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MINISTER FOR HOME AFFAIRS

Bali Democracy Forum

Nusa Dua, Bali

Interactive session on democracy and the rule of law

11 December 2009

- His Excellency Dr Wirajuda, former Foreign Minister of Indonesia
- His Excellency Mr Zainul Abidin Rasheed, Senior Minister of State for Foreign Affairs of Singapore
- Ministers, delegation leaders, distinguished guests.

Introduction

It is a great honour for me to be here today representing the Australian Government, and to take part in this very important dialogue. I thank His Excellency Dr. Wirajuda for providing me this opportunity.

Approaches to democracy, democratic institutions and the rule of law are diverse among the countries represented here.

The very different economic and environmental challenges, different historical experiences and the differences of cultural and religious heritage have and will continue to influence the evolution of democracy and the rule of law within each nation.

In recognition of these differences, no country should impose its preferred path to achieving democracy on another.

However, information sharing and the exchange of ideas and experiences will assist us all in our efforts to continue to strengthen democracy and democratic practices and institutions.

Toward that end I will outline the framework around which Australia's democracy has evolved. I will also elaborate on Australia's efforts abroad to support developing countries, particularly countries experiencing conflict or where peace is at risk.

Whilst the path each nation takes towards its democratic objectives may vary, at the heart of a democracy, we are likely to find some common pillars. These are:

- Firstly, a well developed legal framework oversighted by an independent judiciary;

- Secondly, accountable public institutions with transparent processes that are open to public scrutiny. In Australia this includes the three arms of the Australian system of Federal Government – namely the Parliament, the Executive and the Judiciary;

- Thirdly, freedom of speech, respect for diversity, and respect for the rights of citizens to participate in inclusive political processes; and

- Fourthly, I would add - in the context of my own portfolio as Minister with responsibility for national policing - that a capable, modern and accountable police force is an essential ingredient for peace, stability, democracy and the rule of law.

Although the approach of my own country Australia may vary in some respects to the country of my co-panelist Singapore, I firmly agree with the contentions of my colleague His Excellency Rasheed, who said in his presentation yesterday that “...democracy is not an end in itself [and] ... democracy by itself cannot deliver growth and development... peace or stability”.

It is not enough to have a fair vote on election day. Democracy can only deliver for people if supported by good governance, effective institutions and feedback mechanisms”. Democratically conducted

elections will be largely symbolic if they are not backed up by these things.

Australia remains committed to strengthening the pillars of our own democracy and to supporting other nations in our region and in the broader international arena.

This support abroad is not simply altruistic as we see that thriving democracy and the rule of law among other nations is also in our own interest.

As Australian Prime Minister Rudd said one year ago in the First National Security Statement to the Australian Parliament, "... building democracy and the rule of law in our region and in the broader international arena is part of promoting an international environment that is stable, peaceful and prosperous and underpinned by a global rules-based order".

Some countries are facing very difficult circumstances in their efforts to establish democracy and the rule of law.

Many countries are tackling economic and environmental issues that jeopardise prosperity and peace - including high population growth; limited economic opportunities; poverty and institutions that do not have sound governance structures or that have limited capabilities possibly due to shortages of trained local staff.

Democracy and the rule of law in Australia

Turning now in more detail to the democratic institutions that are the guarantors of democracy and the rule of law in Australia.

The Australian Constitution establishes the three arms of the Federal system of Government—the Parliament, the Executive and the Judiciary.

Under the doctrine of the ‘separation of powers’, each arm of government has distinct powers and responsibilities.

Whilst the Parliament has the power to make laws; the Executive has the power to carry out and enforce the laws; and the Judiciary has the power to independently interpret laws and determine how they apply in individual cases.

The Parliament retains sovereignty and may override a court’s interpretation of any ordinary law by passing or amending an Act of Parliament.

In addition to these structural guarantees, we have:

- an apolitical and independent public service;

- an administrative legal system that enables citizens to challenge government decisions that affect them;
- criminal, national security and evidence laws with safeguards for the fundamental rights of citizens; and
- an independent Human Rights Commission and a bi-partisan parliamentary committee system that scrutinises executive decisions and actions.

Key issues for the Australian Government in this area

Access to justice

The Australia Government believes that access to the Courts by individual citizens is an essential element of the rule of law.

Through the Courts and other justice institutions, people are able to protect their rights against infringement or seek compensation if they have suffered loss.

Criminal Justice

Australia's commitment to democracy and the rule of law is also reflected in the principles which underpin our criminal justice system.

As I indicated earlier, key amongst these principles are protecting individual rights, maintaining an independent judiciary, and adhering to due process and procedural fairness.

An accused person has the right to obtain legal representation, to refuse to give evidence that may self incriminate, and to be tried by a jury of their peers.

The investigation, prosecution and adjudication of criminal matters should be undertaken independently from the executive government and the political process.

The possibility of serious criminal sanctions (such as imprisonment) requires strict adherence to due process.

For example, police must obtain a warrant before they can search a person's house or seize property. Criminal trials must follow set rules to ensure that the accused is accorded procedural fairness.

Australia's regional cooperation on law and justice

Turning now to Australia's engagement abroad.

The Australian Government works closely with a number of countries in the region to strengthen legal and justice systems and promotes good governance and security through capacity building – particularly among some of our neighbours that are under resourced.

Consistent with key elements of the rule of law, Australia works with partner countries to develop clear and accessible laws which protect fundamental rights.

Initiatives include the provision of technical legal assistance, efforts to enhance international legal and law enforcement cooperation, and participation in judicial exchange programs.

Legal assistance

The International Legal Assistance Unit in the Australian Attorney-General's Department has worked successfully with partner countries to develop legal frameworks to deal with a range of serious crimes, such as people smuggling and terrorism. It also works with partner countries to recoup the financial gains of crimes.

The United Nations Conventions and Protocols provide a benchmark for legislative reform projects. These provide an agreed framework at

the international level for responding to crime in a manner which is consistent with the rule of law and respects human rights.

International legal and law enforcement cooperation

Australia's international capacity building efforts have a strong focus on strengthening mechanisms for international legal cooperation. This has recently included successful work with regional partners in South East Asia in developing frameworks for mutual legal assistance and extradition.

Law enforcement capacity building

Clear, fair and accessible laws are key to ensuring respect for the rule of law.

So too is ensuring the ethical and accountable enforcement of those laws.

This is particularly important in the context of societies emerging from conflict in their efforts to restore law and order.

The Australian Federal Police – the AFP – has a long history of participation in overseas peacekeeping operations and capacity building missions.

Through its International Deployment Group, the AFP works in partnership with countries as they face the challenge of post-conflict reconstruction. The AFP's capacity building missions assist countries to build effective, professional and accountable police forces.

Our police personnel contribute technical advice and training on ethics and values based policing. They also provide mentoring and advice to governance institutions such as interior and security ministries.

The activities undertaken by the Australian Federal Police are consistent with broader engagements across the security and law and justice sectors.

Policing is not an end in itself. It is part of a far-reaching vision that includes the courts, prosecution agencies, access to legal representation, civil accountability regimes and corrections, all of which contribute to the rule of law.

Conclusion

Establishing democracy and the rule of law is a fundamental struggle. This struggle should always be based on values and fought as a worthwhile struggle, with the benefits that will flow to the people who have elected us to Parliament in mind.

The challenge of promoting the rule of law is not easy. There will be many obstacles in our way, and sometimes we will suffer setbacks. However, the costs of inaction, or half-hearted approaches, to developing the rule of law are too high to ignore.

Thank you.