

# Human Rights in the Asia-Pacific: Australia's Role and Responsibilities



## Issue

Australia should develop a comprehensive policy on human rights in the Asia-Pacific and explicitly commit to the promotion and protection of human rights as the primary goal and instrument of Australia's engagement with the region.

The recent report of the Joint Committee on Foreign Affairs, Defence and Trade (JCFADT) on human rights in the Asia-Pacific identified the region as 'diverse and complex' with a 'mosaic of human rights challenges'.<sup>1</sup> The Committee highlighted gender discrimination and violence, human trafficking, capital punishment, restrictions on freedom of expression and association, and profound poverty, among others.<sup>2</sup> The Committee identified a 'clear need to enhance mechanisms to protect human rights and to redress human rights violations'.<sup>3</sup>

On Australia's role, JCFADT found that Australia is 'well placed to foster discussion and progress on a cooperative approach to human rights challenges facing the Asia-Pacific'.<sup>4</sup> It concluded that Australia has a 'significant', albeit 'sensitive and cooperative' role to play in the region.<sup>5</sup>

## Opportunity and Imperative for Action

The Government's new Human Rights Framework commits Australia to 'promote and protect human rights within our region',<sup>6</sup> while 'comprehensive engagement with the Asia-Pacific' is one of the three key pillars of Australian foreign policy.<sup>7</sup> Australia is running for the Security Council in 2013-14 and has positioned itself as a 'principled advocate of human rights for all'.<sup>8</sup>

Despite these commitments, Australia has not developed a comprehensive policy on human rights in the Asia-Pacific. Such a policy could integrate human rights in all areas of Australian engagement with the region and capitalise on the benefits of doing so.<sup>9</sup>

From a national perspective, the timing for a commitment to a human rights-based approach to the Asia-Pacific is opportune. In 2011, Australia will go through the Human Rights Council's Universal Periodic Review process. A commitment to develop a comprehensive human rights-focused Asia-Pacific policy could be a significant 'voluntary pledge' made in this process. It could also give additional substance and credibility to the human rights promise of Australia's Security Council Candidacy.

The timing for stronger Australian action on human rights in the Asia-Pacific is also propitious from a regional perspective. Recent positive developments in Asia include:

- the establishment of the ASEAN Intergovernmental Commission on Human Rights; and
- civil society mobilisation to establish a SAARC human rights instrument and mechanism.<sup>10</sup>

Recent positive developments in the Pacific include:

- a commitment to the 'implementation of international and regional human rights conventions, covenants and agreements' in the Pacific Plan;<sup>11</sup>
- ongoing support for the development of a Pacific sub-regional human rights commission;<sup>12</sup> and
- the appointment of a Pacific Islands Forum Secretariat Human Rights advisor.

Most recently, on 23 April 2010, 30 governments from across the Asia-Pacific adopted the 'Bangkok Action Points'<sup>13</sup> on regional human rights cooperation which:

- 'welcome the emerging regional human rights infrastructure in the Asia-Pacific region and the development of new regional human rights mechanisms';<sup>14</sup>
- call for work 'towards the development of sub-regional human rights mechanisms';<sup>15</sup> and
- 'encourage the establishment of effective, independent and pluralistic national human rights institutions'.<sup>16</sup>

### **Recommendations for Action**

#### Human Rights as a Key Instrument and Aim of Australian Engagement in the Region

JCFADT recommended that the Australian Government should be 'conscious of its human rights obligations in all of its regional relationships',<sup>17</sup> including in the area of trade.

1. Australia should develop a comprehensive white paper on human rights and Australia's engagement with the Asia-Pacific. The paper should: explain the benefits and imperatives of a human rights-based approach to the Asia-Pacific region; set out Australia's human rights and foreign policy objectives in the region; and detail the means by which the Government will pursue these strategic objectives. The paper should identify priorities for action and make concrete, measurable commitments across all areas of Australian engagement with the Asia-Pacific which impact on human rights.<sup>18</sup>
2. Australia should develop and undertake Human Rights Impact Assessments as a key aspect of doing business in the Asia-Pacific, including in the areas of aid, development, trade, investment, business, labour, migration, defence, military cooperation, security and the environment.
3. Australia should ensure that the promotion and protection of human rights are incorporated into the objectives and activities of all regional organisations and processes that impact on human rights and of which Australia is a part.
4. Where appropriate, Australia should negotiate for bilateral and multilateral agreements to include human rights clauses and safeguards.<sup>19</sup>

#### Adopting a Human Rights-Based Approach to Aid and Development Assistance

JCFADT also recommended that AusAID 'adopt a human rights-based approach'<sup>20</sup> to aid and development projects. This recommendation was underpinned by evidence that development and human rights are interdependent and mutually reinforcing, and that a human rights-based approach can enhance program effectiveness and efficiency. Both the OECD and the Overseas Development Institute have identified that the integration of human rights in all aspects of aid programming can deliver more effective, sustainable and value-for-money development outcomes.<sup>21</sup>

5. Consistent with the Government's commitment to strengthen the effectiveness of Australia's aid program, AusAID should 'adopt a human rights-based approach' to aid and development projects.
6. Australia should prioritise human rights as a key aim and instrument of Australia's development cooperation with the Asia-Pacific.<sup>22</sup>

#### Adopting a Human Rights-Based Approach to Military and Security Cooperation

In many countries in the Asia-Pacific, members of the security forces who are implicated in human rights abuses are neither investigated nor prosecuted. Australia is playing an increasing role in training foreign security forces through exchange programs and joint training exercises.

Human rights should be central to these trainings both in content and in terms of who is invited to participate.

7. Australia should develop a transparent vetting system to scrutinise all members of security forces who are put forward to participate in activities funded or coordinated by, or otherwise involving, the Australian government. The vetting system should be codified in a publicly available policy document initially and later through legislation. Members that have themselves been implicated in human rights abuses, or are stationed with a unit that is implicated in such abuses, should be excluded from the trainings unless they have been charged with criminal offences relating to the abuses and found not guilty. National human rights institutions and human rights NGOs should be consulted to determine whether members or units are implicated in such abuses.
8. Australia should ensure that all activities involving members of foreign security forces, particularly training activities, funded or coordinated by, or otherwise involving the Australian government, includes practical human rights training.
9. Bilateral military assistance and training programs that involve security forces should be contingent on respect for human rights and accountability for violations.

#### Empowering Communities and Supporting NGOs

In JCFADT's view, the Australian Government should do more to support the 'vital work' of NGOs and civil society in the region, including by establishing a scholarship fund for Asia-Pacific human rights defenders. This is positive, but should be supplemented by increasing Australian funding to NGOs in the region to protect human rights at the grassroots level.

10. While the recent expansion of Australia's Human Rights Grants Scheme – from about \$1 million to \$3 million per year – is welcome, the scheme generally provides short-term, project-based funding only. The scheme should be expanded in amount (in the Netherlands, for example, the government's Human Rights Fund will distribute €27.5 million in 2010) and duration, to provide longer-term, recurrent support to enhance the effectiveness and secure the sustainability of human rights NGOs.
11. Recognising the need to build human rights capacity in the Pacific, the Australian Government should fund annual workshops which bring together key human rights and civil society organisations and actors from across the Pacific region. Such workshops could provide a forum to facilitate dialogue, networking, capacity building and collaboration between NGOs across the region, and to work constructively with governments to promote human rights standards and institutions.

#### Human Rights Treaty Ratification and Implementation

JCFADT recommended that Australia adopt a 'targeted approach'<sup>23</sup> to promote human rights treaty ratification and implementation in the region, particularly the Pacific. The Pacific has the lowest human rights treaty ratification rate of any global region, notwithstanding that the core human rights treaties provide clear, comprehensive, internationally accepted principles that can enhance governance and improve accountability.

12. As a party to the significant majority of the core UN human rights treaties, and an active participant in the associated UN treaty body review processes, Australia should provide Pacific states with

technical and financial support to ratify, implement and report under the core human rights treaties and thereby improve human rights and democracy on the ground.

13. Australia should also resource Pacific Island NGOs to further engage with the UN human rights system, including through funding.

Australia's capacity and ability to promote human rights abroad is inextricably linked with our domestic human rights situation.

14. Australia is not party to the *International Convention on the Protection of the Rights of All Migrant Workers and their Families* or the *International Convention for the Protection of All Persons from Enforced Disappearance*, despite their significance in the Asia-Pacific.<sup>24</sup> Australia should sign and ratify these conventions and encourage other Asia-Pacific states to do the same.
15. Further, consistent with our commitment to the universality and interdependence of all human rights, together with accountability for human rights breaches, Australia should expedite ratification of the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* and the *Optional Protocol to the Convention against Torture*.

#### Strengthening Human Rights Institutions

16. Australia should seek to strengthen and secure the presence and independence of the UN High Commissioner for Human Rights in the region, including by increasing its voluntary contribution to the Office of the High Commissioner for Human Rights.
17. Australia should continue and expand its technical and financial support for the establishment and operation of independent, effective, 'Paris Principle'-compliant national human rights institutions in the region, including through the Asia Pacific Forum of National Human Rights Institutions.

#### Parliamentary Engagement with Human Rights

Parliamentary understanding of engagement with human rights is essential to the effective institutional protection of human rights.<sup>25</sup> Further, as JCFADT noted, 'Parliaments in representative and democratic societies, such as Australia, have a responsibility to assist the international community to help strengthen parliamentary systems and protect fundamental human rights...In particular, it should be incumbent on parliamentarians to share their knowledge and expertise in the areas of human rights'.<sup>26</sup> Despite this, the Joint Parliamentary Human Rights Committee, proposed under the Human Rights Framework and established pursuant to the Human Rights (Parliamentary Scrutiny) Bill 2010, is not mandated to contribute to or participate in the parliamentary human rights dialogue in the region.

18. The Australian Parliament should provide the Joint Parliamentary Human Rights Committee with a mandate to consider not only domestic, but also regional and international human rights issues, and to convene and participate in regional inter-parliamentary human rights dialogues.

JCFADT further noted that 'Parliaments from around the world have established different oversight mechanisms' to 'monitor national and international human rights obligations and provide suggestions and recommendations on how to best promote and protect human rights standards'.<sup>27</sup> Despite this, the Australian Parliament itself does not play any coordinated, institutionalised role in monitoring, overseeing and following up on the implementation of recommendations and decisions of international human rights mechanisms.

19. The functions of the proposed Joint Parliamentary Human Rights Committee should be expanded to include the power 'to monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council'. This would enhance the Australian Parliament's capacity, and assist to discharge its obligation, to play an active role in monitoring, overseeing and following up on the implementation of recommendations and decisions of international human rights mechanisms.<sup>28</sup>

#### Human Rights Envoys and Ambassadors

JCFADT recommended that the Australian Government appoint a Special Envoy for Regional Cooperation on Human Rights. This Envoy would be tasked to consult with Asia-Pacific governments and civil society and then report back to the Government on how Australia can best support human rights in the region.

20. The Australian Government should appoint a Special Envoy for Regional Cooperation on Human Rights.
21. The Australian Government should also appoint a permanent, full-time Australian Human Rights Ambassador. Human Rights Ambassadors in leading states such as the Netherlands, Norway and Sweden already assist to promote a coordinated and coherent approach to human rights across all areas of foreign policy. An Australian Human Rights Ambassador could play a valuable role in the region and internationally on an ongoing basis.

The **Human Rights Law Resource Centre** is a leading national community legal centre. The Centre promotes and protects human rights and contributes to the alleviation of poverty and disadvantage in Australia.

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<sup>1</sup> Joint Committee on Foreign Affairs, Defence and Trade, *Human Rights in the Asia-Pacific: Challenges and Opportunities* (April 2010) 5 at [www.aph.gov.au/house/committee/jfadt/asia\\_pacific\\_hr/report.htm](http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/report.htm) (JCFADT Report).

<sup>2</sup> JCFADT Report, 5-30.

<sup>3</sup> JCFADT Report, vii.

<sup>4</sup> JCFADT Report, 149.

<sup>5</sup> JCFADT Report, 147.

<sup>6</sup> Australian Government, *Australia' Human Rights Framework* (April 2010) 7.

<sup>7</sup> See, eg, The Hon Stephen Smith MP, Minister for Foreign Affairs, 'Australia and the Asia-Pacific Century', Paper to the South Australian Branch of the Australian Institute of International Affairs, 12 April 2010.

<sup>8</sup> Department of Foreign Affairs and Trade, *Australia: United Nations Security Council Candidate 2013-14*.

<sup>9</sup> See generally, Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009); David P Forsythe, *Human Rights and Comparative Foreign Policy* (2000).

<sup>10</sup> See, eg, Abdul Mannan, 'High time to Institute SAARC Human Rights Convention', *The New Nation* (Bangladesh), 25 April 2010 at [www.ittefaq.com/issues/2010/04/25/news0501.htm](http://www.ittefaq.com/issues/2010/04/25/news0501.htm), Asian Forum for Human Rights and Development, 'Need for a Human Rights Mechanism in SAARC', 3 May 2010 at [www.forum-asia.org/index.php?option=com\\_content&task=view&id=2544&Itemid=130](http://www.forum-asia.org/index.php?option=com_content&task=view&id=2544&Itemid=130).

<sup>11</sup> Pacific Islands Forum, *Pacific Plan for Strengthening Regional Cooperation and Integration* (2007) 7.

<sup>12</sup> See generally JCFADT Report, 107-115. See also Pacific Islands Forum, *Pacific Plan*, 7.

<sup>13</sup> *Bangkok Action Points on Regional Cooperation on the Protection of Human Rights in the Asia Pacific Region*, adopted on 23 April 2010: see <http://bangkok.ohchr.org/news/events/asia-pacific-regional-framework-workshop-2010/>.

<sup>14</sup> *Bangkok Action Points*, para 2.

<sup>15</sup> *Bangkok Action Points*, para 3.

<sup>16</sup> *Bangkok Action Points*, para 8.

<sup>17</sup> JCFADT Report, 133.

<sup>18</sup> See, eg, Netherlands Ministry of Foreign Affairs, *Human Dignity for All: A Human Rights Strategy for Foreign Policy* (2007). The policy 'places human rights at the centre of Dutch foreign policy' and details over 100 actions the Netherlands will take to advance human rights across six priority areas.

<sup>19</sup> In a March 2010, the Joint Standing Committee on Treaties called for the inclusion of human rights safeguards in Australia's extradition arrangements with other countries. Similarly, in its 2009 report on *Australia's Relationship with ASEAN*, JCFADT recommended that 'human rights, core labour standards, and the environment be pursued in future free trade agreements' and the review of existing free trade agreements: 159 [Recommendation 8].

<sup>20</sup> JCFADT Report, 133 [Recommendation 2].

<sup>21</sup> Overseas Development Institute, *Aid Effectiveness and Human Rights: Strengthening the Implementation of the Paris Declaration* (October 2006); OECD Development Assistance Committee, *Action-Oriented Policy Paper on Human Rights and Development* (2007) at [www.oecd.org/dataoecd/50/7/39350774.pdf](http://www.oecd.org/dataoecd/50/7/39350774.pdf).

<sup>22</sup> Australia has recently adopted a new 'Framework for Law and Justice Engagement with the Pacific' (15 June 2010), which commits to the promotion and protection of human rights as both a key objective and instrument.

<sup>23</sup> JCFADT Report, 144.

<sup>24</sup> The ICRMW has been signed or ratified by the following Asia-Pacific states: Bangladesh, Cambodia, Indonesia, Philippines, Sri Lanka and Timor-Leste. The Convention on Enforced Disappearances has been signed or ratified by: India, Japan, Lao, Samoa, Vanuatu. It needs two more states to become party to enter into force.

<sup>25</sup> JCFADT Report, 151-65.

<sup>26</sup> JCFADT Report, 165.

<sup>27</sup> JCFADT Report, 165.

<sup>28</sup> The functions of the UK Joint Parliamentary Committee on Human Rights include monitoring government responses to judgments of the European Court of Human Rights and recommendations of the UN human rights mechanisms: Joint Committee on Human Rights, *Enhancing Parliament's Role in Relation to Human Rights Judgments* (15<sup>th</sup> Report of Session 2009-10).