000.[26]

7.36 Furthermore, Dr Dan drew to the Committee's attention a system of black listing of families. This was not a stated part of the law but a system of administrative arrangements to disadvantage those with any association over three generations with the French, the South Vietnamese regime or the landowning/ capitalist class.

> You can be forced to go to the new economic zones. You can be denied the right to vote. It will be very difficult for you to pursue higher education or find employment. You are subjected to increased police surveillance. Your blacklisted status is noted on your Rice Ration Booklet and your Household Registration Card ... Hospitals give priority to members of the communist party.[27]

7.37 In June 1990 Australia signed a trade and economic cooperation agreement with Vietnam. **The Committee would hope, in the course of Australia's efforts to aid the reintegration of Vietnam into the regional and broader international community and especially into the international financial institutions such as the World Bank and the IMF, that the Australian Government will encourage the Government of Vietnam to comply with its international obligations under the International Covenant on Civil and Political Rights to which it is a party. In particular, that the Australian Government should raise with the Vietnamese Government the cases of**

---

[25] Trieu Dan Submission, pp. 1260-1.

[26] Trieu Dan Submission, p. S1260.

[27] ibid., p. S1262.

those detainees, religious and political, who are prisoners of conscience. Some names are listed in Submissions *44, 80* and *83 to this inquiry.*

Philippines

7.38 The Philippines Christian Support Group wrote to the Committee concerning the human rights situation in the Philippines. The Philippines suffers from landlessness and a massive foreign debt which consumes 48 per cent of GNP. The Philippines Christian Support Group described dehumanising poverty which affects around 70 per cent of the population, an infant mortality rate of 44 per 1,000 live births, malnutrition affecting 70 to 80 per cent of children under six. Vitamin A deficiency threatens blindness to 19,250 pre-school children and 4,717 children were admitted to the malnutrition ward of Negros Provincial Hospital in 1990.[28]

7.39 Chronic poverty has led to armed insurgency and, in turn, harsh repression by the Philippines military. Para-military units, the Citizens Armed Forces Geographical Units, have been formed. They and the regular military are responsible for human rights abuses: harassment, detention without charge or trial and extra-judicial murder. Amnesty International reported 85 cases of political killings under the Aquino Government.

7.40 **The submission calls upon the Australian Government to condemn these abuses and in particular to link Australian aid to groups which support human rights, to cease arms sales to the Philippines and to investigate exploitive practices by Australians in the Philippines. The submission noted two possible areas of exploitation: the exploitation of labour through low wages and poor conditions and the exploitation of women and children in the sex trade. The Committee urges the Australian Government to examine these recommendations.**

China

7.41 The differing interpretations of the nature of human rights are most starkly seen in the debate that has developed between China and the West on human rights. Australia has been involved in this debate quite closely through the visit of the Human Rights Delegation to China in 1991. China believes that human rights are a matter of the collective good and that China's record is to be judged by the improvements in the collective welfare of the Chinese people. In the West the law is seen as an instrument which, although it is made by the government is separated from that government when it is interpreted or applied, and so the law offers protection to the individual.

7.42 Those Chinese who spoke to the Committee spoke of human rights abuses in China that occurred because no such separation, no detached interpretation or right

---

[28] Phillipines Christian Support Group Submission, pp. S2048-9.

of appeal, existed in China. The Committee was told that there is a constitution in China which provides for political, religious and individual freedom, but that the practice did not meet the ideal. As in Vietnam, the legal system is used to serve the state. There are no independent lawyers and there is no legal aid. The submissions suggested that an extension of the dialogue between China and Australia to include exchanges of politicians, law students and experts on constitutional law would be beneficial.[29]

7.43 Of particular concern was the operation of the personal dossier system by which a record was kept and regularly updated on every citizen in China. Individuals who spoke *in camera* to the Committee gave details of the working of this system.

> The personal dossiers record things concerning people from as early as seven years of age. A recording is made into the dossier about every half year or every year ... It also happens when you are transferred to a new work unit. In your dossier there will be a summary of your experiences and how you behave. This summary is made by your boss. It is made by this person himself, not as a result of discussions at work. The entries in the dossiers are made by a person according to his likes or dislikes of you. So it may include everything, including your personal life. The dossier stays with you and shadows you until you die ... Sometimes this is for internal control. The content of the dossier is not known by the individual concerned. Only certain people have the right to look at their dossier. So promotions and demotions depend on what is written in the dossier.[30]

7.44 Witnesses to the Committee stated that this surveillance stretched to Chinese living abroad. They said that PRC nationals who returned to China were harassed if they had taken part in pro-democracy activities and that members of their families in China were also persistently harassed. Mail and telephone calls from Australia were screened and scrutinised.[31]

7.45 Many of the claims made by witnesses were supported by a confidential submission to the Committee which contained documents from various public security and police research institutes. As it is a confidential submission, a single reference will be made to it at the end. The documents contained in the submission are internal discussions and analyses of the problems of policing in modern China. They describe the nature and extent of crime, in particular its growth in the last ten years, the problems of the floating population, the workings of household registration system, pre-arrest detention and the reeducation through labour system.

7.46 These documents reveal a system considerably strained by rapid social and economic changes and the consequent increases in both criminal and political

---

29 Welfare Committee for Chinese Students Submission, pp. S1228-9.

30 Evidence, 24 April 1992.

31 Welfare Committee for Chinese Students Submission, p. S1232.

activity. The rate of crime in China in the 1980s is said to be double that of the 1960s. It involves 1 per cent of the population, compared to 3.9 per cent in France, 4.3 per cent in the Federal Republic of Germany, 4.8 per cent in the United States and 5 per cent in Britain.[32] Although these figures are very favourable and possibly the degree of control in China has been such that the crime rate has been comparatively low, there is also, it is claimed, a considerable degree of under-reporting. The Zhejiang provincial police researched the question and produced a table to cover the period from 1985 to 1988. Illustrative of the difference between known cases and those reported are the figures for 1988. In that year, there were 9,515 known cases, 4,236 reported by the local police to the county police and only 2,738 of those reported in county level statistics.

7.47 Whatever the actual rate, the increase in crime is acknowledged in all the documents supplied in this confidential submission. The increase is said to be in economic and social crimes rather than political crimes. In 1979, the political prisoner constituted 7 per cent of the prison population whereas in 1990 they were only 4 per cent.

7.48 The changes in China have also led to a breakdown in the household registration system, that system by which 'all residents were recorded as part of a household and could not relocate without permission'. This system has been central to the Chinese community policing strategy; it is an elaborate system where the emphasis is on the intricacies of control of the population and pays little attention to the individual citizen's rights. The solution to its breakdown, the submission claimed, was 'a far more arbitrary form of policing' and a reliance on 'political, ideological and punitive police campaigns'. By 1989, the floating population, those existing outside the legal register, was estimated to be 60 million. These people are particularly vulnerable to arbitrary treatment.

7.49 Arbitrary treatment is made worse by the 'lack of officially codified laws or regulations relating to administrative measures adopted to detain suspects for investigation'. A series of problems were listed in relation to this system:

- a lack of supervision by the judicial organs of the state;
- a lack of clear definition of who should come under the system;
- a lack of limitation on the length of time one could be administratively detained;
- cases of people being detained without investigation or investigated without release;
- a lack of procedures for handling investigations and passing on results;

[32] These figures were quoted in the China Daily, 20 December 1985. Confidential submission

- high rates of escape, suicide, assault among those taken in for questioning;
- violence used to extract evidence:
- unsanitary conditions in detention centres.

The detention system offered no protection to the individual. People could be detained for investigation as a preventive measure to ensure the security of important activities conducted by the State and the Party. Furthermore, the period of time that people could spend in detention, despite a regulation that it should not be more than three months, could be up to two years. According to a survey conducted by police research in China, 'detained suspects who have been held in custody for more than three months and whose cases have received no attention make up 30 per cent of the total of detained suspects. Some of them have been locked up for two, three and even up to five years during which time nothing has been done to solve their cases'.[33]

7.50 Other issues that were raised with the Committee concerned the separation of families, mothers and children, husbands and wives, the indiscriminate use of abortion as a form of family planning and the control of religion by an atheistical state bureau.

7.51 **The witnesses urged the Australian Government, and this Committee endorses their request, to investigate these allegations and to raise the issues with the relevant government department in China and to draw the matters to the attention of the international community.**

Tibet

7.52 The Australian Campaign for Tibet provided, as attachments to their submission, two very detailed, comprehensive and authoritative documents on the human rights situation in Tibet. One is the 1992 Amnesty International report on Tibet, the other is provided jointly from Asia Watch and the Tibet Information Network (TIN), entitled Political Prisoners in Tibet. The Committee directs readers of this report to the bound volumes of evidence for access to this detailed information.

7.53 Amnesty International documents a system of law and prisons which, as they say, falls far short of accepted international standards. Prisoners of conscience serve sentences for such acts as the distribution of leaflets advocating Tibetan independence and criticising the Chinese Government or in one case containing a translation of the Universal Declaration of Human Rights. Others are detained

[33] ibid. NB All quotes and detailed information in the preceding four paragraphs have been taken from the final confidential submission to the inquiry.

without trial for periods of up to four years. Detainees are systematically tortured. China's report to the UN Committee against Torture in 1990 did not deal with the allegations on torture in Tibet, nor has the Chinese Government satisfactorily answered the Committee's questions since. Interrogation with torture to obtain confessions before trials results in the deaths of detainees. Detainees have also died from lack of medical attention. Peaceful demonstrators have been shot. Trials are conducted with little recognition of the presumption of innocence, defendants' rights to legal counsel, time to prepare a defence, right to cross examine prosecution witnesses or to call defence witnesses. Verdicts are often decided and approved before trials by committees of the Communist Party.[34]

7.54 The AsiaWatch/TIN document lists, in the course of 75 pages, political prisoners, their cases and their status. The evidence is very specific. There are 360 cases identified by name, including 120 cases of those recently released. The 'crimes' of the overwhelming majority are minor, peaceful acts of political protest. The sentences for this group are harsh, ranging from one year to life. Twenty-eight percent were for terms of over five years. The information persuades this Committee of widespread injustice being perpetrated in Tibet by the Chinese authorities.[35]

7.55 Other issues of concern that were brought to the attention of the Committee were:

- Population control policies. The submission claimed that, despite the Chinese authority's claim to the contrary, Tibet is subject to population control measures, including forced abortion and sterilisation. Anecdotal evidence was provided to the Committee, but as might be expected no overall statistical information is available. The allegation is also made that a transmigration program, beyond the supply of technicians for particular development projects, seeks to swamp the Tibetan population.[36]

- Suppression of religious freedom. Few monasteries and temples have been rebuilt after the widespread destruction of the Cultural Revolution. There is a marked decline in the numbers of teachers available. Religious freedom is curtailed by the state and party monitoring of Buddhist studies. The arrest, imprisonment or expulsion of monks and nuns is a constant threat to free religious practice.[37]

- Environmental degradation. The claim is made that Chinese development of the Tibetan region is in fact wholesale exploitation. In

---

34 Campaign for Tibet Submission, pp. 1613-23.

35 ibid., pp. 1631-5.

36 ibid., pp. S1780, S1784-5.

37 ibid., pp. 1782-4.

particular, deforestation of the Tibetan plateau is blamed for excessive flooding in the Yangtze last year.[38]

7.56 When the Dalai Lama spoke to the Committee this year he said he saw the most urgent priorities for Tibet as being: an end to the killing of Tibetans by Chinese authorities; an end to the transmigration of Chinese into Tibet; and a recognition of the right to some form of cultural and social independence.

7.57 **This Committee believes that the Australian Government should continue to press the Chinese Government:**

- **to respect the human rights of the Tibetan people, particularly those rights set out in the Universal Declaration of Human Rights which China has signed and the International Convention for the Elimination of Racial Discrimination and the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which China is a party; and**

- **to enter into earnest negotiations, without preconditions, with the Dalai Lama and his representatives with a view to reducing the tension in Tibet.**

[38] Evidence, 10 April 1992, p. 368.

Chapter Eight

Beyond the Region

I come from a world with huge problems, which we shall overcome in freedom. I come from a world in a hurry, because hunger cannot wait. When hope is forgotten, violence does not delay. America's liberty and democracy have no time to lose and we need the whole world's understanding to win freedom from dictators, to win freedom from misery. I come from Central America. Oscar Arias Sanchez 1987

Whatever may be the future of our freedom efforts, our cause is the cause of the liberation of people who are denied freedom. Only on this basis can the peace of Africa and the world be firmly founded. Our cause is the cause of equality between nations and peoples. Only thus can the brotherhood of man be firmly established.
Albert John Lutuli 1960

Only a few of the human rights problems that affect the world at large were brought to the attention of the Committee. Submissions were received on the Balkans, Israel and the Occupied Territories, the Sudan, South Africa and Guatemala.

The Balkans - Serbia/Croatia

8.1 The Serbian National Federation of Australia and the Albanian Democratic League of Kosova in Australia were the only two groups from this complicated area of conflict to put submissions or information to the Committee. Since this report was written, the situation in the Balkans has deteriorated badly and it is obvious the destruction of cities and villages, the forced movements of populations and the abuse of prisoners in detention have destroyed much of Bosnia and Herzegovina. This area has become an intractable human rights disaster area for Europe. The submissions below show some of the origins of the conflict in Croatia and the dangers that exist for the spread of the conflict to Kosova.

8.2 The Serbian National Federation wished to present to the Committee a case that they did not believe had been sufficiently put. As the submission was received late in the process it was not possible to discuss the issues raised at a public hearing. Nevertheless, the Committee notes the concerns the Federation has raised.

8.3 The Serbian National Federation submitted that the secession of the Croatian state from the state of Yugoslavia was accompanied by serious threat, intimidation and abuse directed at the Serbian minority living within the borders of the new Croatian state. These attacks, threatened and actual, were the cause of the outbreak of hostilities and the reason for the counter-demands from the Serbians in Croatia for self-determination, a self-determination finally implemented by force since June 1991.

8.4 The case put to the Committee included:

- The inflammatory statements of President Tudjman in his book Wastelands, 1988 where he wrote, 'Genocidal violence is a natural phenomenon ... which is not only permissible, it is also recommended'. Or his statement that the Ustasha Croat state had been the legitimate expression of Croatian aspirations for an independent state. Tudjman's assurances that the rights of Serbs and other national groups would be protected were seen as hollow in the face of these other statements and the weight of memories of the Ustasha treatment of the Serbians during the war.[1]

- Constitutional changes were made which declared the Serbians a minority rather than a constituent nation thus relegating them to an inferior legal status without the right to secede.

- Language changes were made to 'Croaticise' the language and to remove the cyrillic script used by the Serbians from official use.

- The Law of Citizenship made those of pure Croatian heritage automatically citizens; others had to apply.

- The replacement of all police of Serbian origin with police of Croatian origin.

- The removal and replacement of senior bureaucrats and commercial executives of Serbian origin.

- The demand that Serbian workers, on pain of dismissal, sign a letter of support of the Croatian leadership. In the Adria Enterprise in Zadar in May 1991, fifteen Serbs were summarily dismissed for failing to sign such a declaration.

- Changes of street names to commemorate fascist heroes and the use of the checkerboard symbol on the flag, a symbol first used by the Ustashi, were seen to be provocative.

---

[1] Sebian National Federation in Australia Submission, pp. S2664-5.

- The harassment of Orthodox clergy and the damaging of church property was also detailed.

8.5 Since the outbreak of fighting in June 1991, harassment and restriction have allegedly become massacres and atrocities. Two were cited in the submission: the first in Vukovar where a shallow grave with the dismembered bodies of children were found after the fighting stopped; the second in Gospic where Helsinki Watch reported a massacre of forty in October 1991. The submission also cites the development of internment camps at Odjak with 4,000 Serbs in it and at Slavonska Pozega where there are 350 Serbs being detained.[2]

8.6 The Committee notes these events in Croatia but believes the problem of human rights abuses created by violence and counter violence and the widespread practice of 'ethnic cleansing' has gone beyond a simple assessment of right and wrong. In reading the submission, the Committee was very aware of the legacy of the past; that the present violence seems to be rooted in the violence of the past; that the carnage of the Second World War is a fresh memory. So many places and actions seemed, in the description of them, to be redolent of past atrocities and therefore fear and suspicion seem to govern many actions. Unfortunately, the present violence will leave another legacy.

Kosova

8.7 The story told to the Committee of the events in Kosova is a mirror and a reverse of what has happened to the Serbian minority in Croatia. In Kosova the minority Serbian community has imposed a repressive military occupation on the majority Albanian population.

8.8 Kosova is a province of two million people in the south of Yugoslavia. It lies adjacent to Albania. Ninety per cent of its population is ethnic Albanian. It is rich in natural resources but has been economically backward with high unemployment. Under the old Yugoslavian federation Kosova had been given considerable autonomy. It is a province that has had historical and cultural significance for both Serbs and Albanians. It contains some of the greatest monuments of the Serbian Orthodox Church and it is seen by Albanians as the birthplace of the Albanian national revival.

8.9 In 1981, demonstrations in support of Albanian independence were violently suppressed. They were followed by constitutional changes which tightened Serbian control of the province; Serbia took control of the police, the judiciary, civil defence and foreign relations. In July 1990 the Parliament was suspended after it had voted for Kosovan independence. This parliament then became a government in exile. Elections for it were held this year supervised by international observers who reported that they were fair although conducted amidst considerable military

[2] ibid., p. S2670.

intimidation by the Serbian military forces in the province. Dr Ibrahim Rugova was elected president by a vote of 88 per cent of the one million eligible voters. The Serbian Government in Belgrade has not accepted the vote for independence nor recognised the government of Dr Rugova.

8.10 The Serbian army and police presence imposes continued Serbian control on the province. Reports provided to the Committee have come from Amnesty International, the international press and from the information ministry of the republic of Kosova. They reveal a pattern of violence and repression. The Committee was also provided with a video tape which depicted the violence described in the written affidavits.

8.11 Amnesty reported that the main local media in the Albanian language has been banned and tens of thousands of Albanians have been dismissed from their jobs, generally to be replaced by Serbs and Montenegrins.[3] Six thousand Albanian secondary school teachers and 800 Albanian teaching staff from the University of Pristina have been dismissed. As well, 2 000 doctors and medical staff have been sacked from health clinics causing many to have to close.[4]

8.12 The pattern of violence involves the beatings, often in public view, by Serbian police and military and the imprisonment and sometimes death of ethnic Albanians. Many of the beatings have been directed at students and teachers over resistance to the implementation of a new Serbian curriculum. Documentation in or use of the Albanian language has been banned in schools. Reports of such beatings, many very severe, causing permanent injury and death, have become daily occurrences according to Amnesty.

> The ill-treatment most frequently alleged has consisted of beating with rubber truncheons and rifle-butts, kicking and punching. The fact that this is apparently quite routinely carried out in police stations, with up to twenty police officers present, suggests that this practice is condoned by senior police officers. ... [It] must be characterised as systematic torture.[5]

Israel and the Occupied Territories

(i) The Case from the Palestine Liberation Organisation

8.13 The conflict in the Middle East is so longstanding and so complex and the cycle of violence - war, terrorism, uprising and repression - has become so escalated that it is impossible to seek the origins or to apportion blame. This Committee is certainly not in a position to examine the issue in a systematic way or even, given

---

3 Exhibit No. 74, p. 4.

4 Exhibit No. 78.

5 Exhibit No. 74, p. 6.

its resources, to collect evidence in as thorough a way as it would like. As with all the other situations that are discussed in this report, the Committee has relied on the evidence presented to it, it has sought answers to questions raised by some of that evidence and it has relied on reports from reputable international human rights organisations for confirmation or verification of claims that have been made.

8.14 The Committee received very long and detailed submissions on the human rights situation in the Occupied Territories. Much of the evidence was compelling in the statistical information provided on detentions, deportations, deaths in custody, land confiscation and house demolitions, in the attribution of names, places and dates to events, in the eyewitness accounts of human rights abuses and, especially, in the affidavits made by victims of intimidation, beatings and torture. Readers of this report should consult the volumes of evidence that accompany it to gain access to this detail.

8.15 Much of the information concentrates on the human rights abuses of the Palestinian population by the Israeli security forces since the intifada began, although it is by no means confined to this period.

8.16 The submissions presented to the Committee reported a large number of deaths and injuries in the last year at the hands of the Israeli security forces. The figures from the various sources the Committee examined varied slightly, but not substantially.

> In 1991, there were ninety-eight Palestinians killed by Israeli security forces; ninety-three were shot to death, three died from beating injuries, and two died after exposure to tear gas. About one-third of all killings (31 of 98) were of children aged 16 or less. One-third of all killings by live ammunition (27 of 93) were by Israeli undercover units. A total of 1,001 Palestinians have been killed by Israeli forces during the four years of the intifada.[6]

8.17 It is claimed that the undercover units are security agents disguised so as to be able to penetrate Palestinian residential areas and to kill targeted people at close range and without warning. Since 1989, 66 Palestinians have been killed by undercover units.[7] Amnesty International also reported that 170 Palestinians were killed, apparently by other Palestinians, some after being tortured.[8]

8.18 The Palestine Human Rights Campaign claimed that in the last year alone Israeli forces injured 13,000 Palestinians. Ten per cent of the injuries resulted in the loss of limbs or limb function. In 1991, eight Palestinians were deported, 14,000 are being held in military detention, charged and awaiting trial and 400 are administrative detainees, held without charge or trial. Administrative detention can

---

6 *Palestine Human Rights Campaign Submission, p. S1003.*

7 ibid., p. S1005.

8 Exhibit No. 76, p. 150.

be renewed every six months and, although there is an appeal process, it is described as being largely ineffective.[9] Amnesty International reported that information, evidence and reasons for detention were withheld from lawyers and family and appeals took weeks or months so that legal safeguards were rendered meaningless.[10]

8.19 As the settlements have spread to accommodate more and more immigrants, they have expropriated traditional land from more and more Palestinians. The intifada is the Palestinian rebellion against this process. In response, the Israeli authorities have confiscated land, burned houses, uprooted olive trees, cut off water and instituted curfews. The olive groves are very old and are the lifeblood of many Palestinian families. It is claimed that, since the uprising began, 118,735 trees have been uprooted, 379,435 dunums (a dunum is approximately .25 acre) have been confiscated[11] and 2,058 houses have been demolished or sealed.[12] (Since 1967 the number of dwellings sealed or demolished is estimated at 21,448.)[13]

8.20 It is done either in the name of punishment for the stone throwing of youths or in the name of clearing land for security reasons. It seemed to the Committee that the reasons stated for the confiscation of land were often spurious, based on the lack of a sophisticated land title system, and that the appeals system available to the Palestinians was of doubtful justice.[14]

8.21 Numbers of Israeli settlers on the West Bank have grown from 5,000 in 1977 to 110,000 in 1991. The area of the West Bank controlled by the state of Israel is now 65 per cent.(See Appendix 11) Unravelling the damage done and accommodating the demands of displaced Palestinian communities is likely to be an extremely difficult task for the present peace talks. The Committee hopes that the more conciliatory statements, the restrictions on building in the Occupied Territories and the release of political detainees of the newly elected Israeli Government will help the process.

(ii) The Case from Australia/Israeli Publications

8.22 Australia/Israeli Publications, in answer to a question on notice at the public hearing of the Committee in Sydney about these allegations, provided a very detailed

---

9 Palestine Human Rights Campaign Submission, p. S1003.

10 Exhibit No. 76, p. 151.

11 Palestine Human Rights Campaign Submission, p. S1032.

12 ibid., S2501.

13 ibid, p. S2501.

14 ibid., pp. S1017-30.

submission. As with other such submissions, all the detail cannot be included in the text of this report but readers are directed to the volumes of submissions which accompany it. Here, the Committee will report the thrust of the case put to it in answer to the above allegations.

8.23 The submission claimed that much of the material previously supplied to the Committee was propaganda, containing false, questionable or inaccurate material. It admitted that the 'Arab war against Israel had had a deleterious effect on the human rights of individuals in many Middle East states' and moreover was used 'to reinforce the tyrannical regimes of many dictators and totalitarians'.[15] However the case was put that the situation in the Occupied Territories could not be understood in isolation from the historical context. It was a situation bound up with the continual threats to Israel's security over the last forty years. These threats were real in the form of three wars in 1948, 1967 and 1973 and a continuing terrorist campaign. They were rhetorical in the form of the constitution of the Palestine Liberation Organisation (PLO), attached to the submission, which in Articles 9, 15, 19 and 22 calls for the destruction of Israel and in the statements of the Hamas (Islamic Resistance Movement) or the Hizbollah who variously directed their members to 'view every Jew and every Jewish settler as a target to be killed' or to 'pursue the Jihad against the Israeli enemy whatever the sacrifices'. [16] The scud missile attacks on Israel during the Gulf War only confirmed Israel's belief in the determination of her neighbours to destroy her.

8.24 The intifada was seen as a continuation of that threat to security. It was not non-violent as claimed.

> In 1991, according to Israeli government records, there were 262 shootings, 1,193 petrol bomb attacks, 106 grenade attacks, 297 arson attacks, 178 bombings, 1,118 attacks using weapons such as knives, machetes and axes and 33,400 different public disturbances which include the throwing of rocks. This resulted in 939 Israeli casualties in that year.[17]

In response to this, the submission invoked the right and responsibility of every state to

> protect its citizens from attack and all democracies faced with terrorism have accepted the need, even if undesirable and unpalatable, to introduce controls which will protect the populace from campaigns of terror, intimidation and violence.[18]

---

[15] Australia/Israel Publications Submission, p. S2860.

[16] Serbian National Federation in Australia Submission, p. S2684.

[17] ibid., p. S2685.

[18] ibid., p. S2682.

8.25 Mr Jeremy Jones, Director of Australia/Israel Publications, drew a distinction between the Arabs who are Israeli citizens and those who live in the Occupied Territories. In Israel, the Palestinians are full citizens with all the rights and protections of a democratic state. He also asserted that, although the Geneva Conventions did not apply to administration of these territories, Israel had pledged to keep to the spirit of their humanitarian provisions in its governance of the area. Where human rights abuses did occur they were not at the direction of the government, but the failures of soldiers faced with a difficult and complex situation.

8.26 In response to the specific claims in the PLO submission of human rights abuses in the Occupied Territories, the submission made the following points:

- Israel held the land of the Occupied Territories lawfully on the grounds that, in international law, a state which is the victim of aggression is entitled to occupy territory of the attacking state. Land which is used for settlements is acquired by legal processes based on searches of records and is open to appeal through the courts.

- The local Arab population of the territories has grown from 996,700 in 1967 to 1,597,500 in 1991. Of these, 78,700 have been Arab immigrants comparable to the 81,600 Jewish settlers.

- Water supply has increased. In 1967 there was no infrastructure for drinking water plants. Since the occupation, the water supply to the villages of Hebron, Bethlehem, Ramallah, Nablus, Jenin and Tulkarm has increased five fold; 46 wells have been drilled to serve the Arab population and 17 for the Jewish settlements. There are plans for new pumping stations, purification systems and storage reservoirs.

- In Gaza, infant mortality rates have dropped from 86 deaths per 1,000 live births to 28.1. In the West Bank the rate has dropped from 33.6 to 21.0. Community health clinics have been built, increasing from 0 to 26 in Gaza and from 113 to 323 on the West Bank. The number of physicians and nurses has doubled between 1974 and 1988. The number of hospital beds has grown from 1708 to 2013. The intifada has led to attacks on these centres. The submission details eight incidents in 1988 and 1989 involving murder, acid throwing, vandalism and the torching of premises.

- Five universities have been built. Pupil enrolment has increased from 22,166 to 496,181. Teacher numbers have risen from 7,377 to 17,374. The closures of schools is the result of strikes and the intimidation of teachers and students by the intifada. The submission details thirteen incidents in 1990 of attacks, stabbings and murders in schools by masked youths.

- Between 1967 and 1987 unemployment had fallen by half, gross national product has risen by 400 percent. However, strain in the economy has been the result of the intifada; the strikes, the disincentives to investment and the loss of money able to be transferred from Palestinian workers in the Gulf States, as well as the general recession in Israel and the immigration policy for Soviet Jews.

- The killings are a direct result of the intifada, not a government policy. There are special units to combat terrorism but there are no death squads. Illegal deaths are investigated. In the first six months of this year, 750 people were captured by these units, 18 were killed. During the intifada, 171 Israeli soldiers have been convicted of crimes while in service in the territories, 30 are currently facing court-martial.

- Deportations are for reasons of security and only in extreme cases. The numbers in detention are fewer than the 14,000 claimed. The Israeli figures are 4667 convicted prisoners, 1902 under investigation, 253 in administrative detention. Sixty-two per cent of appeals are successful. They are heard generally within two weeks.

- Torture is expressly forbidden and thoroughly investigated.[19]

8.27 The submission concluded that the issue was one of the desire of Israel for secure borders.

> Israel, like Kuwait, was attacked and invaded by a large Arab army, but Israel unlike Kuwait, survived. The lesson is that defensible borders for Israel are the most important requirement for any resolution of the Arab/Israeli conflict.[20]

8.28 In terms of the overall human rights records of countries in the Middle East, Mr Jeremy Jones brought to the attention of the Committee two issues. One was the question of workers' rights. They were outlined in a document attached to his submission which surveyed countries affiliated with the League of Arab States. The executive summary to that report outlined the appalling conditions for workers throughout the region; at best union activity was banned or limited to an organ of the state with severe penalties including the death penalty for those attempting to form associations, at worst slavery existed.

> Workers in the twenty countries affiliated with the Arab League of States face serious violations of internationally recognised worker and trade union rights. In five countries unions are simply banned outright (Bahrain, Oman, Qatar,

---

19 Serbian Federation in Australia Submission, pp. S2691-S2707.

20 ibid., p. S2709.

Saudi Arabia and the United Arab Emirates). In six countries, no collective bargaining is permitted (Djibouti, Iraq, Libya, Somalia, Sudan and Yemen). In Sudan, organising a strike is punishable by death. Other countries subject their labour federations to government control (Kuwait, Mauritania and Syria). Only a handful of Arab League countries permit trade unions to exist independent of government control, but these countries also place restrictions on union activity (Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia. Palestinian and other foreign workers face even more stringent restrictions than the local population in twelve countries (Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates and Yemen). Slavery exists in three countries (Muaritania, Oman and Sudan).[21]

8.29 The second issue related to the treatment of Jews in Syria. Mr Jones submission and a further submission by the Executive Council of Australian Jewry claimed they suffered constant harassment, surveillance and restriction on their activities by the Syrian authorities. In particular, there was a prohibition on emigration except with the deposit of forfeitable deposits. This prohibition in particular was singled out as giving rise to the possibility of all the other human rights abuses as there was no escape from the persecution. It offended against a number of international covenants and conventions to which Syria was a party - the ICCPR, the ICERD and the Declaration of Human Rights. In 1991 no Jews were permitted to leave Syria.[22] **The Committee urges the Australian Government to continue to make representations on behalf of the Syrian Jews.**

Iran

8.30 The National Spiritual Assembly of the Baha'is of Australia outlined for the Committee a period of religious persecution of their group by the Iranian Government beginning in 1979. It was, they said, a campaign based on 'physical, economic and social intimidation,' including executions, torture, imprisonment, denial of education and employment and arbitrary seizure of homes and possessions.[23] The Assembly wished to thank the Australian Government for its grave concern, its representations to the Iranian Government, its action in the international forums and its taking of Baha'is refugees into Australia.

Salman Rushdie

8.31 The Salman Rushdie case seemed to the Committee to be one of symbolic significance and therefore worthy of specific mention. The fatwa, or sentence of death imposed in February 1989, was reimposed on Rushdie on 14 February this

---

21 Jones Australia/Israel Publications Submission, p. S200.

22 ibid., p. S226.

23 National Spiritual Assembly of the Baha'is Submission, p. S232.

year. He has been in hiding for three years. He has become a prisoner of conscience and a hostage as truly as the hostages in Lebanon were hostages. His Japanese translator has been killed and an Italian translator has been stabbed.

8.32 It is an issue which encompasses many human rights issues: freedom of expression, the right to a fair trial, the right to appeal, proportionality in sentencing, freedom of religion. It has raised questions about where the line is crossed between cultural toleration and cultural totalitarianism. For Australians, the higher right which needs to be upheld, even where there is disapproval of what is said, is the defence of the right to say it.

8.33 Representations have been made to the Australian Government on behalf of Salman Rushdie by the Fellowship of Australian Writers. The Victorian branch of the Fellowship also raised the case with this Committee. **It seems to the Committee that Salman Rushdie deserves the same international outcry and international pressure to be brought to bear on the regime that has imposed the death sentence on him as was devoted to the other hostages in the Middle East. Representation might be made to the UN and to the British Government to encourage it to work to obtain Rushdie's release.**

Sudan

8.34 The Horn of Africa has suffered deprivation, famine, war and governmental oppression of citizens for many years now. The Committee is aware of the devastating war and drought in Somalia as this report is going to print. This situation, like that in Bosnia, is unfolding daily and therefore has not been dealt with here. The Committee notes, however, that there has been a resolution to the conflict in Ethiopia (including Eritrea) and that there are plans for a plebiscite later this year. It is hoped that this will lead to some stability of government and greater peace and progress for ordinary Ethiopians.

8.35 The story of Sudan in the last three years has been one of appalling human rights abuses. There has been a prolonged civil war in Sudan since independence in 1955 with a respite only between the years 1972 to 1983. The country is divided between the largely Islamic/Arabic north and the Christian/black African south. It is a country of 24 million people; 16 million live in the north.

8.36 The military coup in 1989 instituted a military government under the leadership of Omar Ahmed al-Bashir which suspended constitutional guarantees, abolished freedom of speech and all private publications, banned all political parties (although the National Islamic Front has had a revival of fortunes of late), opposed free association and political dissent. The regime has imprisoned without trial leading academics, the entire leadership of the trade unions and the associations of various professionals.[24] Detention without trial or charge, or brief military trials

[24] Evidence, 13 March 1992, p. 218.

with no legal protection for defendants have been commonplace. People have disappeared into so called ghost houses.

8.37 In 1991 a new penal code was introduced which instituted islamic punishments of amputation, stoning or flogging for certain crimes. Torture has been described as common. Public floggings were carried out in the streets of Khartoum on women who were said to be indecently dressed. An amnesty in June 1991 freed 300 political prisoners but, according to Amnesty International, 200 remain including 40 prisoners of conscience.[25] An extensive security apparatus of over 100,000 aids government control of the country.

8.38 Despite this, the civil war has intensified and the situation over the country is best described as one of chaotic lack of control. Militia, often based on tribal groupings, have formed and are supplied with weapons from government sources but they operate independently and often out of control. Massacres and extrajudicial killings have occurred frequently along the southern border regions as a result.

8.39 The displacement of people is on a massive scale. Agriculture has been disrupted by the war which has destroyed crops and slaughtered cattle. Drought has compounded the shortages of food. Famine and starvation have been a recurring problem. It has been met by an international relief effort but little of the food aid has reached the victims. Masses of people who have moved north to avoid the fighting have squatted around Khartoum. In the first three months of this year the government forcibly moved 400,000 people from their dwellings, 'transferring them into the desert areas without food, water or shelter.'[26] In the south large scale movements of people have been taking place over the last five years to avoid fighting. They are harried as they move. In May 1991 the government bombed refugees on the border with Ethiopia.[27]

8.40 One group of refugees is made up of a large number of young children, mainly boys aged between 12 and 18, separated from their parents. These children have walked over a thousand kilometres to escape the fighting. They had sought refuge on the Ethiopian border only to be driven back across the Sudan to the Kenyan border. Children captured in these circumstances are pressed into slavery. Mr Mariano Ngor told the Committee:

> An eyewitness survivor of a slave raid told World Vision staff that he saw 150 children kidnapped during one raid in the Nuer area of the Upper Nile region in late 1990 ... People reported that their children were forcibly taken from them by the Misseriya, one of the northern ethnic groups, which identified itself as a part of the junta militarisation of the communities in northern

[25] Exhibit No. 76, p. 241.

[26] Exhibit No. 37, p. 1.

[27] Evidence, 13 March 1992, p. 219.

> Sudan in order to raid their neighbour in southern Sudan and take children and women into slavery.[28]

and

> Arab tribal militias formed and armed by the northern-dominated government are trafficking slaves from the southern Dinka tribe. Dinka children and women seized in raids are either kept by the militias or sold north. In February 1988 a Dinka child could be bought for $90.00; so many slaves are available that the price has now fallen to $15.00. Quoted from the Economist, 6 January 1990.[29]

8.41 Mr Ngor estimated the total number of young girls enslaved since 1983 to be 50,000.[30]

8.42 The problems of the Sudan are not at present on the agenda of the UN despite the fact that the senior UN official who visited in 1991 thought the conditions of the Sudanese pitiful by comparison with those of the Kurds. **The Committee believes that the situation in the Sudan is an issue which must be raised again in the General Assembly and recommends that course to the Australian Government. Australia signed the anti-slavery conventions as the first of the international conventions it signed in 1926. In view of this, the Committee recommends that the Australian Government take extra measures in the United Nations to draw to the attention of the international community the revival of slavery as a result of the civil war.**

South Africa Training Trust

8.43 Towards the end of the inquiry the Committee received a submission from the South Africa Training Trust. It was not possible to follow up the issues raised by this submission at a public hearing. However, the Committee notes with concern the situation in South Africa presented to it by the Trust.

8.44 The Trust submitted that there were on-going human rights problems for South African blacks that resulted from the long years of Apartheid. Apartheid has had a brutalising effect on the black community as well as the white. Violence, state sponsored or private, political or criminal, continues at a very high level. According to the Trust the Government of President De Klerk exploits the fear and weakness of the black people to divide and rule and to buy time politically. It funds the Inkatha movement, it refuses to move against the perpetrators of violence in the

---

[28] Evidence, 13 March 1992, p. 210.

[29] Evidence, 13 March 1992, p. 211.

[30] ibid, p. 211.

black townships, often Inkatha supporters. The submission quotes the Deputy Vice Chancellor of the University of Cape Town, Dr Mamphela Ramphele, as saying that:

> The fear for the future must be that the effect of Apartheid will not be sufficiently addressed by the present South African Government and that it will bequeath a legacy that ensures that those who eventually assume positions of power and influence will have been so influenced by their oppressors that they will reflect and adopt as administrative norms the methods and means of those who oppressed them. [31]

8.45 Apart from curbing the violence in the townships, the Trust believed that the De Klerk Government must quickly deal with the inequality in the distribution of wealth for it is poverty and uncertainty that creates the stress and tension that keeps violence close to the surface in South Africa. This redistribution of wealth, they believed, is a political not an economic problem.[32]

8.46 The South Africa Training Trust is a program, part funded by the Australian government and part funded by private sponsors, which offers training places at various Australian workplaces and institutions for South African blacks. Its expenditure from July 1991 to March 1992 was $180,450. The aim of the program is to increase skills and experience and to build confidence. In the past year it has involved thirteen students in courses ranging from four weeks to fourteen weeks covering nursing, community work, journalism, youth activities, business, science and the arts. The Committee commends this work.

Guatemala

8.47 The Committee received two submissions on the human rights abuses that occur in Guatemala. They were very detailed and very well documented. The Committee recommends that readers of this report consult the accompanying volumes of evidence for access to this detailed evidence.

8.48 In the submissions from the Committee for Human Rights in Guatemala, Guatemala is described as a central American republic of nine million inhabitants with a very unequal distribution of wealth. The country therefore suffers from poverty, malnutrition, hunger, illiteracy and death.[33] The submission quotes from the United Nations Development Fund report on Guatemala of 1991 that:

- 2.2 per cent of the population owns 65 per cent of the arable land;
- 10 per cent monopolise 44 per cent of the nation's income;
- 86 per cent of all Guatemalan families live below the poverty line;

---

[31] South Africa Training Trust Submission, p. S2504.

[32] South Africa Training Trust Submission, p. S2505.

[33] Committee for Human Rights in Guatemala Submission, p. S1862.

- 6 million Guatemalans have no access to health care;
- 3.6 million lack drinkable water;
- 4 million lack adequate sanitary conditions;
- 1 million minors work without receiving health care or education; and
- 250,000 children are orphaned because of political violence.[34]

8.49 The present Government of President Jorge Serrano Elias took office in January 1991 with a pledge to protect human rights. However, in the last eighteen months it is alleged there has been no improvement. Powerful vested interests are instead protected by the army which is the real power in Guatemala. The army is responsible for daily violence and repression against the civilian population in the name of national security and the consolidation of democracy. In fact, the army has waged war against the population for thirty years. In that time more than 100,000 people have been killed, 45,000 have disappeared, 440 villages have been razed. In 1991 the pattern of abuse continued. The army bombed villages. Leaders of prominant organisations have been intimidated with death threats. Extra-judicial executions, kidnappings and disappearances have continued.[35] The groups targeted include street children, academics, students, teachers, trade unionists, journalists, indigenous people, church workers and human rights activists.[36]

8.50 These actions are against the pledge made by the present government on coming to office. They are against the constitution of Guatemala which guarantees to uphold Habeas Corpus in Articles 263 and 82.[37] They are against international human rights law. However, the army acts with impunity. There are no investigations made of deaths in custody, extra-judicial executions, disappearances or arbitrary detentions and torture. Complainants are intimidated or themselves murdered. Judges and government officials have proved weak in upholding the legal rights of citizens in the face of criminal acts by the state. Details of many such cases were presented to the Committee in the submissions and evidence.

8.51 This year an attempt at the United Nations Human Rights Commission by Canada and the European Community to have Guatemala declared under Item 12 of the agenda by which Guatemala would be listed as one of the worst human rights offenders requiring a Special Rapporteur was defeated by a block of votes from other South American states and the United States.[38] Instead, Guatemala was listed under Item 19 which expresses concern only at the human rights record of the government. Christian Tomuschat was reconfirmed as an independent expert to the

---

[34] ibid., p. S1843.

[35] ibid., pp. S1863-4.

[36] ibid., p. S265.

[37] ibid., pp. S1825-6.

[38] ibid., pp. S1831, S1835.

country. Tomuschat has already recommended the abolition of the Citizen Protection System and the Civil Patrols both of which have been blamed for many of the violations of human rights in the country.

8.52 **This Committee urges the Australian Government to support further action in the United Nations which would seek an improvement in the human rights record in Guatemala.**

Conclusion

This is the first report to the Australian Parliament on human rights. The inquiry has aroused considerable and expanding interest in the community, so much so that it proved to be taxing of the Committee's resources. Furthermore, it is obvious that human rights are so significant to so many people that the work of the Committee will continue to grow. The Committee regrets that both resources and time and the newness of the Committee have led to what might be perceived as the selection of some places and situations for criticism while others are ignored. The Committee is aware that the world already suffers from selectivity in the attention it chooses to give to human rights abuse and that the aim should be consistency and evenness if the universality of the moral principle is to be upheld. It is hoped that in future rounds some of these deficiencies will be addressed.

Unfortunately, despite the greater interest being taken in human rights since the end of the Cold War, it does not seem that the problems of the abuse of people will quickly disappear. The experience of the United Nations has shown how difficult it can be to achieve concerted or effective or consistent action or cooperation on many issues no matter how fundamental or critical they appear to be. Certainly the view of the world presented to the Committee, fragmentary as it has been, has not been an optimistic one when it comes to the preservation of that fragile commodity, human dignity. Aggression, greed and the abuse of power have seemed over the course of this inquiry to be rampant in many parts of the world and the mechanisms we have established all too tentative. It will take a massive effort of will and perseverence to maintain and promote those systems that are currently established.

The record of the Australian Government in this endeavour, despite the criticisms aired in this report, is a laudable one. By most comparisons, this is a country which believes in the importance of human rights and genuinely tries to live up to the obligations that it makes in the signing of the treaties. It works hard to support the international forums which seek to expand these rights. Australia believes in the worth of the rule of law, both domestically and internationally, as a civilising force and a protection for the weak against the strong. The Joint Committee on Foreign Affairs, Defence and Trade hopes to be able to contribute to this cause by providing a forum for discussion and debate, by raising the profile of the issue in the Parliament, and particularly by providing the proper Parliamentary scrutiny of the nation's efforts to promote and protect human rights.

Senator Chris Schacht
Chairman

APPENDIX 1

LIST OF SUBMISSIONS

Submission No:	Person - Organisation
1.	Department of Foreign Affairs and Trade
2.	Mr Russell Anderson
3.	UNIYA - Father Frank Brennan SJ
4.	Ms Amy Goodman & Mr Allan Nairn
5.	*Confidential*
6.	Ms Margaret M Johanson
7.	Executive Council of Australian Jewry Mr Leslie Caplan
8.	Mr James Irving
9.	Australia Israel Publications Mr Jeremy Jones
10.	Australian Catholic Social Justice Council
11.	National Spiritual Assembly of the Baha'is of Australia Incorporated
12.	Mr A F Swan
13.	Sudan Relief & Rehabilitation Association & Friends of African Children Educational Foundation (See also Supplementary Submission No 31)
14.	Australian Democrats NSW Division Andrew Larcos
15.	Mr D S Campbell

16. The Australian Association of Social Workers

17. The Committee for Human Rights Guatemala

18. Nugget Coombs Forum for Indigenous Studies

19. Professor James Crawford, Faculty of Law
The University of Sydney

20. Mr David E Pfanner, Bask International

21. Mr David Hunter Assoc Pastor Community Church

22. Dr Hilary Charlesworth, Law School
University of Melbourne

23. Mr Doug Harrison

24. The Australian Institute of International Affairs

25. Hungarian Human Rights Foundation of Victoria Inc.

26. United Nations Association of Australia, Mr David Purnell

27. Sri Lankan Youth Resource Group, Mahinda Seneviratne

28. Australians for a Free East Timor,
Judy Conway & Kathy McMahon

29. Australasian Federation of Tamil Associations

30. Overseas Service Bureau

31. Sudan Relief & Rehabilitation Association &
Friends of African Children Educational Foundation
(Supplementary to Submission No. 13.)

32. Dr Nguyen Trieu Dan

33. Amnesty International

34. Overseas Service Bureau
(Supplementary to Submission No. 30)

35. Mr Alan Matheson, ACTU

36. Human Rights and Equal Opportunity Commission
Mr Brian Burdekin, Human Rights Commissioner

37.	The Law Reform Commission Australia Hon Justice Elizabeth Evatt AO
38.	Fellowship of Australian Writers
39.	SRRA/FACE Mr Mariano Ngor (Supplementary to Submission No. 13)
40.	Palestine Human Rights Campaign
41.	Confidential
42.	World Vision Australia
43.	Welfare Committee for Chinese Students Nsw Inc.
44.	Dr Nguyen Trieu Dan (Supplementary to Submission No.32)
45.	State of Palestine Palestine Liberation Organisation
46.	World Vision Australia (Supplementary to Submission No.42)
47.	Australian Campaign for Tibet Inc.
48.	Department of Immigration, Local Government and Ethnic Affairs
49.	Committee for Human Rights in Guatemala - Brisbane Branch (Supplementary to Submission No. 17)
50.	Overseas Service Bureau (Supplementary to Submission No.30)
51.	Hon. E G Whitlam, AC, QC.
52.	Mrs M Mackay
53.	NSW Young Labor, Mr Ian Rogers Secretary
54.	Department of Foreign Affairs and Trade (Supplementary to Submission No. 1)
55.	Philippines Christian Support Group Mr Rod Brown

56.	Australia-Burma Council/ National Coalition Government for the Union of Burma
57.	The Uniting Church Centre, Rev Richard Wootton
58.	The Uniting Church Centre, Rev Richard Wootton (Supplementary to Submission No 57).
59.	Mr Hugh Wood
60.	Austcare, Ms Patricia Garcia
61.	The Hon John Dowd, QC, International Commission of Jurists
62.	Mr Malcolm R Gracie, International Commission of Jurists
63.	Amnesty International, Mr Harris van Beek (Supplementary to Submission No 33)
64.	Hon. E G Whitlam, AO, QC (Supplementary to Submission No 51).
65.	Attorney General's Department
66.	Chinese Alliance for Democracy
67.	Overseas Services Bureau (Supplementary to Submission No 30)
68.	Ms Lyndal & Sophie Barry on behalf of the National Coalition Government for the Union of Burma and The All Burma Students Democratic Front
69.	Dr David Pfanner Bask International (Supplementary to Submission No 20)
70.	State of Palestine Palestine Liberation Organisation (Supplementary to Submission No 45)
71.	Mr Helmi Fauzi on behalf Indonesia National Youth Front (FPN) & the Indonesian Forum for Human Dignity (INFOHD)
72.	Palestine Human Rights Campaign (Supplementary to Sub No 40)
73.	Australia/South Africa Training Trust

74.	Wen Jin Chen, Feng Ye
75.	Department of Foreign Affairs and Trade (Supplementary to Submission No 1)
76.	Attorney-Generals Department (Supplementary to Submission No 65)
77.	Department of Foreign Affairs and Trade (Supplementary to Submission No 1)
78.	Ms Rosemarie Gillespie
79.	AIDAB (Supplementary to Submission No 1)
80.	Sakyamuni Buddhist Centre Venerable Thich Quang Ba
81.	Department of Immigration, Local Government and Ethnic Affairs (Supplementary to Submission No 48)
82.	Serbian National Federation in Australia
83.	Vietnam Committee on Human Rights
84.	Ms Rosemarie Gillespie (Supplementary to Submission No 78)
85.	Department of Foreign Affairs and Trade (Supplementary to Submission No 1)
86.	Department of Defence
87.	*Australia Israel Publications* (Supplementary to Submission No 9)
88.	Department of Foreign Affairs and Trade (Supplementry to Submission No 1)
89.	Confidential

APPENDIX 2

LIST OF PUBLIC HEARINGS AND WITNESSES

CANBERRA
MONDAY, 2 DECEMBER 1991

Mr Kevin Boreham	Assistant Secretary, South East & South East Asia Branch, Department of Foreign Affairs and Trade
Mr Andre Georges Frankovits	Campaign Director, Amnesty International
Mr John McCarthy	First Assistant Secretary, International Organisations & Legal Division, DFAT
Mr Robert Howard Muntz	Project Officer, South East Asia Branch, Community Aid Abroad

CANBERRA
FRIDAY, 21 FEBRUARY 1992

Professor James Richard Crawford	Challis Professor International Law, University of Sydney
Mr David Lyle Purnell	National Administrator United Nations Association of Australia
Mr Harold Francis Wilkinson	President, United Nations Association of Australia

MELBOURNE
FRIDAY, 13 MARCH 1992

Mr Antal Paul Amon	Vice President, Hungarian Human Rights Foundation of

	Victoria
Dr Hilary Christiane Mary Charlesworth	Law School, University of Melbourne
Dr Nguyen Trieu Dan	President, Friday Club Victoria
Mr Christopher Dureau	Manager, Overseas Service Bureau
Mr David George Feith	Project Officer, Overseas Service Bureau
Mr James Stuart Hamilton	President, Fellowship of Australian Writers
Mr Andrew Kovesdy	President, Hungarian Human Foundation of Victoria
Mr Alan John Matheson	International Officer, Australian Council of Trade Unions
Mr Mariano Ngor	Australian Representative, Sudan Relief and Rehabilitation Association

CANBERRA
FRIDAY, 10 APRIL 1992

Mr Kevin James Boreham	Acting First Assistant Secretary, Asia Division, DFAT
Mr Robert L Cotton	Acting First Assistant Secretary, International Organisations and Legal Division, DFAT
Mr Kevin Alan Garratt	(Private), Lyneham, ACT
Mr Ali Kazak	Representative, Palestine Liberation Organisation
Mr Kathiravelpillai Ravichandra	Communications Secretary, Australasian Federation of Tamil Associations Inc.
Ms Lyn Russell	National Director, Australian Campaign for Tibet
Mr Frans Willem Timmerman	Chairperson, Palestine Human Rights Campaign
Dr Helen Ware	Acting Deputy Director-General, Australian International Development Assistance Bureau

SYDNEY
THURSDAY, 23 APRIL 1992

Mr Robert Gordon Christie	Convenor, International Relations Committee, New South Wales Young Labor
Mr Andre Frankovits	Campaign Director, Amnesty International Australia.
Mr Jeremy Jones	Director, Sydney Office, Australia/Israel Publications
Mr Dennis Dewey Schulz	(Private), Jingili, NT
Mr Harris van Beek	National Director, Amnesty International Australia
Mr Roger John Walker	Policy Adviser to the Chief Executive, World Vision Australia

SYDNEY
FRIDAY, 24 APRIL 1992

Bishop William Brennan	Chairman, Australian Catholic Social Justice Council
Hon John Robert Arthur Dowd, AO QC	Chairman, Council, Australian Section, International Commission of Jurists
Justice Elizabeth Andreas Evatt, AO	(Private) Paddington, NSW
Mr Malcolm Reeves Gracie	Convenor, Subcommittee (Burma), International Commission of Jurists Australian Section
Mr Victor-Hugo Munoz	President, Committee for Human Rights in Guatemala
Mr Lachlan James Murdoch	Secretary, Committee for Human Rights in Guatemala
Mr Philip Edward Smyth	Co-representative, Australia-Burma Council and National Coalition Government of the Union of Burma
Hon Edward Gough Whitlam, AO, QC	(Private), Potts Point, NSW
Mrs Amanda Zappia	Representative, National Coalition Government of the Union of Burma and Australia-Burma Council

CANBERRA
THURSDAY, 14 MAY 1992

Mr Ross Charles Baker	A/g Ass Secretary, Asia Branch, International Policy Division, Department of Defence
Ms Linda Jean Barnes	Director, Migrant Entry & Citizenship Branch, Department of Immigration, Local Government and Ethnic Affairs
Miss Lyndal Barry	(Private), Hawthorn, VIC
Miss Sophie Barry	(Private), Hawthorn, VIC
Mr John Harold Broome	First Ass Sec, Civil Law Dvsn, Attorney-General's Dept
Mr Laurence Kenneth Bugden	Ass Sec, Refugee, Asylum & Intnl Branch, DILGEA
Mr Henry Burmester	A/g Chief General Counsel, Attorney-General's Dept
Mr Douglas Stuart Campbell	(Private), Hawker, ACT
Ms Patricia Garcia	Project Coordinator, AUSTCARE
Mr Robert John Hogan	A/g Director, Asylum Section, Refugee, Asylum & Intnl Branch, DILGEA
Ms Sue Ingram	Ass Sec, Compliance Branch, DILGEA
Dr Graham Richard Kearns	Ass Sec, Strategic Policy & Planning, Dept of Defence
Mr Graham Albert Mowbray	Adviser, Human Rights, Attorney-General's Dept
Air Commodore Brendan Donald O'Loghlin	Director-General, Military Strategy & Concepts, Headquarters, Australian Defence Force
Dr David Pfanner	(Private), Campbell ACT
Ms Joan Sheedy	Ass Sec, Human Rights Branch, Attorney-General's Dept
Mr Ian Geoffrey Simington	First Ass Sec, Refugee & Intnl Dvsn, DILGEA
Mr Mark Anthony Sullivan	First Ass Sec, Temporary Entry, Compliance & Systems Dvsn, DILGEA
Ms Claire Young	A/g Ass Sec, Pacific Branch,

	Intnl Policy Dvsn, Dept of Defence

CANBERRA
THURSDAY, 28 MAY 1992

Mr Kevin James Boreham	Ass Sec, South-East and South Asia Branch, DFAT
Mr Peter Charles Grey	First Ass Sec, Asia Dvsn, DFAT
Ms Penny Wensley	First Ass Sec, Intnl Orgns & Legal Dvsn, DFAT

CANBERRA
TUESDAY, 16 JUNE 1992

Mr Brian Edwin Burdekin	Human Rights Commissioner, Human Rights and Equal Opportunity Commission
Ms Rana Flowers	Executive Assistant, Human Rights and Equal Opportunity Commission
Mr David Mason	Senior Policy Adviser, Human Rights and Equal Opportunity Commission

CANBERRA
THURSDAY, 25 JUNE 1992

Major-General Chamlong Srimuang	Leader, Palang Dharma Party, Thailand

LIST OF EXHIBITS

1. *Massacre at Santa Cruz*: Video-Australian Media Reports -Dili - supplied by ACFOA.

2. *Video - Lateline, A Current Affair, Win News & ABC News*: supplied by the Parliamentary Library media coverage of the events in Dili on 18/11/91.

3. *Father Renato's Video*: events after the massacre in Dili, supplied by Bill Nelson at DFAT.

4. *The Right to Intervene in the Domestic Affairs of States*: a paper written by Gary Klintworth, Senior Research Fellow Northeast Asia Program, Australian National University.

5. *Statement of the K W I - The Indonesian Bishops Conference on the East Timor Incident*: supplied by Pat Walsh-ACFOA-

6. *Photographs and Map of Dili*: The crowd of mourners moving to the cemetery in Dili, supplied by Mr Bob Muntz.

7. *Tape*: AM 18-11-91 East Timor, supplied by Micah, Parliamentary Library.

8. *Amnesty International Report on Indonesia/East Timor*: AI Index: ASA 21/26/91

9. *East Timor - The Santa Cruz Massacre*: Paper from International Secretariat - Amnesty International -

10. *Amnesty International Report*: East Timor - After the Massacre -

11. *Australian Red Cross Society News Release*: East Timor incident

12. *Uniya*: List of victims of Dili massacre - supplied by Father Frank Brennan SJ.

13. *ACFOA - Report on the Disturbance in East Timor*: Speech made by Commander-in-chief of the armed forces, and a list of the members of the commission of inquiry.

14. *Bishop's Committee for Justice Development and Peace*: Media Release by the Australian Catholic Social Justice Council.

15. *Resolution on the East Timor massacre*: by the European Parliament, from the Embassy of Portugal.

16. *UN Resolutions 1975-82*: Research Paper by Bill Standish on UN activities in the 1980's on East Timor.

17. *The Santa Cruz massacre*: What is to be done? - A paper from Pat Walsh at ACFOA.

18. *East Timor*: an Indonesian Socio-Anthropological Study by Prof Dr Mubyarto, Dr Loekman Soetrisno et.al.

19. *Texts of Testimony*: by Rt Rev and Mrs Paul Moore, Allan Nairn and Amy Goodman to a hearing of the United State Congress Human Rights Caucus on 26 November 1991.

20. *The Dhein Massacre, Slavery in the Sudan*: Human Rights Abuses in the Sudan 1987 by Ushari Ahmed Mahmud & Suleyman Ali Baldo.

21. *Human Rights Violations in Sudan*: Video Massacre in Bor, Kongor and Mongalla, Nov 1991. Mass exodus of children from Southern Sudan 1990. Khartoum Government's obstruction of relief operations in Southern Sudan May 1991.

22. *Racism and Antisemitism in Australia during 1991*: an overview of developments by ACTU.

23. *ILO Conventions ratified by Australia*: from the ACTU.

24. *Asia Watch*: US Senate C'tee Hearings - Amnesty International USA; from Embassy of Portugal

25. *The Middle East, Islam and Human Rights*: Background Paper No. 2 from the Dept Parliamentary Library.

26. *The Optional Protocol: The Practical Issues*: paper from Attorney-General's Department.

27. *Australia and the Righting of an Injustice to Israel and the Jewish People*: from the Zionist Federation of Australia.

28. *The Public/Private Distinction and the Right to Development in International Law*: by Dr Hilary Charlesworth.

29. *Press Release*:

15. *Resolution on the East Timor massacre*: by the European Parliament, from the Embassy of Portugal.

16. *UN Resolutions 1975-82*: Research Paper by Bill Standish on UN activities in the 1980's on East Timor.

17. *The Santa Cruz massacre*: What is to be done? - A paper from Pat Walsh at ACFOA.

18. *East Timor*: an Indonesian Socio-Anthropological Study by Prof Dr Mubyarto, Dr Loekman Soetrisno et.al.

19. *Texts of Testimony*: by Rt Rev and Mrs Paul Moore, Allan Nairn and Amy Goodman to a hearing of the United State Congress Human Rights Caucus on 26 November 1991.

20. *The Dhein Massacre, Slavery in the Sudan*: Human Rights Abuses in the Sudan 1987 by Ushari Ahmed Mahmud & Suleyman Ali Baldo.

21. *Human Rights Violations in Sudan*: Video Massacre in Bor, Kongor and Mongalla, Nov 1991. Mass exodus of children from Southern Sudan 1990. Khartoum Government's obstruction of relief operations in Southern Sudan May 1991.

22. *Racism and Antisemitism in Australia during 1991*: an overview of developments by ACTU.

23. *ILO Conventions ratified by Australia*: from the ACTU.

24. *Asia Watch*: US Senate C'tee Hearings - Amnesty International USA; from Embassy of Portugal

25. *The Middle East, Islam and Human Rights*: Background Paper No. 2 from the Dept Parliamentary Library.

26. *The Optional Protocol: The Practical Issues*: paper from Attorney-General's Department.

27. *Australia and the Righting of an Injustice to Israel and the Jewish People*: from the Zionist Federation of Australia.

28. *The Public/Private Distinction and the Right to Development in International Law*: by Dr Hilary Charlesworth.

29. *Press Release*:

30. *Unity No 21, December 1991*: a newspaper of the United Nations Association of Australia.

31. *Unity No 22, January 1992*: a newspaper of the United Nations Association of Australia.

32. *Unity No 23, February 1992*: a newspaper of the United Nations Association of Australia.

33. *Economic and Social Council*: United Nations report from Embassy of Portugal.

34. *Letter, paper and News release*: recording the Indonesian Government's response to the Dili massacre, from Senator The Hon G Evans, QC.

35. *Notes on an interview with Otto Ondawame*: a West Irian Refugee.

36. *Report on the atrocities committed by the Burma Army 30 August, 1989*: from Kachin Independence Organisation.

37. *Sudan Update*: SRRA/FACE Foundation, from Mr Mariano Ngor

38. *Sinhalese backlash*: Far Eastern Economic Review, from Australasian Federation of Tamil Associations.

39. *Jaffna Teachers Union-Tamils in Sri Lanka - an Appeal from a Dying Nation*: a letter supplied by the Australasian Federation of Tamil Associations.

40. *A collection of press clippings*: from the Australasian Federation of Tamil Associations.

41. *Protection Denied*: continuing Israeli Human Rights Violations in the Occupied Palestinian Territories 1990. supplied by Palestine Liberation Organisation.

42. *A collection of press clippings*: from Palestine Liberation Organisation

43. *A collection of papers from Al-Haq*: from Palestine Liberation Organisation

44. *Tibetan New Year Festival*: from Australian Campaign for Tibet Inc.

45. *Burmese Refugees in Thailand*: by Therese M Caouette supplied by Training and Environmental Awareness for the Karen People.

46. *Countdown to 1997*: report of a Mission to Hong Kong from the International Commission of Jurists

47. *Human Rights in Guatemala 1991*: report elaborated and published with support and collaboration of the World Council of Churches, supplied by Mr Lachlan Murdoch of the Committee for Human Rights in Guatemala.

48. *The Burmese Way*: To Where?: report of a Mission to Myanmar (Burma) on behalf of the International Commission of Jurists, Mr Malcolm Gracie.

49. *Overseas Burma Liberation Front*: from The Australia-Burma Council National Coalition Government for the Union of Burma

50. *Protecting Children's Rights under the UN Convention*: The Alicia Johnson Memorial Lecture, Darwin, 11 October 1991. by Justice Elizabeth Evatt, AO.

51. *Eliminating Discrimination against Women*: a paper by Justice Elizabeth Evatt, AO December 1991.

52. *On an Equal Footing*: a report by the provisional Human Rights and Foreign Policy Advisory Committee of the Netherlands, supplied by Amnesty International.

53. *Five Booklets relating to Human Rights abuses in Jammu and Kashmir*: provided by the Indian High Commission

54. *Government Response to the JCFADT Review of AIDAB & the Aid Program*: from Robert McKinnon, International Policy & Ministerial Services Section AIDAB.

55. *Address to Amnesty International on "Human Rights and Australian Foreign Policy*: by Dr John Hewson.

56. *A collection of documents on International Human Rights*: from the Parliamentary Library.

57. *Further information on Burma*:
The SLORC Cannot be Trusted: from Mr Hugh Wood, Spokesperson on Burma, W A Division, Australian Democrats.

58. *Release all Political Prisoners. Stop Human Rights Violations in Burma*: from Reverend Richard Wootton

59. *Humanitarian Intervention - Morally right, Legally wrong?*: written by Dr Hugh Smith, a Senior Lecturer, ADFA.

60. *The Barefoot Student Army*: video on Human Rights Atrocities along Burma Thailand Border, produced and supplied by Lyndal and Sophie Barry

61. *ILO Conventions Ratified by Australia as at May 1992*: supplied by Mr Alan Matheson ACTU

62. *Creating Facts*: Israel, Palestinians and the West Bank, by Geoffrey Aronson
Human Rights Issues Post Madrid:
Undercover Killings in 1991 Reveals Israel's Shoot to Kill Policy: Palestine Human Rights Information Centre
Separated Palestine Families Tell Their Stories: Al Haq.
B'Tselem: Limitations on the Right to Demonstrate and Protest in the Territories
B'Tselem: The Interrogation of Palestinians during the INTIFADA
A collection of press clippings: supplied by Mr Ali Kazak of the PLO.

63. *Australian Controls on the Export of Defence and Related Goods*: Guidelines for Exporters, supplied by Department of Defence.

64. *Submission to the Foreign Affairs Inquiry*: from Australia\West Papua Association.

65. *Colonial History (British and Sinhala)*: supplied by Mr Ravi Chandra Australasian Federation of Tamil Associations.

66. *The New World Order Redefining Refugees*: a report on three Asian Refugee Trouble Spots written by Justice Marcus Einfeld
Australians Caring for Refugees Worldwide:
Refugee Week Committee: a collection of media releases.

67. *News photographs of the 1st Anniversary of the NCGUB*: supplied by Amanda Zappia Australia-Burma Council\National Coalition Government for the Union of Burma

68. *A collection of various articles on Human Rights violations in Vietnam*:
A letter re: Investigation to the Persecution of Buddhists in Vietnam:
Death Penalty: by Amnesty International
An Appeal by the Unified Buddhist Church of Vietnam for the Protection of Human Rights in the Socialist Republic of Vietnam: Documents on the violation of the right for freedom on worship in Vietnam
A collection of Press clippings: relating to Human Rights violations in Vietnam
Various letters to Parliamentarians:
Parliamentary papers: on Vietnam

69. *Set of the Procedure Advice Manuals on Refugee and Special Humanitarian Programs*: supplied by DILGEA.

70. *Human Rights Defender's Manual 1992*: Diplomacy Training Program Ltd written and supplied by John Scott Murphy

71. *Canadian Human Rights Mission to Sri Lanka*: supplied by Mr Ravichandra, Federation of Tamil Associations

72. *East Timor Independence Committee*: a letter to all Caucus Members from Ines Almeida

73. *Human Rights in Developing Countries and the link to Development Assistance - Research and Administrative Programme 1988*: by The Danish Center for Human Rights
Dutch Human Rights and Foreign Policy Advisory Committee - Development Cooperation and Human Rights: supplied by Amnesty International

74. *Yugoslavia Mistreatment of Ethnic Albanians*: a case study - a report by Physicians for Human Rights and the Johannes Wier Foundation March 1991
Yugoslavia - Ethnic Albanians - Victims of torture and ill-treatment by police in Kosova province: Amnesty International.
A collection of articles on Kosova: supplied by Mr Sezar Jakupi, Albanian Democratic League of Kosova in Australia.

75. *ACTU Circular*: - 48th Session of the UN Commission on Human Rights NB. The role of the Australian Government.
Trade Union Rights: Survey of Violations 1991 - by the International Confederation of Trade Unions (ICFTU)
Working for Democracy and Human Rights: leaflet by the Commonwealth Trade Union Council (CTUC), supplied by Mr Alan Matheson ACTU.

76. *Amnesty International Report 1992*: this report covers the period January to December 1991, supplied by Parliamentary Library

77. *Country Reports on Human Rights Practices for 1991*: report submitted to the Committee on Foreign Affairs House of Representatives and Committee on Foreign Relations U.S. Senate by the American Department of State.

78. *Timor Tragedy - Incident at Santa Cruz*: 12 November, 1991: a report of the Australian Section, International Commission of Jurists July 1992, supplied by Rodney Lewis.

79. *Human Rights and Equal Opportunity Commission Annual Report 1990-1991*: supplied by the Commission.

CHARTER OF THE UNITED NATIONS

PREAMBLE

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 practice tolerance and live together in peace with one another as good neighbours, and
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, and
to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.
Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER 1. PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to

bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventative or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matter to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, THE GENERAL ASSEMBLY *proclaims*

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interest resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

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 aimed at the destruction of any of the rights and freedoms set forth herein.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

PREAMBLE

The STATES PARTIES TO THE PRESENT COVENANT.

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART 1

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:
  (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
(b) Safe and healthy working conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:
(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of his right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The State Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The State Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the health development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum education standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
   (a) To take part in cultural life;
   (b) To enjoy the benefits of scientific progress and its applications;
   (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The State Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant.

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendations or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles

16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any maters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The State Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a

conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by two-thirds majority of the States Parties to the present Covenants in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenants to all States referred to in article 26.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

PREAMBLE

The STATES PARTIES TO THE PRESENT COVENANT

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that, these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
   (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present

Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. Non one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
   (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
      (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
      (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
      (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
      (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. 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.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in

the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile person otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person

for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputation of others;
   (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1 Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his

family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28.

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be

provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
   (a) Twelve members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
   (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the committee to receive and consider

communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with the matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e), is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e), is not

reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned had made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint and *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals or the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of th Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the State Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the

present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose and amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;
(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The STATES PARTIES TO THE PRESENT PROTOCOL

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the rights of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provisions of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.
2. The Committee shall not consider any communication from an individual unless it has ascertained that:
   (a) The same matter is not being examined under another procedure of international investigation or settlement;
   (b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.
3. The Committee shall hold closed meetings when examining communications under the present Protocol.
4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.
2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument

of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one-third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2

before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

Our ref: 106C377

9 January 1992

The Hon. Dr Carmen Lawrence
Premier of Western Australia
19th Floor
Capita Centre
197 St Georges Terrace
PERTH WA 6000

BY FACSIMILE

Dear Premier

I am currently on leave and have just seen the text of a statement issued by the Acting Premier on 6 January.

I am writing to you as a matter of urgency because in my view the foreshadowed legislation, if based on the Acting Premier's statements, would clearly be in breach of several important international treaties which Australia has ratified - the most significant of which are the International Covenant on Civil and Political Rights (ratified by Australia in 1980) and the Convention on the Rights of the Child (ratified by Australia in 1990).

In writing to you I am very conscious of the gravity of the situation which you and your Ministers are addressing. I accept without reservation the responsibility which you have to the wider community. I have on many occasions said publicly that proper protection of human rights involves a careful balancing of the rights and obligations of all members of our community. However, my purpose in writing to you is to respectfully emphasise that the rights of the wider community can - and should - be protected without breaching obligations which are binding on us as a matter of international law.

The points which cause me most concern include, but are not limited to, the following:

I. In his statement issued on 6 January the Acting Premier said:

> **"Repeat juvenile offenders will be jailed at the Governor's Pleasure in addition to any other penalty"**

It would clearly appear from this statement that incarceration of "repeat offenders" at the Governor's Pleasure will be mandatory - rather than a matter of discretion for the courts.

Article 40(4) of the Convention on the Rights of the Child provides that "[a] variety of dispositions ... shall be available ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence" [emphasis added].

If, as appears to be the case, Governor's Pleasure sentences are to be mandatory, then:

(a) courts will not have a variety of dispositions available as required by our treaty obligations;

(b) there will be nothing in the law to ensure that dispositions are proportionate to the offender's circumstances and offence: whether offenders in fact serve proportionate sentences will depend entirely on administrative discretion;

(c) in many (if not all) cases an indeterminate and therefore theoretically indefinite sentence will in fact be disproportionate. In particular, it is not clear that indeterminate sentences are to apply only to repeat offenders of the most serious category. What in law amounts to a life sentence would, in my considered view, be grossly disproportionate for two offences of car theft - if the foreshadowed legislation were to give effect to the Acting Premier's generalisation.

At this point I note that it is not clear from the Acting Premier's statement that the concept of "repeat offender" will be restricted to repeated offences of car theft and will not include other and more minor offences.

Whether Governor's Pleasure sentences are intended to be mandatory or only available, in my view they would constitute a breach of the prohibition of "arbitrary detention" set out in Article 9(1) of the International Covenant on Civil and Political Rights and Article 37(b) of the Convention on the Rights of the Child.

Powers or actions which are "arbitrary" for these purposes include those which are uncontrolled or not governed by any fixed rule or standard. This appears not only from the ordinary meaning of the word, but from the relevant records of the Third Committee of the General Assembly of the United Nations relating to the drafting of the International Covenant on Civil and Political Rights, and from the discussion of these records in papers before the Meeting of Ministers on Human Rights in Brisbane on 13 October 1979 (at which the Government of Western Australia was represented).

In summary, Governor's Pleasure detention epitomises arbitrary executive discretion - because by its very nature it is beyond any legal control or legal review. The fact that administrative arrangements may exist for review of such cases does not, in my

considered view, suffice to alter this conclusion.

II. In his statement the Acting Premier also specified that:

> "Where an offence involves violence, no consideration of release will be possible for a minimum of 18 months"

This statement appears to indicate that the foreshadowed legislation will impose a mandatory sentence, without any discretion being left to the courts. Legislation giving effect to this statement would also in my view be inconsistent with Article 40(4) of the Convention on the Rights of the Child. As already indicated, that Article requires that a range of sentencing options be available to ensure any sentence is proportional to the circumstances and the offence. Moreover, Article 37(b) of this Convention requires that the detention or imprisonment of a child shall "be used only as a measure of last resort and for the shortest appropriate period of time" [emphasis added]. A mandatory minimum term of imprisonment is clearly not consistent with this. It cannot, in my view, be asserted that in all cases involving violence of any degree in any circumstances by a juvenile a minimum sentence of one and a half years is proportionate, necessary as a measure of last resort, and the shortest appropriate period.

Examples of the point I am making may include cases of excessive force in self defence; cases of provocation and cases where violence is relatively minor.

These examples are not entirely hypothetical. I provide them because I have received information suggesting that senior police in your State have, in the past, been instructed by a very senior police official that the main task of police patrols assigned to dealing with juveniles in relation to car theft or hooliganism is to

> "... harass potential offenders...".

If the advice I have received is accurate, I must say that such behaviour by law enforcement officials would constitute, in my considered view, not only quite inappropriate conduct but a clear violation of the human rights of the children concerned. Furthermore, information available to me suggests that such inappropriate actions may well have contributed to the gravity of the situation which your Government is now seeking to address.

III. The Acting Premier further said:

> "Car thieves who cause death or serious injury will face a maximum 20 years imprisonment"

While I note that the proposed penalty of 20 years is stated as a maximum, it would in my view be important to ensure that the requirements of proportionality to which I have already referred are adequately reflected in any legislation being prepared (and in particular in any legislative directions or guidelines provided to sentencing judges).

IV. The Acting Premier also stated that:

> **"...the courts would also receive a legislative direction that for the protection of the public these juveniles should be sentenced as adults"**

This proposal is clearly in breach of Article 40(1) of the Convention on the Rights of the Child, which requires that children who infringe the criminal law be treated in a manner consistent with their age.

There is also a related point which would need to be borne in mind if your Government proceeds with drafting legislation to give effect to this pronouncement. It is not clear from the Acting Premier's statement whether it is contemplated that juveniles will be sentenced to incarceration in adult prisons. This would be contrary to Article 37(c) of the Convention on the Rights of the Child and Article 10(3) of the International Covenant on Civil and Political Rights.

The requirement of separation of adult and juvenile offenders set out in Article 37(c) of the Convention on the Rights of the Child is subject in its terms only to variation where this is in the child's best interests. Australia lodged a reservation to this Article following consultations with Territory and State Governments, including the Government of Western Australia. That reservation, however, does not permit mixing of adult and juvenile offenders whenever that is considered desirable (for reasons of policy or political pressure). Rather, the reservation refers to the child's best interests and to considerations of practicality (by reference to Australia's geography and demography).

Article 10 of the International Covenant on Civil and Political Rights is in even stronger terms than Article 37(c) of the Convention on the Rights of the Child, as it does not make any exception to the obligation to segregate. Australia also maintains a reservation to this Article but, again, this is not a general reservation. It permits incarceration of children with adults only where this is considered by the responsible authorities to be in the best interests of the juvenile concerned.

V. The Acting Premier stated that

> **"...the court will be directed that when imposing sentence, priority is given to the principles of protection of the public, punishment and deterrence"**

I accept the importance of these ends as responsibilities of government and objectives of the criminal justice system. However, international law provides other criteria which must also be borne in mind in drafting measures to achieve these objectives.

Article 40(1) of the Convention on the Rights of the Child recognises:

> ... the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of

others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The issue at this point is clearly one of balance (to which I referred earlier) - rather than mutually exclusive criteria. With respect, this balance is not reflected in the Acting Premier's pronouncement.

Because of this Commission's charter under Federal law, there is another extremely important area which I believe I must draw specifically to your attention. This is the series of recommendations made by the recent Royal Commission into Aboriginal Deaths in Custody. While the implementation of these recommendations is presently principally the responsibility of Federal and State Governments, there is no doubt in my mind that Australia will be called to account in international human rights fora to which our treaty obligations oblige us to report.

Without enumerating exhaustively the relevant recommendations from the Royal Commission, I would particularly draw your attention to recommendations 62, 92 and 95. For convenience I set these out below:

YOUNG ABORIGINAL PEOPLE AND THE JUVENILE JUSTICE SYSTEM

62. *That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.*

IMPRISONMENT AS A LAST RESORT

92. *That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.*

95. *That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organisations, programs be designed to reduce that incidence of offending.*

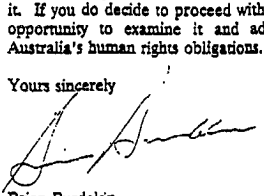
I would respectfully suggest that the foreshadowed legislation outlined by the Acting Premier would not only breach the spirit of these recommendations but - were it to closely accord with his public pronouncement - would be in complete conflict with the substance of these three recommendations.

There are, of course, other recommendations which are relevant and which must be

borne in mind. I refer for example to recommendations 214, 215, and 235 which call for greater consultation with Aboriginal organisations regarding law enforcement as it affects Aboriginal people, and recommendation 236 which emphasises that "local community based and devised strategies have the greatest prospect of success".

I hope you will find these observations of assistance. Apart from providing a copy of this letter to the Federal Attorney-General (pursuant to my statutory obligations) I intend to keep its contents confidential until you have had an opportunity to consider it. If you do decide to proceed with legislation on this matter, I would appreciate an opportunity to examine it and advise you with respect to its compliance with Australia's human rights obligations.

Yours sincerely



Brian Burdekin
Federal Human Rights Commissioner

Human Rights and
Equal Opportunity Commission

Human Rights Commissioner

Our ref: 39CPR025

3 February 1992

The Hon. Dr Carmen Lawrence
Premier of Western Australia
19th Floor
Capita Centre
197 St Georges Terrace
PERTH WA 6000

BY FACSIMILE

Dear Premier

By letter of 13 January 1992 the Acting Chief Executive of your Department indicated that you would reply as soon as possible to my letter of 9 January, in which I raised a number of concerns regarding legislative proposals on juvenile offenders announced by the Acting Premier. My letter indicated that I would appreciate an opportunity to examine draft legislation arising from the Acting Premier's statement so that I might advise you with respect to its compliance with Australia's human rights obligations. I have still not received any substantive reply to my letter. However, your office has now provided me with a copy of proposed legislation under the headings Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill 1992 and Criminal Law Amendment Bill 1992. It appears from the documents provided that these Bills are still in draft form. I believe, however, that it may be most useful if I provide my advice at this point - rather than awaiting finalisation of the Bills and their presentation in Parliament.

At the outset I wish to re-emphasise, as indicated in my earlier letter, that I accept without reservation your Government's responsibility for the protection of the community. I restate this point because of your reported public statement with respect to our international treaty obligations that:

> "Those treaties are important and worthy of our attention but they don't say anything about the rights of the victims or community protection and governments have to judge the balance of those rights and needs." (The Australian, 24 January 1992. A quotation to similar effect appeared in the transcript of the ABC Radio AM program of 23 January 1992.)

I must respectfully point out that international law on human rights does indeed refer

to and recognise the need for community protection and requires that the human rights of each individual be exercised consistently with the rights of others.

The fundamental principle is enshrined in Article 29 of the Universal Declaration of Human Rights, which provides:

> 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
>
> 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The same principle is embodied, albeit more concisely, in Article 5.1 of the International Covenant on Civil and Political Rights (ratified by Australia in 1980). This stipulates that:

> Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is permitted in the present Covenant.

The Convention on the Rights of the Child (ratified by Australia in 1990) contains a number of provisions emphasising the importance of respect for the rights of others, and in particular for the rights of families.

Article 40.1 (to which I drew your attention in my earlier letter) requires that:

> States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. [emphasis added]

Also relevant in the present context is Article 5 of the same Convention:

> 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.

In the present context this implies that emphasis should be placed on solutions which

involve families and communities - and in particular, solutions which are, where applicable, consistent with the role of the Aboriginal community as recognised under Aboriginal custom and customary law.

In summary, international human rights law is premised on the basis of consistent and clear recognition of the duty of governments to protect the safety and health of their peoples and the security and order of their societies. This is not only implicit in our treaty obligations, it is recognised explicitly. Equally clearly, however, our international treaty obligations require that governments act consistently with human rights in fulfilling their responsibilities to the community.

With respect to the proposed Bills, I note that several of the proposals in the Acting Premier's statement which I identified as being of serious concern are not reflected in the draft legislation. I welcome this, and your commitment in public statements that the legislation to be introduced will respect our international treaty obligations.

In this context, however, I must advise you that after careful consideration I have concluded that a number of serious problems remain regarding the consistency of the draft Bills with our obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Accordingly, I urge your Government to consider further modifications to the proposed legislation.

These comments relate only to the Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill 1992. In my view, the provision by the Criminal Law Amendment Bill 1992 for increased maximum penalties for a number of offences is not, in itself, inconsistent with international law on human rights. Since, under the Criminal Law Amendment Bill 1992 (apart from the effects of the cognate Bill which I discuss below) the maximum sentences are not to be mandatory, the courts would retain their proper function of ensuring that sentences in each case are proportionate to the offence and to the circumstances, and the discretion to impose alternative sentences where appropriate - as required by Article 40(4) of the Convention on the Rights of the Child, to which I drew your attention in my earlier letter. I would, however, re-emphasise the requirement of this Convention that a range of appropriate dispositions - including programs involving families and communities - should in fact be available to the courts.

I turn, therefore, to the Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill 1992.

Indeterminate sentencing

I note, and welcome, the fact that the legislation does not implement the Acting Premier's proposal to require or provide for detention or imprisonment at the Governor's Pleasure. However, the regime of mandatory indeterminate sentences of detention or imprisonment now proposed raises several other serious concerns by reference to our treaty obligations.

Arbitrary detention

In my earlier letter I noted that imprisonment or detention at the Governor's Pleasure would constitute "arbitrary detention", contrary to Article 9 of the International Covenant on Civil and Political Rights and Article 37(b) of the Convention on the Rights of the Child. I pointed out that such detention would be arbitrary, both because it was not subject to any legal (rather than administrative) review and because it was not subject to any fixed rule or standard.

Clearly, regular review by the Supreme Court, as contemplated by the present proposal, would avoid the first of these problems. (This is, of course, on the assumption that the applications for review would in fact be made by the chief executive officer of the institution concerned as required and that the Supreme Court is able to give prompt and due consideration to such applications - as to which I express no conclusion, but with respect to which I have several reservations.)

However, I am unable to find in the Bill as proposed any ascertainable standard or factors by reference to which the Supreme Court is to determine whether an application should result in the release of the detainee or prisoner concerned - and on the basis of which the detainee may expect to be released (whether by demonstrating rehabilitation, making restitution to victims, serving a period of detention sufficient to satisfy the requirements of retribution and deterrence, undertaking further programs of punishment and rehabilitation, or a combination of these and any other relevant factors).

Accordingly, in my considered view, the issue of arbitrary detention has not been disposed of and, in this respect, the Bill as presently drafted clearly breaches our international treaty obligations.

Variety of dispositions and proportionality

In my earlier letter I noted that it appeared from the Acting Premier's statement that incarceration of "repeat offenders" at the Governor's Pleasure was to be mandatory - rather than a matter of discretion for the courts. I drew your attention to Article 40(4) of the Convention on the Rights of the Child, which provides that "[a] variety of dispositions ... shall be available ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence" [emphasis added].

I expressed concern that:

(a) courts would not have a variety of dispositions available as required by our treaty obligations;

(b) there would be nothing in the law to ensure that dispositions are proportionate to the offender's circumstances and offence and that whether offenders in fact serve proportionate sentences would depend entirely on administrative discretion;

(c) *in many cases an indeterminate and therefore theoretically indefinite sentence* would in fact be disproportionate and, in particular, that it was not clear that indeterminate sentences were to apply only to repeat offenders of the most *serious category.*

I note that the Bill now defines "repeat offender" by reference to a list of serious offences, and that *indeterminate sentences are to be applied only to* "repeat offenders" who commit further "violent offences" - which offences, again, are listed. I also note that, as already discussed, it is no longer proposed that release should depend solely on administrative discretion.

However, it still appears that no provision is made to ensure that in making decisions concerning release the courts should ensure that sentences served are proportionate *to the offence and to the circumstances.*

The Bill as presently drafted specifies as mandatory not only that an indeterminate sentence *should be imposed, but that "the offender is to be detained in custody or* a detention centre" unless or until released by order of the Supreme Court. Clearly, this is not consistent with the courts having available a range of dispositions as required by Article 40(4) of the Convention on the Rights of the Child. Nor, in my view, is it consistent with the requirement of Article 37(b) of that Convention, to which my letter also referred, that the detention or imprisonment of a child "shall be used only as a measure of last resort and for the shortest appropriate period of time". My concerns regarding the inconsistency of such provisions with our treaty obligations therefore remain.

Who may make an application for release

I note that the proposed legislation in its present form provides for applications to the Supreme Court, for release of a person serving an indeterminate sentence, to be made only by the chief executive officer of the institution where the person is detained or imprisoned.

Article 9(4) of the International Covenant on Civil and Political Rights, however, unambiguously stipulates that:

> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. [emphasis added]

Relevant decisions of the European Court of Human Rights in interpreting the equivalent provision of the European Convention on Human Rights make it quite clear that this right applies notwithstanding that the original order for detention was made by a court.

In my view, therefore, our international treaty obligations clearly require that provision be made for application for release by and on behalf of the person detained

or imprisoned - if the proposal to legislate for indeterminate detention is proceeded with.

Right to be heard

Article 12 of the Convention on the Rights of the Child specifies:

> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

I note that, in undertaking a review on an application for release, the present draft of the proposed legislation states that the Supreme Court may consult or take advice from any person, and inform itself in such manner as it thinks fit, and that the Court is to determine the procedure to the extent that this is not specified by the legislation or by Rules of Court. In my view, however, to afford the court a general discretion in the terms of the present proposed Bill is not sufficient to meet the obligation to "assure" the right to be heard. I therefore respectfully urge that - if the scheme of indeterminate detention subject to regular review is proceeded with - the Bill should expressly provide that the child, his or her parents or others responsible for the child, and any other parties with a sufficient interest, have a right to participate and to be heard in the review proceedings.

Mandatory detention or imprisonment for 18 months

In my earlier letter I noted that the Acting Premier's statement appeared to indicate that the foreshadowed legislation would impose a mandatory minimum period of detention or imprisonment of one and a half years, without any discretion being left to the courts. I advised that legislation giving effect to this statement would also be inconsistent with Article 40(4) of the Convention on the Rights of the Child, which, as already indicated, requires that a range of sentencing options be available to ensure any sentence is proportionate to the circumstances and the offence. I also drew your attention to Article 37(b) of this Convention, which requires that the detention or imprisonment of a child shall "be used only as a measure of last resort and for the shortest appropriate period of time" [emphasis added]. I pointed out that a mandatory minimum term of imprisonment would be inconsistent with these provisions.

The present draft of the proposed legislation clearly imposes a mandatory sentence of imprisonment or detention for a minimum of 18 months as announced by the Acting Premier. Accordingly, I must advise that the Bill is, in this respect, similarly

inconsistent with our obligations under Articles 37 and 40 of the Convention on the Rights of the Child.

I clearly understand, of course, that this mandatory minimum term of detention or imprisonment is to apply only to "repeat offenders" convicted of a "violent offence" and that the definitions provided of "repeat offender" and "violent offence" would serve to exclude most minor offences and many where there may be mitigating circumstances. (In my previous letter I expressed particular concern regarding the possible application of a mandatory minimum term even to minor offences - in the absence of definitions such as have now been provided.)

I must emphasise, however, that the restriction of this provision to repeat offenders convicted of a violent offence does not suffice to comply with the requirement that detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time. This right is an individual right, recognised as applying to "a" (that is, every) child recognised as having infringed the law. Parties to the Convention are required (pursuant to Article 2) to ensure this right "to each child within their jurisdiction". Accordingly, an individual assessment in each case is required (rather than a general legislative formula). I emphasise that I am not stating that 18 months detention would necessarily be excessive in any particular case involving a "repeat offender" who commits a "violent offence" as defined. My concern is to clearly indicate that our international treaty obligations require that the appropriate sentence must be determined on the basis of an individual assessment. Courts trying cases are the appropriate institution to make such assessments - albeit with the assistance of such guidelines as the legislature may properly provide.

Imprisonment in adult jails

I welcome the fact that the present draft of the proposed legislation does not give effect to the Acting Premier's statement that:

> ... the courts would also receive a legislative direction that for the protection of the public these juveniles should be sentenced as adults

As I indicated in my letter of 9 January, such a provision would be in breach of Article 40(1) of the Convention on the Rights of the Child, which requires that children who infringe the criminal law be treated in a manner consistent with their age.

In my previous letter I also noted that it was not clear from the Acting Premier's statement whether it was contemplated that juveniles would be sentenced to incarceration in adult prisons. I pointed out that this would be contrary to Article 37(c) of the Convention on the Rights of the Child and Article 10(3) of the International Covenant on Civil and Political Rights.

The present draft Bill requires courts sentencing "repeat offenders" for "violent offences" to:

> ... sentence the offender to a term of imprisonment, or to be detained in a detention centre for a specified period ...

and to direct that on the expiration of this term or period:

> ... the offender is to be detained in custody in a prison or detention centre (whichever the court thinks fit) ...

I would appreciate your urgent clarification whether it is indeed the Government's intention (as appears to be the case) that children should be able to be sentenced to imprisonment in adult prisons. Use of the term "imprisonment" in legislation usually has this meaning and there is no contrary indication here. If this is the case, I must reiterate my advice that such sentencing would clearly be in breach of Australia's obligations under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights (other than in the exceptional circumstances, provided for in Australia's reservations to these treaties, where detention of children in adult prisons is determined to be necessary in their own best interests, due to factors such as those relating to remoteness).

Sentencing guidelines

The Acting Premier's statement indicated that:

> ...the court will be directed that when imposing sentence, priority is given to the principles of protection of the public, punishment and deterrence.

My letter of 9 January indicated that I accept the importance of these ends as responsibilities of government and objectives of the criminal justice system, but pointed out that international law provides other criteria which must also be taken into account when drafting measures to achieve these objectives.

My letter referred to Article 40(1) of the Convention on the Rights of the Child, which recognises:

> ... the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. [emphasis added]

In my view no inconsistency with human rights is involved in the proposed direction (contained in Schedule 3 of the Bill as presently drafted) that the court sentencing an offender "shall have regard to the need to balance rehabilitation with the protection of the public". Further, in my view the courts may permissibly be directed to have regard to each of the matters listed as relevant. Indeed, I am somewhat surprised by

the apparent suggestion in the explanatory notes accompanying the Bill that the courts would not have regard to these matters under existing law. However, I would respectfully suggest that the list of relevant matters should be expanded to include those which Article 40(1) of the Convention on the Rights of the Child requires to be taken into account and which I have emphasised above; that is, the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Aboriginal Children

In my previous letter I drew attention to a number of relevant recommendations made by the recent Royal Commission into Aboriginal Deaths in Custody. These included:

YOUNG ABORIGINAL PEOPLE AND THE JUVENILE JUSTICE SYSTEM

62. *That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.*

IMPRISONMENT AS A LAST RESORT

92. *That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.*

95. *That in jurisdictions where motor vehicle offences are a significant cause of Aboriginal imprisonment the factors relevant to such incidence be identified, and, in conjunction with Aboriginal community organisations, programs be designed to reduce that incidence of offending.*

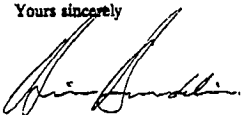
I have outlined above (by reference to the relevant provisions of the Convention on the Rights of the Child) my view that the draft Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill 1992 is not consistent with the requirement that imprisonment of juveniles should be a last resort. The information available to me indicates that the draft legislation is also clearly inconsistent with recommendations 62 and 95.

In conclusion, I would respectfully emphasise that the treaty obligations to which I have drawn your attention are obligations that the Australian Government has undertaken of its own volition and, particularly in the case of the International

Covenant on Civil and Political Rights, after a very lengthy process of consultation with all State Governments.

I hope you will find this advice useful. Given the very limited time until the State Parliament considers this issue, and given my responsibility under Federal law to "promote an understanding and acceptance, and the public discussion, of human rights in Australia" (Human Rights and Equal Opportunity Commission Act 1986 s.11(1)(g)), I am considering making the contents of this letter public. As with my previous letter, I have provided a copy to the Federal Attorney-General.

Yours sincerely



Brian Burdekin
Federal Human Rights Commissioner

Human Rights and
Equal Opportunity Commission

Human Rights Commissioner

Our ref: 39CPR025

27 February 1992

The Hon. Dr Carmen Lawrence
Premier of Western Australia
19th Floor
Capita Centre
197 St Georges Terrace
PERTH WA 6000

BY FACSIMILE

Dear Premier

Thank you for your letter dated 18 February in reply to my letters of 9 January and 3 February 1992, in which I raised a number of concerns regarding the (then) proposed legislation concerning sentencing of juvenile offenders.

My letter of 3 February identified a number of respects in which the exposure draft of the Juvenile Crime (Serious and Repeat Offenders) Sentencing Bill 1992 provided by your office was inconsistent with Australia's international treaty obligations, particularly those embodied in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child.

I have given careful consideration to the Crime (Serious and Repeat Offenders) Sentencing Bill 1992 which you have now provided and which your letter indicates to be in the form passed by the Parliament (but not yet proclaimed). Although the Bill (now the Act) contains a number of amendments to the Bill on which my letter of 3 February commented, I regret that these do not appear to have the effect of addressing the serious problems to which I drew your attention. My concerns as set out in that letter therefore remain.

I welcome the insertion of provisions limiting the operation of the legislation to a period of two years and requiring that a regular review be conducted by the Minister and laid before the Parliament. Clearly, however, these provisions will not alter the substantive effect of the legislation as enacted - if it is proclaimed.

I thank you for providing me with a copy of your Second Reading speech on the Bill. That speech contains the following passage to which I believe a response is necessary:

> I should say, however, that the claims made by the Human Rights Commissioner that United Nations Conventions provide balanced protection for victims and potential victims of crime are frankly

unconvincing.

> In the light of the deficiency in the United Nations guidelines, the Government has had to apply its own judgment to balancing the protection of the public against the well being of these most serious and dangerous offenders.

This passage indicates that there may be some misunderstanding of the advice I provided on this point in my letter of 3 February. Neither in that letter, nor at any time since, have I stated or implied that international human rights instruments themselves set out a detailed code of the measures which Governments should implement in order to discharge their responsibilities for the protection of the community (which responsibilities I have repeatedly and clearly acknowledged).

Rather, my letter indicated that international human rights law

> ... is premised on the basis of consistent and clear recognition of the duty of governments to protect the safety and health of their peoples and the security and order of their societies. This is not only implicit in our treaty obligations, it is recognised explicitly.

My concern was, and is, to emphasise that while it is a matter for the judgment of Governments how they discharge that responsibility, this judgment must be exercised consistently with human rights.

If your statement is intended to indicate that the Government has the responsibility of determining how to protect the public consistently with human rights, I would respectfully note that my letter indicated this was the legitimate responsibility of Government. I would, however, respectfully re-emphasise that in my view this judgment has been erroneously exercised - since the measures adopted clearly violate important human rights.

Taken alone, your statement might also be interpreted as indicating that your Government has felt compelled to choose between the protection of the public and compliance with our international obligations. I am, however, reassured in this respect by the reaffirmation in your letter that the Government recognises the need for this legislation to comply with the international obligations to which I have referred.

I therefore return to the substantive provisions of the legislation as they relate to Australia's human rights obligations under international law.

I note that certain of the provisions of the legislation now also extend to adults. Clearly, this does not, of itself, render the regime prescribed for juveniles any more consistent with our international obligations on human rights.

Indeed, my advice regarding breaches of Article 9(1) of the ICCPR (prohibiting arbitrary detention) and Article 9(4) of the same Covenant (requiring that detained

or imprisoned persons be able to take proceedings to have the lawfulness of detention determined) applies a fortiori to the provisions to be applied to adult repeat offenders who commit violent offences, as these people are to be subjected under section 8(2) of the Crimes (Serious and Repeat Offenders) Act 1992 to mandatory sentences of detention at the Governor's pleasure.

Section 9(4) of the legislation, when read with the relevant provisions of the Offenders (Community Corrections) Act 1963, appears clearly to specify that judicial review of detention is not to be available in such cases. Although detention is required to be reviewed administratively on a regular basis, (as indicated in my letter of 3 February) this does not satisfy the explicit requirement of Article 9(4) of the ICCPR that

> anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. [emphasis added]

In my letter of 3 February I noted that there have been a number of relevant decisions by the European Court of Human Rights (pursuant to the equivalent provision of the European Convention on Human Rights). These indicate that, if indeterminate sentences are to be imposed for community protection, this provision (Article 9(4) of the ICCPR) requires that there be a continuing right for the person detained to take proceedings before a court, to secure a determination whether the justification for imprisonment continues to exist. (This is in addition to the effect of Article 9(1) of the ICCPR, which has no precise equivalent in the European Convention.)

The United Nations Human Rights Committee (which monitors the implementation of the ICCPR - including by Australia) has also considered Article 9(4) [Torres v. Finland, Human Rights Committee Report 1990 (U.N.Doc.A/45/40) p.96], and decided that a period of even one week of detention without the possibility of taking proceedings for review by a court constituted a breach of this provision.

You would be aware that Australia has acceded to the First Optional Protocol to the ICCPR, effective from 25 December 1991, and that individuals whose rights under the ICCPR are violated from that date and who have exhausted (or have no recourse to) domestic remedies are accordingly able to bring their case before the United Nations Human Rights Committee. I would respectfully suggest that, rather than awaiting an adverse decision from the Human Rights Committee in response to an individual complaint (which in my view is likely to occur), your Government should immediately act to remove inconsistencies between this legislation and our international obligations.

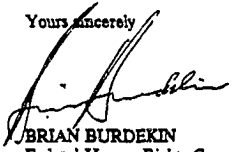
In this context I would also draw your attention to the fact that the Australian Government must report to the Human Rights Committee every five years on Australia's compliance with the International Covenant on Civil and Political Rights, and that Australia's next Report is due this year.

I thank you for your invitation to make a submission to the Legislation Committee of the Legislative Council. I would appreciate your urgent advice as to whether the proclamation of the Act is to be deferred, pending the Report of that Committee. In my respectful submission, it clearly should be.

Finally, in my letter of 3 February I requested your urgent advice as to whether the legislation, in referring to "imprisonment" of juveniles, was intended to permit detention of juveniles in adult jails (as appeared to be the effect of the Bill then before me). I would again request that you provide clarification in this respect.

As with my previous letters, I am providing a copy of this letter to the Federal Attorney-General.

Yours sincerely



BRIAN BURDEKIN
Federal Human Rights Commissioner

SUBMISSION BY THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE ON THE AUSTRALIAN GOVERNMENT'S INTERNATIONAL HUMAN RIGHTS POLICY AND ACTIVITIES

SECTION A: POLICY STATEMENT

General

The Australian Government accords a high priority to the promotion and protection of human rights internationally. This position is based on the belief that the universal observance of the rights and principles contained in the Universal Declaration of Human Rights (and other major international human rights instruments) would result in a more just international order, from which the security and prosperity of all nations and individuals would benefit.

2. In taking a leading role in international human rights, the Government is also conscious of its moral obligation to reflect in its foreign policy the democratic and individual values of Australian society. This amounts to translating good citizenship to the international arena. Care is taken to ensure close contact is maintained between the Government and the community, through regular consultative processes.

3. The Government considers that the standards set out in the Universal Declaration have an application which transcends national borders, and hence human rights constitute a legitimate subject for international scrutiny and concern. The Government does not accept that the treatment of human rights constitutes an "internal affair" for any country.

4. The Government has been careful to ensure that its policies take account of the major changes in the observation of human and democratic rights taking place within the USSR and central Europe. It has done so through an emphasis on dialogue and co-operation, aimed at not only encouraging wider adherence to fundamental human rights, but lessening East-West tensions in the human rights field.

5. Similarly, the Government is anxious to develop closer contact and dialogue with developing countries, particularly in the Asia-Pacific region, and to help diminish North-South differences over human rights perspectives and issues, which have threatened to emerge as a new focus in the aftermath of the Cold War.

6. The Government appreciates that there are varying perspectives on human rights, and that cultural, social and historic influences should be taken into account in addressing human rights situations. Nevertheless, it is important to understand that there is no society which does not value human dignity nor recognise the fundamental nature of the principles set out in the Universal Declaration.

7. The Government also accepts that for many regional and other developing countries, economic rights are seen as especially important, and

agrees on the need to address the underlying causes of human rights abuse. We do not consider, however, that economic rights should be accorded priority over civil and political freedoms - the two are not mutually exclusive. A society which respects and promotes individual rights (with the physical and intellectual mobility and flexibility they involve) is more likely than not to enjoy economic growth. Australia rejects the hypothesis that a State may determine that the pursuit of the collective economic well-being of its citizens can justify the suppression of individual and democratic freedoms.

8. The bottom line objective of the Government in its pursuit of improved standards of human rights is to better the situation of the individual human rights victim. To this end, Government policy is to adopt the most constructive approach possible in a given situation.

9. Experience has shown that confrontation does not bring positive results for the victims of human rights abuse; rather it is more productive to engage in rational and open dialogue on human rights issues and cases of concern.

10. There are additional aspects which the Australian Government considers important to the credibility of its international human rights policy. It is essential that Australia be demonstrably consistent and non-discriminatory in raising human rights matters; there must be no selectivity in approaches to other countries. It is also necessary to ensure that in raising human rights concerns any approach is based on accurate information - in many instances, the initial steps in looking into human rights allegations involve careful enquiry rather than accusation.

11. A result-oriented approach to human rights also calls for flexibility and judgement. In raising human rights concerns the Government employs a variety of approaches which are designed to be most effective in the circumstances of the case or issue in question; thus, it is usually considered that bilateral representations should remain on a confidential government-to-government basis, to avoid possible charges of grandstanding, though there are occasions when a public statement is judged a more effective form of pressure. The channels for representations may also vary according to the requirement to register an effective demarche.

12. Judgements are also required on the question of what actions might be employed in support of representations and appeals on human rights cases and issues. The Australian Government takes a case-by-case approach to such questions as sanctions or aid embargoes; however, it is generally felt that punitive measures against a regime guilty of human rights violations are more likely to adversely affect the human rights victims themselves than the perpetrators of abuse. Exceptions can arise, particularly where there is strong support amongst the international community, and when there are few other available means of persuasion.

13. The Government is conscious that it must itself subscribe to the principles and rights it seeks to uphold. There can be no denying that Australia's record has been far from perfect, in particular in respect to the treatment of Aboriginal and Torres Strait Islander people. We do not shy away from acknowledging this fact, though we point out at the same time that positive steps are being taken to redress past injustices and Government policy is to eliminate racial and other discrimination from Australian society. The Government takes an active part in the international promotion of indigenous peoples' rights.

14. Australia is also aware of the need to uphold vigorously the principle of international accountability by itself adhering to the major human rights

instruments, and responding accurately and fully to enquiries raised as a consequence of the monitoring processes.

The Multilateral Arena

15. Australia strongly encourages all countries to adhere to international human rights instruments. Australia is itself a Party to nineteen of the twenty-four international instruments, including all the major conventions (see *Table 1*).

16. Australia attaches considerable importance to the effective operation of these international instruments, which, with the Universal Declaration, form the basis of international human rights law. The Government has been active in advocating reform measures to rationalise the functioning of the monitoring bodies, and has nominated candidates to serve (in their personal capacity) on two of these bodies - the Economic, Social and Cultural Rights Committee, and the Committee on the Elimination of Discrimination Against Women.

17. Australia has also recently become a Party to the First Optional Protocol to the ICCPR, thus recognising the competence of the Convention's monitoring body (the Human Rights Committee) to receive communications from persons within Australia concerning Australia's compliance with the Convention. Australia is a Party to the Second Optional Protocol, against Capital Punishment.

18. The Government is a strong supporter of the United Nations' human rights role, including its standard-setting and monitoring activities. Australia is currently serving a three year term as a Member of the UN Commission on Human Rights, the main international forum for the promotion and protection of human rights. Australia also actively pursues human rights goals at the United Nations General Assembly.

19. The Government seeks to promote adherence to international standards through the operations of these forums. It therefore supports such mechanisms as special country rapporteurs, working groups and thematic studies.

20. Given the international composition of the UN bodies, the Government accepts that progress often requires negotiation, dialogue and consensus. As a country of Western traditions located in a developing region of the world, Australia is keen to play a role in promoting contacts and dialogue between regional groups at multilateral forums. With a history of support for developing countries' perspectives in such areas as economic rights, and our focus on the Asia-Pacific region, the Government has developed a record of active involvement in multilateral consensus procedures.

Bilateral Approaches

21. Australia has been active in raising individual human rights cases and situations with other countries. It is the Government's policy to take up all individual human rights cases which are brought to its attention when it is satisfied that there are valid grounds for enquiry. A large proportion of these cases are initially referred to the Government by the Australian Parliamentary Group of Amnesty International. Information is also drawn from Australia's overseas diplomatic network, and from groups and individuals within Australia. (Details of this activity appear in the second part of this Report.)

22. It is the Government's practice first to investigate the accuracy of any such allegations of human rights abuse, through its relevant diplomatic missions, before raising a case with the authorities of another country. The basic format

Table 1

LIST OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO WHICH AUSTRALIA IS A PARTY

- The International Covenant on Civil and Political Rights (ICCPR).
- The (First) Optional Protocol to the ICCPR.
- The Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- The Convention against Torture and other Cruel, Inhuman or Degrading Forms of Punishment (CAT).
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
- The Convention on the Rights of the Child.
- The Convention on the Prevention and Punishment of the Crime of Genocide.
- The Convention on the Political Rights of Women.
- The Convention on the Nationality of Married Women.
- The Slavery Convention of 1926.
- The 1953 Protocol amending the 1926 Convention.
- The Slavery Convention of 1926 as amended.
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.
- The Convention on the Reduction of Statelessness.
- The Convention relating to the Status of Stateless Persons.
- The Convention relating to the Status of Refugees.
- The Protocol relating to the Status of Refugees.

of approaches to other governments in cases where it is considered action is warranted is first to seek clarification of the reported abuse in a non-confrontational manner; the receiving authority is informed that, if the allegation were correct, it would be a matter of concern to the Australian Government. The Government is careful not to initiate action in cases where it judges that to do so would not be beneficial to the individual(s) concerned.

23. Representations are normally made through the Australian diplomatic mission in, or accredited to, the country concerned as this is considered the most effective channel to register Australian views with the relevant authorities. In exceptional cases, representations are made by the Department of Foreign Affairs and Trade to diplomatic representatives in Canberra. Both the Minister for Foreign Affairs and Trade, Senator Gareth Evans, and the Minister for Trade Negotiations, Dr Neal Blewett, frequently raise individual cases and wider human rights concerns in their meetings with senior foreign government representatives abroad and in Australia.

24. The Government is well aware that this is an area of great sensitivity in the field of bilateral relations. However, it considers that with skilful handling, human rights issues can be managed without significant adverse impact upon other areas of bilateral relationships.

25. Australia is particularly conscious of the differing cultural and social perspectives on human rights amongst our Asian-Pacific regional neighbours. The Government considers that the best prospect for improving human rights situations within the region will usually lie in a non-confrontational approach and the development of mutual understanding. The Government's policy is to achieve the observance of internationally-accepted standards through common agreement based on dialogue and co-operation, without compromising on fundamental human rights principles.

26. The recent Australian Human Rights Delegation to China constitutes a relevant example of the application of rational and open discussion in advancing Australian human rights goals. The Delegation carried out a constructive and non-confrontational dialogue, to the satisfaction of both sides, in the course of which Australian Government concerns on a range of human rights issues and on individual cases of prisoners of conscience were clearly conveyed. At the same time, the Delegation listened carefully to Chinese perspectives on human rights, and gathered much useful information on the Chinese legal, judicial and penal systems. Moreover, in accepting the visit the Chinese Government implicitly accepted the legitimate place of human rights on the international agenda as a proper subject for bilateral discourse. The Delegation visit also, importantly, provided the opportunity to contribute to a better understanding on the part of the Chinese authorities that there are alternative approaches to human rights, and that there are advantages in adopting a more open and humane attitude. This exemplifies the direction of Australia's international human rights policy.

SECTION B: ACTIVITIES DURING FINANCIAL YEAR 1990/91

Representations

The Department of Foreign Affairs and Trade maintains a register of Australia's bilateral human rights representations. This shows that during the period 1 July 1990 to 30 June 1991, the Australian Government made 428 representations to the government authorities of 78 different countries over individual human rights cases or situations. In addition, there was on-going activity on cases raised prior to 1 July 1990. (In the period from 1 July 1987, when statistics were first maintained, to 30 June 1991, the Government has made a total of 1657 representations to 122 different countries.)

2. These figures do not constitute the actual number of individual cases raised, as any one representation may include more than one person - some, for example, have involved as many as eighty individuals.

3. The chart at *Table 2* shows a regional breakdown of representations made in the period under review. This does not constitute an relative index of human rights abuse in various parts of the world, but does provide an indication of the level of activity of the Australian Government in making human rights representations.

4. While it is difficult to precisely assess the results of specific representations, responses were received in approximately 20 to 25% of these cases, of which some 15% can be considered positive. Such responses could take the form of information on the health or whereabouts of the person concerned, advice that a prisoner had been released, or an assurance that the individual's human rights were being protected. Of course, it is not always possible to know whether a representation has produced a result, nor to suggest that an outcome is the sole result of any one representation.

Monitoring

5. The Department of Foreign Affairs and Trade takes care to monitor closely human rights situations worldwide, utilising its network of diplomatic missions. Evaluation and formulation of policy responses to such situations are the responsibility of the Department's Human Rights Section.

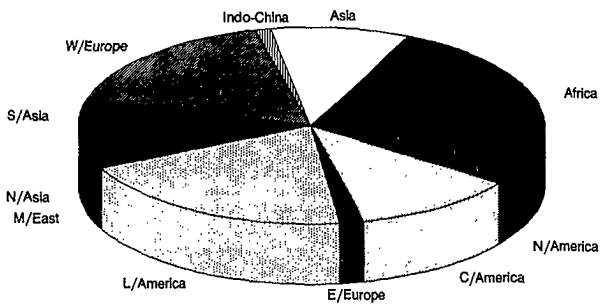
6. The Section also ensures that assessments on human rights situations and cases are regularly made to Ministers, Parliamentarians and senior officials.

Dialogue

7. Following the conclusion of the Australia-USSR Human Contacts Agreement in 1989, the Soviet Foreign Ministry proposed that a framework be established for holding bilateral human rights consultations. The first such discussions were held, at officials level, in Moscow in January 1991. As well as reviewing the operation of the Human Contacts Agreement, the consultations included discussion of issues of mutual interest on the agenda of the 47th Session of the Commission on Human Rights and human rights issues of concern within each country. In respect of the last item, the Australian side raised a number of individual human rights cases, the incidence of capital punishment in the Soviet Union, the lack of an alternative to military service for conscientious objectors, nationalities and minority issues and on-going problems for Soviet Jews. Considerable attention was given to the situation in the Baltic Republics.

Table 2

Australian Government Human Rights Representations: New Cases 1990/91



Regional Distribution (new cases)	
Asia	42
Africa	114
N/America	6
C/America	49
E/Europe	7
L/America	84
M/East	23
N/Asia	3
S/Asia	24
W/Europe	72
Indo-China	4
TOTAL	**428**

8. A number of bilateral consultations were also held between the Australian Delegation and Asian Delegations at the Commission on Human Rights in Geneva in January/February 1991. Discussion focussed mainly on issues of mutual interest before the Commission, including human rights in Burma, and Sri Lanka.

9. One country with which such consultations were held was Indonesia, which had joined CHR for the first time in 1991. It was agreed between Delegations that the idea of bilateral consultations be explored further, and in May 1991 the subject was again raised in the course of annual senior officials talks held in Canberra. It was then agreed that there would be merit in a round of human rights discussions prior to the 1992 Session of CHR.

10. In April 1991, the Minister for Foreign Affairs and Trade, Senator Gareth Evans, during a visit to Beijing reached agreement with his Chinese counterpart, Qian Qichen, on details of an Australian delegation to examine and discuss the human rights situation in China and related matters. It was agreed that the objectives of the delegation would include:

- to commence a constructive and serious dialogue on human rights issues of concern, or of interest, to either side;
- to obtain information on Chinese laws and policies affecting human rights, including on
  - formal and constitutional rights
  - the Chinese legal, judicial and penal systems
  - how laws and policies are observed and implemented in practice, particularly in relation to the protection of the rights of individuals;
- to hold discussions with, and convey Australian views on human rights issues to, relevant Chinese organisations, officials and others involved in human rights matters;
- to seek information and make representations about particular cases, and to pursue the establishment of a satisfactory mechanism for conveying such representations in the future; and
- to respond to Chinese interest in human rights issues in Australia.

11. It was agreed that the Delegation would consist of Parliamentarians, academics and officials and would visit Beijing, Tibet and other regions. It was also agreed that Australia would host a reciprocal delegation should that be sought at any time by the Chinese Government.

12. The agreement to send a human rights delegation to China provided the opportunity to develop a constructive dialogue on human rights with an important regional country. This was seen by the Australian Government to:

(a) enable Australia to encourage the Chinese Government to respect internationally-accepted standards of human rights and improve its overall human rights situation

- and urge Chinese ratification of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights;

(b) persuade the Chinese that human rights constitute an important element in international affairs - affecting a wide range of relationships - and are a legitimate subject of international enquiry;

(c) demonstrate Australia's willingness to listen to differing cultural and social perspectives on Human Rights issues; and

(d) enable Australia to raise specific human rights cases of concern, and seek improvements in conditions of individual prisoners of conscience.

13. In May, Senator Evans selected a Delegation, led by Senator Chris Schacht, Chairman of the Parliamentary Joint Committee on Foreign Affairs, Defence and Trade. The Delegation departed for China for a two week visit in mid- July, and its Report was tabled in Parliament by Senator Evans on 9 September 1991.

Multilateral

14. In May 1990, Australia was elected for a three-year term as a Member of the UN Commission on Human Rights (CHR), commencing in January 1991. Australia therefore participated as a full Member at the 47th Session of CHR from 28 January to 8 March 1991. The Australian Delegation played an active role in the consideration of issues before the Commission, making 13 statements (see Section C), and participating in several working and drafting groups. Consideration of country human rights situations under Agenda Item 12 was of particular interest and a major statement of Australian concerns was delivered under this Item. Australia also took an active part in the review of country situations under the Confidential Procedures Item, giving close attention to the situation in Burma.

15. CHR 47 proved to be a productive Session, with the appointment of three new Special Rapporteurs (Iraq, Occupied Kuwait and Cuba) and a new Working Group on Arbitrary Detention. The existing mandates of Rapporteurs on Iran, Romania, Afghanistan, and El Salvador were renewed, and consideration was given to the need for a Rapporteur on Guatemala. Continuation of CHR scrutiny of Burma was also maintained. For the first time, a Permanent Member of the Security Council was the subject of formal action by the Commission when a Chairman's Statement was delivered on the situation in the Baltic Republics of the USSR. In the area of standard-setting, the Commission decided to set up a Working Group to examine a draft Declaration on the Protection of Persons from Enforced or Involuntary Disappearances.

16. Australia also played an active role on the question of national and regional human rights institutions, indigenous peoples' rights, and preparations for the 1993 World Conference on Human Rights.

17. The Australian Delegation took the opportunity to develop contacts with representatives of Asian-Pacific countries, and to promote wherever possible non-confrontational and consensus solutions to issues facing the Commission.

18. Immediately prior to CHR 47, Australia chaired a session of an on-going UN Working Group drafting a Declaration on the Protection of Human Rights Defenders (formally known as the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally

Recognised Human Rights and Fundamental Freedoms). Australia also participated in two sessions of the UN Working Group preparing Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.

19. At the 45th Session of the United Nations General Assembly (September to December 1990), Australia was also active in supporting UN scrutiny of major international human rights problems, including country situations and standard-setting exercises. Included in Section C are Australia's statements on human rights delivered in the Third Committee.

20. In August 1990, Australia attended in an observer capacity the annual meeting of the United Nations Sub-Commission (of CHR) on the Prevention of Discrimination and the Protection of Minorities.

21. Australia signed the international Convention on the Rights of the Child on 22 August 1990, and ratified it, thereby becoming a full Party, on 17 December 1990. This followed active participation by Australia over a period of 10 years in a UN Working Group which prepared the text of the Convention, and extensive consultation between Australian Federal, State and Territory Governments and with community groups concerning the Convention. This international instrument sets minimum standards for the protection of children's rights.

22. On 30 September 1990, the Minister for Foreign Affairs and Trade attended the World Summit for Children and endorsed the World Declaration on the Survival, Protection and Development of Children. The Declaration identifies the most critical disadvantages faced by children throughout the world, and includes a ten-point program of commitment by Governments to give priority to measures to assist children.

23. On 2 October 1990, Australia deposited its instrument of accession to the Second Optional Protocol (against capital punishment) to the International Covenant on Civil and Political Rights. The Protocol states that no-one within the jurisdiction of States Parties shall be executed. Accession followed an active international campaign, in which Australia played a prominent role, to progress this human rights instrument. Accession is consistent with the Government's strong and universal opposition to the death penalty.

24. Australia participated in the Eighth Session of the UN Working Group on Indigenous Populations in Geneva in July 1990, delivering a major statement on developments relating to Aboriginal and Torres Strait Islander Australians, and working actively in the preparation of an Universal Declaration on the Rights of Indigenous Peoples.

25. The Government also submitted in June 1991, in compliance with its obligations as a Party to the Convention on the Elimination of All Forms of Racial Discrimination (CERD), Reports covering the period January 1987 to December 1990 on measures taken to give effect to the provisions of the Convention. These Reports, together with the Report for the period October 1984 to December 1986, were heard by the CERD Committee (the body of independent experts monitoring the Convention) on 6 and 7 August 1991.

Indigenous Peoples Issues

26. International interest in the treatment and rights of indigenous peoples and minority groups is increasing. Under the auspices of the UN Working Group on Indigenous Populations, work has begun on a draft Universal

Declaration on the Rights of Indigenous Peoples. Australia has played a prominent role in the progression of this exercise in recent years (see also above), in keeping with the Government's conviction that the special needs of indigenous peoples should be recognised and addressed.

27. The Australian Government is also conscious of its particular need to promote and protect the rights of Aboriginal and Torres Strait Islander Australians. The Department of Foreign Affairs and Trade continues to play a role in relating international interest and human rights standards to measures being taken domestically to remedy discrimination and mistreatment based on grounds of race - including for example the governmental response to the Royal Commission into Aboriginal Deaths in Custody.

Human Rights Fund

28. The Department of Foreign Affairs and Trade administers, through its International Organisations Branch and Human Rights Section, a Human Rights Fund, totalling annually $40,000. The purpose of the Fund is to provide assistance directly to organisations and individuals, in other countries, who are involved in the promotion and protection of human rights.

29. During the period under review, the following disbursements were made from the Fund:

- $10,000 to the Commonwealth Secretariat to assist in the holding of a South Pacific Human Rights Workshop, focussed on the importance of international human rights instruments;

- $20,000 to the United Nations Voluntary Fund for Advisory Services in the field of human rights (Australia's first contribution for several years to this Fund, which provides valuable services to countries in need of expert advice on the implementation of human rights policies);

- $11,410 to the Guatemala Human Rights Ombudsman, for the printing of a report on human rights to the Guatemala Congress.

30. In previous years, the Fund has been used for such projects as the printing of a booklet on "Women and the Law" in Pakistan, administrative assistance to the Sri Lanka Bar Association in habeas corpus cases, and to assist community groups opposed to apartheid in South Africa. A project already approved for 1991/92 is to provide training in human rights for police and military personnel through the Philippines Human Rights Commission ($10,7000).

Community Consultations

31. The Department of Foreign Affairs and Trade conducts regular consultations (usually three times a year) with representatives of Australian human rights NGOs on issues of current interest in the field of human rights. The agenda for these talks is set by the Department and NGO representatives jointly. Subjects discussed during 1990/91 included UNGA 45, CHR 47, human rights in Indonesia and Australian defence exports. Senator Evans attended the consultation held on 14 September 1990.

32. The Department liaises on a regular, on-going basis with Parliamentary representatives, particularly with the Parliamentary Group of Amnesty International, and with NGOs and individuals on human rights issues and cases of interest to the Australian community.

Public Statements

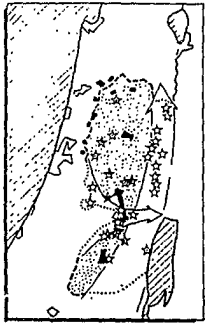
33. The Minister for Foreign Affairs and Trade delivered 47 public and parliamentary statements on Australia's international human rights policy during the period under review. Section C of this Report includes speeches dealing with, inter alia, human rights, relevant press releases and major parliamentary statements on human rights issues by Senator Evans.

34. Statements presented by Australian representatives at the 45th United Nations General Assembly and the 47th Session of the Commission on Human Rights are also attached.

35. Although not delivered in the period under review, speeches by the Minister for Foreign Affairs and Trade on 26 August 1991 (to Amnesty International in Sydney) and on 26 September 1991 (to the Asia Society in New York) are attached, as these provide a clear and comprehensive outline of Australia's current international human rights policies.

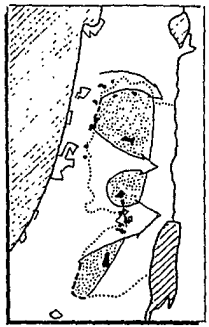
MAPS 1 — 3
PHASES OF ISRAELI SETTLEMENT IN THE WEST BANK
(EXCLUDING JERUSALEM). SCALE: 1:2,000,000

Map 1. 1967-1977



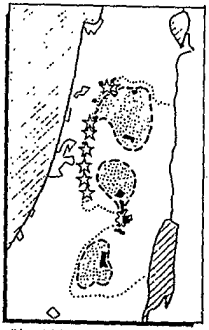
* (empty star) Alon Plan Settlement
* (dotted star) Gush Emunim settlement, 1975-77.
Settler population 1977: 5000

Map 2. 1978-1989



(large arrows) Settlement Drives and Suburban Settlement. Settler population 1989: 65,000

Map 3. 1990....



(triangle) Recent large confiscations
(stars) Settlements on 'green line'
Settler population 1991: 110,000

Source:

Submission No 40

Volume 5

Pages S1018-9

THE PALESTINE HUMAN RIGHTS INFORMATION CENTER

Formerly The DataBase Project on Palestinian Human Rights

The Palestine Human Rights Information Center of the *Arab Studies Society* • P.O. Box 20479 • Jerusalem
PHRIC - International: 4753 N. Broadway • Suite 930 • Chicago, IL 60640 • USA

HUMAN RIGHTS VIOLATIONS SUMMARY DATA

The Months of June/July and Uprising Totals from DECEMBER 9, 1987 THROUGH JULY 31, 1991

VIOLATION		JUNE 1991	▲JULY 1991	UPRISING TO DATE
DEATHS	TOTAL	6 (3)	6	968 (252)
	Shot	6 (3)	5	814 (207)
	Non-Bullet Cause	0	0	63 (9)
	Tear-Gas Related	0	1	91 (36)
INJURIES *		1650 (prelim)	1030	115,970 (est)
EXPULSIONS (Emergency Defense Reg.)		—	—	66
ADMINISTRATIVE DETENTION				
	New	85		15,100 est. total
	Current	613	600	
CURFEWS (days) [excluding war]		140	216	10,428
West Bank		107	188	5923
Gaza (*all Gaza Strip)		33	28	4505 (*59)

January 16-February 25: Blanket curfew or military closure orders on entire West Bank and Gaza Strip. These were gradually lifted at the end of February.

TREES UPROOTED	3861	4228	118,735
LAND CONFISCATION **(dunums)	2166	3618	379,435
DEMOLITIONS & SEALINGS			
Houses and other Structures	18	43	2013
•"For Security Reasons"			
Demolished	7	11	478
Sealed	1	9	332
•Unlicensed/Demolished	9	23	1129
•Demolished by Settlers	0	—	3
•Indirect Demolitions	1	—	71

▲ July human rights violations summary data are preliminary figures.

*Injury estimate based on total PHRIC figures for Gaza, plus live ammunition injuries and double the preliminary PHRIC figures for all other injuries in the West Bank. (See *Injuries* chart in *Update* for explanation.)

** Land confiscation data must be periodically revised; some orders are given only verbally, while some written orders cite incorrect number of dunums. () Figures in parentheses = number of children killed. See comprehensive chart in *The Cost of Freedom: 1989 Annual Report of The Palestine Human Rights Information Center*, for notes and other categories.

Source: Submission No 40 Volume 5 Page S1032