



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT

**Submission to the Department of Foreign
Affairs and Trade regarding Australia's
engagement at the 38th Session of the
Human Rights Council**

June 2018

Contents

About ACFID	3
Introduction	4
1. Thematic Issues.....	7
1.1 Gender and Women’s Human Rights.....	7
Women’s Human Rights Defenders	7
Sexual and Reproductive Health and Rights	8
Sexual Orientation and Gender Identity	9
Women’s human rights and ‘protection of the family’	9
Women, Peace and Security	10
1.2 Human Rights of Persons with Disabilities.....	10
1.3 Protection of the Rights of Children and Youth	11
The right to education – including equal access for girls.....	12
Early and forced marriage – including in emergencies.....	12
1.4 Civil Society Space	13
1.5 Human Rights and Climate Change.....	13
1.6 Business and Human Rights	14
2. Country Situations.....	16
2.1 Violation of Human Rights in the Syrian Arab Republic.....	16
2.2 Situation of human rights in Myanmar and human rights situation of Rohingya people	16
2.3 Situation of Human Rights in the Democratic Republic of the Congo, particularly concerning the events in the Kasai Regions	17

About ACFID

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations (NGOs) involved in international development and humanitarian action. Our vision is of a world where all people are free from extreme poverty, injustice and inequality and where the earth's finite resources are managed sustainably. Our purpose is to lead and unite our members in action for a just, equitable and sustainable world.

Founded in 1965, ACFID currently has 123 members and 22 affiliates operating in more than 95 developing countries. The total revenue raised by ACFID's membership from all sources amounts to \$1.65 billion (2016), \$930 million of which is raised from over 1.5 million Australians (2016). ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith based organisations.

ACFID members must comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability and effectiveness of signatory organisations. Covering 9 Quality Principles, 32 Commitments and 90 compliance indicators, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes annual reporting and checks. The Code has an independent complaints handling process.

Introduction

ACFID appreciates the opportunity to provide a submission to DFAT on Australia's engagement at the 38th Session of the United Nations Human Rights Council (HRC). ACFID would be happy to provide additional clarity on any of the statements contained within this submission or provide any further information on issues as they arise at the HRC.

For further information please contact Jennifer Clancy, Humanitarian Policy and Advocacy Advisor, on jclancy@acfid.asn.au.

ACFID and its members recognise that the protection and promotion of human rights is crucial to sustainable human development, durable peace and the eradication of poverty, as emphasised in ACFID's Strategic Plan¹ and its Code of Conduct.²

ACFID and its members recognise that human rights and sustainable development are mutually reinforcing. According to the 2030 Agenda for Sustainable Development, the Sustainable Development Goals (SDGs) 'seek to realise the human rights of all',³ with over 90% of the 169 SDG targets reflected in international human rights instruments.⁴ The transformative commitment in the 2030 Agenda to 'leaving no one behind' strongly reflects the human rights principles of non-discrimination and equality.

We recognise Australia's leadership in promoting the international human rights system, including as a founding member of the United Nations, and as one of eight countries that drafted the Universal Declaration of Human Rights.

Australia's membership of the HRC provides an opportunity for the Australian Government to show regional and global leadership in the protection and promotion of human rights. It also offers an opportunity for reflection on our domestic human rights challenges.

This submission provides input from ACFID and its members on both **thematic issues** (Part 1) and **country situations** (Part 2) that may be considered at the 38th Session of the Council. As the programme of work for the Session has not been finalised, we would be happy to provide input into additional issues as they arise.

In addition to the thematic and country-specific issues outlined in the body of this submission, we also make the following overarching recommendations to the Australian Government:

Australia must promote a human-rights based approach to development during its term on the HRC, and through its overseas aid program. Australia should use its membership on the HRC to promote development and the implementation of the SDGs as means to realise universal human rights. The Australian Government should also ensure that human rights standards guide its overseas aid

¹ Australian Council for International Development. 2015. *ACFID Strategic Plan 2015-20*. p. 1. Available at https://acfid.asn.au/sites/site.acfid/files/resource_document/ACFID_STRATEGIC_PLAN_WEB.pdf

² Australian Council for International Development. 2017. *ACFID Code of Conduct*. p. 8. Available at https://acfid.asn.au/sites/site.acfid/files/ACFID%20Code%20of%20Conduct%20JUNE2017_0.pdf

³ United Nations General Assembly. 2015. *Transforming our World: the 2030 Agenda for Sustainable Development*. p. 1. Available at: <http://undocs.org/A/RES/70/1>

⁴ Danish Institute for Human Rights. 2018. *Human Rights and the 2030 Agenda for Sustainable Development*. p. 9. Available at: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/sdg/hr_and_2030_agenda-web_2018.pdf

program. In implementing a human-rights based approach to development, the Australian aid program should both support ‘duty-bearers’ to meet their human rights obligations and ‘rights holders’ to claim their rights.

Australia must align strong support of thematic resolutions with country-specific interventions on human rights violations as and when they occur. Australia’s strong stance on thematic issues must be supported by equally strong interventions on country-specific human rights violations. For example, while Australia seeks to co-sponsor a resolution on ‘the equal right to nationality,’ it must also speak out about situations in which people are deprived of nationality or citizenship, such as the Rohingya in Myanmar who are denied full citizenship under the *Burma Citizenship Law (1982)*. We encourage Australia to sponsor and support resolutions that address country-specific human rights situations and to make strong statements condemning human rights violations where they occur.

Australia should capitalise and leverage its position as a regional leader to become a strong voice for human rights in the Indo-Pacific. Australia’s membership on the Council provides an opportunity to bring regional perspectives from the Indo-Pacific to the Council and for Australia to operate as a ‘regional standard bearer’ on human rights issues. Due to our unique location within the Indo-Pacific, Australia must be a strong voice in promoting human rights in the region, and in speaking out when violations occur. Australia must not let political, economic or foreign policy objectives stand in the way of shining a light on, and holding nations in our region to account for, human rights violations. Instead, Australia should take a leadership role in addressing human rights concerns in our region, both bilaterally and through the HRC.

Australia must be decisive in addressing risks to our moral authority and legitimacy as a council member by better aligning domestic policy with international relations rhetoric, including through ending offshore detention. As a member of the HRC, Australia’s domestic human rights record is under additional scrutiny. We welcome Australia’s leadership in developing an incoming members’ pledge for new Council members, and the commitments Australia has made through this pledge, including to ‘engage in the work of this Council in a spirit of self-reflection with a view to improving our own human rights situation...’⁵ To be a leader in human rights, Australia must align its domestic policies to what it will need to uphold as a member of the Council, including bringing a swift end to its arbitrary detention of asylum seekers on Manus and Nauru and in Australia, working to reduce rates of incarceration of Indigenous people, and ending the indefinite detention of people with disabilities.

The Australian Government’s credibility on the HRC is compromised by Australia’s offshore detention of asylum seekers. The Government has been urged to end its offshore processing regime by the United Nations - including the UN High Commissioner for Refugees and the UN Special Rapporteur on the human rights of migrants - and Australian civil society and human rights organisations.

In his report to the 37th Session of the Council, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, stated that offshore detention is a ‘particularly traumatic form of migration-related detention.’⁶ The trauma inflicted by Australia’s offshore

⁵ Australian Mission to the United Nations. 2018. *Incoming Members’ Pledge*. para. 7. Available at: <http://dfat.gov.au/international-relations/international-organisations/un/unhrc-2018-2020/statements/Documents/joint-statement-to-interactive-dialogue-with-hc-for-hr-incoming-members-pledge-8-march-2018.pdf>

⁶ Human Rights Council. 2018. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. p. 7. Available at: http://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf

detention regime remains too high; at least ten refugees and asylum seekers have died on Manus and Nauru, four to suspected suicide.

Last month's reported suicide of a Rohingya man on Manus Island after suffering ongoing mental health concerns is particularly distressing. The Rohingya are one of the most persecuted minorities; over 646,000 Rohingya have fled Myanmar since August last year to escape grave human rights abuses. The Australian Government has provided a generous response to the Rohingya refugee crisis in Bangladesh, yet they have left Rohingya and other refugees and asylum seekers languishing on Manus Island and Nauru.

Australia must immediately end its offshore processing policy and find appropriate long-term solutions for all men, women and children on Manus Island and Nauru to ensure its credibility as a human rights leader on the international stage.

Australia should promote and practice strong engagement with Civil Society in Australia and internationally, including through the Australian Aid Program. ACFID and its members welcome DFAT's engagement with Australian civil society organisations, including through the annual DFAT-NGO Forum on Human Rights, and through calling for written submissions in advance of each Human Rights Council session. We encourage Australia to complement this by establishing a formal process to meet with civil society in advance of each Council session. These consultations could provide an opportunity for genuine dialogue with civil society organisations around priorities for Australia's contribution on the HRC.

The Australian Government should also promote and protect the role of civil society through the HRC (as outlined in Part 1 below) and through providing increasing support for civil society strengthening through the Australian aid program. It should also demonstrate its commitment to civil society through supporting and protecting civil society space in Australia.

1. Thematic Issues

1.1 Gender and Women's Human Rights

ACFID is pleased that the 38th Session of the HRC is likely to have a strong focus on gender and women's human rights. Gender inequality remains a persistent challenge for the global community. Addressing its symptoms – such as physical violence, political exclusion, and economic insecurity – requires addressing power structures that disadvantage women and girls in every part of the world.

We commend Australia's commitment to advancing the rights of women and girls through its membership of the HRC as outlined in the first pillar of Australia's voluntary pledges.

Australia must be a strong advocate for the full and equal realisation of women's civil, political, economic, social and cultural rights, including the right to development, as outlined in resolutions *A/HRC/35/L.29 Elimination of Discrimination against Women and Girls* and *A/HRC/35/10 Report of the United Nations High Commissioner for Human Rights on the impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of all human rights by women and girls*. Australia must promote the rights of women and girls in both thematic discussions, and through strongly condemning situations in which these rights are not upheld, including making strong statements on country-specific cases where States have committed conflict-related sexual violence or where women's human rights defenders are persecuted.

Recommendation: As a **red line**, Australia must ensure it does not support any language in resolutions that inadvertently weakens or provides exceptions to the protection of women's human rights. For example, language such as:

- 'reiterating the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues.'
- 'underlining the fundamental importance of respecting relevant domestic debates at the national level on matters associated with historical, cultural, social and religious sensitivities.'
- 'underlining that the present resolution should be implemented while ensuring respect for the sovereign right of each country as well as its national laws, development priorities, the various religious and ethical values and cultural backgrounds of its people.'

Women's Human Rights Defenders

ACFID welcomes Australia's voluntary pledge to advocate for the protection of human rights defenders, who play an important role in promoting accountability and respect for human rights but are regularly targeted by state and non-state actors for their work. We encourage the Australian government to particularly advocate for the rights of women's human rights defenders (WHRDs) who often face additional risks, particularly those who work on sexual and reproductive rights and the rights of sexual and gender minorities.

Recommendation: As a **red line**, Australia must ensure that the commitments outlined in resolution *A/C.3/68/L.64 Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders* - and *A/HRC/22/L.13 Protecting human rights defenders* are upheld.

Recommendation: Australia should also:

- acknowledge the risks faced by WHRDs working on issues of sexual and reproductive health, reproductive rights and matters related to sexuality.
- reaffirm rights that are essential for WHRDs including, freedom of opinion and expression, freedom of peaceful assembly, freedom of association, the right to access funding and the right to develop and discuss new ideas in human rights, the right to make complaints about policies relating to human rights, to have such complaints reviewed and to benefit from an effective remedy.
- condemn all forms of violence against WHRDs and call for the inclusion of language from resolution *A/RES/67/144 Intensification of efforts to eliminate all forms of violence against women* in any Council resolution on WHRDs. Suggested language could include to, ‘support and protect those who are committed to eliminating violence against women, including women human rights defenders in this regard, who face particular risks of violence.’⁷
- adopt all recommendations made by the Special Rapporteur on the situation of human rights defenders in resolution *A/HRC/16/44* (paragraphs 104-112).

Sexual and Reproductive Health and Rights

The 1994 *International Conference on Population and Development* (ICPD) affirmed that reproductive and sexual health is a fundamental human right. Reproductive and sexual health rights are enshrined in many international human rights instruments including the *Convention on the Rights of Persons with Disabilities* (CRPD) and the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

The right to sexual and reproductive health is also an integral part of the right to health as enshrined in article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), as confirmed by the *General comment on the right to sexual and reproductive health* (E/C.12/GC/22).

The SDGs include a global commitment to ‘ensuring universal access to sexual and reproductive health-care services, including for family planning, information and education.’⁸ The ICPD outlines that all people have the right to services that are inclusive and non-discriminatory, regardless of gender, sexual orientation, age or disability.

Sexual and reproductive rights are critical to the empowerment of women, as recognised through the rights-approach to population and development enshrined in the *1994 ICPD Plan of Action*.

Globally, 214 million women and girls have an unmet need for modern contraception.

Disproportionate numbers are women and girls with disabilities, who report that access barriers and social perceptions that they are ‘asexual’ mean that ‘their specific needs and expectations are not met by gynaecological services’⁹.

⁷ UN Women. 2013. *Elimination and prevention of all forms of violence against women and girls: 2013 Commission on the Status of Women Agreed Conclusions*. Available at: <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/57/csw57-agreedconclusions-a4-en.pdf?la=en&vs=700>

⁸ United Nations General Assembly. 2015. *Transforming our World: the 2030 Agenda for Sustainable Development*. p. 1. Available at: <http://undocs.org/A/RES/70/1>

⁹ United Nations General Assembly, 2017. *Sexual and reproductive health and rights of girls and young women with disabilities: Report of the Special Rapporteur on the rights of persons with disabilities, A/72/133*. Available from <https://undocs.org/A/72/133>. p. 10/

Australia has a critical role to play in reversing this situation, as outlined in DFAT's Gender Equality and Women's Empowerment Strategy. Sexual and reproductive health services and education can help break down the barriers to women and girls' gender inequality and provide the conditions to access education and economic empowerment.

Recommendation: Australia should provide a strong voice for the protection and promotion of women's sexual and reproductive rights at the HRC, and as a **red line** ensure that the commitments on sexual and reproductive rights included in the SDGs, CRPD, CEDAW, the ICPD and the *Beijing Declaration and Platform for Action* are protected and upheld.

Sexual Orientation and Gender Identity

Australia should show leadership in ensuring that the Human Rights Council considers and promotes the rights of sexual and gender minorities. For example, Australia could advocate for a Working Group on the elimination of all forms of discrimination based on sexual orientation and gender identity.

Recommendation: Australia must strongly condemn all situations of discrimination based on sexual orientation and gender identity and as a **red line** ensure that:

- the commitments outlined in resolution A/HRC/RES/32/2 *Protection against violence and discrimination based on sexual orientation and gender identity* are protected.
- the mandate of the *Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity* is upheld.

Women's human rights and 'protection of the family'

We note with concern that 'protection of the family' is on the resolution forecast for the 38th Session of the HRC. We suggest that 'protection of the family' efforts often reflect rising traditionalism, cultural, social and religious conservatism and attitudes and beliefs that may be hostile to women's human rights, sexual rights, and the rights of sexual and gender minorities. As a member of the HRC Australia should condemn and speak out about abuses of human rights that take place in family contexts.

Recommendation: As a **red line**, Australia must ensure that HRC resolutions:

- recognise the centrality of the human rights of individuals, specifically the human rights of women and girls, including within family contexts.
- recognise and protect diversity within family structures and relationships, as referenced in resolutions A/RES/65/277 *Political Declaration on HIV and AIDS: Intensifying our Efforts to Eliminate HIV and AIDS* and A/HRC/7/29 *Rights of the Child*.
- align with the commitments in
 - the *Convention on the Elimination of all forms of Discrimination Against Women* Part 4, Article 16: *Marriage and Family Life*;
 - *International Covenant on Civil and Political Rights* Article 23 on the family; and
 - UN General Assembly Resolutions- A/RES/69/156 *Child, early and forced marriage* and A/RES/67/146 *Intensifying global efforts for the elimination of female genital mutilation*.

Women, Peace and Security

ACFID is pleased to see the Government's commitment to Women, Peace and Security (WPS) highlighted in Australia's voluntary pledges, including the commitment to work with governments and civil society to promote the implementation of the WPS agenda.

ACFID suggests that Australia's approach to WPS should focus on the long-term prevention of conflict and violence as its key priority.

Australia's first National Action Plan (NAP) on Women, Peace and Security (2012 – 2018) demonstrates the Australian Government's ongoing support for the WPS agenda. The NAP sets out Australia's domestic and international priorities to integrate a gender perspective into its peace and security efforts; protect the human rights of women and girls; and promote their participation in all aspects of conflict prevention and resolution.

Recommendation: Australia should ensure that any resolution on 'the impact of arms transfers on human rights' (as per the resolution forecast for the 38th Session of the HRC):

- recognises that arms transfers to those involved in armed conflicts may seriously undermine the human rights of civilians, especially women, children, the elderly, persons with disabilities and vulnerable groups.
- recognise that arms transfers have a seriously negative impact on the human rights of women and girls, who may be disproportionately affected by the widespread availability of arms, as it may increase the risk of sexual and gender-based violence and may also contribute to the recruitment and use of children in armed conflicts.
- commits states to refraining from transferring arms to those involved in or supporting armed conflicts when they assess that such arms could be used to commit or facilitate serious violations or abuses of international human rights law or international humanitarian law.

1.2 Human Rights of Persons with Disabilities.

People with disabilities make up a significant proportion of the world's most marginalised people. There are over one billion people living with disabilities in the world,¹⁰ and the prevalence is even higher in developing countries where one in five people have a disability.¹¹ People, particularly women and girls, with disabilities in developing countries tend to be poorer, and face higher levels of discrimination, exclusion and violence than the rest of the population. This not only makes people with disabilities more vulnerable to human rights violations, it also weakens their communities and economies by excluding the contributions of people with disabilities.

The pathway out of these vulnerable circumstances are the human rights provided by the United Nations *Convention on the Rights of People with Disabilities* (CRPD). Australia's strong commitment to disability rights in an international context was evident in the active role that Australia played in negotiating the CRPD, and the fact that Australia was amongst the original signatories of the CRPD in 2007 and ratified this in 2008. The Australian Government has since nominated Rosemary Kayess for the United Nations Committee on the Rights of Persons with Disabilities for 2019 – 2022.

¹⁰ World Health Organisation and World Bank, *World Report on Disability*, 2011, available from http://www.who.int/disabilities/world_report/2011/en/, p 29.

¹¹ World Health Organisation and World Bank, as above, p. 27.

The CRPD has also formed a cornerstone of the first *Development for All: Towards a disability-inclusive Australian aid program 2009 – 2014* and the subsequent *Development for All 2015 – 2020: Strategy for strengthening disability-inclusive development in Australia’s aid program*.

These strategies have earned Australia’s international acclaim and standing as a highly credible leader in disability-inclusive development, as outlined in the recent evaluation report of the Office of Development Effectiveness, *Unfinished business: Evaluation of Australian advocacy for disability-inclusive development*.¹²

The Human Rights Council presents Australia with an important opportunity to capitalise upon its leadership status in relation to disability inclusive development and ensure that disability rights issues – and particularly the rights of people with disabilities in developing countries – are voiced strongly. The mainstream recognition of disability rights as core human rights, critical to over fifteen percent of the world’s population who live with disabilities, is relatively recent, long overdue, and still has far to go. Australia must use the 38th session of the HRC to continue the momentum on this and ensure that disability rights are considered as a central pillar of all human rights.

Recommendation: As a **red line** Australia must ensure that all HRC resolutions align with the rights of people with disabilities as provided by the *Convention on the Rights of People with Disabilities*. Particular emphasis should be made to ensure participation and leadership of people with disabilities in all decision-making processes through their representative organisations, in accordance with the principle of ‘nothing about us without us’ and *Convention on the Rights of People with Disabilities*, Article 4.

Recommendation: Australia should make a strong statement in support of the right and need for people with disabilities to access support services required to allow them to equally participate in all aspects of social, economic and political life in accordance with the *Convention on the Rights of People with Disabilities*, Articles 9, 10, 19 and 20.

1.3 Protection of the Rights of Children and Youth

ACFID welcomes the statements made by Australia at the 37th Human Rights Council Session in the full day meeting on the rights of the child and in the interactive dialogue on children in armed conflict. ACFID and its members continue to be deeply concerned by the effects of violence and rights violations on millions of children worldwide, including the over 10 million refugee children.

Recommendation: As a **red line**, ACFID urges Australia to reinforce that all states must uphold the fundamental rights of the child as outlined in the *Convention on the Rights of the Child*, including in situations of crisis and displacement. ACFID further recommends that Australia push states to prioritize the best interests of the child in all relevant policies, programs, and practices.

Recognizing that there are specific work plan items dedicated the right to education and forced marriage, ACFID wishes to focus on these areas specifically.

¹² Office of Development Effectiveness, Department of Foreign Affairs and Trade, 2017, *Unfinished business: Evaluation of Australian advocacy for disability-inclusive development*, available from <http://dfat.gov.au/aid/how-we-measure-performance/ode/strategic-evaluations/Pages/unfinished-business.aspx>

The right to education – including equal access for girls

The human right to education is well-documented in international conventions and instruments, most notably in the Universal Declaration of Human Rights and the Convention on the Rights of the Child. The UN Human Rights Council has further recognized this right through its resolutions, most recently in June 2017 in Resolution A/HRC/RES/35/22 *Realizing the equal enjoyment of the right to education by every girl*. In light of this strong existing foundation, steps must now be taken to ensure that states uphold and protect these rights. Importantly, there is a need for greater acceptance and commitment to ensuring that the right to education is not abridged in emergencies. All children, including refugee children, have a right to access education, regardless of their status or personal circumstances. We note with grave concern that Rohingya children in both Myanmar and Bangladesh are prevented from accessing formal education, in direct violation of their human rights.

Education serves as a core protection mechanism in emergencies helping children recover from the impacts of violence and displacement, reducing the likelihood that they turn to negative coping mechanisms, and enabling humanitarian actors to identify and refer children who need additional support.

Recommendation: Australia should strongly encourage all states to respect the right to education (including in emergencies) and should particularly call on the Governments of Bangladesh and Myanmar to reverse their restrictions on education for Rohingya children. ACFID further encourages Australia to increase its contribution to education in emergencies, and to push other donor governments to do the same.

Education for girls is also of critical importance. It is a crucial component of breaking the cycle of gender inequality and supporting the protection and advancement of women and girls in society. It must also be recognised that girls with disabilities fall well behind their peers without disabilities in measures of primary education access and attainment. Approaches to girls' rights to education must specifically examine those girls left furthest behind.

Recommendation: Australia should make a strong statement during the relevant interactive dialogue and resolution discussions in support of all girls' right to high quality and inclusive primary and secondary education, as well as to "catch-up" and skills training for those girls who have not received formal education or who have left school early.

Early and forced marriage – including in emergencies

ACFID welcomes Resolution A/HRC/35/16 *Child, early and forced marriage in humanitarian settings* and its renewed commitment to eliminating early and forced marriage. As the resolution notes, early and forced marriage "undermines women's and girls' autonomy and decision-making in all aspects of their lives, and remains an impediment not only to the economic, legal, health and social status of women and girls but also to the development of society as a whole." Early and forced marriage is linked to the perpetuation of other harmful practices, such as the withdrawal of girls from school and unwanted pregnancy.

ACFID's members are particularly concerned about the heightened risk of early and forced marriages in emergency and displacement settings, where security risks are high, and community support networks and state protection have often broken down. The practice of marrying off girls for "protection" in such settings is a dangerous self-protection strategy, and efforts should be made to ensure families are not forced to resort to this option. Funding for education and protection services

in emergencies can be a crucial means of preventing and responding to issues of early and forced marriage.

States should develop a holistic approach to eradicating this practice and raising awareness about the rights of women and girls more broadly, including by working with community and religious leaders, and other traditional authorities to create change.

Recommendation: Australia should make a strong statement on the need for states to take concrete measures to prevent early and forced marriage, with a particular focus on humanitarian settings. Australia should also call on all States to amend any legislation or practices that permit perpetrators of rape, sexual abuse, or other misconduct from escaping prosecution by marrying their victims.

1.4 Civil Society Space

ACFID and its members are concerned about the shrinking civil society space both in Australia and abroad. We believe that vibrant civil society is an essential feature of free societies, bringing benefits to the public that governments and the market cannot do alone. Civil society is a fundamental component of democratic societies, but it is being constrained and restricted by Governments, shrinking the space in which citizens can organise and speak out. In building systems to uphold human rights around the world, and through its membership of the HRC, Australia should make a special priority of defending the role of civil society and promoting the necessary protections that enable civil society to flourish.

ACFID remains concerned by the Foreign Interference legislation that was introduced by the Australian Government in 2017. The legislation of any of the three bills in their current form, will restrict the voice of charities and the free press, limit NGO's public advocacy on issues of public importance, and limit legitimate sources of funding for ACFID members. ACFID is particularly concerned about the possible criminalisation of working with international counterparts on important global issues that cross national boundaries. For instance, the bills could restrict ACFID members collaborating with civil society groups in partner countries or their international affiliate bodies to advocate or campaign for Australia to increase its international development assistance. These bills ultimately 'threaten to seriously curtail democratic rights.'¹³

Recommendation: In addition to addressing threats to civil society space in Australia, the Government should also use its position on the HRC to:

- support HRC resolutions that promote and protect civil society space.
- make strong statements, or co-sponsor resolutions on country-specific situations where civil society is under attack, or where freedom of expression is curtailed, particularly in our region, for example in Cambodia, Myanmar, the Philippines and Bangladesh.

1.5 Human Rights and Climate Change

As recognised in the Foreign Policy White Paper, climate change is already disrupting livelihoods and displacing people in vulnerable communities across the Indo-Pacific, especially in Pacific island states

¹³ Goodman, J. 2018. "Contesting Accusations of 'Foreign Interference': The New Agenda for Australian Civil Society." *Cosmopolitan Civil Societies: an Interdisciplinary Journal*. 10(1):63-84.

and Asian delta cities where livelihoods and infrastructure are threatened by sea level rise and salt water intrusion. Climate change is already affecting agricultural cycles, critical urban infrastructure, vectors of disease, and access to water and energy supplies. Recent cyclones in the Pacific, including Tropical Cyclone Gita in Tonga, show that the impacts of climate change are disproportionately affecting those that have done the least to contribute to it.

Unless urgently addressed, climate change will significantly undermine the human rights of millions of people across the globe, including the rights to life, food, water, shelter, security, health and culture. The effects of this disruption are not equally distributed, and it is those experience poverty and inequality, and especially women, will bear the brunt of its impacts.

Climate change is a fundamental human rights issue as it undermines human security, and particularly the rights of people living in poverty to a life lived with dignity.

Recommendation: Australia must be guided by human rights principles in its approach to climate change and should support resolutions regarding human rights and climate change during the 38th Session of the HRC.

Recommendation: Australia should also invest in designing a comprehensive climate change strategy that aligns Australia's domestic and international action with its 2015 Paris Agreement commitments.

1.6 Business and Human Rights

Australia has identified the important role of the private sector in its foreign policy and official development assistance agenda. The Australian Government should work with the private sector to protect and promote human rights, as well as engaging with the private sector to address social and economic development challenges.

While noting the positive impact the private sector can play in supporting sustainable development, there is, however, a growing body of evidence showing that many Transnational Corporations (TNCs) and other business enterprises are involved in the violation of human rights and labour rights, the erosion of the basis of food sovereignty, the pollution of water sources and lands, and the plunder of natural resources. It is thus important that there are binding mechanisms in place to ensure non-state actors avoid such rights abuses and are held accountable if they occur.

Through its position on the Human Rights Council, Australia should support the development of a **Binding Treaty on Business and Human Rights** to ensure that TNCs and other businesses protect and respect human rights and provide remedy for human rights abuses inflicted as a result of their operations. Furthermore, it is essential that any such treaty, and any related resolution before the Human Rights Council, address the differentiated impact of business activities on the rights of women and men. This approach is in line with Australia's own Foreign Policy White Paper which emphasises women's empowerment and gender equality as a top priority.¹⁴ The process of developing a binding treaty should be coupled with open multi-stakeholder discussions regarding the decision to sign on to such a treaty.

¹⁴ Government of Australia. 2017. *Foreign Policy White Paper*, 23 November 2017, available at: <https://www.fpwhitepaper.gov.au/>

Human rights abuses committed by TNCs and other businesses are not gender neutral and disproportionately affect women and girls, particularly indigenous women and girls.¹⁵ As per Australia's own Foreign Policy White Paper, Australia should ensure any binding mechanisms will enable the prevention, monitoring and administration of remedy of human rights abuses by business in a manner that takes into account this disproportionate impact on women and girls. These mechanisms include mandatory Gender Impact Assessments for current and planned business activities through a process of Free, Prior, and Informed Consent; gender-sensitive justice and remedy mechanisms; and respect, protection and the generation of an enabling environment for women's human rights defenders.¹⁶

At a minimum, the Australian government should be transparent about its decision not to proceed with the National Action Plan, which was contrary to the recommendations of the *Multi-Stakeholder Advisory Group on Implementation of the UN Guiding Principles on Business and Human Rights* convened by the government in 2017.¹⁷

Recommendation: Australia should:

- support a HRC resolution that proposes a binding treaty on Business and Human Rights.
- work to ensure that such a treaty and any related resolutions mandate gender impact assessments for planned and existing operations, gender-sensitive justice and remedy mechanisms, and guarantees respect protection and an enabling environment for women's human rights defenders.

¹⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, 23 June 2017, E/C.12/GC/24, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en

¹⁶ Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. 2017. *Integrating a gender perspective into the treaty on transnational corporations and other business enterprises*, 20 October 2017, available at: <https://wilpf.org/wp-content/uploads/2017/10/Jt-statement-gender-into-the-treaty-October-2017.pdf>

¹⁷See: <http://dfat.gov.au/international-relations/themes/human-rights/business/Documents/final-msag-priorities-paper.pdf>

2. Country Situations

2.1 Violation of Human Rights in the Syrian Arab Republic

ACFID and its members remain appalled by the ongoing violations of human rights in Syria, including the use of chemical weapons by the Syrian authorities, the use of sexual violence as a weapon of war, attacks on civilians and civilian objects including schools and hospitals, and blockades on humanitarian assistance.

We welcome Australia's strong statements on the human rights situation and the ongoing humanitarian crisis in Syria at the 37th Session of the HRC. We also welcome the Australian Government's \$220 million multi-year package of assistance in response to the Syria crisis.

Recommendation: Australia should continue to support resolutions on the human rights situation in Syria, push for their implementation, and make strong statements condemning human rights violations. Australia should:

- continue to support the mandate of the *Independent International Commission of Inquiry on the Syrian Arab Republic* to investigate human rights abuses in Syria.
- continue to support the mandate of the *International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic* and pledge financial support to ensure it fulfils its mandate and ends impunity for the crimes committed.
- strongly condemn the use of sexual and gender-based violence against women, girls, men and boys by parties to the conflict, as outlined in A/HRC/37/CRP.3¹⁸ and press for accountability for those responsible.
- continue to call for the protection of civilians and health facilities in line with International Humanitarian Law and use all diplomatic efforts to influence the parties to the conflict to ensure civilians are protected and have sustained, unfettered access to humanitarian assistance.
- call for an end to the targeting and military use of schools inside Syria and calling for an emphasis on eliminating barriers to quality education inside Syria and in host countries in the region.

2.2 Situation of human rights in Myanmar and human rights situation of Rohingya people

ACFID and its members are deeply concerned by the human rights situation in Myanmar, particularly in Rakhine, Kachin and northern Shan states. We are particularly alarmed by the escalation of violence in Rakhine State since August 2017 which the UN's Special Rapporteur on Myanmar Yeehang Lee has said 'bears the hallmarks of genocide'. The Independent International Fact-Finding Mission on Myanmar suggests that the systematic and widespread nature of the violence in Rakhine State suggests prior planning and organisation by Myanmar's military.¹⁹

¹⁸ Human Rights Council. 2018. "*I lost my dignity*": *Sexual and gender-based violence in the Syrian Arab Republic* Available at: www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf

¹⁹ Statement by Mr Marzuki Darusman, Chairperson of the IIFMM. 2018. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22798&LangID=E>

In March 2018 the UN Secretary-General included, for the first time, Myanmar's military on his annual list of parties that have committed conflict-related sexual violence.²⁰ The 2018 Report of the Secretary General on conflict-related sexual violence reports the strategic use of sexual violence as a means of ethnic cleansing in Rakhine State with the intention to humiliate and terrorise Rohingya women who are seen as propagators of ethnic identity; to drive people from their homes; and to make people fearful of returning. Since August 2017, the humanitarian community in Bangladesh has treated at least 2,756 survivors of sexual violence who fled Myanmar.

Due to our location in the Indo-Pacific, Australia has a moral obligation to strongly condemn and speak out about human rights violations that occur in our region. Our actions must also support this rhetoric.

As such, we call on the Australian government to **cease Australia's defence engagement and cooperation program with the Tatmadaw** until the protection and rights of the Rohingya and other ethnic minorities in Myanmar are upheld, and the recent violence in Rakhine State has been investigated. The ongoing defence arrangements with Australia are both supporting the legitimacy of the Tatmadaw and contributing to the impunity with which they are acting.

Recommendation: As a member of the HRC Australia should:

- make strong statements condemning the human rights violations occurring within Myanmar, including the systematic discrimination against the Rohingya population.
- call for an end to impunity for the human rights violations that have occurred in Myanmar, including widespread sexual violence against ethnic minorities in Rakhine, Kachin and northern Shan states, and the killing of an estimated 6,700 Rohingya civilians since military operations began in August 2017.
- encourage and support the Government of Myanmar to implement the recommendations of the *Advisory Commission on Rakhine State*, including those regarding citizenship, as a matter of urgency. This must include reforming the *Burma Citizenship Law (1982)* so that it is in line with international standards and treaties, does not distinguish between different types of citizens, and ensures that all children are granted citizenship regardless of their ethnicity (as per the *Convention on the Rights of the Child*, which Myanmar has ratified).
- continue to support, and call for access to Myanmar and Northern Rakhine State in particular, for the *Independent International Fact-Finding Mission on Myanmar*.
- continue to support the mandate of the Special Rapporteur on the situation of human rights in Myanmar, and call for access for her to Myanmar and Northern Rakhine State.

2.3 Situation of Human Rights in the Democratic Republic of the Congo, particularly concerning the events in the Kasai Regions

ACFID and its members remain deeply concerned by the humanitarian situation in the Democratic Republic of Congo (DRC), particularly in the Kasai regions. Over 13 million people are in need of humanitarian assistance, and a recent report found that at least half of all children under five in the Kasai region are suffering from acute malnutrition – including 400,000 children who are severely malnourished. The humanitarian crisis can be directly linked back to the ongoing security and human rights situation, which has prevented civilians from being able to return to their homes,

²⁰ Report of the Secretary General on conflict-related sexual violence. 2018. Available at: <http://undocs.org/s/2018/250>

harvest their crops, and restart their lives. The high level of destruction of infrastructure means that long after the violence comes to an end the humanitarian crisis will continue to take time to be fully resolved. ACFID likewise remains concerned about the potential for ongoing political instability at the national level to lead to further violence and humanitarian deteriorations.

ACFID is disappointed that Australia did not pledge any funds towards the DRC Humanitarian Response Plan at the donor conference in April 2017.

Recommendation: Australia should:

- show its commitment to the people of DRC by strongly supporting the need for an end to the human rights violations in DRC and accountability for those who have perpetrated attacks on civilians.
- emphasize the need for the Government of DRC to enable unhindered humanitarian operations across the country, including by ensuring that humanitarian programs and funds are not obstructed through government interference.
- call for the Government of DRC to withdraw plans for a “Humanitarian Fund Management Agency” that would “manage, monitor and control humanitarian funds” as such an entity would significantly hinder the work of humanitarian agencies.