



Australia as a global human rights leader

DFAT Foreign Policy White Paper consultation 2017

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Human Rights Law Centre

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1. Executive Summary

The Human Rights Law Centre (**HRLC**) welcomes this opportunity to provide a submission to the public consultation on the 2017 Foreign Policy White Paper (**2017 White Paper**).

The HRLC seeks to ensure that Australia adopts a human rights-based approach to foreign policy and engages positively and constructively with United Nations human rights system.

The last Foreign Policy White Paper was released by the Howard Government in 2003 (**2003 White Paper**). In the 13 years since, Australia and the wider global community have faced many new political, legal and social challenges, which have impacted the proper protection of human rights both at home and overseas.

Now, more than ever, it is critical to ensure that Australia adopts a principled and consistent human rights-based approach to its foreign policy work, whether that concerns Australia's response to human rights abuses in the region, the activities of Australian corporations overseas, or how Australia engages with the UN human rights system.

These submissions first set out how closely Australia's national interest is tied to the rules-based international order that promotes and protects human rights and ensures international peace and security. This means that it is in Australia's interests to both defend the international rule of law, and to comply with international law, including international human rights law.

The submissions then consider:

1. The need for Australia to consistently speak out, publicly and privately, on grave human rights abuses, particularly in relation to its regional neighbours.
2. The ways in which Australia can play a principled and consistent role to promote and protect human rights in the UN human rights system, including the UN Human Rights Council.
3. The importance of ensuring that Australian corporations operating abroad are complying with human rights standards and are accountable for human rights abuses beyond our borders.
4. How to make the best use possible of human rights expertise in Australian civil society and the Australian Human Rights Commission to inform Australia's foreign policy work.

2. Recommendations

1. Australia should develop a written policy that is publicly available and that sets out how it will uphold the rule of law and protect and promote human rights in foreign policy.
2. Australia should bring its domestic policies in line with international law to strengthen its position, which should include, at a minimum, closure of the Manus Island and Nauru facilities.

3. Australia must ensure that its trade and border protection relationships with regional neighbours do not unduly influence Australia's advocacy for the maintenance of the rule of law and protection of human rights in the Asia-Pacific region.
4. Australia should take opportunities to raise concerns about human rights abuses, both privately and publicly.
5. Australia should introduce a law similar to the US Leahy Law, which would prohibit Australia from providing direct aid or assistance to any foreign security forces against whom there is credible information of serious human rights abuses, such as rape, torture or war crimes.
6. Australia should enact legislative amendments to improve its own position on the death penalty and continue to advocate for the abolition of the death penalty in the Asia-Pacific and worldwide.
7. Australia should include specific, measurable and verifiable commitments to improving human rights domestically and overseas in its voluntary pledges in support of its Human Rights Council bid.
8. Australia should ensure that it takes a consistent approach to addressing human rights violations in country situations of concern in the Human Rights Council.
9. The Government should implement decisions of UN human rights treaty bodies on individual communications fully and in good faith.
10. Australia should establish an executive-level coordination body to implement decisions of human rights treaty bodies and monitor compliance with UN human rights body reports.
11. Australia should develop a National Action Plan on business and human rights which contains specific, forward-looking commitments and clear guidance for Australian business on how to respect human rights in accordance with the UNGPs, including on human rights due diligence and reporting.
12. Australia should strengthen the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises.
13. Australia should expand the scope of the Commonwealth procurement rules to include human rights-related procurement obligations for businesses supplying goods and services to the Australian government from Australia or overseas suppliers.
14. Australia should engage closely with NHRIs and NGOs to ensure a principled and consistent approach to human rights is reflected in its foreign policy.
15. Australia should restore funding to the Australian Human Rights Commission.
16. Australia should establish a Human Rights Advisory Group.
17. Australia should provide additional resources to DFAT to assist in its human rights work.

3. Australia's national interest

[Question 1 of the 2017 White Paper consultation]

3.1 Australia's national interest in peace, security, human rights and the rule of law

Australia's national interest lies in peace and security that can only be achieved through a rules-based international order in which human rights are promoted and protected. As Australia's Foreign Minister, the Hon Julie Bishop MP, recently stated: "human rights, security, peace and prosperity go hand in hand".¹

This sentiment is not new. It is key to the United Nations Declaration of Human Rights (**UDHR**), which recognises that the "inherent dignity and...the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."²

Central to Australia's national interest, therefore, is that it upholds and defends international law, including international human rights, and the multilateral institutions that support it.

Australia showed its capacity to be a strong multilateral player that defends human rights during its 2013-2014 seat on the UN Security Council. Indeed Australia made human rights and humanitarian intervention central pillars of its work. Gary Quinlan, then Ambassador and Permanent Representative for Australia to the United Nations, emphasised the connection between human rights and peace and security, stating that "human rights are a central element of the Council's work".

Debates about the exact jurisdictional demarcations of various UN organs are increasingly anachronistic and sterile in a world where security challenges have obvious political, economic, social and humanitarian dimensions and require multi-dimensional responses.³

It is in Australia's national interest for it to be principled and consistent in its support for the international rule of law that protects human rights, peace and security.

Defence of a rules-based global order is particularly important in a climate in which the United States may step back from pursuing policies and decisions that protect the international rule of law. President Trump has indicated plans to withdraw from a number of important multilateral treaties, including the

¹ Minister for Foreign Affairs, The Hon Julie Bishop MP, 'Human Rights Speech' presented at the Lowy Institute for International Policy on 12 December 2016, <http://foreignminister.gov.au/speeches/Pages/2016/jb_sp_161212.aspx>.

² *Universal Declaration of Human Rights*, GA Res 217A (III) UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) (**UDHR**), Preamble.

³ Statement by Gary Quinlan, Ambassador and permanent representation of Australia to the United Nations, on 30 April 2014 <<http://dfat.gov.au/international-relations/international-organisations/un/unsc-2013-2014/national-statements/Pages/wrap-up-session-april-2014.aspx>> .

recently concluded Paris Climate Change Agreement.⁴ Perhaps even more worryingly, a leaked draft executive order also indicates the Trump Administration may be planning to withdraw or not participate in accountability under the human rights treaties.⁵ The withdrawal of the United Kingdom from the European Union also signifies a potential shift away from the influence of regional legal institutions.

Australia must also lead by example. This means that it must not only defend international law, but also comply with it. Australia's offshore detention regime, operated in violation of international human rights law, is not only causing serious harm but it undermines Australia's credibility to defend international law and conflicts with our broader national interest.⁶ Australia should bring its domestic policies in line with international law to strengthen its position, which should include, at a minimum, closure of the Manus Island and Nauru facilities.

To demonstrate its commitment to a global rules-based order, Australia also needs to embrace and promote the various international conflict resolution mechanisms backed by the UN. Australia's decision to withdraw its recognition of the maritime boundary jurisdiction of the International Court of Justice in 2002 has hampered its ability to settle disputes with its neighbours. It has also undermined Australia's recent efforts to encourage China to respect independent rulings regarding the international law of maritime territory disputes.

Australia is currently a candidate for its first term on the United Nations Human Rights Council and again has an opportunity to become a leader in a global forum. Australia should draw on its influence as a regional leader and world middle power and advocate for the maintenance of the rule of law and highest possible standards in the protection and promotion of human rights.

⁴ See e.g. Nick Miller, 'Donald Trump to withdraw from Paris agreement, 'change course' on climate change, says advisor' *Sydney Morning Herald* (online) 31 January 2017 <<http://www.smh.com.au/world/donald-trump-to-withdraw-from-paris-agreement-change-course-on-climate-change-says-adviser-20170130-gu1t58.html>>.

⁵ See e.g. Max Fisher, 'Trump Prepares Orders Aiming at Global Funding and Treaties' *The New York Times* (online), 25 January 2017 <<https://www.nytimes.com/2017/01/25/us/politics/united-nations-trump-administration.html>>.

⁶ Juan Méndez, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Observations on communications transmitted to Governments and replies received*, UN Doc. A/HRC/28/68/Add.1 (5 March 2015) [16]-[31] accessible at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/044/17/PDF/G1504417.pdf?OpenElement>>; Francois Crepeau, Special Rapporteur, *End Statement by the UN Special Rapporteur on the human rights of migrants on his official visit to Australia* (1-18 November 2016) accessible at <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20885&LangID=E>>; *Namah v Minister for Foreign Affairs and Immigrations* SCA No.84 of 2013 (26 April 2016) [69].

Recommendation

Australia should develop a written policy that is publicly available and that sets out how it will uphold the rule of law and protect and promote human rights in foreign policy.

Australia should bring its domestic policies in line with international law to strengthen its position, which should include, at a minimum, closure of the Manus Island and Nauru facilities.

4. Australia's regional relationships

[Question 2 of the consultation paper]

Australia should contribute to strength, stability and peace in the region by being a consistent and principled advocate for the protection and promotion of human rights, both publicly and privately.

Australia is the oldest democracy in the Asia-Pacific region with a strong, if uneven, history of defending human rights. Australia has at times shown a willingness to put human rights first in its foreign policy in the region, such as Australia's role in leading and organising the UN peacekeeping efforts in East Timor (**INTERFET**). However more recently Australia has increasingly disregarded human rights abuses in neighbouring countries in an effort to curry favour for the furtherance of Australia's domestic immigration and trade priorities.

4.1 Australia's domestic policies should not unduly influence its human rights advocacy

Australia needs to ensure that its domestic interests, in particular immigration policies and border protection relationships with its regional neighbours, do not undermine its human rights agenda.

Australia has entered into bilateral arrangements with a number of countries in the region, including Sri Lanka, Nauru, Papua New Guinea and Cambodia, as partners in Australia's regime of offshore detention, processing and resettlement. At different times, Australia has gone too far in prioritising the border protection relationship at the cost of speaking out on serious human rights abuses or attacks on democracy and the rule of law in those countries. This has included Australia opposing accountability for war crimes and grave human rights abuses in Sri Lanka;⁷ Australia remaining silent as the rule of law on Nauru deteriorated;⁸ turning a blind eye to human rights abuses in PNG in order

⁷ Human Rights Law Centre, "Can't flee, can't stay", March 2014.

⁸ See George Williams, "Australia must defend rule of law on Nauru", *Sydney Morning Herald*, 27 January 2014, <http://www.smh.com.au/comment/australia-must-defend-rule-of-law-in-nauru-20140127-31ist.html>.

to keep the Manus Island facility open;⁹ and, failing to comment as Cambodia's President Hun Sen badly damages its democracy.¹⁰

Similarly, Australia has at times seriously underplayed human rights abuses in Burma (Myanmar), whilst it facilitates increased trade and investment links there, particularly in energy and resources.¹¹ Likewise, Australia has been reluctant to ever raise concerns about the ongoing human rights abuses in Indonesia's Papuan provinces or push for international media access.

Australia's foreign policy must be consistent and principled in its advocacy for human rights.

4.2 Australia should speak publicly about human rights abuses in the region

Australia should speak out publicly on serious human rights abuses in the region. Australia needs to maintain a strong voice and not reserve its criticisms for meetings behind closed-doors, such as the bilateral dialogues with countries such as China, Vietnam and Laos.¹² Public pressure is critical to building momentum for change. It also provides support to civil society organisations promoting human rights inside the state in question and ensures human rights issues are exposed to international scrutiny.

4.3 Australia should ensure it does not aid or assist human rights abuses

Australia has close military and police ties with many governments in the region, in particular Indonesia, PNG and Sri Lanka. There are credible reports of human rights abuses by military and police in those countries.¹³

⁹ Eric Tlozek, "Australian government accused of ignoring PNG human rights abuse," *ABC online*, <<http://www.abc.net.au/news/2015-11-24/australian-government-accused-of-ignoring-png-human-rights-abuse/6967754>>.

¹⁰ Lindsay Murdoch, "Australia silent as Cambodia's Hun Sen deals final blow to democracy," *Sydney Morning Herald* (online) 22 February 2017, <http://www.smh.com.au/world/australia-silent-as-cambodias-hun-sen-deals-final-blow-to-democracy-20170221-guhorj.html>.

¹¹ Lindsay Murdoch, "Australia goes soft on egregious human rights abuses in Myanmar," *Sydney Morning Herald* (online) 17 March 2016, <http://www.smh.com.au/world/australia-goes-soft-on-egregious-human-rights-abuses-in-myanmar-20160317-gnlmgj.html>.

¹² See e.g. Minister for Foreign Affairs, The Hon Julie Bishop MP, 'Human Rights Speech' presented at the Lowy Institute for International Policy on 12 December 2016 <http://foreignminister.gov.au/speeches/Pages/2016/jb_sp_161212.aspx>.

¹³ See e.g. Human Rights Watch, *World Report 2017- Indonesia*, accessible at <<https://www.hrw.org/world-report/2017/country-chapters/indonesia>>; Human Rights Watch, *World Report 2017 – Papua New Guinea*, accessible at <<https://www.hrw.org/world-report/2017/country-chapters/papua-new-guinea>>; *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka* (31 March 2011) accessible at <http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf>.

Australia should introduce a law similar to the US Leahy Law, which would prohibit Australia from providing direct aid or assistance to any foreign security forces against whom there is credible information of serious human rights abuses, such as rape, torture or war crimes.¹⁴

This type of law would improve Australia's legitimacy and moral standing in international affairs by ensuring that Australia does not provide assistance to perpetrators of gross human rights violations abroad. It would also create a space for active and effective human rights dialogue with partner countries. By adopting a vetting system and denying assistance to units or individuals involved in human rights violations, Australia could also encourage its partners to prosecute human rights violators and prevent future gross violations.

Recommendation

Australia must ensure that its trade and border protection relationships with regional neighbours do not unduly influence Australia's advocacy for the maintenance of the rule of law and protection of human rights in the Asia-Pacific region.

Australia should take opportunities to raise concerns about human rights abuses, both privately and publicly.

Australia should introduce a law similar to the US Leahy Law, which would prohibit Australia from providing direct aid or assistance to any foreign security forces against whom there is credible information of serious human rights abuses, such as rape, torture or war crimes.

4.4 Australia's should champion abolition of the death penalty in the region and beyond

In her 2016 address on human rights, Foreign Minister Julie Bishop emphasised that "in forum after forum, whether in bilateral meetings or in multilateral settings like the United Nations, Australia has argued the case for abolition".¹⁵ Abolition of the death penalty is also part of Australia's current campaign for election to the United Nations Human Rights Council.¹⁶

As part of its consistent and principled approach to human rights in foreign policy, Australia must ensure that its advocacy abroad is consistent with Australian practice at home. Australia's endeavor to

¹⁴ Since 1997 the US Government has been prevented from directly arming or assisting human rights abusers abroad through the operation of the Leahy Law: Section 620M, Foreign Assistance Act 1961 as amended contained the law colloquially known as the Leahy Law after its chief sponsor, Senator Patrick Leahy.

¹⁵ Minister for Foreign Affairs, The Hon Julie Bishop MP, 'Human Rights Speech' presented at the Lowy Institute for International Policy on 12 December 2016, <http://foreignminister.gov.au/speeches/Pages/2016/jb_sp_161212.aspx>.

¹⁶ See e.g. Minister for Foreign Affairs, The Hon Julie Bishop MP, 'Human Rights Speech' presented at the Lowy Institute for International Policy on 12 December 2016, <http://foreignminister.gov.au/speeches/Pages/2016/jb_sp_161212.aspx>.

be a global leader is diminished by the AFP's practice, illustrated in the Bali 9 case, of sharing information with foreign police that leads to the imposition of the death penalty.

In May 2016 the Joint Standing Committee on Foreign Affairs, Defence and Trade recommended that that the Australian Federal Police be prevented from sharing information that leads to the death penalty unless they are given an assurance that the death penalty will not be imposed.¹⁷ Yet the government has failed to implement this recommendation.

Australia cannot oppose the death penalty in some forums and support the investigation of death penalty cases in others. Australia's global advocacy for abolition of the death penalty is seriously undermined by Australian police actively sharing information that leads directly to people being put to death.

Australia leaves itself wide open to accusations of exceptionalism and hypocrisy; that it will happily tell other states what to do but will not implement the same standards at home.

Recommendation

Australia should enact legislative amendments to improve its own position on the death penalty and continue to advocate for the abolition of the death penalty in the Asia-Pacific and worldwide.

5. International human rights institutions

[Question 3 of the 2017 White Paper]

5.1 Australia's bid for the United Nations Human Rights Council

Australia should play a principled and consistent role as a human rights leader in international human rights institutions.

Australia's Human Rights Council candidacy represents an invaluable opportunity to articulate how human rights form part of Australia's foreign policy. It is an opportunity to establish a clear human rights agenda in a global forum. As part of the bid, Australia has made voluntary pledges that allow some assessment of the likely value of its contribution to promotion and protection of human rights.¹⁸

¹⁷ Joint Standing Committee on Foreign Affairs, Defence and Trade, 'A world without the death penalty- Australia's advocacy for the abolition of the death penalty', May 2016

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Death_Penalty/Report.

¹⁸ United Nations General Assembly, Resolution 60/251 on the Human Rights Council (A/RES/60/251, 60th Session, 2006).

The Government should ensure that its pledges to uphold human rights that contain specific, measurable and verifiable commitments to improving human rights domestically and overseas.¹⁹ As they currently stand, the voluntary pledges lack specificity and do not signal new initiatives to substantively improve human rights law and policy in Australia and in Australia's foreign policy.

The revised pledges should do the following, as recommended by 17 civil society organisations in a statement to DFAT in February 2017:

1. Include specific, measurable and verifiable commitments.
2. Commit to new steps to be taken towards substantive improvement of international cooperation in an area in which Australia currently falls short, including for example the ratification of outstanding human rights treaties.
3. Commit to new steps to be taken towards substantive improvement of some of Australia's domestic human rights challenges.
4. Indicate Australia's approach to the contribution of civil society in the bid process as well as in the development of human rights policies and programs.
5. Commit Australia to uphold the highest standards in the protection and promotion of human rights.
6. Commit to full cooperation with UN treaty bodies and special procedures, including the establishment of a domestic mechanism for the implementation of their views and recommendations.

5.2 Approach to country situations of concern

As a candidate and if it becomes a member of the Human Rights Council, Australia should demonstrate its principled leadership by being more active on country situations of concern. This is the core aspect of the Council's mandate to protect human rights. Australia is yet to play a particularly active role on the HRC in relation to country situations and often supports country-specific actions raised by others rather than assuming a leadership role.²⁰

As a member, Australia should actively seek to pursue initiatives to ensure that the Council can fulfil its protection mandate. This could take many forms including speaking on the reports of the Council's special procedures when they report on human rights abuses, supporting country-specific joint statements and actively supporting the passage of country-specific resolutions. Australia's support for

¹⁹ This would accord with the recommendations of the Office of the High Commissioner for Human Rights guidance. See United Nations Office of the High Commissioner for Human Rights, 'Suggested Elements for Voluntary Pledges and Commitments by Candidates for Election to the Human Rights Council' <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/pledges.pdf>>.

²⁰ See e.g. discussion in Human Rights Watch and Human Rights Law Centre, 'Australia at the Human Rights Council- Ready for a Leadership Role?' September 2015, 17 <https://www.hrw.org/sites/default/files/report_pdf/australia0915_4up_0.pdf>.

the joint statement concerning the human rights situation in China at Human Rights Council session 31 is an example of the constructive and principled role that Australia can play.²¹

At the Human Rights Council, Australia has appeared reluctant to criticise states closer to home, with inconsistent responses to grave abuses in Burma (Myanmar) and Cambodia,²² and an unprincipled opposition to the establishment of an international inquiry into allegations of war crime and crimes against humanity committed by both sides during Sri Lanka's civil war.²³ Again, these foreign policy positions are driven by a singular focus on other Australian domestic interests.

These approaches are also short-sighted. The Sri Lankan Opposition Leader at the time of Australia's opposition to the inquiry is now the Prime Minister. He has noted the silence of Australia and other countries at that time: "When human rights were being trampled, and democracy was at bay, these countries were silent. That is an issue for Sri Lanka."²⁴

Australia can avoid this criticism by adopting a principled and consistent approach consistent with human rights and the rule of law. Australia will do the Human Rights Council and the people it aims to protect, a great disservice if, as a member, it takes equivocal or silent stances on issues of grave human rights violations.

Recommendations

Australia should include specific, measurable and verifiable commitments to improving human rights domestically and overseas in its voluntary pledges in support of its Human Rights Council bid.

Australia should ensure that it takes a consistent approach to addressing human rights violations in country situations of concern in the Human Rights Council.

5.3 Australia's engagement with United Nations Treaty Bodies

In the 2003 White Paper, two of the stated objectives for the Australian Government in its approach to human rights in its foreign policy were "strengthening the effectiveness of UN human rights treaty body

²¹ See <https://geneva.usmission.gov/2016/03/10/item-2-joint-statement-human-rights-situation-in-china/>.

²² See e.g. discussion in Human Rights Watch and Human Rights Law Centre, 'Australia at the Human Rights Council- Ready for a Leadership Role?' September 2015, 17 <https://www.hrw.org/sites/default/files/report_pdf/australia0915_4up_0.pdf>.

²³ Lisa Cox, "Australia opposes UN resolution to conduct war crimes inquiry into Sri Lanka," *Sydney Morning Herald* (online) 28 March 2014 <<http://www.smh.com.au/federal-politics/political-news/australia-opposes-un-resolution-to-conduct-war-crimesinquiry-in-sri-lanka-20140327-35moj.html>>.

²⁴ Amanda Hodge, "Sri Lanka abuse silence 'price of boat deal,'" *The Australian* (online) 23 February 2015 <<http://www.theaustralian.com.au/national-affairs/foreign-affairs/sri-lanka-abuse-silence-price-of-boats-deal/storyfn59nm2j-1227234601817>>.

machinery” and “working on establishing a credible and effective means of enforcing international human rights”.²⁵ These objectives should remain in Australia’s foreign policy.

The Australian Government needs to do more to meet these objectives, including responding directly to recommendations and views from treaty bodies.

The Government should implement decisions of UN human rights treaty bodies on individual communications fully and in good faith. Despite 45 decisions that have found Australia to be in breach of international human rights law, Australia has not taken concrete steps to implement the committees’ views and provide a remedy to victims in a large number of these cases.²⁶

An executive-level coordination body should be established to do this, such as a high level inter-departmental committee, with clear communication channels to ministerial offices and including the involvement of the Australian Human Rights Commission. This body should report publicly on progress made in addressing UN decisions.

Recommendations

The Government should implement decisions of UN human rights treaty bodies on individual communications fully and in good faith.

Australia should establish an executive-level coordination body to implement decisions of human rights treaty bodies and monitor compliance with UN human rights body reports.

6. Australia’s economic priorities

[Question 4 of the Consultation Paper]

6.1 Ensuring businesses comply with human rights

It is also clearly in the interest of Australian business and national economy for the Australian government to ensure, as far as possible, a stable, predictable international business environment based on respect for human rights and the rule of law.

In recent years, Australian businesses operating overseas have been implicated in a range of human rights abuses, including violent assaults on asylum seekers in Australia’s offshore detention centres,²⁷

²⁵ Department of Foreign Affairs and Trade, ‘Advancing the National Interest- Australia’s Foreign and Trade Policy White Paper’ (2003) 114-118.

²⁶ See Remedy Australia’s public database on complaints upheld against Australia <<http://remedy.org.au/cases/>>

²⁷ HRLC & Rights & Action in Development (RAID), *Complaint concerning G4S Australia Pty Ltd: Submitted to the Australian and United Kingdom National Contact Points for the OECD Guidelines for Multinational Enterprises*

financing land grabs and forcible evictions of communities in Cambodia and Papua New Guinea,²⁸ risking the safety and lives of mineworkers in Malawi and South Africa²⁹, and profiting from exploitative labour practices in the garment sector in Bangladesh³⁰ and North Korea.³¹

Such abuses result not only in harm to the individuals and communities directly affected, but also expose the Australian companies involved and their investors to legal, operational and financial risks and cause damage to Australia's reputation and trading relationships abroad.

Greater guidance and regulation are needed to assist Australian companies to navigate these risks, protect communities impacted by Australian business activity overseas and safeguard Australia's standing within the international community.

On this note, the HRLC welcomed the Australian government's commitment in March 2016 to undertake a national consultation on implementing the UN Guiding Principles on Business and Human Rights. A year later, there has been little progress, however, to take this consultation forwards – no timeframes or terms of reference have been set and the government has yet to announce the membership of its advisory group for the consultation.

In order to make its commitment to the UN Guiding Principles meaningful, the Australian Government should as a matter of priority:

- Develop a National Action Plan on business and human rights which contains specific, forward-looking commitments and clear guidance for Australian business on how to respect human rights in accordance with the UNGPs, including on human rights due diligence and reporting;
- Strengthen the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises, which is currently inadequately resourced and lacking independent oversight; and

(September 2014) (online)

<http://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/581699b035a11a8bfc26b877/58169aba35a11a8bfc26d0c4/1477876410300/HRLC_RAID_Complaints_OECD_Guidelines_specific_instance_G4S_Sep2014.pdf?format=original>

²⁸ Oxfam Australia, *Banking on Shaky Ground: Australia's Big Four Banks and Land Grabs* (2014)

<https://www.oxfam.org.au/wp-content/uploads/site-media/pdf/2014-47%20australia's%20big%20%20banks%20and%20land%20grabs_fa_web.pdf>

²⁹ Centre for Public Integrity & International Consortium of Investigative Journalists, *Fatal Extraction: Australian Mining in Africa*, (10 July 2015) <<https://projects.icij.org/fatalextraction/>>

³⁰ Four Corners, "Australian retailers Rivers, Coles, Target, Kmart linked to Bangladesh factory worker abuse", *ABC News* (online) (24 June 2013) <<http://www.abc.net.au/news/2013-06-24/australian-retailers-linked-to-sweatshop-abuse/4773738>>

³¹ Nick McKenzie & Richard Baker, "Surf clothing label Rip Curl using 'slave labour' to manufacture clothes in North Korea", *The Sydney Morning Herald* (21 February 2016) <<http://www.smh.com.au/business/surf-clothing-label-rip-curl-using-slave-labour-to-manufacture-clothes-in-north-korea-20160219-gmz375.html>>

- Expand the scope of the Commonwealth procurement rules to include human rights-related procurement obligations for businesses supplying goods and services to the Australian government from Australia or overseas suppliers.

Such commitments would reinforce the Government's commitments to good governance and strong national human rights institutions in support of its Human Rights Council bid.

Recommendations

Australia should develop a National Action Plan on business and human rights which contains specific, forward-looking commitments and clear guidance for Australian business on how to respect human rights in accordance with the UNGPs, including on human rights due diligence and reporting.

Australia should strengthen the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises.

Australia should expand the scope of the Commonwealth procurement rules to include human rights-related procurement obligations for businesses supplying goods and services to the Australian government from Australia or overseas suppliers.

7. Australia's assets

[Question 6 of the Consultation Paper]

7.1 Increasing engagement with and support for NHRIs and NGOs

The Office of the High Commissioner for Human Rights has repeatedly emphasised the important role National Human Rights Institutions (**NHRIs**) can play in promoting and monitoring the effective implementation of international human rights standards at a national level.³² These bodies are uniquely placed to provide specialist guidance on how to adopt a human rights focused approach to foreign policy.

Globally, the Australian Government has been a strong supporter of NHRIs and contributed to broad support in the Human Rights Council to expanding participation of NHRIs in council proceedings and defending them from political pressure. Australia should continue this work.

As part of this leadership effort, Australia should continue to work closely with the Australian Human Rights Commission and draw on its expertise to support its foreign policy work. Given that funding is

³² See e.g. United Nations General Assembly Resolution 70/163, 'National institutions for the promotion and protection of human rights' (A/RES/70/163, 17 December 2015).

critical to the Commission's ability to perform its role effectively, the Australian Government should also take steps to reverse the severe funding cuts to the Commission announced in 2014.³³

In addition, the Australian Government needs to engage more closely with civil society, especially specialist human rights NGOs, both internationally and at home. For example, DFAT country offices should be focused on building strong relationships with civil society in the Asia-Pacific and consult with regional and national organisations on their initiatives and positions at the Human Rights Council. Senior DFAT officials and the foreign minister should also work on holding more clearly targeted meetings with domestically based NGOs and Geneva-based NGOs, especially in the lead up to United Nations sessions.

7.2 Increasing the human rights expertise and capacity of Australia's foreign service

Australia should also take practical steps to strengthen Australia's human rights expertise. The creation of the office of Special Envoy for Human Rights in 2016 was an encouraging step forward. However, more needs to be done to ensure that Australia becomes a strong leader in human rights.

First, the Government should establish a Human Rights Advisory Group, comprising experts from NGOs, academia and human rights bodies, to provide external advice on foreign policy and options for addressing human rights problems.

Second, the Government should provide such additional resources to DFAT as is necessary for Australia to become a more effective and active human rights promoting state, including by increasing the number of human rights officers and incorporating human rights in all DFAT training.

Recommendations

Australia should engage closely with NHRIs and NGOs to ensure a principled and consistent approach to human rights is reflected in its foreign policy.

Australia should restore funding to the Australian Human Rights Commission.

Australia should establish a Human Rights Advisory Group.

Australia should provide additional resources to DFAT to assist in its human rights work.

³³ Australian Government, Budget: 2014-15 – Part 2: Expense Measures, available at <http://www.budget.gov.au/2014-15/content/bp2/html/bp2_expense-05.htm>.