

A photograph of a conference table with a microphone and a sign that says "AUSTRALIE". The background is a colorful abstract painting.

AUSTRALIE

AUSTRALIA AT THE HUMAN RIGHTS COUNCIL

Ready for a Leadership Role?

HUMAN
RIGHTS
WATCH



Human Rights
Law Centre



Australia at the Human Rights Council

Ready for a Leadership Role?

Copyright © 2015 Human Rights Watch

All rights reserved.

Printed in the United States of America

ISBN: 978-1-6231-32682

Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organisation that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organisation with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: <http://www.hrw.org>

The Human Rights Law Centre protects and promotes human rights in Australia and beyond through a strategic mix of legal action, advocacy, research and capacity building. We are an independent and not-for-profit organisation and donations are tax-deductible.

Follow us at <http://twitter.com/rightsagenda>

Join us at <https://www.facebook.com/HumanRightsLawResourceCentre>

For more information, please visit our website: <https://www.hrlc.org.au>



Australia at the Human Rights Council

Ready for a Leadership Role?

Summary	1
Recommendations	5
Methodology	7
I. Australia’s Track Record in Promoting Human Rights Globally	8
Australia’s Role at the Security Council	8
Australia’s Role at the Human Rights Council	10
II. Advancing Human Rights in Countries of Concern.....	12
Sri Lanka	14
Cambodia	16
Burma	18
A Human Rights Leader in the Asia-Pacific Region?.....	20
III. Fulfilling International Human Rights Obligations at Home	23
Strengthening National Human Rights Institutions	24
IV. Working Effectively with Civil Society.....	26
Appendix I	29
Appendix II	32
Acknowledgments	36

Summary

Australia has announced its intention to seek election to the United Nations Human Rights Council for the 2018-20 term. The council is the United Nations' (UN) preeminent human rights body, responsible for taking action to respond to the most serious global human rights violations and emergencies and for strengthening the promotion and protection of human rights around the globe.

Human Rights Council members are expected to "uphold the highest standards in the promotion and protection of human rights," and "fully cooperate with the Council." States seeking a seat on the council should be committed to adhering to these criteria, both domestically and in their foreign policy.

This report considers Australia's readiness to operate effectively as a Human Rights Council member. As a vibrant democracy with a strong if uneven history of respecting fundamental human rights, Australia is well placed to do so. But, as detailed below, it should improve its record in key areas if it is to exercise true leadership.

Australia's recent membership of the UN Security Council demonstrated that Australia can successfully leverage its diplomatic power to advance human rights protection. Australia's work at the Security Council was effective in promoting human rights in that forum because Australia adopted a strategic approach to diplomacy and leadership and developed strong relationships with civil society. If elected as a member of the Human Rights Council, Australia could take on a similarly significant role in international human rights.

Australia's record to date at the Human Rights Council, however, gives some pause. While Australia has been solid in some respects, it has yet to play a leadership role in the Human Rights Council's work on grave human rights situations globally. Its status as an observer may in part account for Australia's limited role to date, but other observer states have played a more active role in ensuring an effective response to crises. Australia's approach too often has been passive and, of greater concern, Australia has at times acted in an inconsistent and unprincipled manner.

Australia's domestic human rights record will also come under increasing scrutiny during its candidacy for the council and, should it be elected, during its membership term. Australia's recent track record is not promising: former Prime Minister Tony Abbott has said that Australia is "sick of being lectured to by the United Nations," and Australia has failed to respond constructively to numerous recommendations by UN human rights bodies, including the United Nations High Commissioner for Refugees (UNHCR), the UN expert on torture and cruel, inhuman and degrading treatment, and the treaty body that monitors adherence to the International Covenant on Civil and Political Rights (ICCPR).

Nonetheless Australia has also long supported the UN, ever since Australia's Dr. Herbert Vere "Doc" Evatt as president of the UN General Assembly oversaw the adoption of the Universal Declaration on Human Rights (UDHR) in 1948. Australia's candidacy provides an important opportunity for Australia to address its domestic human rights issues and demonstrate how it can once again operate as an international human rights leader.

Australia can demonstrate its leadership at the Human Rights Council in three areas: it should take a stronger leadership role on country-specific human rights violations, particularly in Asia-Pacific states such as Sri Lanka, Burma, and Cambodia; it should respond more constructively to international concerns about some of its own domestic policies and practices, bringing them into line with international human rights standards; and it should engage more closely with global civil society organisations that help bring issues to the attention of the council.

First, Australia can and should more often play a leadership role in the council's work responding to situations of human rights violations and emergencies ("country situations"). Australia supports the council's work on country situations by cosponsoring many resolutions. For example, Australia was strong in its condemnation of the widespread human rights abuses reported by the council's Commission of Inquiry into the Democratic People's Republic of Korea (North Korea, or DPRK) and the council's resolution.

This contribution is important. The success of the Human Rights Council as an effective body for protecting human rights depends on the commitment, work and determination of its members, as well as non-member delegations. In the recent past, the council failed to respond to a number of new human rights emergencies or chronic situations of violations of human rights that needed its attention. The council has improved that record, thanks to

the hard work of a number of delegations in taking the lead on initiatives that directly address human rights violations in specific countries.

Despite a generally good record supporting country-specific human rights resolutions, Australia has at times not performed well on countries of concern in the Asia-Pacific region. Particularly regarding countries with which it shares border protection efforts or has key trade relationships, Australia has seemed willing to turn a blind eye to serious human rights abuses.

In March 2014, Australia opposed the council's important Sri Lanka resolution establishing an inquiry into allegations of some of the most serious human rights abuses in the Asia-Pacific region in recent times, including the deaths of up to 40,000 civilians in the final months of Sri Lanka's civil war. In February 2015, new Sri Lankan prime minister Ranil Wickremesinghe told journalists that Australia's silence on human rights issues was the price it paid for Sri Lanka's assistance in preventing ethnic Tamil asylum seekers fleeing to Australia.

Australia has also been unwilling to take on human rights concerns in Burma and Cambodia, glossing over grave human rights violations raised by the council's special procedures. Australia's statements have been out of touch with the reality on the ground and risk undercutting the work of the council's experts. Australia also has a vested interest in those countries concerning migration—Burma because of the Rohingya asylum seekers who seek protection in Australia and Cambodia as a country that Australia is paying to resettle refugees detained on Nauru.

To date, Australia has missed opportunities to leverage its unique access and influence geographically, as part of the Asia-Pacific region, and politically, as part of the Western European and Others Group (WEOG) at the council. Australia will run against France and Spain for two seats on the council. Australia's position in the Asia-Pacific could, and should, become an asset not a liability.

Australia has an opportunity to be a regional standard bearer on human rights issues and an influencer of regional players to discuss and champion human rights norms and standards at the council. Australia has not always been willing to publicly raise serious

human rights concerns with its neighbours. Private efforts are less effective without public pressure to do the same.

Secondly, Australia's promotion of human rights abroad has been undercut by its failure to address important human rights issues at home. While Australia has helped lead the council's work in strengthening the role and work of national human rights institutions (NHRIs), recent political attacks by Australian politicians on the independence and integrity of the president of Australia's own national human rights commission have badly damaged Australia's credibility to lead on this issue. The International Coordinating Committee, the UN body responsible for accrediting NHRIs, has written to Australia's prime minister, concerned that the attacks undermine and intimidate the independence of the commission. Even after the UN special rapporteur on human rights defenders Michel Forst urged Australia to halt these attacks, in June 2015, Australia's immigration minister, Peter Dutton, launched fresh attacks on the president, calling her a "complete disgrace" and suggesting her role was untenable.

Finally, Australia should ensure that it has strong partnerships with civil society organisations at home, in the Asia-Pacific region, and in Geneva. Many civil society organisations have not seen Australia as a consistently reliable strategic partner in the council, and this will need to change quickly if Australia is to play an effective role at the council. From the perspective of civil society, the most effective council members have strong relationships with independent nongovernmental organisations (NGOs) that enable information sharing and important partnerships on shared initiatives. In fact, civil society participation in the council's work is itself a contentious issue and Australia is well-placed not just to forge stronger ties with key organisations, but also to champion the value and importance of their contribution.

In September 2015, Malcolm Turnbull ousted Tony Abbott to become prime minister of Australia. It is too early to assess the impact of his leadership on Australia's work at the Human Rights Council.

Recommendations

To the Australian Government

Engage constructively with recommendations and decisions of UN human rights bodies concerning Australia and ensure, at a national level, that government statements do not undermine the credibility of the UN human rights system.

Stop unwarranted and unsubstantiated attacks on the independence and impartiality of the Australian Human Rights Commission (AHRC), including its president.

Establish an executive-level coordination body to ensure that decisions of UN human rights treaty bodies on individual communications are implemented fully and in good faith, with clear communication channels to ministerial offices and the AHRC. The coordination body should report publicly on progress made in addressing UN decisions.

To the Australian Parliament

Expand the role of the Parliamentary Joint Committee on Human Rights to include monitoring and reporting on Australia's implementation of concluding observations, recommendations and views of UN treaty bodies and the recommendations from special procedures and Australia's Universal Periodic Review (UPR) at the Human Rights Council.

Maintain pressure on the Australian government to engage constructively with the recommendations and decisions of UN human rights bodies concerning Australia, and to ensure that government statements do not undermine the credibility of the UN human rights system.

To the Department of Foreign Affairs and Trade

Commit Australia, as part of its candidacy, to fully implement the Human Rights Council's mandate, including its responsibility to address and prevent violations, and respond promptly to emergencies.

Leverage the close relationships with neighbouring countries in the Asia-Pacific region to:

- open a dialogue on supporting human rights standards at the Human Rights Council; and
- encourage regional cooperation with the special procedures of the Human Rights Council.

Ensure that Australia consistently supports, advocates, and takes stronger leadership on Human Rights Council action on country situations of concern based on an objective assessment of the specific human rights situation, including the advice of the council's special procedures.

Make promoting and protecting the role of civil society at the Human Rights Council a priority by leading and coordinating the work of those countries that support civil society participation.

Ensure strong and consistent support for civil society at the Human Rights Council not only in thematic resolutions but through support of country resolutions that bear on those issues.

Establish regular dialogue with Australian civil society organisations and draw on wide-ranging expertise within Australia by creating a high-level human rights advisory group, comprised of experts from NGOs, academia and think-tanks, to advise the minister on foreign policy and options for addressing human rights issues abroad.

Include representatives of the Australian Mission and Geneva-based NGOs in the annual Department of Foreign Affairs and Trade (DFAT) human rights dialogue for the part of the discussion which focuses on Australia's priorities and positions at the Human Rights Council and the General Assembly's Third Committee.

Seek strong and enduring partnerships with key regional and national NGOs in the Asia-Pacific region and consult with them on Australia's position on core Human Rights Council resolutions concerning their countries.

To Other Council Members and Observer States

Encourage and work with Australia to take leadership on country-specific human rights issues at the Human Rights Council.

Use Australia's UPR, scheduled for November 2015, to encourage Australia to respond effectively and constructively to recommendations and decisions of UN human rights bodies, and to ensure that government statements do not undermine the credibility of the UN human rights system.

Methodology

This report is based on public statements made by the Australian government, the government's responses to questions put to them during the course of this research, and interviews with civil society actors working on relevant issues at the Human Rights Council.

Our correspondence with the government on issues raised in this report is available in appendix I and appendix II of this report. Australia's statements are assessed against human rights reporting emanating from the UN system, including the Human Rights Council and its special procedures. Where relevant, the report contains an assessment of the consistency of Australia's statements across the council's proceedings, including the UPR.

This report does not address domestic human rights concerns in Australia in any detail. As noted above, Australia's credibility as a regional and international leader on human rights around the world also depends on its ability to remedy significant human rights violations at home.

This report was published immediately after Malcolm Turnbull became prime minister of Australia in September 2015. The prime minister had not announced his new ministry at the time of publishing.

I. Australia's Track Record in Promoting Human Rights Globally

Australia has a long history of supporting human rights at the global level. Australia proclaims itself a “principled advocate of human rights for all” and a “leading proponent” of the consistent and comprehensive implementation of the UDHR and the core human rights treaties, which it sees as “vital to global efforts to achieve lasting peace and security, and freedom and dignity for all.”¹

Australia's foreign minister, Julie Bishop, described Australia's bid for a Human Rights Council seat as “consistent with our nation's history of promoting and protecting human rights.”²

While these statements of principle are welcome, they do not always sit easily with Australia's recent actions on human rights on the international stage.

Australia's Role at the Security Council

Australia's work as a non-permanent member of the Security Council during 2013-14 showcased Australia's ability to play an active role in advancing human rights at the international level.³

Australia's push for humanitarian action on Syria was one of Australia's key successes on the council. Australia, with fellow non-permanent members Luxembourg and New Zealand, provided essential leadership in pushing for increased humanitarian access to Syria. Australia helped navigate around the council's deadlock on Syria, initially gaining agreement around a presidential statement that was adopted during Australia's presidency of the Security Council in October 2013. The presidential statement paved the way for a breakthrough resolution on Syria (SCR 2139), which not only demanded critical steps on humanitarian access, but called for an end to indiscriminate attacks on civilians,

¹“Australia: Seeking Human Rights for All,” DFAT, <http://www.dfat.gov.au/international-relations/themes/human-rights/Pages/australia-seeking-human-rights-for-all.aspx> (accessed August 11, 2015).

² Matthew Knott and Sarah Whyte, “Australia presses for Human Rights Council seat despite UN criticism,” Sydney Morning Herald, October 12, 2014, <http://www.smh.com.au/federal-politics/political-news/australia-presses-for-human-rights-council-seat-despite-un-criticism-20141011-114rmo.html> (accessed August 11, 2015).

³ Richard Gowan, “Australia in the UN Security Council,” Lowy Institute, June, 2014, p.14, <http://www.lowyinstitute.org/files/australia-in-the-un-security-council.pdf> (accessed August 11, 2015).

including by barrel bombs, and demanded an end to arbitrary detention. Resolution 2139 in turn provided the basis for two follow-on resolutions, including Resolution 2165 that explicitly authorises cross-border humanitarian access to Syria.

In 2014, the UN Human Rights Council's Commission of Inquiry on Human Rights in North Korea, led by former Australian High Court judge, Michael Kirby, released a devastating report into crimes against humanity in North Korea.

While the Security Council does not generally take notice of Human Rights Council reports relating to countries not on its agenda, Australia helped put the report before Security Council members through an informal (Arria-formula) meeting, arranged with France and the United States. At that meeting Kirby briefed Security Council members on the findings of the commission's work.

Behind the scenes, Australian diplomats at the UN in New York used a pragmatic approach that sought input from civil society groups and like-minded non-permanent Security Council members to achieve results. Notably, Australia cosponsored a side-event on the DPRK during the 69th session of the General Assembly, which helped achieve a strong vote count in favour of a UN General Assembly resolution on DPRK. Australia also played a key role in leveraging the General Assembly vote to obtain formal Security Council engagement on the situation in North Korea.

To achieve that goal, Australia worked behind the scenes to successfully rally 10 Security Council members to support a public letter expressing concern about the grave human rights violations in North Korea. These steps were critical in attracting support for putting North Korea's human rights situation on the agenda of the Security Council. The letter generated momentum in the council to hold a procedural vote in which eleven council members favoured placing the situation in North Korea on the council's formal agenda.

As "pen-holder" (diplomatic coordinator) on Afghanistan, Australia successfully championed the rights of women and girls and pressed for the mandate renewals for the United Nations Assistance Mission in Afghanistan (UNAMA) and the NATO-led

International Security Assistance Force (ISAF) to include human rights and humanitarian assistance as key priorities.⁴

More broadly, Australia has consistently advocated the position that human rights are a central element of the Security Council's work and that gross human rights violations can constitute a threat to international peace and security.⁵ As part of that advocacy, Australia encouraged the UN High Commissioner for Human Rights to give regular briefings to the council on South Sudan, Ukraine, and Syria.

Australia's successful engagement on human rights at the Security Council showcased Australia's potential for leadership in this field.

Foreign Minister Bishop has flagged that Australia intends to tout its record at the Security Council in its bid for a Human Rights Council seat, noting “[o]ur strong and principled stand on numerous human rights issues in our role as a temporary member of the Security Council will form part of our campaign.”⁶

Australia's Role at the Human Rights Council

Comprised of 47 members with a set distribution of members from each geographic region, the Human Rights Council works to promote human rights, and protect the victims of human rights abuses. The Human Rights Council's mandate expressly calls for it to address “situations of human rights violations, including gross and systematic violations,” such as those occurring in Burma, Cambodia, Iran, Israel/Palestine, North Korea, Syria, Sri Lanka, and Sudan.

⁴ Statement by HE Gary Quinlan, Ambassador and Permanent Representative of Australia to the United Nations, “The Situation in Afghanistan,” UN General Assembly statement, November 2013, <http://australia-UNSC.gov.au/2013/11/the-situation-in-afghanistan-3/> (accessed August 11, 2015); Statement by Senator the Honorable Bob Carr, Australian Minister for Foreign Affairs, “United Nations Assistance Mission in Afghanistan (UNAMA),” UN Security Council statement, 19 March, 2013, http://foreignminister.gov.au/speeches/2013/bc_sp_130319.html (accessed August 12, 2015).

⁵ On April 30, Ambassador Quinlan gave a speech to the Security Council reminding member states of the connection between human rights and peace and security, declaring 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.” Statement by Gary Quinlan, ambassador and permanent representative of Australia to the United Nations, <http://australia-UNSC.gov.au/2014/04/wrap-up-session-april-2014/> (accessed August 11, 2015).

⁶ Matthew Knott and Sarah Whyte, “Australia presses for Human Rights Council seat despite UN criticism,” Sydney Morning Herald, October 12, 2014, <http://www.smh.com.au/federal-politics/political-news/australia-presses-for-human-rights-council-seat-despite-un-criticism-20141011-114rmo.html> (accessed August 11, 2015).

Non-member or “observer” states at the Human Rights Council participate on an equal footing with member states in much of the council’s business. Non-member states participate fully in council formal and informal sessions, and can sponsor resolutions. Given this flexibility, some observer states play a very active role in the council’s work, including leading regional groups on occasion. While Australia’s track record at the council is generally positive, it has tended to join or support action on particular countries led by other states, rather than leading such efforts itself.⁷

UN Secretary-General Ban Ki-moon has said that “[a]ll victims of human rights abuses should be able to look to the Human Rights Council as a forum and a springboard for action.”⁸ Under the UN General Assembly resolution that established the Human Rights Council (60/251), members of the council “shall uphold the highest standards in the promotion and protection of human rights” and “shall fully cooperate with the council’s recommendations.”

Australia has described itself as an “engaged and pragmatic multilateral player” in its work to date at the council, focused on “achieving the best possible outcome in what is often contested space.”⁹ Australia sees itself as having a “well established bridge-building role to advance human rights objectives by facilitating cross-regional dialogue.”¹⁰

But Australia has not said enough about the objectives it will set should it be elected to the council, and how it will use its bridge-building and cross-regional dialogue skills to achieve greater results, particularly relating to country situations.

Australia’s work at the Security Council demonstrates that it has the ability to provide effective leadership on critical human rights issues. The question now is, will it ratchet up its engagement as a member of the Human Rights Council to provide leadership on critical initiatives in Geneva as well?

⁷ Interview with international NGO representative, Geneva, August 18, 2014.

⁸ Ban Ki-moon, UN Secretary-General, March 12 2007, Opening of the 4th Human Rights Council session, <http://www.un.org/sg/STATEMENTS/index.asp?nid=2475> (accessed August 11, 2015).

⁹ Letter from Peter Woolcott, Australia’s former Permanent Representative to the United Nations in Geneva, to Human Rights Watch and the Human Rights Law Centre, August 19, 2014. See Appendix II.

¹⁰ Ibid.

II. Advancing Human Rights in Countries of Concern

In recent years the Human Rights Council has taken action on human rights violations in a greatly increased number of countries. In each of 2013 and 2014, the Human Rights Council adopted approximately 30 resolutions or decisions on human rights situations around the world, covering 20 different countries, compared to just 10 resolutions on 8 countries in 2009.¹¹ Country-specific resolutions can result in the council establishing a dedicated mechanism (a commission of inquiry or a UN expert or “rapporteur”) on a specific country situation to monitor and report to the council on the situation, or to support the provision of technical assistance. Council engagement on human rights violations in particular countries plays an important role in exposing violations, and in preventing further abuses.

Country-specific work is a key element of the council’s protection mandate, and is also the most contested and contentious element because the political stakes are so high. Certain states at the Human Rights Council, especially those from Asia and Africa, obstruct and resist country-specific initiatives on principle, claiming that without the cooperation of the state concerned, such initiatives violate national sovereignty and do not allow a climate for constructive dialogue and cooperation between the Human Rights Council and the country concerned.¹²

Given this, it is critical that states like Australia that support country-specific action make work in this area a priority. Support for the council’s country-specific engagement can take many forms. States that support country-specific action should be vocal and engaged in response to the reports and recommendations made by the council’s special rapporteurs on country situations and the High Commissioner for Human Rights. Supporters also have a critical role in ensuring that the council takes up the full range of situations that require its attention. They should be willing to call for special sessions of the council to address country situations, support country-specific joint statements, and actively work for the

¹¹ Human Rights Watch, “Votes Count: Analysis” <http://votescount.hrw.org/page/read%20and%20download> (accessed August 25, 2015).

¹² See for example, Burma statement in interactive dialogue of 17 March, 2014 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14393&LangID=E> (accessed August 11, 2015); see also statements by China and Russia during discussion of OHCHR report on Sri Lanka, 25th session of the Human Rights Council, March 27, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14447&LangID=E> (accessed August 12, 2015).

passage of country-specific resolutions. Of critical importance to such efforts is the willingness of one country (or two or three countries working in partnership) to take leadership on a situation and work to use the council's full toolbox to ensure action is taken on it.

Australia usually supports country-specific actions raised by others at the council: it cosponsored most of the country-specific resolutions before the council in the last few years. It also supported the council's joint statements on the human rights situation in Azerbaijan in June 2015, in Bahrain in March 2014 and in South Sudan in June 2014, although it failed to support the joint statement on Egypt in March 2014, despite the unprecedented government crackdown in the country. Australia is also a strong contributor to the UPR debates at the council, making statements in almost all UPR debates that took place in 2014.

Australia took a strong position in support of the council's Commission of Inquiry into North Korea—an effort which was led by the delegations of Japan and the European Union. Australia condemned the “systematic, widespread and grave human rights violations in the DPRK” and hosted briefings for regional groups garnering support for the commission's report, its recommendations, and the related Human Rights Council resolution.¹³ Australia's work on North Korea is an example of how Australia can effectively contribute to the council's work.

While Australia has spoken out on a wide range of country situations through the UPR, it has not been willing to lead on expanding the council's agenda to include additional situations in need of attention, such as Uzbekistan or Egypt.

Despite Australia's overall record of positive engagement on country situations, Australia has at times been too quick to ignore or gloss over serious and grave human rights abuses, especially when it concerns countries with which Australia has a close trade or border protection relationship. A closer look at Australia's role on Sri Lanka, Burma, and Cambodia illustrates this tendency.

¹³ Australian Statement, Human Rights Council, 25th Regular Session, Item 4, Interactive Dialogue with Commission of Inquiry on the DPRK, March 17, 2014, <http://geneva.mission.gov.au/gene/statement560.html> (accessed August 11, 2015).

Sri Lanka

Australia publicly opposed a Human Rights Council resolution in March 2014 to establish an international inquiry into allegations of war crimes and crimes against humanity committed by both sides during the final phase of Sri Lanka's civil war.¹⁴ The resolution was led by a core group comprised of the US, the UK, Macedonia, and one non-member, Mauritius, and was adopted by a vote of 23 in favour, 12 opposed, and 12 abstaining.¹⁵

After the resolution was adopted, Foreign Minister Bishop said she was not convinced “that the resolution's call for a separate, internationally-led investigation, without the co-operation of the Sri Lankan Government, is the best way forward at this time.”¹⁶

Given the severity of violations past and present in Sri Lanka, and the complete absence of any credible domestic accountability approaches, it is hard to imagine what might have been sufficiently “convincing” to Australia. UN High Commissioner for Human Rights Navi Pillay had endorsed the resolution, after the government of Sri Lanka had failed to ensure independent and credible domestic investigations into past violations, and following additional attacks against religious minorities and harassment and intimidation of human rights defenders, lawyers, and journalists.¹⁷

Some insight into Australia's position may be found in remarks by Sri Lanka's new prime minister, Ranil Wickremasinghe. Wickremasinghe reportedly told journalists that the Australian government had agreed to stay silent on Sri Lanka's human rights abuses in exchange for the Sri Lankan navy stopping Tamil asylum seekers from fleeing Sri Lanka.¹⁸

¹⁴ Lisa Cox, “Australia opposes UN resolution to conduct war crimes inquiry into Sri Lanka,” Sydney Morning Herald, March 28, 2014 <http://www.smh.com.au/federal-politics/political-news/australia-opposes-un-resolution-to-conduct-war-crimes-inquiry-in-sri-lanka-20140327-35moj.html> (accessed August 11, 2015).

¹⁵ This illustrates that non-members can play a crucial role on important country resolutions.

¹⁶ Lisa Cox, “Australia opposes UN resolution to conduct war crimes inquiry into Sri Lanka,” Sydney Morning Herald, March 28, 2014 <http://www.smh.com.au/federal-politics/political-news/australia-opposes-un-resolution-to-conduct-war-crimes-inquiry-in-sri-lanka-20140327-35moj.html> (accessed August 11, 2015).

¹⁷ Report of the Office of the High Commissioner for Human Rights, “Promoting reconciliation and accountability in Sri Lanka,” February 24, 2014, A/HRC/25/23 <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx> (accessed August 11, 2015).

¹⁸ Amanda Hodge, “Sri Lanka abuse silence ‘price of boat deal,’” The Australian, February 23 2015, <http://www.theaustralian.com.au/national-affairs/foreign-affairs/sri-lanka-abuse-silence-price-of-boats-deal/story-fn59nm2j-1227234601817> (accessed August 11, 2015).

Thousands of Sri Lankans had attempted to reach Australia by boat in 2012 and 2013.¹⁹ Australia's response was to send many of those people back without properly screening for protection claims, while strengthening ties with the Rajapaksa regime through strengthened military support. Australia provided patrol boats and other resources to equip Sri Lankan authorities to prevent asylum seekers leaving the country.²⁰ Former Prime Minister Abbott boasted that Australia has "the closest possible cooperation" with Sri Lanka to prevent boat migration.²¹

Human Rights Watch has documented the Sri Lankan authorities' use of torture and rape against ethnic Tamils in detention, including those returned as failed asylum seekers from countries such as Australia.²² That reporting led the UK government to suspend returns of some Tamils to Sri Lanka.²³

Australia's failure to criticise serious human rights abuses in Sri Lanka has, at times, appeared to excuse them. In his press conference at the end of the Commonwealth summit in Colombo in November 2013, former Prime Minister Abbott did not criticise Sri Lanka's human rights record and, in doing so, he made statements that effectively excused torture—the prohibition of which is one of the most unequivocal human rights—committed by the Sri Lankan government on the basis that "sometimes in difficult circumstances, difficult things happen."²⁴

¹⁹ Between January 2012 and September 2013, Australia received more than 8300 Sri Lankans by boat; 1957 of those arrived in 2013: Ben Doherty, "Sri Lankan naval officer arrested over people smuggling," *The Age*, September 9 2013, <http://www.theage.com.au/national/sri-lankan-naval-officer-arrested-over-people-smuggling-20130908-2te1k.html> (accessed August 11, 2015).

²⁰ See discussion in Human Rights Law Centre, "Can't Flee, Can't Stay," March 2014, http://www.hrlc.org.au/wp-content/uploads/2014/03/HRLC_SriLanka_Report_11March2014.pdf (accessed August 11, 2015).

²¹ Prime Minister Tony Abbott, Press Conference, Colombo, Sri Lanka, November 17 2013, <http://www.pm.gov.au/media/2013-11-17/press-conference-colombo-sri-lanka> (accessed August 11, 2015).

²² Human Rights Watch, "We Will Teach You a Lesson," February 26, 2013, <https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces> (accessed August 13, 2015); Human Rights Watch, "UK: Suspend Deportations of Tamils to Sri Lanka," May 29, 2012. <https://www.hrw.org/news/2012/05/29/uk-suspend-deportations-tamils-sri-lanka> (accessed August 25, 2015).

²³ Haroon Siddique, "Court stops Tamil asylum seekers being sent back to Australia," *The Guardian* February 28 2013, <http://www.theguardian.com/uk/2013/feb/28/border-agency-tamils-sri-lanka> (accessed August 11, 2015).

²⁴ ABC radio report by Louise Yaxley, including audio of interviews with Tony Abbott, Bill Shorten, Scott Ludlum, and Scott Morrison, November 18 2013, <http://www.abc.net.au/news/2013-11-18/abbott-faces-questions-over-comments-in-sri-lanka/5099522> (accessed August 11, 2015).

Cambodia

The Human Rights Council has been engaged on Cambodia for many years, and in 2008 established a mandate for a dedicated special rapporteur on the situation of human rights in Cambodia.²⁵

Australia has taken inconsistent positions on Cambodia's human rights situation. While Australia made a strong statement during Cambodia's UPR, comments by Australian leaders both before and after that statement have failed to acknowledge real concerns and instead expressed overly optimistic views of the direction in which Cambodia was headed.

For example, in September 2013 the special rapporteur reported "indiscriminate and excessive use of force against protestors" in the weeks following Cambodia's general election, including police brutality that resulted in one death and several injuries. To Australia's credit, it expressed concern about restrictions on freedom of peaceful assembly and the disproportionate violence, and detention without trial, of protestors during Cambodia's UPR.²⁶

That strong criticism, however, was undermined by former Prime Minister Abbott's letter congratulating Prime Minister Hun Sen for his election victory in which Abbott lauded the "peaceful conduct of the recent National Assembly elections in Cambodia."²⁷ Australia took a similarly weak line in its council statement in response to the special rapporteur's report in September 2013. In that statement, Australia overlooked serious human rights abuses connected with the Cambodian elections, and instead simply welcomed "the fact that the recent elections were held in a largely peaceful environment."²⁸ In contrast, the UK, New Zealand, the US, and the European Union all acknowledged the election-related violence in their statements.²⁹

²⁵ Prior to 2008, the Cambodia mandate was held by a special representative of the secretary-general for human rights in Cambodia, a mandate that also reported to the Human Rights Council and to the Commission on Human Rights that preceded it.

²⁶ Universal Periodic Review Working Group, 18th Session, Universal Periodic Review of Cambodia, Statement by Australia, January 28, 2014, <http://geneva.mission.gov.au/gene/statement534.html> (accessed August 11, 2015).

²⁷ Kevin Ponniah, "Key donors endorse election," The Phnom Penh Post, October 14, 2013, <http://www.phnompenhpost.com/national/key-donors-endorse-election> (accessed August 12, 2015).

²⁸ Australian Statement for the Interactive dialogue with the Special Rapporteur on the Situation of Human Rights in Cambodia, September 24, 2013 <http://geneva.mission.gov.au/gene/statement493.html> (accessed August 11, 2015)

²⁹ See for example Statement by the United Kingdom, Human Rights Council, 24th session, Item Ten, September 24, 2013, https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/24thSession/OralStatements/United%20Kingdom_ID%20Cambo_30.pdf (accessed August 13, 2015).

Australia's response to the special rapporteur's 2014 report was also weak. While the special rapporteur reported violence since the elections, an arbitrary ban on demonstrations, and politically motivated arrests of opposition party members, Australia merely welcomed political reform, urged reforms to the judiciary and called for the establishment of a national human rights institution. One NGO observer who attended the session described Australia's statement as "shocking and disappointing."³⁰

By glossing over the many serious human rights violations in Cambodia, Australia not only appeared out of touch with the reality on the ground, but it undermined the ability of important mechanisms such as the UN special rapporteur to carry out their work.

As with Sri Lanka, Australia's border protection relationship with Cambodia would appear to explain some of the softness of Australia's criticism. In September 2014, Australia signed a refugee resettlement deal with Cambodia to allow Australia to resettle refugees on Nauru in Cambodia. The full cost of the deal is unknown but Australia made a \$US29 [A40] million aid commitment when the deal was announced and reportedly spent a further \$US11.2 [A15.5] million on the transfer of the four refugees that have been moved to Cambodia under the agreement.³¹ Australia will additionally pay for the costs of housing and educating refugees that are resettled under the plan. The deal was criticised by UNHCR as a "worrying departure from international norms."³² The special rapporteur on Cambodia called upon Australia "to abide by its obligations under the Convention to offer refugees the opportunity to rebuild their lives in safety and dignity, rather than export that responsibility to another country."³³

³⁰ Email correspondence with international NGO representative, Geneva, September 30, 2014.

³¹ Lauren Crothers and Paul Farrell, "First four refugees from Nauru land in Cambodia in \$40m resettlement deal," *The Guardian*, June 4, 2015, <http://www.theguardian.com/australia-news/2015/jun/04/four-refugees-arrive-in-cambodia-from-nauru-under-deal-with-australia> (accessed August 11, 2015).

³² "Cambodia refugee deal: UNHCR, Amnesty International condemn refugee resettlement arrangement," *ABC News*, September 27, 2014, <http://www.abc.net.au/news/2014-09-27/unhcr-deeply-concerned-by-australia-cambodia-refugee-relocation/5773242> (accessed August 11, 2015).

³³ Surya P. Subedi, "Report of the Special Rapporteur on the situation of human rights in Cambodia," UN Doc A/HRC/27/70, August 15, 2014, para. 62, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-70_en.doc (accessed August 11, 2015).

Burma

Human rights violations in Burma have long been of concern to the Human Rights Council, and are monitored and reported on by the special rapporteur on the situation of human rights in Myanmar. Burma's human rights situation remains poor despite some important steps taken by the Burmese government towards reform since the country's multiparty elections in 2010.

Australia describes development assistance as the “cornerstone of the bilateral relationship” with Burma, and it is estimated to reach \$US65.3 [A\$90] million in 2014-15.³⁴ Development assistance includes \$US13.1 [A\$18] million in humanitarian assistance to conflict-affected people between 2013-2016.³⁵ Since 2011, Australia has also engaged bilaterally to facilitate increased trade and investment links, particularly in energy and resources, with Australian businesses ANZ, Woodside, and Bluescope Steel all establishing a presence in Rangoon.³⁶

In 2014, the special rapporteur acknowledged the steps taken by the Burmese government to improve respect for human rights, but the bulk of his report highlighted serious ongoing violations, including torture in detention, attacks on freedom of expression and assembly, forced evictions, “widespread and systematic abuses” in ethnic border areas, and the worsening situation for ethnic Rohingya Muslims in Arakan (Rakhine) State that “may constitute crimes against humanity.”³⁷

During the council's interactive dialogue with the special rapporteur on Myanmar, Australia made a weak statement that glossed over most of the human rights abuses, save for crimes against humanity in Arakan State. Australia did not acknowledge other “widespread and systematic human rights violations” reported by the special rapporteur.³⁸ Instead, Australia's response focused on the Burmese government's “significant progress in improving human

³⁴ DFAT Country brief on Burma, http://www.dfat.gov.au/geo/burma/burma_brief.html (accessed August 11, 2015).

³⁵ See DFAT, “Development assistance in Burma,” <http://dfat.gov.au/geo/burma/development-assistance/Pages/humanitarian-assistance-burma.aspx> (accessed 11 August, 2015).

³⁶ DFAT Country brief on Burma, http://www.dfat.gov.au/geo/burma/burma_brief.html (accessed August 11, 2015).

³⁷ Tomas Ojea Quintana, Report of the Special Rapporteur on the situation of human rights in Myanmar, UN Doc A/HRC/25/64, April 2, 2014, www.ohchr.org/EN/HRBodies/HRC/.../A-HRC-25-64_en.doc (accessed August 11, 2015).

³⁸ Tomas Ojea Quintana, Report of the Special Rapporteur on the situation of human rights in Myanmar, UN Doc A/HRC/25/64, April 2, 2014, pp 9-10, www.ohchr.org/EN/HRBodies/HRC/.../A-HRC-25-64_en.doc (accessed August 11, 2015).

rights” and the peace process.³⁹ By contrast, the UK government raised gross human rights violations by the military, including sexual violence in Kachin State.⁴⁰

In March 2015, the special rapporteur warned the council of signs of backtracking in the Burmese government’s protection of human rights.⁴¹ She reported on a growing atmosphere of fear, distrust and hostility, and drew attention to four “race and religion” bills that would cement discriminatory attitudes and policies.

Australia’s response in 2015 more appropriately addressed the special rapporteur’s concerns. At informal negotiations on the resolution, Australia supported wording to protect media freedom, civil society activists, and human rights defenders.⁴² Australia’s formal statement to the council covered those issues as well as the dire situation in Arakan State, recent escalation of armed conflict in Kokang and police violence reported against student protesters in Letpadan.

In order for the council to protect and promote the rights of victims of abuses, it is critical that debate at the council reflects and responds to the reality on the ground. Given the whitewashing of abuses from countries and regional groupings that are generally hostile to human rights, countries like Australia can play a critical role in delivering objective assessments of the human rights situation in Burma. But Australia and some other countries failed in 2014 to reflect existing as well as worrying new human rights trends in Burma raised by the special rapporteur. During the special rapporteur’s visit to Burma in January 2015 in preparation for her report, she was subjected to sexist personal attacks in an apparent attempt to intimidate her. One additional helpful step Australia could have taken would have been to issue a public statement of support for the special rapporteur.

³⁹ Australian Statement, Interactive Dialogue with the Special Rapporteur on Myanmar, Human Rights Council - 25th Regular Session, March 17, 2014, <http://geneva.mission.gov.au/gene/statement562.html> (accessed August 11, 2015).

⁴⁰ Statement by the United Kingdom on the Interactive dialogue with the Special Rapporteur on Myanmar, March 17, 2014 https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/25thSession/OralStatements/UK_Myan_32.pdf (accessed August 12, 2015).

⁴¹ Yanghee Lee, Report of the Special Rapporteur on the situation of human rights in Myanmar, March 23, 2015, A/HRC/28/72, www.ohchr.org/EN/HRBodies/HRC/.../A_HRC_28_72_en.doc (accessed August 11, 2015)

⁴² Australia also raised these issues in its statement during formal negotiations: Australian statement on the Report of the Special Rapporteur on the situation of human rights in Myanmar, Item 4, Human Rights Council, 28th regular session March 16, 2015, <http://geneva.mission.gov.au/gene/statement684.html> (accessed August 12, 2015).

If Australia becomes a member of the Human Rights Council, it will not have the flexibility to pick and choose positions on international human rights situations according to a domestic political agenda. Nor should Australia take positions at the council on serious country human rights situations based on a desire to please governments with poor human rights records. Instead Australia should adopt consistent, principled positions based on international law.

A Human Rights Leader in the Asia-Pacific Region?

The current Australian government took office on a policy platform of providing a “principled voice” and a “robust approach” to human rights abuses, particularly in the Asia-Pacific region.⁴³ It declared that Australia’s foreign policy would be “more Jakarta, less Geneva.”⁴⁴

At the Human Rights Council, Australia is a member of WEOG not the Asia-Pacific Group. Australia is in a unique position, being geographically located in the Asia-Pacific region and politically aligned with Western Europe, with different levels of access and influence in each group.

Australia has an opportunity to be a regional standard bearer on human rights issues and influence regional players to discuss and even champion human rights norms and standards at the council. Australia should exercise its influence for the benefit not only of Australians, but to effect real change for populations across Asia and the Pacific. The Human Rights Council is an important venue for that engagement.

But so far Australia has recently helped to erode international standards on refugee protection in the Asia-Pacific region. This is through its attempts to outsource its international obligations to asylum seekers and refugees to poorer, less-equipped and unsafe countries such as Cambodia, Nauru, and Papua New Guinea, as well as by Australia engaging in unilateral measures such as towing asylum seeker boats back to sea.

⁴³ The policies and platforms of the current government were set out in the Liberal and National Parties’ (together the Coalition) election policies and discussion papers “The Coalition’s Policy for Foreign Affairs,” September, 2013, p 7 <http://lpawebstatic.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20%E2%80%93%20Foreign%20Affairs%20-%20final.pdf> (accessed 12 August 12, 2015).

⁴⁴ Dennis Shanahan “Jakarta relations beyond boats, says Tony Abbott,” *The Australian*, September 21, 2013, <http://www.theaustralian.com.au/national-affairs/foreign-affairs/jakarta-relations-beyond-boats-says-tony-abbott/story-fn59nm2j-1226724097032> (accessed 12 August 2015).

Australia is also often unwilling to publicly raise serious human rights concerns with its regional neighbours. The Australian government's view is that if human rights are to be raised, they are to be raised privately, either behind closed doors or, in the case of China, Laos, and Vietnam, during Australia's formal bilateral human rights dialogues with those countries. Human rights issues have been effectively removed from Australia's public, diplomatic efforts on China, and even from high level meetings with Chinese officials. While visiting China in April 2014, former Prime Minister Abbott shared his view that human rights are "not normally matters for discussion between prime ministers and premiers or between prime ministers and presidents."⁴⁵

Experience shows that efforts at raising human rights issues privately are ineffective if they are not paired with public pressure. The latter is critical to building the momentum for change and in supporting civil society organisations promoting human rights inside the country in question. Public pressure is also important to ensure that private discussions are not used to shield violations from international scrutiny.

As noted above, Australia is well placed to encourage regional cooperation with the Human Rights Council's mechanisms. While Australia has issued a standing invitation to Human Rights Council special procedures to visit Australia, special procedures are not afforded the same level of access in many countries in the Asia-Pacific region. Countries such as Burma, Cambodia, Fiji, Indonesia, Sri Lanka, and Vietnam have all refused to issue invitations to various UN experts seeking to monitor conditions in-country.

In March 2014, Papua New Guinea refused a request by Christof Heyns, UN special rapporteur on extrajudicial, summary, or arbitrary executions, to visit the Australian-funded Manus Island regional processing centre during his visit to the country. In April 2014, the Nauruan government suddenly cancelled a visit by the UN Working Group on Arbitrary Detention whose members were due to visit Australia's regional processing centre on Nauru. Australia should use its substantial influence with these two governments to encourage cooperation with special procedures and improve oversight of Australia's immigration detention facilities in those countries.

⁴⁵ Prime Minister Tony Abbott, press conference, Beijing, China, April 12, 2014, <https://www.pm.gov.au/media/2014-04-12/press-conference-beijing-china> (accessed August 11, 2015).

In addition to its potential leadership role in the Asia-Pacific region, cross-regional engagement is crucial to effective leadership in multilateral fora such as the Human Rights Council. Australia is a member of JUSCANZ, an informal grouping consisting of Australia, Canada, Iceland, Israel, Japan, Liechtenstein, New Zealand, Norway, Switzerland, and the United States. Australia could do more to effectively leverage its participation in this grouping, and to strengthen its outreach to states from other regional groups.

III. Fulfilling International Human Rights Obligations at Home

Australia's foreign policy positions on human rights would carry more weight if the government better addressed its international human rights obligations domestically. During its candidacy for the Human Rights Council, Australia's track record at home is likely to come under increasing scrutiny, in particular its treatment of asylum seekers and refugees, and discrimination faced by Australia's indigenous population.

Australia should show its willingness to respond constructively to UN human rights bodies' recommendations. For example, UNHCR, the UN expert on torture and cruel, inhuman and degrading treatment, and the treaty body that monitors adherence to the ICCPR, have each advised Australia that its harsh refugee and asylum seeker policies violate human rights law and called for reform of the laws to ensure that they comply.⁴⁶ However, the government has not done so, at times responding dismissively, such as when the former immigration minister asserted that laws would be "made in Australia under our laws, not out of the directives of Geneva or elsewhere."⁴⁷

Similarly in November 2014, when the UN Committee against Torture raised concerns that Australia's refugee policies put asylum seekers at risk of mistreatment, including particularly harsh conditions in offshore detention centres, former Immigration Minister Scott Morrison dismissed the committee's relevance: "What I want to assure Australians is that Australia's border protection policies are made in Australia—nowhere else."⁴⁸

⁴⁶ Human Rights Committee, Views: Communication No 2136/2012, 108th sess, UN Doc CCPR/C/108/D/2136/2012 (July 25 2013) <http://goo.gl/PZISV7> (accessed August 12, 2015); Human Rights Committee, Views: Communication No 2094/2011, 108th sess, UN Doc CCPR/C/108/D/2094/2011 (July 26, 2013) <http://goo.gl/l5pgnM> (accessed August 12, 2015); Juan E. Méndez, "Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment," UN Doc A/HRC/28/68/Add.1 (March 6, 2015) http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_Add.1_AV.doc (accessed August 12, 2015); United Nations High Commissioner for Refugees, "UNHCR monitoring visit to Manus Island, Papua New Guinea (2013)," [http://unhcr.org.au/unhcr/files/2013-07-12_Manus_Island_Report_Final\(1\).pdf](http://unhcr.org.au/unhcr/files/2013-07-12_Manus_Island_Report_Final(1).pdf) (accessed August 11, 2015); United Nations High Commissioner for Refugees, "UNHCR monitoring visit to the Republic of Nauru (2013)," http://unhcr.org.au/unhcr/images/Amended%20of%20footnote%202012-1214%20nauru%20monitoring%20report%20final_2.pdf (accessed August 11, 2015).

⁴⁷ Latika Bourke "Scott Morrison invokes John Howard in challenging Labor to back temporary protection visas," *The Age*, October 27, 2014, <http://www.smh.com.au/federal-politics/political-news/scott-morrison-invokes-john-howard-in-challenging-labor-to-back-temporary-protection-visas-20141026-11cokk.html> (accessed August 11, 2015).

⁴⁸ Latika Bourke, "Morrison defends Australia's border protection policies against UN criticism," *Sydney Morning Herald*, November 29, 2014, <http://www.smh.com.au/federal-politics/political-news/morrison-defends-australias-border-protection-policies-against-un-criticism-20141129-11wq15.html> (accessed August 11, 2015).

Australia has shown disregard for implementing the decisions of UN treaty bodies in many other cases. Since 1994, UN treaty bodies have found Australia in violation of its international human rights law obligations in 36 individual communications, but most victims have not received any remedy.⁴⁹

Particularly with respect to refugee matters, Australia has increasingly shown contempt for international human rights standards and disregard for recommendations from UN human rights experts (the UN “special procedures” system). Statements such as those from Australia’s prime minister in March 2015, that Australia is sick of being “lectured” by the UN are ill-befitting a candidate for membership of the council.⁵⁰

Strengthening National Human Rights Institutions

A particular issue of concern is Australia’s credibility as a champion of national human rights institutions globally given recent domestic developments.

In addition to its work on country situations, the Human Rights Council works on a broad range of thematic issues, ranging from good governance to HIV-AIDS and access to medicine, from women’s rights to conscientious objection.

One such initiative on which Australia has shown leadership, is the council’s work on strengthening national human rights institutions. Although the depth and strength of Australian advocacy has varied, Australian support for this initiative has been consistent through changes in government.⁵¹ Australia’s leadership has contributed to broad support in the council for national human rights institutions, and expanded participation by these institutions in council proceedings through changes to the council’s rule of procedure.⁵² In September 2014, Australia led a resolution that sought

⁴⁹ Remedy Australia maintains a public database of complaints upheld against Australia by the UN treaty bodies. See their published research on the extent to which those complaints have resulted in a remedy <http://remedy.org.au/cases/> (accessed August 11, 2015).

⁵⁰ Daniel Flitton, “Tony Abbott gives ‘two-fingered salute’ to UN censure over refugee detention,” *Sydney Morning Herald*, March 12, 2015, <http://www.smh.com.au/federal-politics/political-news/tony-abbott-gives-two-fingered-salute-to-un-censure-over-refugee-detention-20150312-1419ba.html> (accessed August 11, 2015).

⁵¹ Interview with Kieren Fitzpatrick, Secretariat to the Asia Pacific Forum, Sydney, September 15, 2014.

⁵² Interview with Kieren Fitzpatrick, Secretariat to the Asia Pacific Forum, Sydney, September 15, 2014.

to defend staff of national human rights institutions from political pressure and intimidation in the course of their work.⁵³

Going forward, however, Australia's credibility to lead on this issue has been undermined by the government's recent, unsubstantiated political attacks on the AHRC. The Australian government has significantly cut the commission's budget and senior government ministers have made numerous attacks on the credibility and integrity of the president of the AHRC, Gillian Triggs. Former Prime Minister Abbott labelled the commission's report on abuses against children in immigration detention a "political stitch up," even though the report covered abuses occurring during periods when both major political parties were in power in Australia. The attorney general attempted to procure Triggs' resignation.

The chairman of the International Coordinating Committee, the UN body responsible for accrediting national human rights institutions, has described these attacks as being of "grave concern" and undermining and intimidating the independence of the AHRC.⁵⁴

In February 2015, the special rapporteur on the situation of human rights defenders urged the Australian government to halt its personal attacks on the president of the AHRC.⁵⁵ Nonetheless, Immigration Minister Dutton launched fresh attacks on the president in June 2015, calling her a "complete disgrace," and suggesting her position should not continue.⁵⁶

⁵³ The resolution asserted that NHRIs and their staff "should not face any form of reprisal or intimidation, including political pressure, physical intimidation, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates, including when taking up individual cases or when reporting on serious or systematic violations in their countries." Resolution A/HRC/27/L.25, September 23, 2015, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/27/L.25 (accessed August 12, 2015).

⁵⁴ Letter from International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to Tony Abbott MHR, 23 February, 2015, <http://nhri.ohchr.org/EN/News/Documents/The%20Prime%20Minister%20of%20Australia.pdf> (accessed August 11, 2015).

⁵⁵ Letter from Michel Forst to Australian Permanent Mission in Geneva, February 25, 2015, [https://spdb.ohchr.org/hrdb/29th/public_-_AL_Australia_25.02.15_\(1.2015\).pdf](https://spdb.ohchr.org/hrdb/29th/public_-_AL_Australia_25.02.15_(1.2015).pdf) (accessed August 12, 2015).

⁵⁶ Michael Gordon, "Revealed: How the UN told Abbott government to back off Gillian Triggs," *Canberra Times*, June 9, 2015, <http://www.canberratimes.com.au/federal-politics/political-news/revealed-how-the-un-told-abbott-government-to-back-off-on-gillian-triggs-20150609-ghk224.html> (accessed August 11, 2015).

IV. Working Effectively with Civil Society

Civil society partnerships are critical to successful membership of the council. In his opening statement before the Human Rights Council, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein acknowledged that the work of the council could never be achieved without civil society participation.⁵⁷ The most effective Human Rights Council members engage regularly with civil society representatives and form close working partnerships.

The Australian Mission in Geneva claims a “strong relationship with domestic and international civil society organisations.”⁵⁸ However, Australia, perhaps reflecting its nonmember status, does not appear to have invested in cultivating enduring partnerships and providing significant diplomatic and financial support to NGOs in Geneva. In part as a result, NGOs have less actively sought Australia’s help and leadership on key thematic priorities or country situations of concern, in many cases turning elsewhere for support. Australia should ensure more frequent and more regular interactions with NGOs given it is seeking a seat at the council.

Until recently, Australia has not proactively engaged in regular exchanges of information and views with civil society organisations on strategies and initiatives at the council. Other delegations, like those of Canada, France, the UK, the US, the EU, Norway, and, more recently, Indonesia and Brazil, all host regular meetings with NGOs on their issues. These meetings are important opportunities for NGOs to express views on the language of proposed resolutions and what the priorities of states ought to be. Although it does not host its own preparatory meetings with NGOs, Australia has recently begun to actively participate in pre-session NGO briefings organised by Canada for JUSCANZ states.⁵⁹ In a further positive development, the mission has co-hosted a number of side-events with NGOs on issues such as strengthening civil society participation at the UN, and enhancing the efficiency and effectiveness of the council.

⁵⁷ Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the Human Rights Council 27th Session, Geneva, September 8, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14998&LangID=E#sthash.gJIUvIYi.dpuf> (accessed August 11, 2015).

⁵⁸ Letter from Peter Woolcott, Australia’s former Permanent Representative to the United Nations in Geneva, to Human Rights Watch and the Human Rights Law Centre, August 19, 2014. See Appendix II.

⁵⁹ JUSCANZ is an informal consultative group of States composed of Australia, Canada, Iceland, Israel, Japan, Liechtenstein, New Zealand, Norway, Switzerland, and the United States of America.

Civil society engagement should extend beyond Geneva. DFAT country offices should build strong relationships with civil society in the Asia-Pacific region and consult with regional and national organisations on their initiatives and positions at the Human Rights Council.

A more collaborative approach also requires a change in Canberra, where Australia's approach on human rights seems ad hoc. DFAT holds an annual dialogue with human rights groups, but the agenda is not clearly linked to the government's human rights priorities or its work at the council. The NGO dialogue could be improved by connecting up the staff from the Geneva mission and Geneva-based NGOs for the discussion of Australia's work in the council. This would make for a more sophisticated and informed dialogue around those issues.

Senior DFAT officials and the foreign minister could also gain a lot from regular and clearly targeted meetings reaching out to specific groups and experts, especially ahead of council sessions, to help determine Australia's priorities. UK Foreign Secretary William Hague established a human rights advisory group in 2010 and said that its "expertise has proved invaluable in informing our human rights policies."

Separately, Australia has played a critically important role in its advocacy for the protection of civil society through mechanisms such as the Human Rights Council resolution on protection of human rights defenders.⁶⁰ This is a good fit for Australian foreign policy and a very important issue at the international level. A group of countries hostile to NGO participation continually seeks to restrict the role of civil society at the council itself.⁶¹ Many countries at the council are not friends of civil society or human rights, and they invest significant financial and diplomatic capital to undermine resolutions and initiatives led by civil society there.⁶²

Although Australia has shown its support for civil society, a handful of states including the US, the UK, Switzerland, and Norway do the heavy lifting. It is important that Australia be an equally strong and consistent supporter of NGOs in the context of all council resolutions, including country resolutions which bear on those issues.

⁶⁰ Interview with international NGO representative, Geneva, August 18, 2014.

⁶¹ The Like Minded Group is comprised of Algeria, Belarus, Bangladesh, Bahrain, China, Cuba, Egypt, Ethiopia, India, Myanmar, Pakistan, Saudi Arabia, Thailand, Uganda, United Arab Emirates, and Venezuela.

⁶² Interview with international NGO representative, Geneva, August 18, 2014.

Australia could improve its support for civil society and strengthen its relationships with Geneva-based, regional, and national organisations by playing a coordinating role at the council for states that support civil society participation.⁶³

⁶³ Interview with international NGO representative, Geneva, October 2, 2014.

Appendix I

Mr Peter Woolcott
Australian Ambassador and Permanent Representative to the United Nations
Chemin des Fins 2
Case Postale 102
1211 Geneva 19
Switzerland

By email: Peter.Woolcott@dfat.gov.au

5 August 2014

Dear Ambassador,

Re: Australian foreign policy at the Human Rights Council

We are writing to solicit the views of the Permanent Mission in Geneva for our research into Australia's work at the Human Rights Council.

The Human Rights Law Centre (HRLC) is an Australian nongovernmental organisation that protects and promotes human rights in Australia and through Australian foreign policy using a mix of litigation, research, advocacy and education.

Human Rights Watch is a nongovernmental organisation based in New York that monitors human rights abuses by state and non-state actors in over 90 countries. In August 2013 Human Rights Watch opened an Australian office.

We are committed to producing material that is well-informed and objective. We hope that you and your staff would be able to answer the questions attached so that our report properly reflects the views of the Australian government regarding its work at the Human Rights Council.

In order for us to take your answers into account for our forthcoming report, we would appreciate a written response by 26 August 2014.

Emily Howie of the HRLC spoke with Ruth Stone and Emily Hill from the Mission about this project during the March 2014 session of the Human Rights Council. We look forward to continuing our constructive engagement with the Mission.

Yours sincerely,

Emily Howie
Director of Advocacy and Research
Human Rights Law Centre

Elaine Pearson
Australia Director
Human Rights Watch

Attachment: Questions for the Australian Permanent Mission to the United Nations in Geneva

Leadership role

1. On which initiatives or issues does Australia take a leadership role at the Human Rights Council? Why have these issues been made a priority?
2. In her letter to the Human Rights Law Centre dated 27 February 2014, Foreign Minister Julie Bishop named abolition of the death penalty, gender inequality and the strengthening national human rights institutions as thematic priorities for multilateral engagement. How has Australia led or contributed to initiatives on those thematic priorities at the Human Rights Council or otherwise pursued those priorities at the Council?
3. Does Australia take a leadership role in relation to any country-specific issues? If so, which country issues did Australia lead on and why? If not, why not?
4. What actions will Australia take at the Council to improve its candidacy for membership of the Human Rights Council in 2018?

Australia's potential for impact at the Human Rights Council

5. Does Australia's lack of membership on the Human Rights Council affect its ability to be influential on the Council's work? If so, how?
6. Australia has sometimes been described as a "constructive negotiator" and a "bridge-builder between the global North and South" in its work at the United Nations. Is this true of the role Australia plays at the Human Rights Council? Can you provide examples of when Australia has played this role at the Human Rights Council?
7. What interventions by Australia have had the greatest impact?

Australia's relationship with civil society

8. How would you describe Australia's relationship with Australian and other civil society organisations at the Human Rights Council?
9. To what extent does the Mission include civil society organisations in developing or informing initiatives in which it plays a role?

Appendix II

Ms Emily Howie
Director of Advocacy and Research
Human Rights Law Centre
By email: emily.howie@hrlc.org.au

Ms Elaine Pearson
Australian Director
Human Rights Watch
By email: pearsoe@hrw.org

19 August 2014

Dear Ms Howie and Ms Pearson,

I refer to your letter of 5 August regarding Australian foreign policy at the Human Rights Council (HRC). We are pleased to provide some perspectives on Australia's role in the HRC.

As you will be aware, Australia is not currently a member of the Human Rights Council. Although not a member, Australia engages actively in the HRC by presenting and cosponsoring resolutions, and participating in debates, panel discussions and interactive dialogues. We are also engaged actively in negotiations on key resolutions and have a reputation for being constructive and focused on what will make a positive difference to the human rights situation on the ground.

Australian leadership and engagement

Australia leads the HRC resolution on National Human Rights Institutions (NHRI). We have adopted an inclusive consultation process and work closely with the International Coordinating Committee for NHRIs, the Australian Human Rights Commission and Asia-Pacific Forum for NHRIs, to ensure a strong, consensus-based text. The most recent resolution, adopted at the 23rd session of the HRC in June 2013, had a thematic focus on

women and girls. The resolution was adopted by consensus, with 86 co-sponsors from all regions. Australia will continue to lead on NHRIs in the HRC, including when we present the next resolution at the forthcoming 27th session of the HRC in September 2014.

Australia takes a leading role in the resolutions on good governance; as well as the independence of judges and lawyers. Our leadership on these resolutions is consistent with our advocacy for strong democratic institutions and the rule of law.

Australia also takes a leading role in advocating for the responsibility to protect (R2P). As part of a core group, which also includes Hungary, Nigeria, Rwanda and Uruguay, we hosted three successful and well-attended side events on R2P and the broader prevention agenda. We coordinated the joint statement delivered at the March session of the HRC in 2011 (HRC16), on behalf of 56 states, on the responsibility to protect; as well as the joint statement made in March 2012 (HRC19), on behalf of Australia, Hungary, Nigeria, Thailand and Uruguay, which reiterated the conviction that the HRC has an important role to play in supporting the practical implementation of the human rights dimension of the responsibility to protect.

Moreover, Australia actively supports other resolutions on important issues such as the rights of persons with disabilities, the death penalty, discrimination against women, violence against women, rights of Indigenous peoples, freedom of expression, freedom of assembly and association, and business and human rights (amongst others). Australia has played a constructive role in many country-specific resolutions. We would note in particular the resolutions on DPRK, Cambodia and Myanmar.

Australia is the permanent chair of the JUSCANZ grouping in the HRC. The JUSCANZ group comprises all members of the Western Europe and Others Group (WEOG) that are not members of the European Union as well as Japan and the Republic of Korea. We facilitate dialogue and the sharing of information between members of the group. The JUSCANZ group meets both at Ambassadorial and expert levels.

In 2012, Ambassador Woolcott, in his personal capacity, was the WEOG representative on the Consultative Group. The Consultative Group, which consists of a representative from each regional group, provides recommendations to the HRC President on the selection of special procedure mandate holders.

The Australian Mission in Geneva provided support for a range of Australian candidates for special procedure mandate holders, most notably Philip Alston (Special Rapporteur on extreme poverty and human rights). We also provided extensive support to Justice Michael Kirby in his capacity as Chair of the HRC Commission of Inquiry on DPRK, including by hosting briefings for regional groups to assist in garnering support for the Commission's report, its recommendations and the related HRC resolution.

Potential for impact at the Human Rights Council

We recognise that the major differences between members and observers of HRC are that the former can be office bearers and that they have the right to vote. As a consequence HRC members tend to have more influence than observers. The right to vote, and indeed to call for a vote, puts HRC members in a stronger negotiating position as they can leverage this ability to influence the text of resolutions during negotiations. This is an element as to why Australia has decided to put forward its HRC candidacy, so that we can play an even more active role in the HRC's work.

Australia has a reputation as an engaged and pragmatic multilateral player in Geneva and New York. We are about achieving the best possible outcomes in what is often contested space. We seek to utilise our well-established bridge-building role to advance human rights objectives by facilitating cross-regional dialogue.

Engagement with civil society

The Australian Mission in Geneva has a strong relationship with domestic and international civil society organisations. Where feasible we meet with civil society in the margins of the HRC and in particular in the lead up to UPR sessions. We endeavor to consult with civil society and other non-government actors on initiatives that Australia leads.

In the context of the UPR, Australia values highly the contribution of civil society. We welcome submissions and briefings by civil society organisations received in Geneva, Australia or by other Australian diplomatic missions in country. Australia takes civil society input into consideration when developing our recommendations for states under review. We similarly greatly value civil society input into Australian appearances before the

Treaty Body Committees to which Australia is a party.

The Australian Government is committed to Australia's candidacy for the HRC for the term 2018-2020. We look forward to discussing our campaign strategy further with you as it develops over the coming year.

I trust this information is useful.

Sincerely,
Peter Woolcott

Acknowledgments

This report was researched and written by Emily Howie, director of advocacy and research at the Human Rights Law Centre. This report was edited by Elaine Pearson, Australia director at Human Rights Watch, and Philippe Dam, Geneva deputy director at Human Rights Watch. James Ross, legal and policy director at Human Rights Watch, Peggy Hicks, global advocacy director at Human Rights Watch, John Fisher, Geneva advocacy director at Human Rights Watch, and Joseph Saunders, deputy program director at Human Rights Watch, also reviewed the report. Production assistance was provided by Georgia Bright, associate with the Asia division; Kathy Mills, publications specialist; and Fitzroy Hepkins, administrative manager.

We would like to thank everyone who gave us their valuable time during the research of this report.

AUSTRALIA AT THE HUMAN RIGHTS COUNCIL

Ready for a Leadership Role?

Australia is a candidate for membership of the United Nations Human Rights Council for the 2018-2020 term. This report considers Australia's readiness to operate effectively if it is elected.

Australia's recent experience as a member of the UN Security Council illustrated that it can successfully leverage its diplomatic power to advance human rights protection. However, its record at the Human Rights Council gives some pause. Australia is yet to play a leadership role in the Human Rights Council's work on grave human rights situations globally. Too often Australia's approach at the council has been passive, and, of greater concern, Australia has acted inconsistently and, at times, in an unprincipled manner. Meanwhile, at home, Australia has shown disregard for the UN system and failed to respond constructively to recommendations made by UN bodies.

Human Rights Watch and the Human Rights Law Centre urge Australia to advance its candidacy for council membership by addressing these issues and demonstrating that it can operate as an international human rights leader. Australia needs to improve its record in three areas: it should take a stronger leadership role on country-specific human rights violations, particularly in Asia-Pacific states; it should respond more constructively to international concerns about some of its own domestic policies and practices, bringing them into line with international human rights standards; and it should engage more closely with global civil society organisations that help bring issues to the attention of the council.



Australia's placard at the United Nations Human Rights Council in Geneva

© 2015 Human Rights Watch